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

**AAM** - the abbreviation to identify the adopting agency  
**01** - the State Register issue number  
**96** - the year  
**00001** - the Department of State number, assigned upon receipt of notice.  

**E** - Emergency Rule Making—permanent action not intended (This character could also be: A for Adoption; P for Proposed Rule Making; RP for Revised Rule Making; EP for a combined Emergency and Proposed Rule Making; EA for an Emergency Rule Making that is permanent and does not expire 90 days after filing.)

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

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**Office of Children and Family Services**

**EMERGENCY/PROPOSED RULE MAKING**

**NO HEARING(S) SCHEDULED**

Minimum Pre-Service, Orientation Health and Safety Training Requirements in Child Day Care Programs

- **I.D. No.** CFS-14-17-00003-EP  
- **Filing No.** 206  
- **Filing Date:** 2017-03-20  
- **Effective Date:** 2017-03-20

Pursuant to the provisions of the State Administrative Procedure Act, notice is hereby given of the following action:

**Proposed Action:** Amendment of sections 390(2-a)(a), 390-a(3), 410(1) and 410-x(3) to implement the new federal minimum health and safety pre-service or three-month orientation period training requirements.

**Subject:** Minimum pre-service, orientation health and safety training requirements in child day care programs.

**Purpose:** To implement minimum pre-service, orientation health and safety training requirements in child day care programs.

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Rule making by the Office of Children and Family Services (the Office) must change New York State child care regulations to achieve compliance and consistency with the federal mandate. In order to comply, the Office must adopt emergency regulations to protect the health, safety and general welfare of children in care. OCFS is also simultaneously proceeding with a notice of proposed rulemaking to Title 18 of the Official Compilation of Codes, Rules and Regulations of the State of New York (NYCRR) sections 414.14, 415.4, 416.14, 417.14, 418-1.14 and 418-2.14. Individuals who completed the 15-hour health and safety classroom training before August 1, 2016 will need to take Office-approved training by September 30, 2017 to comply with the new CCDBG requirement. Individuals who completed the 15-hour health and safety classroom training on or after August 1, 2016 have complied with the new CCDBG requirement. Individuals who completed the 15-hour health and safety classroom training before August 1, 2016 will need to take Office-approved training by September 30, 2017 to comply with the new CCDBG requirement. Individuals seeking to operate a family day care or group family day care after the effective date of these regulations must comply with the new CCDBG requirement upon completion of the 15-hour health and safety classroom training course, prior to the Office issuing the registration or license. Family day care and group family day care homes permitted to replace the person named as the provider, must have the individual complete the 15-hour health and safety classroom training before becoming the provider.

Every assistant, substitute, and volunteer with the potential for regular and substantial contact with children in care must complete Office-approved training that complies with the federal minimum health and safety pre-service training requirements. Every person in the position of assistant, substitute, or volunteer with the potential for regular and substantial contact with children at the time this regulation becomes effective must complete the Office-approved training by September 30, 2017. Any assistant or substitute who does not complete this training by September 30, 2017 must not be left unsupervised with children in care until such time as the training has been completed. The person supervising the individual must have completed the Office-approved training that complies with the federal minimum health and safety pre-service training requirements. Every applicant for the position of assistant, substitute, or volunteer with the potential for regular and substantial contact with children in care must complete Office-approved training that complies with the federal minimum health and safety pre-service training requirements.
Language is being added to the family day care and group family day care regulations to clarify that the pre-application orientation session is a separate requirement from the new CCDBG health and safety pre-service or three-month orientation requirement.

Small Day Care Centers, Day Care Centers and School-age Child Care Programs

Every director, teacher, caregiver, and volunteer with the potential for regular and substantial contact with children in care must complete Office-approved training that complies with the federal minimum health and safety pre-service or three-month orientation period training requirements.

Every person in the position of director, teacher, caregiver, or volunteer with the potential for regular and substantial contact with children at the time this regulation becomes effective must complete the Office-approved training by September 30, 2017. Any teacher or director who does not complete this training by September 30, 2017 must not be left unsupervised with children in care until such time as the training has been completed.

The person supervising the individual must have completed the Office-approved training that complies with the federal minimum health and safety pre-service training requirements.

Every applicant for the position of director, teacher, caregiver, or volunteer with the potential for regular and substantial contact with children after this regulation becomes effective must complete the Office-approved training, either pre-service or within three months of starting such position, or by September 30, 2017, whichever is later. Any teacher or director who has not completed the training, but will be completing the training within the first three months of starting such position, must not be left unsupervised with children in care until such time as the training has been completed.

The person supervising the individual must have completed the Office-approved training that complies with the federal minimum health and safety pre-service training requirements.

Language is being added to the licensing and registration child care regulations to clarify that the pre-application orientation session is a separate requirement from the new CCDBG health and safety pre-service or three-month orientation requirement.

Legally-Exempt Child Care Programs

To be enrolled by or to maintain enrollment with a legally-exempt caregiver enrollment agency to provide child care services to families receiving child care subsidies under the New York State Child Care Block Grant Program, every legally exempt caregiver, employee with a caregiving role, and volunteer with the potential for regular and substantial contact with children in care, except for a grandparent, great-grandparent, sibling (if living in a separate residence), aunt, or uncle providing care pursuant to 415.1(h), must complete Office-approved training that complies with the federal minimum health and safety pre-service training requirements.

For informal child care programs enrolled at the time this regulation becomes effective, the required individuals must complete the Office-approved training by September 30, 2017.

For pre-exempt group child care programs enrolled at the time this regulation becomes effective, the required individuals must complete the Office-approved training by September 30, 2017. Any individual who does not complete the training by September 30, 2017 must not be left unsupervised with children in care until such time as the training has been completed.

The person supervising the individual must have completed the Office-approved training that complies with the federal minimum health and safety pre-service training requirements.

For applicants seeking to be enrolled as an informal child caregiver after this regulation becomes effective, the required individuals must complete the Office-approved training pre-service or by September 30, 2017, whichever is later.

For applicants seeking to be enrolled as a legally-exempt group child care program after this regulation becomes effective, the required individuals must complete the Office-approved pre-service or by September 30, 2017, whichever is later. Any required individual who has not completed the training by September 30, 2017 must not be left unsupervised with children in care until such time as the training has been completed. The person supervising the individual must have completed the Office-approved training that complies with the federal minimum health and safety pre-service training requirements.

This notice is intended: to serve as both a notice of emergency adoption and a notice of proposed rule making. The emergency rule will expire June 17, 2017.

Text of rule and any required statements and analyses may be obtained from: Public Information Office, New York State Office of Children and Family Services, 52 Washington Street, Rensselaer, New York 12144, (518) 473-7793, email: info@ocfs.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.
service or during a three-month orientation period, or by September 30, 2017, whichever is later. Any assistant or substitute who does not complete training by the required date must not be left unsupervised with children in care until such time as the training has been completed. Failure to obtain the training by the required date may result in regulatory violations, and potential enforcement action against the child care program.

The regulations are consistent with the Child Care and Development Block Grant Act of 2014 (42 U.S.C. 9058 et seq.), which requires the Office to ensure minimum health and safety training in specific topical areas to be completed pre-service or during an orientation period.

9. Compliance schedule:
The regulations are effective when filed, as the federal requirement is already in effect, and States are required to have implemented the requirement by September 30, 2017.

10. Alternative approaches:
No alternative approaches were considered because such training is required by federal statute and regulation, as a condition of receiving federal CCDBG funding.

Regulatory Flexibility Analysis

1. Effect on small businesses and local governments:
The emergency and proposed regulations will affect all licensed and registered family day care homes, group family day care homes, school-age child care programs, and day care centers (outside of New York City), approximately 17,230 programs. Additionally, approximately 30,000 legally-exempt child care programs statewide and 12,000 day care centers in New York City will be affected.

2. Compliance requirements:
Child care programs will have to keep a record of compliance with the new training standards, as they are required to do with the current training standards.

CCDBG and the Child Care and Development Fund (CCDF) regulations require all directors, teachers, and caregiving staff at licensed, registered, and legally-exempt child care programs (except for certain legally-exempt relative caregivers) obtain health and safety training, pre-service or during a three-month orientation period, as appropriate for the program setting. Section 98.44(b)(1)(i) of the CCDF regulations provide that this training and related training must be completed by caregivers, teachers, and directors are allowed to care for children unsupervised. The required federal compliance date is September 30, 2017.

The new requirements do not duplicate any existing State or federal requirements or the SSL 390-a(3) training requirements, and there are no substantial contact with children in care until such time as the training has been completed. Failure to complete the training by the required date must not be left unsupervised with children in care until such time as the training has been completed. Failure to obtain the training by the required date may result in regulatory violations, and potential enforcement action against the child care program.

Legally-exempt child care programs are not subject to the SSL 390-a(2) pre-licensure or pre-registration requirements or the SSL 390-a(3) training requirements, and there are no substantial contact with children in care of school-age child care programs and day care centers may obtain the federally required training, either pre-service or during a three-month orientation period, or by September 30, 2017, whichever is later. Failure to complete the training by the required date will result in termination of the caregiver’s enrollment. Individuals associated with legally-exempt group child care programs who are required to complete the training, must do so pre-service or by September 30, 2017, whichever is later. Failure to complete the training by the required date must not have unsupervised contact with children in care. Failure to complete the training by the required date may result in termination of the legally-exempt group child care program’s enrollment.

3. Language is being added to the licensing and registration child care regulations to clarify that the pre-application orientation session is a separate requirement from the new CCDBG health and safety pre-service or three-month orientation requirement.

4. Costs:
The implementation of emergency and proposed regulations may result in costs to child care programs. The Office plans to offer a training at no cost to programs, that will satisfy the federal requirement for pre-service/ orientation health and safety training. For those that use the Office training course to satisfy this requirement, the costs will be minimal.

5. Local government mandates:
The emergency and proposed regulations impose no new mandates on local governments.

6. Paperwork:
Child care programs will have to keep a record of compliance with the new training standards, as they are required to do with the current training standards.

7. Duplication:
The new requirements do not duplicate any existing State or federal requirements.

8. Federal standards:
The regulations are consistent with the Child Care and Development
who do not complete the training by the required date must not have unsupervised contact with children in care. Failure to complete the training by the required date may result in termination of the legally-exempt group child care program’s enrollment.

3. Professional services:
No new professional services are required by small business or local government to comply with this change.

4. Compliance costs:
The implementation of emergency and proposed regulations may result in costs to child care programs. The Office plans to offer a training, at no cost to programs, that will satisfy the federal requirement for pre-service health and safety training. For those that use the Office training course to satisfy this requirement, the costs will be minimal.

5. Economic and technological feasibility:
No new economic or technology requirements for small business or local government are expected.

6. Minimizing adverse impact:
To minimize the impact of the regulations on child care programs, the Office is funding the development of an on-line training course that will meet the federal requirements. The training course is constructed in modular sessions and takes into consideration the time constraints on the child care program and the individual. The training course is anticipated to be available on the effective date of the emergency and proposed regulations and will be available at no cost to the participants.

7. Small business and local government participation:
In the development of the 2016-2018 Child Care and Development Fund Plan, the Office held three regional public hearings, in which the federal training requirements were presented to child care providers and local and state social services districts. The Office held a statewide webinar for child care providers that outlined these and other changes. The draft 2016-2018 Child Care and Development Fund Plan was posted on the Office website. Child care providers, local governments, and the public made comments on the proposed 2016-2018 Child Care and Development Fund Plan.

Rural Area Flexibility Analysis

1. Types and estimated numbers of rural areas:
The emergency and proposed regulations will affect day care centers, school-age and home-based child care providers, and legally-exempt child care programs located in all 44 rural areas of the State. Statewide, there are approximately 17,230 child care programs, 30,000 legally-exempt child care programs statewide, and 12,000 day care centers in New York City that have to complete the required training course and will be affected.

2. Reporting, recordkeeping, and other compliance requirements and professional services:
Child care programs will have to keep a record of compliance with the new training standards, as they are required to do with the current training standards.

CCDBG and the Child Care and Development Fund (CCDF) regulations require all directors, teachers, and caregiving staff at licensed, registered, and legally-exempt child care programs (except for certain legally-exempt relative caregivers) obtain health and safety training, pre-service or during a three-month orientation period, as appropriate for the program setting. Section 98.44(b)(1)(i) of the CCDF regulations provide that this health and safety training must be completed by licensed caregivers, teachers, and directors are allowed to care for children unsupervised. The required federal compliance date is September 30, 2017.

SSL Section 390-a(3)(d) requires family day care and group family day care operators obtain training pertaining to the protection of the health and safety of children, prior to the issuance of a registration or license by the Office. The 15-hour health and safety classroom training designated to satisfy this requirement was updated to include the federally required health and safety pre-service/orientation trainings topics, and was implemented August 1, 2016. Individuals who completed the 15-hour health and safety classroom training before August 1, 2016 will need to take Office-approved training by September 30, 2017 to comply with this CCDBG requirement. Individuals who completed the 15-hour health and safety classroom training on or after August 1, 2016 have complied with this CCDBG requirement. Individuals applying to operate a family day care or group family day care after the effective date of these regulations will comply with the CCDBG requirement upon completion of the 15-hour health and safety classroom training course, prior to the Office issuing the registration or license. Family day care and group family day care homes permitted to replace the person named as the provider, must do so pre-service or by September 30, 2017, whichever is later. Any assistant or substitute who does not complete this training by the required date must not be left unsupervised with children in care until such time as the training has been completed. Failure to obtain the training by the required date may result in regulatory violations, and potential enforcement action against the child care program.

Assistant, substitutes, and volunteers who have the potential for regular and substantial contact with children in care of family day care and group family day care homes must obtain health and safety training, either pre-service or during a three-month orientation period, or by September 30, 2017, whichever is later. Any assistant or substitute who does not complete this training by the required date must not be left unsupervised with children in care until such time as the training has been completed. Failure to obtain the training by the required date may result in regulatory violations, and potential enforcement action against the child care program.

Directors, teachers, and volunteers with the potential for regular and substantial contact with children in care of school-age child care programs and day care centers may obtain the federally required training, either pre-service or during a three-month orientation period, or by September 30, 2017, whichever is later. Directors and teachers located in school-age child care programs and day care centers who have not completed the training by September 30, 2017 must not be left unsupervised with children in care until after such individuals have completed the training. Failure to obtain the training by the required date may result in regulatory violations, and potential enforcement action against the child care program.

Those legally-exempt informal child caregivers who are required to complete the training, must do so pre-service or by September 30, 2017, whichever is later. Failure to complete the training by the required date will result in termination of the caregiver’s enrollment. Individuals associated with legally-exempt group child care programs who are required to complete the training, must do so pre-service or by September 30, 2017, whichever is later. Individuals at legally-exempt group child care programs who do not complete the training by the required date must not have unsupervised contact with children in care. Failure to complete the training by the required date may result in termination of the legally-exempt group child care program’s enrollment.

The implementation of emergency and proposed regulations may result in costs to child care programs. The Office plans to offer a training, at no cost to programs, that will satisfy the federal requirement for pre-service health and safety training. For those that use the Office training course to satisfy this requirement, the costs will be minimal.

4. Minimizing adverse impact:
To minimize the impact of the regulations on child care programs, the Office is funding the development of an on-line training course that will meet the federal requirements. The training course is constructed in modular sessions and takes into consideration the time constraints on the child care program and the individual. The training course is anticipated to be available on the effective date of the emergency and proposed regulations and will be available at no cost to the participants.

5. Rural area participation:
The Office does not expect any reduction to the number of employees at family day care homes, group day care homes, day care centers, school age child care programs, or legally-exempt child care programs based on the regulations.

Categories and Numbers Affected:
There are no changes in categories or numbers.

Nature of Impact:
The Office does not expect any reduction to the number of employees at family day care homes, group family day care homes, day care centers, school age child care programs, or legally-exempt child care programs based on the regulations.

Regions of Adverse Impact:
There are no regions where the regulations would have a disproportionate adverse impact on jobs or employment opportunities.
The Division of Criminal Justice Services

REVISED RULE MAKING NO HEARING(S) SCHEDULED

Handling of Ignition Interlock Cases Involving Certain Criminal Offenders

I.D. No. CJ-S-25-16-00004-RP

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

**Proposed Action:** Amendment of sections 358.1-358.3, 358.4(a), (c), (d), 358.5-358.8, and addition of section 358.10 to Title 9 NYCCR.

**Statutory Authority:** Vehicle and Traffic Law, sections 1193(1)(g) and 1198(5)(a).

**Subject:** Handling of Ignition Interlock Cases Involving Certain Criminal Offenders.

**Purpose:** To promote public/traffic safety, offender accountability and quality assurance through the establishment of minimum standards.

**Substance of revised rule:** The full text of the regulation can be viewed at http://www.criminaljustice.ny.gov/.

These proposed amendments make substantive and technical changes to the Division of Criminal Justice Services rule, entitled “Handling of Ignition Interlock Cases Involving Certain Criminal Offenders”. Overall, it updates, clarifies, and strengthens regulatory provisions to better enhance public/traffic safety, achieve greater offender accountability, and guarantee quality assurance with respect to Ignition Interlock Device (IID) program service delivery.

Rule Sections 358.1 and 358.2 are amended to update the objectives and applicability regulatory language to reflect recent statutory changes.

Rule Section 358.3 governing definitions, is amended to refine and/or reinforce certain definitional terms. Two new definitions of “Emergency Notification Program” and “real time reporting” are also added to reflect new programatic features which are now operational.

Several proposed amendments are made to Rule Section 358.4 governing Ignition Interlock Program Plans. Plan content is updated to incorporate recent statutory changes as to imposition of IIDs in advance of sentencing and to better ensure that plans reflect handling of intermid supervision cases. Additional proposed language will facilitate timely notification procedures to monitors where a court approves reduction in a breath sample in accordance with new regulatory provisions.

Rule Section 358.5, governing the Approval Process and Responsibilities of Qualified Manufacturers, is amended with respect to application procedures, including but not limited to, updating outdated language, and establishing parameters surrounding open application process and contractual terms to promote consistency. Other proposed changes are sought to achieve greater offender and service delivery accountability. For example, new reporting language is proposed with respect to test results to better guarantee serious failed tests by operators are timely reported. Other changes strengthen provisions to establish timely DCJS notification of significant operational service delivery problems. Significantly, a new regulatory provision establishes a mechanism consistent with the National Highway Traffic Safety Administration standards which will permit court authorization of a reduced breath sample for certain operators with certain health issues which prevent them from regular operational usage of the IID.

Rule Section 358.6 governing cancellation, suspension, and revocation of qualified manufacturers, installation and service providers and IIDs, is modified to clarify that verbal and/or written notification or communicatio-
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ing Model Specifications for Breath Alcohol Ignition Interlock Devices and cited the need to have been permitted to operate a motor vehicle by the Courts, and these failed/missed re-tests are therefore, deserving of report notification for whatever action the DA and/or the Court determine(s) appropriate. COAP also raised a few other scenarios where they felt that it was not necessary—for example, where a defendant missed a service visit due to being hospital-ized or missed a re-test due to driving on a highway. DCJS does not believe that it is necessary to create exceptions and any monitor has the option to make a recommendation when necessary. Further DCJS clarified to COAP that monitors are not required to report others who operate the motor vehicle that is equipped with an IID, for whom failed or missed tests are logged. However, any evidence of a crime that is discovered through the operation of the Monitors (e.g. driving while blowing into the IID and recorded on camera) should result in an appropriate response and referral to police for further action whereby such individuals can be subsequently charged with Vehicle and Traffic Law (VTL) § 1198 offenses and/or other crimes which may be applicable.

Additionally, the Queens District Attorney’s Office, sought change to existing regulatory language that requires that any test at, or above, a.05% BAC result in the notification to the applicable Court and DA. Our proposed change in this area to no longer require the monitor report a failed start-up or rolling test (initial tests), where the BAC is.05% or greater, yet maintain the reporting requirement as to confirmatory test satisfactorily addresses their request. Their Office also sought clarification of the DCJS rules in which the Court or DA notification must occur. DCJS directly communicated with them to address their questions. Further their Office asked about the difference between a “temporary lockout” and “permanent lockout.” DCJS explained to them that neither term exists in either the current or proposed regulation, and clarified the regulatory definition of “lockout mode” and when it occurs that requires court and DA notification.

Smart Start, a qualified manufacturer of IDs, submitted specific comments on various regulatory sections. Italicized below is a summary of their suggestions followed by DCJS’ responses:

- Rule Section 358.3(b). Smart Start suggests that all monitors use a standardized “certificate of completion” form for purposes of removal and transfers. DCJS already has a template which is accessible and available to all monitors.
- Rule Section 358.3(bb). Smart Start suggests that additional wording, “with the intention to circumvent or alter the proper operation,” be included in the definition of “tamper.” DCJS rejects this additional language as it would be unduly burdensome on monitors to verify intent and would lead to many violators escaping penalties for their wrongful behavior.
- Rule Section 358.3. Smart Start suggests the addition of other definitions (i.e. fixed site, equipment, service, lockout code, mobile service and camera). DCJS does not believe that any new definitional terms are necessary at this time, in large part because certain suggested terms are not used in the rule and would require clarifications by the Business Section and Court.
- Rule Section 358.4(d)(4). Smart Start suggests adding the requirement that operators return the IID upon completion of their term of monitoring or be held financially liable. As this is a contractual/business relationship between the operator and the vendor, DCJS does not believe it is appropriate to establish such a rule. This position is included in the current NHTSA standards and should any revision occur similarly amend our rule to reflect the most up-to-date document.
- Rule Section 358.5(c)(3). Smart Start suggests adding language to make sure that the Qualified Manufacturer is provided with proof of a reduced breath sample. DCJS agrees to add language requiring proof be provided to the applicable Qualified Manufacturer.
- Rule Section 358.5(c)(5). Smart Start suggests removing the option of an installation service provider/Qualified Manufacturer use mobile servicing. DCJS rejects their suggestion. While this may not fit into their business model it does not mean that it should not be an option for the vendors that choose to utilize it.
- Rule Section 358.5(c)(6). Smart Start suggests adding language to provide consistency with later portions of the regulation relative to time periods between service visits. DCJS agrees to make these changes.

Additionally, with limited exceptions, all failed/missed retests are violations of the regulations under which a license has been permitted to continued pre-sentence which may result in more favorable case outcomes. Accord-
Rule Making Activities

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Education Department

PROPOSED RULE MAKING
NO HEARING(S) SCHEDULED

State Aid for Library Construction, and School Library Systems

I.D. No. EDU-14-17-00006-P

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

Proposed Action: Amendment of sections 90.12 and 90.18 of Title 8 NYCRR.

Statutory authority: Education Law, sections 207(not subdivided), 215(not subdivided), 273-a (1) through (7), 282(not subdivided), 283(not subdivided), 284(not subdivided)


Purpose: To Implement Education Law, section 273-a and to Update Terminology Related to the Functions of school library systems.

Text of proposed rule: 1. Section 90.12 of the Regulations of the Commissioner of Education shall be amended, to read as follows:

§ 90.12 State Aid for Library Construction.

(a) Definitions. As used in this section and in Education Law, section 273-a:

(1) . . .
(2) . . .
(3) . . .
(4) Acquisition means the purchase of a site for library purposes; and/or an existing building suitable for conversion to library purposes.
(5) . . .
(6) . . .
(7) Broadband library services means providing a high-speed internet connection for library users, including but not limited to internal and external connections, at a minimum speed prescribed by the commissioner using such means as wireless, fiber, cable, white space and similar products.

(b) Application procedures.
(1) . . .
(2) . . .
(3) . . .
(4) . . .
(5) The library system board, upon request by the Commissioner, shall provide the eligibility criteria for applications designated as projects serving economically disadvantaged communities pursuant to Education Law § 273-a(2)(e), for each recommended application.
(c) . . .
(d) . . .
(e) Costs. Pursuant to Education Law, section 273-a:

(1) Costs eligible for approval shall include:

(i) construction or acquisition [or] of a library building;
(ii) . . .
(iii) renovation or rehabilitation of leased property to be used for library purposes;

(iv) acquisition of vacant land to be used for library purposes;
(v) purchase and installation of initial equipment and furnishing as a project component of subparagraphs (i), (ii) or (iii) of this paragraph;
(vi) purchase, installation and replacement of a library building’s broadband services infrastructure, including but not limited to internal and external connections, either as a stand-alone project or as a project component of subparagraphs (i), (ii) or (iii) of this paragraph;
(vii) site preparation and grading as a project component of subparagraphs (i), (ii) or (iii) of this paragraph;
(viii) replacement of a library building’s mechanicals including but not limited to heating, ventilation, air conditioning, cooling, electrical, and plumbing systems;
(ix) replacement of permanent components of a library building including but not limited to windows, doors, roofs, and lighting systems;
(x) purchase and installation of permanent signage (with or without lighting, internal or external), which is used for library purposes;
(xi) purchase and installation of one or more generators for library purposes;
(xii) purchase and installation of assistive listening devices in systems for the deaf and hearing impaired, which shall include but not be limited to, hearing loops, FM systems and infrared systems; and
(xiii) [supervision] project management of the construction, renovation, rehabilitation or broadband library services infrastructure project;
(xiv) architectural and engineering plans for locally approved new or ongoing projects; and
(xv) such other costs as may be approved by the [commissioner] Commissioner.

(2) Costs ineligible for approval shall include, but shall not be limited to:

(i) speculative architectural and engineering plans and feasibility studies;
(ii) . . .
(iii) . . .
(iv) . . .
(v) ongoing service fees for telecommunications and broadband services;
(vi) landscaping; and
(vii) routine maintenance.

(f) . . .
(g) Reports. The following reports shall be made to the commissioner on the forms and by the dates prescribed by the commissioner:

(1) . . .
(2) [Each] Upon request by the Commissioner, a library system board shall report on the anticipated State aid necessary for eligible projects to be completed in its service area.
(3) Upon request by the [commissioner] Commissioner, [each] a library system board shall submit [an annual] a report detailing the status of each project for which an application was submitted by a member library and not recommended for approval, or was approved but for which no State aid was provided.

(4) Any other reports the Commissioner shall deem necessary to carry out the purpose of this program.

2. Paragraph (7) of subdivision (a) of section 90.18 of the Regulations of the Commissioner of Education shall be amended, to read as follows:

(7) Coordinator of a school library system means a certified school library media specialist with a minimum of three years employment as a school library media specialist and possessing a valid state administrator and supervisor (S.A.S.) certificate [or], a valid school building leader (S.B.L.) certificate or a valid school district leader (S.D.L.) certificate in accordance with Part 80 of this Title, or an equivalent certificate title as determined by the Commissioner.

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

Data, views or arguments may be submitted to: Carol Desch, State Education Department, State Education Department, CEC, Madison Avenue, Albany, NY 12230, (518) 474-7196, email: regcomments@nysed.gov

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

Regulatory Impact Statement

1. STATUTORY AUTHORITY:

Section 207 of the Education Law grants general rule-making authority to the Board of Regents to carry into effect the laws and policies of the State relating to education. Section 215 of the Education Law authorizes the Commissioner of Education to visit, examine, and inspect schools or institutions under the education supervision of the State and require reports from such schools.

7
Education Law section 273-a(1-4) provides for State aid for projects for the installation and infrastructure of broadband services, and for the acquisition of vacant land and the acquisition, construction, renovation or rehabilitation, including leasehold improvements, of buildings of public libraries and public library systems chartered by the Regents of the State of New York or established by act of the Legislature, upon approval by the Commissioner of Education. Subdivision (5) of section 273-a authorizes the Commissioner of Education to adopt rules and regulations as are necessary to carry out the purposes and provisions of this section.

Section 282, 283, and 284 of the Education Law provide for the establishment and functions of and State aid for school library systems in BOCES, the Big Five city school districts (New York City, Buffalo, Syracuse, Rochester, and Yonkers) and school districts and nonpublic schools enumerated in a school library system plan of service approved by the Commissioner of Education.

2. LEGISLATIVE OBJECTIVES:

The proposed amendment carries out the legislative objectives of the above-referenced statutes by implementing Education Law section 273-a, as amended by Chapter 498 of the Laws of 2011, Chapter 148 of the Laws of 2014 and Chapter 480 of the Laws of 2015 and by updating and clarifying certain terminology relating to the functions of school library systems.

3. NEEDS AND BENEFITS:

The proposed amendments to section 90.12 of the Commissioner’s regulations are necessary to implement Education Law § 273-a, as amended by Chapter 498 of the Laws of 2011, Chapter 148 of the Laws of 2014, and Chapter 480 of the Laws of 2015. These amendments include the following major changes:

- a definition of broadband library services was added;
- requires each public library system to submit, upon request by the Commissioner, the eligibility criteria for applications designated as projects serving economically disadvantaged communities pursuant to Education Law § 273-a(2)(e), for each recommended application;
- clarifies certain costs that are eligible for approval, including but not limited to:
  - acquisition of vacant land to be used for library purposes;
  - purchase, installation and replacement of a library building’s broadband services infrastructure, including but not limited to internal and external connections, either as a stand-alone project or as a project component;
  - purchase and installation of permanent signage (with or without lighting, internal or external), which is used for library purposes;
  - purchase and installation of one or more generators for library purposes;
  - purchase and installation of assistive listening devices and systems for the deaf and hearing impaired, which shall include but not be limited to, hearing loops, FM systems and infrared systems;
  - project management of the construction, renovation, rehabilitation or broadband library services infrastructure project; and
  - architectural and engineering plans for locally approved new or ongoing projects.
- clarifies certain costs that are ineligible for approval, including but not limited to:
  - speculative architectural and engineering plans and feasibility studies; and
  - ongoing service fees for telecommunications and broadband services.
- eliminates the requirement that a library system board must submit an annual report to the Commissioner detailing the status of each project and instead, only requires the submission of a report upon request by the Commissioner. The proposed amendment also provides the Commissioner with flexibility to require the library system board to submit any other report the Commissioner deems necessary to carry out the purpose of the program.
- The proposed amendment also amends section 90.18 of the Commissioner’s regulations to update and clarify certain terminology relating to school library systems in BOCES and the Big Five city school districts. Specifically, the proposed rule amends the definition of a “coordinator of a school library system” to clarify that such a coordinator must possess either a valid certificate as a school librarian, with a certificate as a school library supervisor, or a school building leader (S.B.L.) or a school district leader (S.D.L.) in accordance with Part 80 of the Commissioner’s regulations, or an equivalent certificate title as determined by the Commissioner.

4. COSTS:

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

(b) Costs to local government: The proposed amendment will not impose any additional costs upon local government.

(c) Costs to private regulated parties: None.

(d) Costs to regulating agency for implementation and continued administration of this rule: None.

5. LOCAL GOVERNMENT MANDATES:

The proposed amendment does not directly impose any additional program, service, duty or responsibility upon local governments. The proposed amendment implements Education Law section 273-a and clarifies certain terminology.

6. PAPERWORK:

The proposed amendment does not require any additional paperwork requirements.

7. DUPLICATION:

The proposed amendment does not duplicate any existing State or federal requirements.

8. ALTERNATIVES:

There were no viable alternatives to the proposed amendment, and none were considered.

9. FEDERAL STANDARDS:

The proposed amendment does not exceed any minimum standards of the federal government.

10. COMPLIANCE SCHEDULE:

The proposed amendment would take effect on its stated effective date. It is anticipated that the regulated parties would come into compliance with the amendment on or immediately in following such date. Because of the nature of the proposed amendment, no additional period of time is needed to enable regulated parties to comply.

Regulatory Flexibility Analysis

(a) Small Businesses:

The purpose of the proposed amendment is to amend section 90.12 to implement Education Law 273-a, as amended by Chapter 498 of the Laws of 2011, Chapter 148 of the Laws of 2014 and Chapter 480 of the Laws of 2015 relating to state aid for library construction and to amend section 90.18 to update and clarify certain terminology relating to the functions of school library systems. The amendment does not impose any reporting, recordkeeping, or compliance requirements on small businesses and will not have an adverse economic impact on small businesses. Because it is evident from the nature of the proposed amendment that it does not affect small businesses, no further steps were needed to ascertain that fact and none were taken.

(b) Local Governments:

1. EFFECT OF RULE:

The proposed rule applies to 23 public library systems in New York State and some 750 public and association libraries seeking state aid for library construction under Education Law 273-a and the 41 school library systems in New York State, the 36 boards of cooperative educational services (BOCES), and the Big Five city school districts (New York City, Buffalo, Syracuse, Rochester and Yonkers).

2. COMPLIANCE REQUIREMENTS:

The proposed amendments to section 90.12 of the Commissioner’s regulations are necessary to implement Education Law § 273-a, as amended by Chapter 498 of the Laws of 2011, Chapter 148 of the Laws of 2014, and Chapter 480 of the Laws of 2015. These amendments include the following major changes:

- a definition of broadband library services was added;
- requires each public library system to submit, upon request by the Commissioner, the eligibility criteria for applications designated as projects serving economically disadvantaged communities pursuant to Education Law § 273-a(2)(e), for each recommended application;
- clarifies certain costs that are eligible for approval, including but not limited to:
  - acquisition of vacant land to be used for library purposes;
  - purchase, installation and replacement of a library building’s broadband services infrastructure, including but not limited to internal and external connections, either as a stand-alone project or as a project component;
  - purchase and installation of permanent signage (with or without lighting, internal or external), which is used for library purposes;
  - purchase and installation of one or more generators for library purposes;
  - purchase and installation of assistive listening devices and systems for the deaf and hearing impaired, which shall include but not be limited to, hearing loops, FM systems and infrared systems;
  - project management of the construction, renovation, rehabilitation or broadband library services infrastructure project; and
  - architectural and engineering plans for locally approved new or ongoing projects.
- clarifies certain costs that are ineligible for approval, including but not limited to:
  - speculative architectural and engineering plans and feasibility studies; and
  - ongoing service fees for telecommunications and broadband services.
- eliminates the requirement that a library system board must submit an annual report to the Commissioner detailing the status of each project and instead, only requires the submission of a report upon request by the Commissioner. The proposed amendment also provides the Commissioner with flexibility to require the library system board to submit any other report the Commissioner deems necessary to carry out the purpose of the program.
- The proposed amendment also amends section 90.18 of the Commissioner’s regulations to update and clarify certain terminology relating to school library systems in BOCES and the Big Five city school districts. Specifically, the proposed rule amends the definition of a “coordinator of a school library system” to clarify that such a coordinator must possess either a valid certificate as a school librarian, with a certificate as a school library supervisor, or a school building leader (S.B.L.) or a school district leader (S.D.L.) in accordance with Part 80 of the Commissioner’s regulations, or an equivalent certificate title as determined by the Commissioner.

6. PAPERWORK:

The proposed amendment does not exceed any minimum standards of the federal government.

7. DUPLICATION:

The proposed amendment does not require any additional paperwork requirements.

8. ALTERNATIVES:

There were no viable alternatives to the proposed amendment, and none were considered.

9. FEDERAL STANDARDS:

The proposed amendment does not exceed any minimum standards of the federal government.

10. COMPLIANCE SCHEDULE:

The proposed amendment would take effect on its stated effective date. It is anticipated that the regulated parties would come into compliance with the amendment on or immediately in following such date. Because of the nature of the proposed amendment, no additional period of time is needed to enable regulated parties to comply.

Regulatory Flexibility Analysis

(a) Small Businesses:

The purpose of the proposed amendment is to amend section 90.12 to implement Education Law 273-a, as amended by Chapter 498 of the Laws of 2011, Chapter 148 of the Laws of 2014 and Chapter 480 of the Laws of 2015 relating to state aid for library construction and to amend section 90.18 to update and clarify certain terminology relating to the functions of school library systems. The amendment does not impose any reporting, recordkeeping, or compliance requirements on small businesses and will not have an adverse economic impact on small businesses. Because it is evident from the nature of the proposed amendment, no additional period of time is needed to enable regulated parties to comply.
The proposed amendment also amends section 90.18 of the Commissioner’s regulations to update and clarify certain terminology relating to school library systems in BOCES and the Big Five city school districts. Specifically, the proposed rule amends the definition of a “coordinator of a school library system” to clarify that such a coordinator must possess either a valid certificate as a school administrator and supervisor (S.A.S.), a school building leader (S.B.L.) or a school district leader (S.D.L.) in accordance with Part 80 of the Commissioner’s regulations, or an equivalent certificate title as determined by the Commissioner.

3. PROFESSIONAL SERVICES:
The proposed amendment will not require public and association libraries, public library systems, school library systems, school districts or BOCES to employ additional professional services in order to comply.

4. COMPLIANCE COSTS:
The amendment will not impose any costs on local governments, including public and association libraries, public library systems, school districts or BOCES.

5. ECONOMIC AND TECHNOLOGICAL FEASIBILITY:
The proposed amendment does not impose any new technological requirements or costs on local governments. As stated in “compliance costs,” the amendment will not impose any costs on school districts or BOCES.

6. MINIMIZING ADVERSE IMPACT:
Because the purpose of the proposed amendment is to implement statutory changes, no alternatives were considered.

7. LOCAL GOVERNMENT PARTICIPATION:
Comments on the proposed rule amending 90.12 were solicited from public library system directors, public and association library directors/ managers and library boards of trustees in various regions of the State. Comments on the proposed rule amending 90.18 were solicited from school library system directors in various regions of the State. The proposed amendment to section 90.12 has been sent for comment to public library system directors, public and association library directors/managers and library boards of trustees, including those in rural areas. The proposed amendment to section 90.18 has been sent for comment to school library system directors in various regions of the State, including those in rural areas.

Rural Area Flexibility Analysis
1. TYPES AND ESTIMATED NUMBER OF RURAL AREAS:
The proposed amendments to section 90.12 apply to 23 public library systems and some 750 public and association libraries seeking State aid for library construction under Education Law 273-a and the proposed amendment to section 90.18 applies to the 41 school library systems established in New York State, the 36 boards of cooperative educational services (BOCES), and the Big Five city school districts (New York City, Buffalo, Syracuse, Rochester, and Yonkers). This includes libraries and library systems located in the 44 rural counties and 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 amendments to section 90.12 of the Commissioner’s regulations are necessary to implement Education Law § 273-a, as amended by Chapter 498 of the Laws of 2011, Chapter 148 of the Laws of 2014, and Chapter 480 of the Laws of 2015. These amendments include the following major changes:

- a definition of broadband library services was added;
- requires each public library system to submit, upon request by the Commissioner, the eligibility criteria for applications designated as projects serving economically disadvantaged communities pursuant to Education Law § 273-a(2)(e), for each recommended application;
- clarifies certain costs that are eligible for approval, including but not limited to:
  - the acquisition of vacant land to be used for library purposes;
  - purchase, installation and replacement of a library building’s broadband services infrastructure, including but not limited to internal and external connections, either as a stand-alone project or as a project component;
  - purchase and installation of permanent signage (with or without lighting, internal or external), which is used for library purposes;
  - purchase and installation of one or more generators for library purposes;
  - purchase and installation of assistive listening devices and systems for the deaf and hearing impaired, which shall include but not be limited to, hearing loops, FM systems and infrared systems;
  - project management of the construction, renovation, rehabilitation or broadband library services infrastructure project; and
  - architectural and engineering plans for locally approved new or ongoing projects;
- clarifies certain costs that are ineligible for approval, including but not limited to:
- speculative architectural and engineering plans and feasibility studies;
- ongoing service fees for telecommunications and broadband services;
- eliminates the requirement that a library system board must submit an annual report to the Commissioner detailing the status of each project and, instead, only requires the submission of a report upon request by the Commissioner.

The proposed amendment to section 90.18 of the Commissioner’s regulations to update and clarify certain terminology relating to school library systems in BOCES and the Big Five city school districts. Specifically, the proposed rule amends the definition of a “coordinator of a school library system” to clarify that such a coordinator must possess either a valid certificate as a school administrator and supervisor (S.A.S.), a school building leader (S.B.L.) or a school district leader (S.D.L.) in accordance with Part 80 of the Commissioner’s regulations, or an equivalent certificate title as determined by the Commissioner.

3. COSTS:
The proposed amendment does not impose any additional costs on public and association libraries, public library systems, school library systems or BOCES located in rural areas.

4. MINIMIZING ADVERSE IMPACT:
The proposed amendment to section 90.12 and 90.18 have been drafted to implement statutory requirements. In order to ensure uniform, State-wide high standards for school library systems, the proposed amendment to section 90.18 applies State-wide.

5. RURAL AREA PARTICIPATION:
The proposed amendment to section 90.12 has been sent for comment to public library system directors, public and association library directors/managers and library boards of trustees, including those in rural areas. The proposed amendment to section 90.18 has been sent for comment to school library system directors in various regions of the State, including those in rural areas.

Job Impact Statement
The purpose of the proposed amendment is to amend 90.12 to implement Education Law 273-a, as amended by Chapter 498 of the Laws of 2011, Chapter 148 of the Laws of 2014 and Chapter 480 of the Laws of 2015 and to amend 90.18 to update and clarify certain terminology relating to the functions of school library systems. Because it is evident from the nature of the proposed rule that it will have no impact on jobs and employment opportunities, no affirmative steps were needed to ascertain that fact and none were taken. Accordingly, a job impact statement is not required, and one has not been prepared.
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.

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Substance of proposed rule (Full text is posted at the following State website: [http://www.dec.ny.gov/regulations/106149.html](http://www.dec.ny.gov/regulations/106149.html)): The New York State Department of Environmental Conservation (DEC) proposes to amend 6 NYCRR Part 380, which regulates the disposal and release of radioactive material to the environment pursuant to Articles 1, 5, 17, 19, 27, 29, and 37 of the Environmental Conservation Law (ECL) and the State of New York’s agreement with the United States Nuclear Regulatory Commission (NRC).

The current Part 380 contributes to meeting the legislative goals of conservation, improving, and protecting the State’s natural resources and environment and preventing, abating and controlling water, land, and air pollution. This is done through several provisions in the rule. Part 380 sets limits on the radiation dose to members of the public due to releases of radioactive material to the environment. It requires parties to obtain permits for most releases of radioactive material made directly to the environment. Radiation exposures in uncontrolled areas in the environment are required to be kept as low as reasonably achievable. The regulations also restrict the disposal of radioactive material to only those methods approved in the regulations or by DEC in a permit.

The proposed amendments would not change the general requirements for disposal of radioactive material or obtaining permits, or the requirement that exposures be kept as low as reasonably achievable. New provisions that would contribute to meeting the legislative goals include applying a constraint on emissions to the air, which is lower than the current limit.

The proposed amendments to Part 380 would update several provisions that are required for compatibility with federal regulations, simplify and update language, and add several needed provisions that have been absent from the regulations. The following outline highlights the proposed changes.

In subpart 380-1, several changes to the general provisions will be made for the purpose of improving clarity and to fill regulatory gaps. Reference to Article 37 of the ECL has been added, as it had been previously inadvertently omitted. Applicability of the affected regulations to the use of licensed radioactive material in the environment (e.g., in environmental studies). Because the use of radioactive material in the environment is not currently specifically identified in regulation as being subject to Part 380, DEC cannot issue Radiation Control Permits for such uses until the proposed amendment is adopted. This subpart has been expanded to clarify that certain types of radioactive materials are not subject to Part 380, such as intact smoke detectors, household waste containing excreted residues of radiopharmaceuticals, or naturally occurring radioactive material in natural isotopic abundance. This clarification should help avoid confusion about the disposal of radioactive material that is not subject to regulatory control. In addition, a paragraph has been added to clarify that sites containing buried radioactive waste are subject to Part 380.

In subpart 380-2, several additions and changes in definitions will be made to maintain compatibility with federal regulations, improve clarity, and incorporate commonly used terms of art. The definition changes are highlighted below.

Disposal has been added, as it is not currently defined in Part 380. Release has been added, as it replaces the former use of the term “discharges” throughout the regulation. Discharge has been revised to apply only to the release of material to ground or surface water. The term currently applies to the release of radioactive material to both air and water. Emission has been added for the release of material to the air. Effluent treatment has been added as it is referenced in section 380-3.4. Incineration is defined as a process, instead of the equipment used. Incinerator has been deleted. Permit has been expanded to apply to the use of radioactive material in the environment, and for the maintenance of a former radioactive waste land burial site. Permittee has been updated for consistency with language used in other DEC regulations. Loss of control of radioactive material has been revised because the previous definition was limited to licensed radioactive material. Uncontrolled release has been added for unplanned releases of radioactive material to the environment. This term is referenced in section 380-9.2 and is needed to differentiate from controlled releases of radioactive material to the environment as authorized under the Part 380 regulations. TENORM has been added to clarify that technologically enhanced naturally occurring radioactive material (TENORM) is the same as processed and concentrated naturally occurring radioactive material, which is regulated radioactive material.

Other definitions will be added or revised as required for compatibility with federal regulations issued by the NRC in 10 CFR 20. Definitions for “dose constraint” and “public dose” will be added. Likewise, the definitions for “total effective dose equivalent” and “member of the public” will be revised as required to maintain compatibility with federal rules.

In subpart 380-3, permit requirements will be clarified to identify each type of disposal or release of radioactive material that can only be undertaken authorized by DEC in a permit. Also, the required content of permit applications has been expanded to establish in regulation the minimum information that must be included in a permit application. These criteria have already been used to evaluate the sufficiency of submitted permit applications. In subpart 380-4, language has been added so that all allowed waste disposal methods for radioactive material are now referenced in this subpart. The disposal of a specific category of wastes (the so-called biomedical exemption) has been expanded to include animal bedding meeting certain criteria, which supports the longstanding disposal exemption that exists for animal tissue containing small amounts of radioactive material.

In subpart 380-5, which pertains to radiation dose limits for individual members of the public, a 10 millirem (mrem) constraint on airborne emissions has been added to maintain compatibility with federal rules. This dose constraint has already been implemented by permit condition for several years. Also, the reference to 40 CFR 190 has been deleted because it was inappropriately included in Part 380.

In subpart 380-6, annual calibrations are now required for instruments used to measure effluent flow rates. This requirement has already been implemented by permit condition for several years.

No significant changes were made to subpart 380-7, Release Minimization Programs.

In subpart 380-8, which pertains to records, regulated persons are now authorized to record quantities of radioactivity in the International System of Units (SI) rather than pounds. Also, the required content of reports maintained in electronic format must be made available to DEC via hardcopy upon request; and (2) records required by Part 380 must be transferred from the old permittee to the new permittee when a permit is transferred. These requirements would ensure that inspectors can obtain information and raw data that may only exist on a computer system, and would ensure that records relevant to Part 380 compliance are properly transferred when a permit is transferred.

In subpart 380-9, which pertains to reports, the requirement for a permittee to submit annual reports has been expanded to require reporting of environmental dosimeter results when the acquisition of such data is required by the permit. The requirement has already been implemented by permit condition for several years. Several requirements have changed regarding Notification of Incidents; some changes were required to maintain compatibility with federal regulations, and other changes were added to lower the reporting thresholds because the federal rules requiring notification of incidents only involve large exposures. Reports are now required for: (1) uncontrolled releases or events that cause releases; (2) exceedance of any permit or regulatory limit (this requirement has already been implemented by permit condition for several years); or (3) exceedance of the dose constraint. The contents of reports and timeframes are specified.

In subpart 380-10, which includes the “General Regulatory Requirements,” several additions will be made. The new prohibition of engaging in bribery or nepotism for permits and other forms of official acts. This prohibits the deliberate submission of inaccurate or incomplete information to DEC, and applies to permittees, applicants and contractors. Also, information submitted to DEC must be complete and accurate, and a prohibition has been added against uncontrolled releases, unauthorized transfers, or abandonment of radioactive material or failure to comply with any requirement in Part 380. These additions would strengthen DEC’s enforcement capabilities in the event that violations of Part 380 are identified.

In subpart 380-11, two new isotopes will be added to the Tables of Concentrations: N-13 and O-15. These additions are required to maintain compatibility with the federal rules issued by NRC in 10 CFR 20.

In summary, the proposed amendment to Part 380 would: (1) update several provisions that are required for compatibility with federal regulations; (2) simplify, clarify, and update the law; (3) add several needed provisions that have been absent from the regulations when it was previously promulgated.

**Text of proposed rule and any required statements and analyses may be obtained from:** Sandra Hinkel, NYS Department of Environmental Conservation, 625 Broadway, Albany, NY 12233-7255, (518) 402-9625, email: dec.smRegs.Radiation

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

**Public comment will be received until:** June 5, 2017.

**Additional matter required by statute:** Short Environmental Assessment Form, which includes determination of significance, and Coastal Assessment Form have been completed for this proposed rule making.
Summary of Regulatory Impact Statement

1. STATUTORY AUTHORITY
The New York State Department of Environmental Conservation (DEC) regulates the disposal and release of radioactive material to the environment pursuant to Articles 1, 3, 17, 19, 27, 29, and 37 of the Environmental Conservation Law (ECL) and the State of New York’s agreement with the United States Nuclear Regulatory Commission (NRC).

New York State Agreement State Program:
The Atomic Energy Act (AEA) of 1954 created the federal program for controlling the use of most radioactive materials and for limiting the public exposure to radiation resulting from that use. In 1966, the AEA was amended to allow states to enter into agreements with the NRC whereby the authority to license most uses of radioactive material is relinquished to the state. New York State became an Agreement State in 1962. The State’s agreement is implemented by the New York State Department of Health (DOH), the New York City Department of Health and Mental Hygiene (NYCDOHMH), and DEC.

ECL Articles 1 and 3:
The ECL vests in DEC broad powers with respect to the discharge of pollutants into the environment. Those powers are set forth in ECL section 1-0101(1); DEC further implements this policy by ECL section 3-0301(1). The provisions are generally used for the regulation of radioactive materials. Rather, the source of legal authority is divided among the following ECL Articles: Article 17 (Water), Article 19 (Air), and Article 27 (Solid Waste), Article 29 (Low-Level Radioactive Waste Facilities), and Article 37 (Substances Hazardous or Acutely Hazardous to Human Safety or the Environment).

2. LEGISLATIVE OBJECTIVES
The current Part 380 contributes to meeting the legislative goals of conserving, improving, and protecting the State’s natural resources and environment and preventing, abating, and controlling water, land, and air pollution.

The proposed amendments would not change the current requirements governing the disposal of radioactive material, obtaining permits for releases of radioactive material to the environment, or the requirement that exposures be kept as low as reasonably achievable. New provisions would contribute to meeting the legislative goals include applying a constraint on emissions to the air, which is lower than the current limit.

3. NEEDS AND BENEFITS
The purpose of Part 380 is to control the release of radioactive material to the environment in order to protect the public health and the environment. The regulations apply to all State-regulated parties that dispose of or release radioactive materials to the environment.

These amendments are needed because of New York State’s agreement with the NRC: the State is required to have regulations that are compatible with the NRC regulations. This amendment is needed to incorporate applicable federal changes to 10 CFR 20, the federal standards for protection against radiation, that were made from 1991 through 2008.

The proposed amendments would also simplify language, define commonly used terms of art, and clarify several regulatory provisions. These clarifications would ensure that the regulated community understands how to comply with the regulations. The amendments are needed because the regulations are complex and difficult to understand.

In subpart 380-1, several changes to the general provisions will be made for the purpose of improving clarity and to fill regulatory gaps.

In subpart 380-2, several additions and changes to the definitions will be made to maintain compatibility with federal regulations, improve clarity, and incorporate commonly used terms of art.

In subpart 380-3, permit requirements will be clarified to identify each type of disposal or release of radioactive material that can only be undertaken as authorized in a permit. Also, the required content of permit applications will be expanded to establish the minimum information that must be included in a permit application.

In subpart 380-4, language will be added so that all allowed waste disposal methods are regulated in this subpart.

In subpart 380-5, a 10 millirem (mrem) constraint on airborne emissions will be added, as required to maintain compatibility with federal regulations.

In subpart 380-6, annual calibrations will be required for instruments used to measure effluent flow rates.

No significant changes were made to subpart 380-7.

In subpart 380-8, regulated parties will be authorized to record quantities of radioactivity in SI units. Also, two new requirements will be added: data maintained in electronic format must be made available to DEC via hardcopy upon request; and records required by Part 380 must be transferred from the old permittee to the new permittee when a permit is transferred.

In subpart 380-9, the requirement for a permittee to submit annual reports will be expanded to include reporting of environmental dosimeter results when the acquisition of such data is required by the permit. Several requirements have changed regarding Notification of Incidents - - some changes were required to maintain compatibility with federal regulations; others were made to lower the reporting thresholds.

In subpart 380-10, several additions will be made to the General Regulatory Requirements. The new prohibition of engaging in deliberate misconduct is required for compatibility with federal regulations. Also, information required to be submitted to DEC must be complete and accurate, and a prohibition will be added against uncontrolled releases, unauthorized transfers, or abandonment of radioactive material, or failure to comply with any requirement in Part 380.

In subpart 380-11, two new isotopes will be added to the Tables of Concentrations: N-13 and F-15. These additions are required to maintain compatibility with federal regulations.

4. COSTS
Costs to Regulated Parties:
Part 380 applies to all state-regulated parties that use or dispose of radioactive material, and concentrations that are subject to regulation by the licensing agencies of New York State (i.e., DOH and NYCDOHMH).

In 2012, there were 28 persons holding one or more Part 380 permits. Those 28 permittees held a total of 30 permits: 1 for the incineration of radioactive material. The proposed revisions to Part 380 would require 1 for discharges to surface water, and 2 for the maintenance of former radioactive waste burial sites.

There should be no additional costs to regulated persons due to the requirements to meet the 10 mrem dose constraint on airborne emissions or to report environmental dosimeter results in their annual reports, because permittees have already been subject to this requirement via permit condition for several years. There may be some additional costs to regulated persons due to the lower threshold for reporting of incidents, via expenditure of staff time to prepare and submit reports of incidents and follow-up actions.

Costs to the Department, State, and Local Government:
DEC would spend resources and staff time preparing to implement the proposed revision. Guidelines and explanatory documents distributed to regulated persons must be written, and staff must be trained in the implementation of the new regulations. This would require several months of staff time. After the initial preparation and training period, the routine implementation of the amended regulations is not expected to cost more (on a cost per regulated person basis) than the implementation of the current Part 380 program.

In addition to the cost to DEC, the other State agency in the Agreement State program, DOH, would expend some staff time becoming familiar with DEC’s amended regulation. This may require one or two days of staff time. At least two state agencies and one campus of the state university system have been issued Part 380 permits. Their costs as regulated persons are described above.

The proposed amendment does not place any requirements directly on local governments, except where local governments operate facilities that possess radioactive material. In that case, the cost to the local government would be the same as that to other regulated parties. Currently, none of the entities that have been issued Part 380 permits are owned by local governments.

NYCDOHMH, as one of the three Agreement State agencies in New York State, would probably expend one or two staff days becoming familiar with the revised Part 380.

5. LOCAL GOVERNMENT MANDATES
The adoption of this proposed amendment would not place any mandates on local governments except for those local governments operating facilities that are regulated parties. In those cases, local governments must meet the requirements placed on all regulated parties. Because control of radioactive materials is preempted by the federal government and only relinquished to Agreement States, local governments, other than New York City, have no regulatory responsibilities over the release or disposal of radioactive materials.

6. PAPERWORK
Several provisions in the proposed amendment would require the preparation and submission of additional paperwork. The amendment clarifies the information that must be included in a permit application. The implementation of lower thresholds for notification of incidents would require reports to be submitted for uncontrolled releases or events that could cause releases, exceedance of any permit or regulatory limit, or exceedance of the dose constraint. The required submission of annual reports will be expanded to include reporting of environmental dosimeter results from permittees whose permit requires the acquisition of environmental dosimeter data.

7. DUPLICATION
The New York State Agreement State program is divided among three
agencies. The two agencies other than DEC have the authority to license the possession and use of radioactive materials. It is only when that material is disposed of or released to the environment that it comes under the jurisdiction of DEC. Thus, there is no overlap between the regulatory programs of the licensing agencies and that of DEC.

Because the provisions in the proposed amendments to Part 380 are limited by its role as an Agreement State agency. As explained above, an Agreement State’s regulations must be compatible with 10 CFR, many sections in Part 380 are identical, or very similar, to the federal rules. However, 10 CFR applies to federally-regulated facilities, while Part 380 applies to state-regulated facilities, and thus there is no duplication of regulatory requirements.

8. ALTERNATIVES

The alternatives available to DEC in developing the proposed amendments to Part 380 are limited by its role as an Agreement State agency. As explained above, an Agreement State’s regulations must be compatible with 10 CFR, and be adopted essentially verbatim.

Because DEC’s regulations must be compatible with NRC’s regulations, DEC was precluded from considering alternatives to those provisions of the proposed rule.

For those portions of the proposed amendments that are required by federal rule, taking the no-action alternative would not be consistent with New York State’s agreement with the NRC. If Part 380 is not revised, not only would it be obsolete, but it would be inconsistent with the regulations of the radioactive materials licensing agencies in New York State. Thus, not revising Part 380 for compatibility with federal rules could jeopardize New York State’s agreement with NRC.

For those changes that were not based on federal rules, taking the no-action alternative would result in not simplifying regulatory language, not clarifying regulatory provisions, and not filling regulatory gaps which had become apparent through years of implementing the existing Part 380 regulations. Thus, DEC did not consider alternatives to those provisions of the proposed rule.

9. FEDERAL STANDARDS

The proposed amendments are more stringent than federal regulations regarding several requirements for reporting of incidents. The amendment would require reporting of uncontrolled releases of radioactive material or events that could cause releases of any regulatory limit. These provisions are more restrictive than the federal rules, which require reporting only when dose limits are greatly exceeded. Lower severity events are more common, but are not currently required to be reported.

The amendments require lower severity events to be reported; facility compliance with this requirement would enable DEC to ensure that prompt and appropriate actions are taken to resolve such events.

10. COMPLIANCE SCHEDULE

Section 380-1.5 establishes the transition rules for these amendments. In general, all provisions in the proposed amendments would become effective on the effective date of the rulemaking. The new 10 mrem dose constraint on airborne emissions has already been in effect as a permit condition for several years. Permittees have also been required to report environmental dosimetry results in their annual reports and report the exceedance of any permit limit, in accordance with permit conditions, for several years.

Regulatory Flexibility Analysis

1. EFFECT OF RULE

The proposed amendments to 6 NYCRR Part 380 would affect small businesses that release radioactive material to the environment. (Small businesses that possess radioactive material in a form that is not normally released to the environment are only subject to the disposal restrictions in the existing Part 380. These requirements will not be changed by the Part 380 amendments.) Affected parties may include such small businesses as medical practices, radioactive waste brokers, small research or diagnostic laboratories, radioactive production facilities, and state and local government agencies.

Only one of the parties that currently have a Part 380 permit is a small business. It is a company that produces isotopes for use in medical imaging. Another type of small business that would be affected by this regulation is health physics consultants that may be hired by regulated parties to assist in implementing these amendments. These businesses may benefit from increased business due to these proposed amendments, although they would also need to invest time and resources in becoming familiar with the new requirements.

2. COMPLIANCE REQUIREMENTS

The current Part 380 sets limits on the radiation dose to members of the public that could be received from the release of radioactive material to the environment. Regulated parties must restrict their releases so that those dose limits are not exceeded. The proposed amendments to Part 380 add a new 10 mrem dose constraint for members of the public that could result from radioactive airborne emissions in one year. Regulated parties are not expected to have to change their operations to comply with this amendment because the doses from all currently regulated releases are already below the proposed new dose constraint. Part 380 Radiation Control Permits have already been subject to the 10 mrem dose constraint by a permit condition for the past several years.

The proposed amendments lower the reporting threshold requiring regulated parties to notify DEC of any uncontrolled release of radioactive material to the environment. Reports would be required for uncontrolled releases or events that could cause releases, for exceedance of any permit or regulatory limit, or for exceedance of the dose constraints for environmental dosimeter results. Different requirements for environmental dosimeter results are specified in the proposed amendments.

The proposed amendments expand the requirement for permittees to submit annual reports to also require reporting of environmental dosimeter results when the acquisition of such data is required by the permit. Regulated parties are not expected to have to change their operations to comply with this amendment because this requirement has already been implemented by a permit condition for several years.

The proposed amendments expand the requirement for annual calibration of radiation detection instruments to include instruments used to measure effluent flow rates. Permittees are not expected to have to change their operations to comply with this amendment because this requirement has already been implemented by a permit condition for several years.

3. PROFESSIONAL SERVICES

The proposed amendments to Part 380 do not set any requirements that require any professional services beyond those needed to comply with the current Part 380. To comply with the existing regulations, regulated parties should have on staff one or more professionals knowledgeable in the principles of health physics, radiation protection, and control and monitoring of releases to the environment. In the past, some small businesses have hired consultants to prepare all or part of their permit applications. This practice is expected to continue after the regulations have been amended.

4. COMPLIANCE COSTS

The proposed amendments to Part 380 include a 10 mrem dose constraint for members of the public that could result from radioactive emissions to the air. No regulated party will have to make any initial capital or non-capital investments to meet this new requirement because they are already complying with the 10 mrem dose constraint.

The proposed amendments lower the reporting threshold requiring regulated parties to notify DEC of any uncontrolled release of radioactive material to the environment. This requirement will result in expenditure of staff time to prepare and submit reports of incidents and conduct follow up actions, should a reportable incident occur. Historically, such reports have usually been voluntarily submitted by permittees, as good practice. A reportable incident would require several hours to investigate, document, and institute corrective actions; such work would likely be conducted by the facility’s on-site radiation protection staff. Such incidents do not occur frequently.

The proposed amendments expand the requirement for permittees to submit annual reports to also require reporting of environmental dosimeter results when the acquisition of such data is required by the permit. There will be no increase in costs to regulated parties as they are already complying with this requirement.

The proposed amendments expand the requirement for annual calibration of radiation detection instruments to include instruments used to measure effluent flow rates. There will be no increase in costs to regulated parties as they are already complying with this requirement.

5. ECONOMIC AND TECHNOLOGICAL FEASIBILITY

Implementation of the proposed amendments would be economically and technologically feasible for small business and local governments. Regulated parties currently manage the possession, use and disposal of radioactive material in accordance with a host of existing regulatory requirements. The two agencies other than DEC have the authority to license the possession and use of radioactive material to the environment. This requirement will result in expenditure of staff time to prepare and submit reports of incidents and conduct follow up actions, should a reportable incident occur. Historically, such reports have usually been voluntarily submitted by permittees, as good practice. A reportable incident would require several hours to investigate, document, and institute corrective actions; such work would likely be conducted by the facility’s on-site radiation protection staff. Such incidents do not occur frequently.

6. MINIMIZING ADVERSE IMPACT

The proposed amendments to Part 380 would not have an adverse impact on small businesses, as most provisions are already being met by regulated parties. DEC did not have the option of relaxing these requirements for small businesses. The alternatives available to DEC in writing the proposed amendments to Part 380 are limited by DEC’s status as an Agreement State agency. Under New York State’s (State) agreement with the United States Nuclear Regulatory Commission (NRC), in which NRC has relinquished its authority to regulate the use and possession of most radioactive material to the State, DEC’s Part 380 regulations must be compatible with the federal regulations promulgated by the NRC.

7. SMALL BUSINESS AND LOCAL GOVERNMENT PARTICIPATION

NYS Register/April 5, 2017
As a public outreach initiative in early 2010, information on this rulemaking was mailed to all Part 380 permittees and applicants, radioactive materials licensees, and environmental and public interest groups in the State. Also, a preliminary draft of the amendment was posted on DEC’s website and a notice was published in DEC’s Environmental Notice Bulletin.

8. CURE PERIOD OR OTHER OPPORTUNITY FOR AMELIORATIVE ACTION

DEC does not believe that there is a need for a cure period for the proposed Part 380. Significant proposed amendments (summarized below) are already implemented, as these requirements have been included as permit conditions for the past several years. Such amendments required by a permit condition are: (1) 10 millirem dose constraint for members of the public that could result from radioactive airborne emissions in one year; (2) notification of uncontrolled release, or incidents that are in excedance of any permit or regulatory limit; (3) annual reporting of environmental dosimeter results when a permit requires acquisition of such data; and (4) annual calibration of instruments used to measure effluent flow rates. Since these requirements are already provided as permit conditions, they are not imposed to the regulated community without prior notice and a cure period is not needed. The regulated community would be required to comply with the proposed amendments upon the effective date, which is 30 days after DEC files the Notice of Adoption with the State Department of State. Furthermore, no new penalties are created by proposed Part 380 because enforcement is governed by statutory language which is set forth in Article 71 of the Environmental Conservation Law.

9. INITIAL REVIEW OF THE RULE

DEC will conduct an initial review of the rule within three years of the promulgation of the final rule.

Rural Area Flexibility Analysis

1. TYPES AND ESTIMATED NUMBER OF RURAL AREAS

For purposes of the Rural Area Flexibility Analysis, “rural area” means those portions of the state so defined by Executive Law section 481(7), SAPA section 102(10). Under Executive Law section 481(7), rural areas are defined as “counties within the state having less than two hundred thousand population, and the municipalities, individuals, institutions, communities, programs and such other entities or resources as are found therein. In counties of two hundred thousand or greater population, ‘rural areas’ means towns with population densities of one hundred fifty persons or less per square mile, and the villages, individuals, institutions, communities, programs and such other entities or resources as are found therein.” There are 44 counties in New York State that have populations of less than 200,000 people and 71 towns in non-rural counties where the population densities are less than 150 people per square mile. This rule would apply statewide so it applies to all rural areas of the State.

2. REPORTING, RECORDKEEPING, OTHER COMPLIANCE REQUIREMENTS, AND NEED FOR PROFESSIONAL SERVICES

Several provisions in the proposed rule clarify and expand requirements for the preparation and submission of permit applications, notification of incidents, and annual reports, as well as the maintenance of specific records of releases and releases. Such work is typically conducted by the facility’s on-site facility radiation protection staff, although a regulated facility may elect to hire a health physics contractor to assist in the preparation of required records and reports.

3. COSTS

Regulated parties subject to this proposed rule should experience little or no increase in costs. Many provisions have already been in effect for several years via permit condition. The new, lower threshold for reporting of incidents would require the expenditure of staff time to prepare and submit reports of incidents, should they occur.

4. MINIMIZING ADVERSE IMPACT

This rule is not expected to generate any adverse impact to regulated parties. As stated previously, there would be little or no increase in costs for regulated parties.

5. RURAL AREA PARTICIPATION

A public outreach effort was conducted in early 2010: regulated and interested parties were mailed an informational package regarding the preliminary draft of the proposed rule; this information was also posted on New York State Department of Environmental Conservation’s (DEC) website and DEC’s Environmental Notice Bulletin. In addition, DEC would hold special meetings or workshops if the proposed rule generates sufficient interest or questions.

Job Impact Statement

In accordance with Section 201-a(2)(a) of the State Administrative Procedures Act (SAPA), a Job Impact Statement has not been prepared for this proposed rule as it is not expected to create a substantial adverse impact on jobs and employment opportunities in New York State. Part 380 requirements control the release of radioactive material to the environment. This rulemaking would update several provisions that are required for compatibility with federal regulations, simplify and update language, and add several needed provisions that have been absent from the regulations. The parties affected by this amendment are facilities that possess regulated radioactive materials.

This proposed rule is not expected to cause the loss of jobs at facilities that possess regulated radioactive material. Many of the new requirements in this rule have already been in effect for several years through permit conditions. The new, lower threshold for reporting of incidents would require the expenditure of staff time to prepare and submit reports of incidents, should such incidents occur. Responsibility for ensuring compliance with this rulemaking would likely be designated to on-site facility radiation protection staff, although a regulated facility that has experienced a serious incident may elect to hire a health physics contractor to assist with such investigation, documentation, reporting, and correction of the root causes of such an incident. Regulated facilities are located throughout the State and compliance with this rulemaking would not have any adverse impact on jobs in any areas of the State.

Department of Financial Services

EMERGENCY RULE MAKING

Public Retirement Systems

L.D. No. DFS-14-17-00002-E
Filing No. 205
Filing Date: 2017-03-20
Effective Date: 2017-03-20

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 NYCCR.

Statutory authority: Financial Services Law, sections 202 and 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.


Subject: Public Retirement Systems.

Purpose: To ban the use of placement agents by investment advisers 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.]
Rule Making Activities

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(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.

(f) 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.

(g) 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.

(i) (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).

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

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

(l) (b) 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.

(m) Family member shall mean any person living in the same household with the Fund, or otherwise doing business with the Fund, or otherwise doing business with the Fund, or otherwise doing business with the Fund, or otherwise doing business with the Fund, or otherwise doing business with the Fund, or otherwise doing business with the Fund, or otherwise doing business with the Fund, or otherwise doing business with the Fund.

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

(o) 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.

(p) 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.

(q) 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.

(r) 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.

(s) Unaffiliated Person 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.

Regulatory Impact Statement

1. Statutory authority: The Superintendent’s authority for the adoption of this 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.

2. FSL section 302 establishes the office of the Superintendent and designates the Superintendent to be the head of the Department of Financial Services (“DFS”).

3. 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.

4. 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.

5. The rule 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 enterprises. Article 74 of the Insurance Law sets forth the Superintendent’s role and responsibilities in this latter capacity.

6. 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 rehabilita-
tion 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 intent: Insurance Law section 314 authorizes the Super-
intendent to promulgate and amend, after consultation with the respec-
tive administrative heads of public retirement and pension systems and af-
ter 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 objec-
tives that the Legislature sought to advance in enacting Insurance Law
section 314, which provides the Superintendent with the powers to promul-
gate standards to protect the New York State Common Retirement Fund
(the “Fund”).

3. Needs and benefits: The Second Amendment to 11 NYCRR 136
(Rule 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, strength-ened internal controls and governance, enhanced the operational transpar-
ency 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 invest-
ment opportunities with the Fund, compel the Superintendent to conclud-
e that the mere strengthening of the Fund’s control environment is insuf-
ficient 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” in a manner that both thwarts evasion of the ban while ensuring that such ban does 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 imple-
mentation of the rule imposed by the proposed 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 opportu-
nities 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 prohibi-
tion 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 fol-
lowing comments were received:

Blackstone Group, a global investment manager and financial advisor,
ran an opposition paid to the proposed ban on the use of placement agents by invest-
ment managers 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-
headed financial institutions doing business as placement agents.

Blackstone suggested the inclusion of the following provisions in the rule to relieve
the burden:

- 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 to do business with the
Fund be registered with the Superintendent, and provide the Superintendent with
evidence that its professionals have passed the appropriate Series qualifications adminis-
tered 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
managing firm that the Fund fully disclose the contractual arrangement be-
tween 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, com-
mented 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 a 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 believed 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 require-
ments, 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.

“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 manage-
ment of the New York State and Local Employees’ Retirement System and New
York State and Local Police and Fire Retirement System (collectively,
“the Retirement Systems”), and the New York State Common Retire-
ment 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 com-
nittees, 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 invest-
ment 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-
headed financial institutions doing business as placement agents.

The rule was 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 responsi-
bilities 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 continue 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.

1. Types and estimated numbers of rural areas: 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.

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 lose opportunities to do business with the Fund.

4. Economic and technological feasibility: The rule does not impose any economic or technological requirements or affect parties, other than placement agents who will lose the opportunity to earn profits in connection with investments by the Fund.

5. Minimizing adverse impact: The costs to placement agents are lost opportunities 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 has 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 brieﬂed representatives of: (1) New York State and New York City Public Employee Unions; (2) 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 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.

Office for People with Developmental Disabilities

NOTICE OF ADOPTION

Hearing Procedures Update

L.D. No. PDD-05-17-00001-A
Filing No. 208
Filing Date: 2017-03-21
Effective Date: 2017-04-06

Pursuant to the Provisions of the State Administrative Procedure Act, NOTICE is hereby given of the following action:

Action taken: Amendment of section 602.5 of Title 14 NYCRR.

Subject: Social Services Terminology.

Purpose: To correct a grammatical error in Title 14 NYCRR 602.5.

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

Text or summary was published in the February 1, 2017 issue of the Register.

Public Service Commission

NOTICE OF WITHDRAWAL

Pursuant to the Provisions of the State Administrative Procedure Act, NOTICE is hereby given of the following actions:

The following rule makings have been withdrawn from consideration:

L.D. No. Publication Date of Proposal
PSC-21-00-00007-P May 24, 2000
PSC-36-00-00039-P September 6, 2000
NOTICE OF ADOPTION

Use of Water Metering Equipment

I.D. No.: PSC-25-16-00027-A
Filing Date: 2017-03-15
Effective Date: 2017-03-15

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

Action taken: On 3/9/17, the PSC adopted an order approving New York American Water Company, Inc.’s (NYAW) petition to use the Badger Meter, Inc. High Resolution Encoder with liquid crystal display (Badger HR-E LCD) for water metering applications in New York State.

Statutory authority: Public Service Law, section 89-d(1)
Subject: Use of water metering equipment.

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

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

NOTICE OF ADOPTION

Submetering of Electricity

I.D. No.: PSC-43-16-00004-A
Filing Date: 2017-03-16
Effective Date: 2017-03-16

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

Action taken: On 3/9/17, the PSC adopted an order approving 50 West Street Condominium’s (50 West) notice of intent to submeter electricity at 50 West Street, New York, New York.

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

Purpose: To approve 50 West’s notice of intent to submeter electricity.

NOTICE OF ADOPTION

Substitute of Final Rule

The Commission, on March 9, 2017, adopted an order approving New York American Water Company, Inc.’s petition to use the Badger Meter, Inc. High Resolution Encoder with liquid crystal display (HR-E LCD) for water metering applications in New York State.

Purpose: To approve NYAW’s petition to use the Badger HR-E LCD for water metering applications in New York State.

NOTICE OF ADOPTION

Substance of Final Rule

The Commission, on March 9, 2017, adopted an order approving New York American Water Company, Inc.’s petition to use the Badger Meter, Inc. High Resolution Encoder with liquid crystal display (HR-E LCD) for water metering 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.

NOTICE OF ADOPTION

Substitution of Final Rule

The Commission, on March 9, 2017, adopted an order approving New York American Water Company, Inc.’s petition to use the Badger Meter, Inc. High Resolution Encoder with liquid crystal display (HR-E LCD) for water metering 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.

NOTICE OF ADOPTION

Substitution of Final Rule

The Commission, on March 9, 2017, adopted an order approving New York American Water Company, Inc.’s petition to use the Badger Meter, Inc. High Resolution Encoder with liquid crystal display (HR-E LCD) for water metering 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.

NOTICE OF ADOPTION

Substitution of Final Rule

The Commission, on March 9, 2017, adopted an order approving New York American Water Company, Inc.’s petition to use the Badger Meter, Inc. High Resolution Encoder with liquid crystal display (HR-E LCD) for water metering 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.

NOTICE OF ADOPTION

Substitution of Final Rule

The Commission, on March 9, 2017, adopted an order approving New York American Water Company, Inc.’s petition to use the Badger Meter, Inc. High Resolution Encoder with liquid crystal display (HR-E LCD) for water metering 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.

NOTICE OF ADOPTION

Substitution of Final Rule

The Commission, on March 9, 2017, adopted an order approving New York American Water Company, Inc.’s petition to use the Badger Meter, Inc. High Resolution Encoder with liquid crystal display (HR-E LCD) for water metering 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.

NOTICE OF ADOPTION

Substitution of Final Rule

The Commission, on March 9, 2017, adopted an order approving New York American Water Company, Inc.’s petition to use the Badger Meter, Inc. High Resolution Encoder with liquid crystal display (HR-E LCD) for water metering 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.

NOTICE OF ADOPTION

Substitution of Final Rule

The Commission, on March 9, 2017, adopted an order approving New York American Water Company, Inc.’s petition to use the Badger Meter, Inc. High Resolution Encoder with liquid crystal display (HR-E LCD) for water metering 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.

NOTICE OF ADOPTION

Substitution of Final Rule

The Commission, on March 9, 2017, adopted an order approving New York American Water Company, Inc.’s petition to use the Badger Meter, Inc. High Resolution Encoder with liquid crystal display (HR-E LCD) for water metering 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.

NOTICE OF ADOPTION

Substitution of Final Rule

The Commission, on March 9, 2017, adopted an order approving New York American Water Company, Inc.’s petition to use the Badger Meter, Inc. High Resolution Encoder with liquid crystal display (HR-E LCD) for water metering 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.

NOTICE OF ADOPTION

Substitution of Final Rule

The Commission, on March 9, 2017, adopted an order approving New York American Water Company, Inc.’s petition to use the Badger Meter, Inc. High Resolution Encoder with liquid crystal display (HR-E LCD) for water metering 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.

NOTICE OF ADOPTION

Substitution of Final Rule

The Commission, on March 9, 2017, adopted an order approving New York American Water Company, Inc.’s petition to use the Badger Meter, Inc. High Resolution Encoder with liquid crystal display (HR-E LCD) for water metering 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.

NOTICE OF ADOPTION

Substitution of Final Rule

The Commission, on March 9, 2017, adopted an order approving New York American Water Company, Inc.’s petition to use the Badger Meter, Inc. High Resolution Encoder with liquid crystal display (HR-E LCD) for water metering 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.

NOTICE OF ADOPTION

Substitution of Final Rule

The Commission, on March 9, 2017, adopted an order approving New York American Water Company, Inc.’s petition to use the Badger Meter, Inc. High Resolution Encoder with liquid crystal display (HR-E LCD) for water metering 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.

NOTICE OF ADOPTION

Substitution of Final Rule

The Commission, on March 9, 2017, adopted an order approving New York American Water Company, Inc.’s petition to use the Badger Meter, Inc. High Resolution Encoder with liquid crystal display (HR-E LCD) for water metering 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.
PROPOSED RULE MAKING
HEARING(S) SCHEDULED

Petition for Full-Scale Deployment of AMI and to Establish an AMI Surcharge

I.D. No. PSC-14-17-00017-P

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

Proposed Action: The Commission is considering a petition by New York State Electric & Gas Corporation and Rochester Gas and Electric Corporation for authorization for full-scale deployment of Advanced Metering Infrastructure (AMI) and to establish an AMI surcharge. Statutory authority: Public Service Law, sections 5, 65 and 66
Subject: Petition for Full-Scale Deployment of AMI and to Establish an AMI Surcharge.
Purpose: To consider the petition for Full-Scale Deployment of AMI and to Establish an AMI Surcharge.

Public hearing(s) will be held at: 10:30 a.m., August 2, 2017 and continuing daily as needed*, at Department of Public Service, Agency Bldg. 3, 19th Fl. Boardroom, Albany, NY. *On occasion, there are requests to reschedule or postpone evidentiary hearing dates. If such a request is granted, notification of any subsequent scheduling changes will be available at the DPS website (www.dps.ny.gov) under Cases 17-E-0058 and 17-G-0059.

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

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

Substance of proposed rule: The Commission is considering a petition requesting authorization for full-scale deployment of advanced metering infrastructure (AMI) and to establish an AMI surcharge. New York State Electric & Gas Corporation and Rochester Gas and Electric Corporation (collectively, the Companies) filed the petition on December 20, 2016, as revised on December 29, 2016, in Cases 17-E-0058 and 17-G-0059. The petition alleges that the AMI project will include installation of intelligent meters (including new electric meters, new gas meters and new gas modules to be retrofitted on existing gas meters, a supporting telecommunications network and IT infrastructure that will include diverse media solutions (i.e., radio frequency, cellular, dark fiber, etc.), and software applications to process data and interact with field devices. The Companies estimate that the capital costs for the full-scale AMI deployment will be approximately $513.2 million, and they propose an increase in needed revenues in the total amount of approximately $6.2 million in 2018. Until these amounts are incorporated into future rate plans, the Companies propose to recover them through two surcharges, a fixed monthly charge for AMI meter and communications costs and a variable monthly charge for upfront intellectual property costs. The Companies also propose to allow customers to opt out of an AMI meter, subject to certain opt-out charges. Because all existing electric meters will be removed from service as part of the AMI implementation, the Companies also seek a waiver of the Commission’s in-service meter testing requirements (16 NYCCR 92.10) for existing meters. The full text of the petition may be reviewed online at the Department of Public Service web page: www.dps.ny.gov. The Commission may adopt, reject or modify, in whole or in part, the petition 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/96dir.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: 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
NO HEARING(S) SCHEDULED

Temperature for Daily Contact with DRCs, Interruptible Temperature in Procedures and O&R to Follow Upstate DRC Rules

I.D. No. PSC-14-17-00007-P

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

Proposed Action: The Commission is considering waiver requests adjusting the temperature for upstate LDCs to commence daily communications in any given year to the prescribed 20-degree requirement as the threshold at which demand response customers, to notify DRCs of interruptible temperature in company procedures, and to treat O&R as an upstate utility. Statutory authority: Public Service Law, sections 65, 66(1) and (2)
Subject: Temperature for daily contact with DRCs, interruptible temperature in procedures and O&R to follow upstate rules.
Purpose: To consider waivers adjusting temperature, referencing actual temperature in company procedures and allowing O&R to follow upstate rules

Substance of proposed rule: The Commission is considering waiver requests from Central Hudson Gas & Electric Corporation, National Fuel Gas Distribution Corporation, New York State Electric & Gas Corporation, Niagara Mohawk Power Corporation d/b/a National Grid, and Orange and Rockland Utilities, Inc. (the Parties). On December 16, 2016, the Commission’s Order Adopting New Communications Protocols (2016 Order) directed the local distribution companies (LDCs) and demand response tariff to file amendments to those tariffs to implement new winter communications protocols. In complying with the 2016 Order, several LDCs requested a waiver seeking Commission authorization allowing the LDCs to use the lower temperature threshold of 15 degrees Fahrenheit, rather than the prescribed 20 degrees contained in the 2016 Order, as a maximum cold temperature threshold that will trigger the requirement of daily communications. The 2016 Order requires that, as a result of weather forecasts project outside temperatures to be 20 degrees or below for the upcoming three consecutive days or during the times when three days of consecutive customer interruptions occur the LDCs must communicate daily with their demand response customers. The parties seek a waiver of the prescribed 20-degree requirement as the threshold at which LDCs would commence daily LDC communications with all demand response parties. The Parties request that they not be required to communicate daily with their demand response customers. Therefore, while 15 degrees is the threshold at which daily communications must begin, the Commission is considering allowing each LDC to notify its demand response customers in the LDC’s GTOP of the actual temperature at which each LDC will commence daily communications in any given year. In review of the waiver requests it also became apparent to Staff that Orange and Rockland Utilities, Inc. (O&R) should not be treated as a downstate LDC since O&R’s service territory does not include New York City, where the oil market holds up. Prompting the 2016 Order, Rather, Staff believes that O&R should be required to follow the requirements assigned to the upstate LDCs described in the 2016 Order. Doing so would allow O&R to not implement the requirements of the unannounced January test (#5), the customer affirmation of compliance (#4), and the inclusion of the oil supplier’s contact information (or alternate fuel supplier) (#5) unless and only for specific O&R demand response customers that fail to interrupt as required by O&R’s tariff. Therefore, the Commission is considering treating O&R as an upstate LDC. The full text of the proposals may be reviewed online by the Department of Public Service web page: www.dps.ny.gov. The Commission may adopt, reject or modify, in whole or in part, the waiver requests 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/96dir.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: 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.
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-0185SP2)

PROPOSED RULE MAKING
NO HEARING(S) SCHEDULED

Waiver to the Prohibition on Service to Low-Income Customers by ESCOs

I.D. No. PSC-14-17-00008-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 on January 31, 2017 by Starion Energy New York, Inc. seeking a waiver to the prohibition on service to low-income customers by energy service companies (ESCOs).

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

**Subject:** Waiver to the prohibition on service to low-income customers by ESCOs.

**Purpose:** To consider the petition for a waiver to the prohibition on service to low-income customers by ESCOs.

**Substance of proposed rule:** The Public Service Commission is considering a petition filed on January 31, 2017 by Starion Energy New York, Inc. seeking a waiver to the prohibition on service to low-income customers by energy service companies (ESCOs). The petition requests a waiver of the prohibition on ESCO service to low-income customers (Prohibition Order). The Prohibition Order provided that, if an ESCO can demonstrate that it is capable of providing a product to low-income customers that guarantees savings compared to what the customer would have otherwise paid as a full-service utility customer, it may seek a waiver of the Prohibition Order from the Commission. The full text of the petition may be reviewed online at the Department of Public Service web page: www.dps.ny.gov. The Commission may adopt, reject or modify, in whole or in part, the relief requested 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/96dir.htm.** For questions, contact: Kathleen H. Burgess, Secretary, Public Service Commission, 3 Empire State Plaza, Albany, New York 12223-1350, (518) 486-2655, email: kathleen.burgess@dps.ny.gov

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

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

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

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

(12-M-0476SP22)

PROPOSED RULE MAKING
NO HEARING(S) SCHEDULED

Waiver to the Prohibition on Service to Low-Income Customers by ESCOs

I.D. No. PSC-14-17-00010-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 a petition filed on January 31, 2017 by Just Energy New York Corporation seeking a waiver to the prohibition on service to low-income customers by energy service companies (ESCOs). The petition requests a waiver of the Prohibition Order from the Commission. The full text of the petition may be reviewed online at the Department of Public Service web page: www.dps.ny.gov. The Commission may adopt, reject or modify, in whole or in part, the relief requested 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/96dir.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.

**Subject:** Waiver to the prohibition on service to low-income customers by ESCOs.

**Purpose:** To consider the petition for a waiver to the prohibition on service to low-income customers by ESCOs.

**Substance of proposed rule:** The Public Service Commission is considering a petition filed on January 31, 2017 by Starion Energy New York, Inc. seeking a waiver to the prohibition on service to low-income customers by energy service companies (ESCOs). The petition requests a waiver of the Prohibition Order from the Commission. The full text of the petition may be reviewed online at the Department of Public Service web page: www.dps.ny.gov. The Commission may adopt, reject or modify, in whole or in part, the relief requested 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/96dir.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.

**Subject:** Waiver to the prohibition on service to low-income customers by ESCOs.

**Purpose:** To consider the petition for a waiver to the prohibition on service to low-income customers by ESCOs.
Data, views or arguments may be submitted to: Kathleen H. Burgess, Secretary, Public Service Commission, 3 Empire State Plaza, Albany, New York 12223-1350, (518) 474-6530, email: secretary@dps.ny.gov

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

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

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

(12-M-0476SP24)

PROPOSED RULE MAKING

NO HEARING(S) SCHEDULED

Waiver to the Prohibition on Service to Low-Income Customers by ESCOs

I.D. No. PSC-14-17-00011-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 petition filed on January 31, 2017 by M&R Energy Resources Corp. seeking a waiver to the prohibition on service to low-income customers by energy service companies (ESCOs).

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

Subject: Waiver to the prohibition on service to low-income customers by ESCOs.

Purpose: To consider the petition for a waiver to the prohibition on service to low-income customers by ESCOs.

Substance of proposed rule: The Public Service Commission is considering a petition filed on January 31, 2017 by M&R Energy Resources Corp. seeking a waiver to the prohibition on service by energy service companies (ESCOs) to low-income customers (Petition). On December 16, 2016, the Commission directed a prohibition on ESCO service to low-income customers (Prohibition Order). The Prohibition Order provided that, if an ESCO can demonstrate that it is capable of providing a product to low-income customers that guarantees savings compared to what the customer would have otherwise paid as a full-service utility customer, it may seek a waiver of the Prohibition Order from the Commission. The full text of the petition may be reviewed online at the Department of Public Service web page: www.dps.ny.gov. The Commission may adopt, reject or modify, in whole or in part, the relief requested 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: Kathleen H. Burgess, Secretary, Public Service Commission, 3 Empire State Plaza, Albany, New York 12223-1350, (518) 474-6530, email: secretary@dps.ny.gov

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

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

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

(12-M-0476SP19)

PROPOSED RULE MAKING

NO HEARING(S) SCHEDULED

Waiver to the Prohibition on Service to Low-Income Customers by ESCOs

I.D. No. PSC-14-17-00013-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 petition filed on January 30, 2017 by New Wave Energy Corp. seeking a waiver to the prohibition on service to low-income customers by energy service companies (ESCOs).

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

Subject: Waiver to the prohibition on service to low-income customers by ESCOs.

Purpose: To consider the petition for a waiver to the prohibition on service to low-income customers by ESCOs.

Substance of proposed rule: The Public Service Commission is considering a petition filed on January 30, 2017 by New Wave Energy Corp. seeking a waiver to the prohibition on service by energy service companies (ESCOs) to low-income customers (Petition). On December 16, 2016, the Commission directed a prohibition on ESCO service to low-income customers (Prohibition Order). The Prohibition Order provided that, if an ESCO can demonstrate that it is capable of providing a product to low-income customers that guarantees savings compared to what the customer would have otherwise paid as a full-service utility customer, it may seek a waiver of the Prohibition Order from the Commission. The full text of the petition may be reviewed online at the Department of Public Service web page: www.dps.ny.gov. The Commission may adopt, reject or modify, in whole or in part, the relief requested 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

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

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

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

(12-M-0476SP20)

PROPOSED RULE MAKING

NO HEARING(S) SCHEDULED

Waiver to the Prohibition on Service to Low-Income Customers by ESCOs

I.D. No. PSC-14-17-00012-P

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

Proposed Action: The Commission is considering a petition filed on January 30, 2017 by New Wave Energy Corp. seeking a waiver to the prohibition on service to low-income customers by energy service companies (ESCOs).

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

Subject: Waiver to the prohibition on service to low-income customers by ESCOs.

Purpose: To consider the petition for a waiver to the prohibition on service to low-income customers by ESCOs.

Substance of proposed rule: The Public Service Commission is considering a petition filed on January 30, 2017 by New Wave Energy Corp. seeking a waiver to the prohibition on service by energy service companies (ESCOs) to low-income customers (Petition). On December 16, 2016, the Commission directed a prohibition on ESCO service to low-income customers (Prohibition Order). The Prohibition Order provided that, if an ESCO can demonstrate that it is capable of providing a product to low-income customers that guarantees savings compared to what the customer would have otherwise paid as a full-service utility customer, it may seek a waiver of the Prohibition Order from the Commission. The full text of the petition may be reviewed online at the Department of Public Service web page: www.dps.ny.gov. The Commission may adopt, reject or modify, in whole or in part, the relief requested 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.

(12-M-0476SP26)

PROPOSED RULE MAKING

NO HEARING(S) SCHEDULED

Waiver to the Prohibition on Service to Low-Income Customers by ESCOs

I.D. No. PSC-14-17-00014-P

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

Proposed Action: The Commission is considering a petition filed on January 30, 2017 by Drift Marketplace, Inc. seeking a waiver to the prohibition on service to low-income customers by energy service companies (ESCOs).

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

Subject: Waiver to the prohibition on service to low-income customers by ESCOs.

Purpose: To consider the petition for a waiver to the prohibition on service to low-income customers by ESCOs.

Substance of proposed rule: The Public Service Commission is considering a petition filed on January 30, 2017 by Drift Marketplace, Inc. seeking a waiver to the prohibition on service by energy service companies (ESCOs) to low-income customers (Petition). On December 16, 2016, the Commission directed a prohibition on ESCO service to low-income customers (Prohibition Order). The Prohibition Order provides that, if an ESCO can demonstrate that it is capable of providing a product to low-income customers that guarantees savings compared to what the customer would have otherwise paid as a full-service utility customer, it may seek a waiver of the Prohibition Order from the Commission. The full text of the petition may be reviewed online at the Department of Public Service web page: www.dps.ny.gov. The Commission may adopt, reject or modify, in whole or in part, the relief requested 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.

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

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

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

(12-M-0476SP23)

PROPOSED RULE MAKING

NO HEARING(S) SCHEDULED

Waiver to the Prohibition on Service to Low-Income Customers by ESCOs

I.D. No. PSC-14-17-00016-P

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

Proposed Action: The Commission is considering a petition filed on January 31, 2017 by Utility Expense Reduction, LLC seeking a waiver to the prohibition on service to low-income customers by energy service companies (ESCOs).

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

Subject: Waiver to the prohibition on service to low-income customers by ESCOs.

Purpose: To consider the petition for a waiver to the prohibition on service to low-income customers by ESCOs.

Substance of proposed rule: The Public Service Commission is considering a petition filed on January 31, 2017 by Utility Expense Reduction, LLC seeking a waiver to the prohibition on service to low-income customers by energy service companies (ESCOs). The Public Service Commission is considering a petition filed on January 30, 2017 by South Bay Energy Corp. seeking a waiver to the prohibition on service to low-income customers by ESCOs.

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

Subject: Waiver to the prohibition on service to low-income customers by ESCOs.

Purpose: To consider the petition for a waiver to the prohibition on service to low-income customers by ESCOs.

Substance of proposed rule: The Public Service Commission is considering a petition filed on January 30, 2017 by South Bay Energy Corp. seeking a waiver to the prohibition on service to low-income customers by ESCOs. The Public Service Commission is considering a petition filed on January 31, 2017 by Utility Expense Reduction, LLC seeking a waiver to the prohibition on service to low-income customers by energy service companies (ESCOs). The Public Service Commission is considering a petition filed on January 31, 2017 by Utility Expense Reduction, LLC seeking a waiver to the prohibition on service to low-income customers by energy service companies (ESCOs). The Public Service Commission is considering a petition filed on January 30, 2017 by Drift Marketplace, Inc. seeking a waiver to the prohibition on service to low-income customers by energy service companies (ESCOs).

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.

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

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

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

(12-M-0476SP25)

PROPOSED RULE MAKING

NO HEARING(S) SCHEDULED

Waiver to the Prohibition on Service to Low-Income Customers by ESCOs

I.D. No. PSC-14-17-00015-P

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

Proposed Action: The Commission is considering a petition filed on January 30, 2017 by South Bay Energy Corp. seeking a waiver to the prohibition on service to low-income customers by energy service companies (ESCOs).

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

Subject: Waiver to the prohibition on service to low-income customers by ESCOs.

Purpose: To consider the petition for a waiver to the prohibition on service to low-income customers by ESCOs.

Substance of proposed rule: The Public Service Commission is considering a petition filed on January 30, 2017 by South Bay Energy Corp. seeking a waiver to the prohibition on service to low-income customers by ESCOs. The Public Service Commission is considering a petition filed on January 31, 2017 by Utility Expense Reduction, LLC seeking a waiver to the prohibition on service to low-income customers by energy service companies (ESCOs).

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

Subject: Waiver to the prohibition on service to low-income customers by ESCOs.

Purpose: To consider the petition for a waiver to the prohibition on service to low-income customers by ESCOs.

Substance of proposed rule: The Public Service Commission is considering a petition filed on January 30, 2017 by South Bay Energy Corp. seeking a waiver to the prohibition on service to low-income customers by ESCOs. The Public Service Commission is considering a petition filed on January 31, 2017 by Utility Expense Reduction, LLC seeking a waiver to the prohibition on service to low-income customers by energy service companies (ESCOs). The Public Service Commission is considering a petition filed on January 31, 2017 by Utility Expense Reduction, LLC seeking a waiver to the prohibition on service to low-income customers by energy service companies (ESCOs). The Public Service Commission is considering a petition filed on January 30, 2017 by Drift Marketplace, Inc. seeking a waiver to the prohibition on service to low-income customers by energy service companies (ESCOs).

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.

Public comment will be received until: 45 days after publication of this notice.
PROPOSED RULE MAKING
NO HEARING(S) SCHEDULED

Deferral of Incremental REV Expenses and Recovery Through Its Existing Miscellaneous Charge

I.D. No. PSC-14-17-00018-P

Pursuant to the provisions of the State Administrative Procedure Act, Notice is hereby given of the following proposed rule:

Proposed Action: The Commission is considering a petition filed by Central Hudson Gas & Electric Corporation to defer and recover approximately $1.9 million of incremental Reforming the Energy Vision (REV) electric expenses and carrying charges.

Statutory Authority: Public Service Law, sections 4(1), 65, 66(1) and (12)

Subject: Deferral of incremental REV expenses and recovery through its existing Miscellaneous Charge.

Purpose: Consideration of the incremental REV expense deferral and recovery petition filed by Central Hudson Gas & Electric Corporation.

Substantive Basis of proposed rule: The Public Service Commission (Commission) is considering a petition filed by Central Hudson Gas and Electric Corporation (the Company) on March 8, 2017, to defer costs associated with incremental Reforming the Energy Vision (REV) electric expenses. As of February 28, 2017, the Company has accumulated approximately $1.9 million in predominately labor related expenses and associated carrying costs related to Distributed System Implementation Plan, Advanced Metering Infrastructure, and Earning Adjustment Mechanism costs. Going forward, the Company expects to incur future REV expenses in the range of $2.9 million related but not limited to the development of an interconnection portal to facilitate the connection of Distributed Energy Resources (DER) to Central Hudson’s distribution system as well as a hosting capacity analysis to determine how much DER can connect to each circuit on Central Hudson’s distribution system. The Company requests to defer these REV costs and carrying charges at its current pre-tax rate of return and recover the costs on a volumetric basis through a separate component of their monthly Miscellaneous Charge. The Company plans to provide the Commission an annual report every October detailing deferred and recovered REV costs in the prior rate year ending June 30. The full text of the petition may be reviewed online at the Department of Public Service web page: www.dps.ny.gov. The Commission may adopt, reject, or modify, in whole or in part, the petition 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/96dir.htm. For questions, contact: John Pitucci, Public Service Commission, 3 Empire State Plaza, Albany, New York 12223-1530, (518) 486-2655, email: john.pitucci@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.

(17-E-0107SP1)

Department of State

PROPOSED RULE MAKING
HEARING(S) SCHEDULED

New York State Uniform Fire Prevention and Building Code (the Uniform Code)

I.D. No. DOS-14-17-00004-P

Pursuant to the provisions of the State Administrative Procedure Act, Notice is hereby given of the following proposed rule:

Proposed Action: Amendment of sections 1220.1(b), (c), 1221.1(b), (c), 1222.1(b), (c), 1223.1(b), (c), 1224.1(b), (c), 1225.1(b), (c), 1226.1(b), (c), 1227.1(b), (c), 1228.4, 1228.17, 1264.4, 1265.3; and repeal of section 1226.1(d) of Title 19 NYCRR.

Statutory Authority: Executive Law, sections 377, 382-a and 382-b

Subject: New York State Uniform Fire Prevention and Building Code (the Uniform Code).

Purpose: To amend the existing Uniform Code and to make conforming changes to 19 NYCRR Parts 1264 and 1265.

Public hearing(s) will be held at: 10:00 a.m., May 22, 2017 at Department of State, 99 Washington Ave., Rm. 505, Albany, NY.

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

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

Substance of proposed rule (Full text is posted at the following State website: http://www.dos.ny.gov/DCEA/): This rule making would amend the current versions of Parts 1220, 1221, 1222, 1223, 1224, 1225, 1226, and 1227 of Title 19 of the Official Compilation of Codes, Rules and Regulations of the State of New York by replacing references to the 2016 Uniform Code Supplement with the new publication entitled the 2017 Uniform Code Supplement. The individual Parts pertain to specified portions of the Uniform Fire Prevention and Building Code and are summarized below:

Part 1220 Residential Construction

Applicable residential structures include detached one- and two-family dwellings and multiple single-family dwellings (townhouses), not more than three stories in height above grade with a separate means of egress; such one-family dwellings converted to bed and breakfast dwellings; and certain specified such dwellings under the supervision or jurisdiction of a department or agency of New York State (NYS).

Certain published standards are incorporated by reference into 19 NYCRR Part 1220.

Part 1221 Building Construction
The construction, alteration, movement, enlargement, replacement, repair, equipment, use and occupancy, maintenance, removal and demolition of every building or structure, or appurtenance connected or attached to any building or structure, shall comply with the requirements of the publication entitled “2015 International Building Code” published by the International Code Council, Inc. (hereinafter the 2015 IBC), incorporated herein by reference, as amended in the manner specified in the “2017 Uniform Code Supplement,” published in March 2017, by the NYS Department of State and incorporated herein by reference.

Certain published standards are incorporated by reference into 19 NYCRR Part 1221.

Part 1222 Plumbing Systems
The design, installation, alteration, repair, relocation, replacement, addition to, use or maintenance of plumbing systems, nonflammable medical gas systems and sanitary and condensate vacuum collection systems, shall comply with the requirements of the “2015 International Plumbing Code” published by the International Code Council, Inc. (hereinafter the 2015 IPC), incorporated herein by reference, as amended in the manner specified in the “2017 Uniform Code Supplement,” published in March 2017, by the NYS Department of State and incorporated herein by reference.

Certain published standards are incorporated by reference into 19 NYCRR Part 1222.

Part 1223 Mechanical Systems
The design, installation, maintenance, alteration and inspection of mechanical systems that are permanently installed and utilized to provide control of environmental conditions and related processes within buildings shall comply with the requirements of the publication entitled “2015 International Mechanical Code” published by the International Code Council, Inc. (hereinafter the 2015 IMC), incorporated herein by reference, as amended in the manner specified in the “2017 Uniform Code Supplement,” published in March 2017, by the NYS Department of State and incorporated herein by reference.

Certain published standards are incorporated by reference into 19 NYCRR Part 1223.

Part 1224 Fuel Gas Equipment and Systems

Certain published standards are incorporated by reference into 19 NYCRR Part 1224.

Part 1225 Fire Prevention
The design, installation, maintenance, alteration and inspection of structures, processes and premises; the storage, handling or use of structures, materials or devices; the occupancy and operation of structures and premises; and the construction, extension, repair, alteration or removal of fire suppression and alarms systems, shall comply with the requirements of the publication entitled “2015 International Fire Code” published by the International Code Council, Inc. (hereinafter the 2015 IFC), incorporated herein by reference, as amended in the manner specified in the “2017 Uniform Code Supplement,” published in March 2017, by the NYS Department of State and incorporated herein by reference.

Certain published standards are incorporated by reference into 19 NYCRR Part 1225.

Part 1226 Property Maintenance
All existing residential and nonresidential structures, premises, equipment and facilities, owners, operators and occupants of existing structures and facilities, and the occupants of existing structures and premises, shall comply with the requirements of the publication entitled “2015 International Property Maintenance Code” published by the International Code Council, Inc. (hereinafter the 2015 IPMC), and incorporated herein by reference, as amended in the manner specified in the “2017 Uniform Code Supplement,” published in March 2017, by the NYS Department of State and incorporated herein by reference.

Certain published standards are incorporated by reference into 19 NYCRR Part 1226.

Part 1227 Existing Buildings

Certain published standards are incorporated by reference into 19 NYCRR Part 1227.

19 NYCRR Parts 1228, 1264, and 1265 to reference the 2017 Uniform Code Supplement, as opposed to the 2016 Uniform Code Supplement.

Text of proposed rule and any required statements and analyses may be obtained from: Gerard Hathaway, Department of State, 99 Washington Avenue, Suite 1160, Albany, NY 12231, (518) 474-4073, email: Gerard.Hathaway@dos.ny.gov

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.

Summary of Regulatory Impact Statement
The full text of the Regulatory Impact Statement can be viewed at http://www.dos.ny.gov/DCEA/

1. STATUTORY AUTHORITY

Article 18 of the Executive Law, entitled the New York State Uniform Fire Prevention and Building Code Act, establishes the State Fire Prevention and Building Code Council (hereinafter “Code Council”) and authorizes such council to formulate a code to be known as the Uniform Fire Prevention and Building Code (hereinafter “Uniform Code”). Executive Law § 377 directs that the Uniform Code shall provide reasonably uniform standards and requirements for construction and construction materials for public and private buildings, including factory manufactured homes, consistent with accepted standards of engineering and fire prevention practices.

Executive Law § 378 provides that the Uniform Code shall address certain specified subjects. The subjects are listed in the full Regulatory Statement.

Executive Law § 377(1) specifically states that the Code Council may amend particular provisions of the Uniform Code and shall periodically review the entire code to assure that it effectuates the purposes of Article 18 of the Executive Law. This rule making would amend the existing text of the Uniform Code which is based upon the 2015 editions of eight individual model codes developed and published by the International Code Council (ICC), as modified by the 2016 Uniform Code Supplement. Particularly, the 2016 Uniform Code Supplement will be replaced with a new publication entitled the 2017 Uniform Code Supplement. This publication makes technical and editorial corrections to the Uniform Code that are necessary for its proper application and to address statutory requirements.

19 NYCRR Part 1264 implements Executive Law § 382-a. Executive Law § 382-a provides that the Code Council shall promulgate rules and regulations it deems necessary to carry into effect the provision of this section 382-a. 19 NYCRR Part 1265 implements Executive Law § 382-b. Executive Law § 382-b provides that the Code Council shall promulgate rules and regulations it deems necessary to carry into effect the provisions
of this section 382-b. Parts 1264 and 1265 currently include references to the 2016 Uniform Code Supplement. This rule will amend Parts 1264 and 1265 by changing the existing references to the 2016 Uniform Code Supplement to references to the 2017 Uniform Code Supplement.

2. LEGISLATIVE OBJECTIVES

Executive Law § 371(2) declares that it shall be the public policy of the State of New York to provide for promulgation of a Uniform Code addressing building construction and fire prevention in order to provide a minimum level of protection to all people of the State from the hazards of fire and inadequate building construction. The Code Council was assigned the task of formulating the Uniform Fire Prevention and Building Code which took effect January 1, 1984. However, in the years following 1984, the Uniform Code did not keep pace with the evolving technology of fire prevention and building construction. Furthermore, as the rest of the nation moved to using a nationally accepted set of model codes, New York continued to maintain the separate identity of its building and fire prevention code until January of 2003, when it repealed its entire code and replaced it with text based primarily on the 2000 edition of the International Codes.

The Uniform Code adopted in 2003 was based on International Codes, and represented the first major revision of the Uniform Code since its inception in January 1984. The Uniform Code was revised again in 2007 and 2010. The 2010 revision was based primarily on the 2006 edition of the International Codes. The 2016 revision was based primarily on the 2015 edition of the International Codes. This rule making would revise the Uniform Code once again, and replace the current version of the Uniform Code with a new version still based primarily on the 2015 edition of the International Codes but modified by the 2017 Uniform Code Supplement in place of the 2016 Uniform Code Supplement. By updating the Uniform Code in this manner, the Code Council seeks to better effectuate the purposes, objectives, and standards set forth in Article 18 of the Executive Law and therefore concludes that the rule making conforms with the public policy objectives of Executive Law § 371.

3. NEEDS AND BENEFITS

The purpose of this rule making is to adopt new provisions for the Uniform Code. This change is necessary if New York State is to remain competitive with the rest of the nation in matters involving building construction while at the same time providing an adequate level of safety to its residents. It is also necessary if New York State wishes to keep pace with evolving technology concerning fire prevention and building construction and to have a building and fire prevention code which is consistent with nationally accepted model codes.

Included in Item #3 of the full Regulatory Impact Statement, the Needs and Benefits of significant new provisions of the Uniform Code are discussed.

4. COSTS

a. COST TO REGULATED PARTIES FOR THE IMPLEMENTATION OF, AND CONTINUING COMPLIANCE WITH, THE PROPOSED RULE

Further information concerning the costs of significant provisions of the Uniform Code is discussed in the full Regulatory Impact Statement. While costs vary depending on the construction or modification project, the Department does not anticipate that the costs will differ greatly from the current codes. This rule reflects performance based regulatory requirements that require regulated parties to protect the occupants and users of buildings while at the same time fulfilling programmatic space needs with the most cost effective solution.

b. COSTS TO THE AGENCY, THE STATE AND LOCAL GOVERNMENTS FOR THE IMPLEMENTATION AND CONTINUED ADMINISTRATION OF THE RULE

The Department of State, State agencies that administer and enforce the Uniform Code, State agencies that own or construct buildings, and local governments that administer and enforce the Uniform Code can obtain a copy of the 2017 Uniform Code Supplement on the Department of State’s website at no cost.

Further information concerning costs and savings of the most significant of the new provisions of the Uniform Code are discussed within Item #3 of the full Regulatory Impact Statement.

5. LOCAL GOVERNMENT MANDATES

This rule making will impose some programs, services, duties and responsibilities upon counties, cities, towns, villages, school districts, fire districts and other special districts. When any of the aforementioned governmental entities undertake the construction of a building or structure, the construction process is subject to the provisions of the proposed rule to the same extent that the construction of a private building or structure would be regulated.

Similarly, existing buildings and structures owned or under the control of local government entities are potentially subject to maintenance or fire prevention provisions of the Uniform Code, and therefore, may become subject to maintenance and fire prevention provisions of the Uniform Code, as amended by this rule.

Pursuant to Executive Law § 381, every city, town and village is responsible for enforcing the Uniform Code. Consequently, local government personnel will require training in the details of this rule. However, the Department of State, Division of Building Standards and Codes has funding available to provide for training local government code enforcement officials. This training will provide the ability to enforce local government to enforce this regulation.

6. PAPERWORK

This rule will not impose any additional reporting or record keeping requirements. No additional paperwork is anticipated.

7. DUPLICATION

The New York State Uniform Fire Prevention and Building Code provides standards for the construction and maintenance of buildings and structures and for the buildings and structures used. The uniform code extends to municipalities, political subdivisions, and governmental entities that administer and enforce the Uniform Code. The uniform code also applies to private buildings and structures used by more than one family or individual. The uniform code includes provisions which require buildings and structures to be accessible and usable by the physically disabled. The proposed new text of the Uniform Code also requires accessibility to buildings and structures for the physically disabled. Although the existence of federal and state standards may raise issues of overlap or conflict, no such overlap or conflict exists with this proposed rule.

Several State agencies have promulgated regulations which impose requirements upon buildings or structures which house activities which are licensed or regulated by the particular agency. Such regulations may impose an additional layer of regulation upon the construction, maintenance, or use of certain categories of buildings. These other regulations, however, are focused upon activities or occupants regulated or protected by the particular State agency and have been promulgated pursuant to statutory authority other than Article 18 of the Executive Law.

8. ALTERNATIVES

It is the policy of the Department of State to modernize and amend the Uniform Fire Prevention and Building Code, so as to maintain consistency with the national model codes, to keep building practices in New York State consistent with practice nationally, and to incorporate new technical developments in a timely manner. Consequently, the Uniform Code was revised in 2007 and 2010. The 2010 revision was based primarily on the 2006 edition of the International Code Council’s International Building Code. The Uniform Code adopted in 2003 was based on International Codes, and represented the first major revision of the Uniform Code since its inception in January 1984. The Uniform Code was revised again in 2007 and 2010. The 2010 revision was based primarily on the 2006 edition of the International Codes. This rule making will impose some programs, services, duties and responsibilities upon counties, cities, towns, villages, school districts, fire districts and other special districts. When any of the aforementioned governmental entities undertake the construction of a building or structure, the construction process is subject to the provisions of the proposed rule to the same extent that the construction of a private building or structure would be regulated.

Similarly, existing buildings and structures owned or under the control of local government entities are potentially subject to maintenance or fire prevention provisions of the Uniform Code, and therefore, may become subject to maintenance and fire prevention provisions of the Uniform Code, as amended by this rule.

This rule making would amend the current version of the Uniform Fire Prevention and Building Code (Uniform Code) by replacing the 2016 Uniform Code Supplement with a new publication entitled the 2017 Uniform Code Supplement. The proposed new text of the Uniform Code is based upon the new modifications to the 2015 editions of model codes developed by the International Code Council, Inc. (ICC), as set forth in the 2017 Uniform Code Supplement. The Uniform Code is applicable in all areas of the State, whether or not within the corporate limits of the City of New York.

This rule has the potential to affect small businesses that own or operate buildings in all areas of the State except the City of New York as well as small businesses that provide services, directly or indirectly, to building owners and operators. Small businesses that construct, own, or operate buildings or structures are subject to the requirements of the Uniform Code and therefore will be required to comply with this rule. Businesses that provide services to building owners, such as facility managers, design profession-
als (e.g., architects and engineers), general and specialty contractors (including home builders), and product suppliers; and those not directly regulated by this rule, will be impacted by this rule. It is not possible to estimate the exact number of businesses that will be affected by this rule, but the effect of the rule will be widespread. For example, according to the New York State Department of Education, as of January 1, 2017, there were 10,734 architects\(^1\), 14,949 engineers\(^2\) and 805 landscape architects\(^3\) with active licenses in New York State.

There are approximately 1,605 local governments in New York, including 933 towns, 554 villages, 62 cities, and 57 counties.\(^4\) Local governments will be affected by this rule if the government constructs, owns, or operates structures that are subject to the provisions of the Uniform Code. In those circumstances, a local government is in no different situation than that of any building owner or operator, public or private. Therefore, adoption of this rule making will affect all cities, towns, and villages of the State with the exception of the City of New York. In addition, Executive Law § 381 provides that every city, town, and village of the State shall administer and enforce the Uniform Code within its boundaries, except in limited specific circumstances. Consequently, in most instances, the cities, towns and villages of the State are responsible for enforcement of the Uniform Code within their boundaries, and will be responsible for enforcing the new Uniform Code provisions proposed for adoption by this rule making.

2. REPORTING, RECORDKEEPING AND OTHER COMPLIANCE REQUIREMENTS.

This rule making will not change local government responsibility for administering and enforcing the Uniform Code. There will be no change in requirements for local governments concerning reporting, record keeping, and other compliance requirements.

As the owner, operator, or occupant of a building or structure, both small businesses and local governments will be required to comply with requirements for new building construction and for operation and maintenance of newly constructed buildings, as well as provisions of this rule that apply to existing buildings.

3. PROFESSIONAL SERVICES.

Regulated parties will continue to rely upon professionals to advise them of the requirements of the Uniform Code. Building owners typically rely on professionals with respect to design, construction and operation and maintenance of buildings because of their expertise in building regulations.

4. COMPLIANCE COSTS.

The adoption of new text for the Uniform Code will affect the construction, configuration and cost of new buildings. Remodeling or construction of additions in existing buildings will be similarly affected. It is anticipated that regulated parties will see a change in construction costs and building operation costs as a result of this rule making, with some increases and some decreases depending on the project. There is such a broad range of potential projects that it is not possible to give a single estimate or even a reasonable range of accurate range. For instance, under the proposed code change, a bed and breakfast operation would be required to post an evacuation notice on the occupied side of the entrance door of each new guest room. Compliance cost could be in the order of $260 per notice, depending upon the level of detail and finish desired by the owner.

Code enforcement personnel employed by the cities, towns, villages and counties that are required to administer and enforce the Uniform Code will receive training regarding the new and changed provisions of the Uniform Code. However, such code enforcement personnel are already required by regulation (19 NYCRR Part 1208) to receive 24 hours of annual in-service training, and it is anticipated that the training needed to familiarize code enforcement personnel with the revised Uniform Code to be implemented by this rule will be accomplished within that annual in-service training.

Regulated parties, local governments, and design professionals can obtain a copy of the 2017 Uniform Code Supplement on the Department of State’s website at no cost.

5. ECONOMIC AND TECHNOLOGICAL FEASIBILITY.

The new code provisions proposed for adoption by this rule making will currently distribute a broad range of compliance options. These provisions are performance based and therefore provide an opportunity to select the most cost effective alternative for compliance.

Regulatory change, like technological innovation, is constant in the construction industry. Regulated parties as well as those who provide services to them (i.e., architects, engineers, designers, contractors, and builders) are accustomed to such change. This rule making is expected to encourage innovation in the construction industry and to provide increased opportunities for small businesses to grow.

This proposed rulemaking consists primarily of updating the Uniform Code by adopting some additional New York modifications to the previously adopted ICC model codes. Training resources are available for impacted parties to learn the proposed new provisions of the Uniform Code. The staff of the Division of Building Standards and Codes of the Department of State will provide training for local government enforcement personnel. In addition, when class size permits, courses are open to design professionals and contractors. From time to time, the Department of State also offers specific courses to these groups relating to new code requirements.

6. MINIMIZING ADVERSE IMPACT.

The Department of State, Division of Building Standards and Codes will provide training on the new provisions of the Uniform Code for all local government code enforcement personnel in the State. Article 18 and Executive Law § 381(1) contemplate that the Uniform Code be enforced in a meaningful and effective manner, and in accordance with Part 1203. Executive Law § 381 provides that local governments that will not wish to enforce the Uniform Code may relinquish that responsibility to the county in which they are located. In turn, a county may relinquish enforcement responsibility to the Department of State. As the health, safety, and security of the people of the State are at issue, exemption from coverage by the rule was not considered an option for minimizing the impact on local governments and/or small businesses.

7. SMALL BUSINESS AND LOCAL GOVERNMENT PARTICIPATION.

The Department of State notified interested parties throughout the State of the proposed adoption of this rule by means of notices posted on the Department’s website and notices published in Building New York, an electronic news bulletin covering topics related to the Uniform Code and the construction industry. Building New York is prepared by the Department and is currently distributed to approximately 10,000 subscribers, including local governments, design professionals and others involved in all aspects of the construction industry. Further notification and opportunity to participate in the rule making process involved with consideration of adopting this rule on a permanent basis will be provided by public comment, and a public hearing, if it is determined that will commence upon publication of this Notice in the State Register. A draft of the proposed new code text will also be available on the Department’s website and an e-bulletin will be sent announcing that fact.

8. VIOLATIONS AND PENALTIES ASSOCIATED WITH VIOLATIONS.

This rule will not directly establish or modify a violation, and this rule will not establish or modify penalties associated with a violation. However, part of this rule will add requirements to the Uniform Code. A violation of the requirements added by part of this rule will be a violation of the Uniform Code. A violation of the Uniform Code can be punishable by penalties as high as a fine of not more than one thousand dollars per day of violation, or imprisonment not exceeding one year, or both. See Executive Law § 382(2).

The Department of State believes that it would be inappropriate to include in this rule a “cure period or other opportunity for ameliorative action, the successful completion of which will prevent the imposition of penalties on the party or parties subject to enforcement.” Part 1203 provisions requiring AHJs to require building permits and certificates of occupancy have in effect for decades. Part 1203 provisions requiring AHJs to require operating permits have been in effect for 10 years. Regulated parties should be well familiar with the enforcement-related provisions to be added to the Uniform Code by this rule. In addition, the goal of this part of the rule is to ensure greater compliance with the fire safety and construction-related provisions of the Uniform Code, and not to impose fines. The Department of State would encourage any government unit or agency responsible for enforcing the Uniform Code to consider exercising appropriate prosecutorial discretion with regard to any effort to impose fines on any building owner who is attempting in good faith to comply with Uniform Code, but who inadvertently fails to comply with one of the enforcement-related provisions to be added to the Uniform Code by this rule.

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4. NYSDOE Local Government Issues in Focus, October 2006 (Vol. 2, No. 3)
5. Rural Area Flexibility Analysis
6. 1. TYPES AND ESTIMATED NUMBERS OF RURAL AREAS:

This rule making would amend the current version of the Uniform Fire Prevention and Building Code, Section Gothenburg, to permit the City of Gothenburg, Nebraska, to adopt the 2016 Uniform Code Supplement with a new publication entitled the 2017 Uniform Code Supplement. The proposed new text of the Uniform Code
is based upon the new modifications to the 2015 editions of model codes developed by the International Code Council, Inc. (ICC), as set forth in the 2017 Uniform Code Supplement. The Uniform Code is applicable in all areas of the State with the exception of the City of New York. Therefore, adoption of this rule making will apply to all rural areas of the State.

2. REPORTING, RECORD-KEEPING AND OTHER COMPLIANCE REQUIREMENTS, AND PROFESSIONAL SERVICES:

This proposed rule-making will have no significant impact on reporting and record-keeping requirements in rural areas or elsewhere in New York. Building owners and operators in rural areas will continue to be required to comply with requirements of the Uniform Code for building construction, for operation and maintenance of newly constructed buildings and for maintenance of existing buildings. There will be some changes in these requirements with the new text of the Uniform Code. Regulated parties will continue to rely upon professionals to advise them of the requirements of the Uniform Code. Building owners typically rely on professionals for their expertise in building regulations with respect to design, construction and operation and maintenance of buildings. The need for professionals in rural areas does not differ from such need in non-rural areas.

3. COSTS:

The new provisions of the Uniform Code are expected to reduce some building and development costs and increase others. In general, those costs are expected to increase slightly from the cost of construction based on current Uniform Code provisions. According to the federal Department of Housing and Urban Development (HUD), the literature on the impact of building codes on the price of housing is extremely thin. Much of it is so old as to be useful only for historic interest. Among the handful of studies completed after 1980, almost all are based on anecdotal accounts or poorly specified models. The more quantitative studies suggest that the impact of building codes on price is no more than five percent. This is likely to hold true for construction of smaller buildings typical of rural areas. The proposed new provisions of the Uniform Code have been developed in response to updates in the building and fire safety industry. Any associated costs are expected to occur in rural communities as well as urban and suburban areas of the State.

4. MINIMIZING ADVERSE IMPACT:

The proposed rule requires uniform standards for building construction and fire prevention in all areas of the State with the exception of New York City, where only State buildings and structures must conform to the Uniform Code. The proposed rule will provide uniform fire protection requirements similar to those required by the current provisions of the Uniform Code. As the health, safety and welfare of the people of New York are at issue, exemption from coverage by the rule was not considered an option for minimizing impact on rural areas.

5. RURAL AREA PARTICIPATION:

The Department of State notified interested parties throughout the State of the proposed adoption of this rule by means of notices posted on the Department’s website and notices published in Building New York, an electronic news bulletin covering topics related to the Uniform Code and the construction industry. Building New York is prepared by the Department of State and is currently distributed to approximately 10,000 subscribers, including local governments, design professionals and others involved in all aspects of the construction industry. Further notification and opportunity to participate in the rule making process is expected in the consideration of adopting this rule on a permanent basis will be provided by way of a public comment period that will commence upon publication of this Notice in the State Register. A draft of the proposed new code text will also be available on the Department’s website and an e-bulletin will be sent announcing that fact.

Job Impact Statement

The Department of State has determined that it is apparent from the nature and purpose of the proposed rule making that it will not have a substantial adverse impact on jobs and employment opportunities.

This rule making would amend the current version of the Uniform Fire Prevention and Building Code (Uniform Code). The current version of the Uniform Code (19 NYCRR Parts 1220 through 1227) became fully effective on October 3, 2016. It is based upon the 2015 editions of model codes developed by the International Code Council (ICC), with some New York modifications as set forth in the 2016 Uniform Code Supplement. If adopted, this rule would replace the 2016 Uniform Code Supplement with a new publication entitled the 2017 Uniform Code Supplement. The 2017 Supplement is intended to make corrections to the 2016 Supplement and address topics specific to New York.

The ICC model codes incorporate the most current technology in the areas of building construction and fire prevention. The ICC codes are updated on a three-year cycle to stay current with industry practice and technical and life-safety evolution. The Department of State concludes that this update, which is based upon the current edition of the ICC model codes with some New York modifications as set forth in the 2017 Uniform Code Supplement, will continue to provide a strong incentive to construction of new buildings and rehabilitation of existing buildings. Therefore, this rule making will not have a substantial adverse impact on jobs and employment opportunities within New York.

PROPOSED RULE MAKING

HEARING(S) SCHEDULED

State Energy Conservation Construction Code (the Energy Code)

L.D. No. DOS-14-17-00005-P

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

Proposed Action: Amendment of section 1240.3; and addition of sections 1240.2(s), (t), 1240.4(c)(9) and 1240.5(b)(7) to Title 19 NYCRR.

Statutory authority: Energy Law, section 11-103(2)


Purpose: To amend the existing Energy Code.

Public hearing(s) will be held at: 10:00 a.m., May 22, 2017 at Department of State, 99 Washington Ave., Room 505, Albany, NY.

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

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

Text of proposed rule: Section 1240.2 of Title 19 of the Official Compilation of Codes, Rules and Regulations of the State of New York is amended by adding new subdivisions (s) and (t), to read as follows:

(s) 2016 Uniform Code Supplement. The term “2016 Uniform Code Supplement” means the publication entitled 2016 Uniform Code Supplement (publication date: March 2016) published by the New York State Department of State.

(t) 2017 Uniform Code Supplement. The term “2017 Uniform Code Supplement” means the publication entitled 2017 Uniform Code Supplement (publication date: March 2017) published by the New York State Department of State.

Subdivision (b) of section 1240.3 of Title 19 of the Official Compilation of Codes, Rules and Regulations of the State of New York is amended to read as follows: 1240.3 Amendments made by and to the 2016 Energy Code supplement.

(a) For the purposes of applying the 2015 IECC commercial provisions, the 2015 IECC residential provisions, and ASHRAE 90.1-2013 in New York State:

(1) 2015 IECC commercial provisions shall be deemed to be amended in the manner provided in part 1 of the 2016 Energy Code supplement; and

(2) 2015 IECC residential provisions shall be deemed to be amended in the manner provided in part 3 of the 2016 Energy Code supplement.

(b) The 2016 Energy Code supplement shall be deemed to be amended as follows: each reference in the 2016 Energy Code Supplement to the 2016 Uniform Code Supplement shall be deemed to be a reference to the 2017 Uniform Code Supplement.

Subdivision (c) of section 1240.4 of Title 19 of the Official Compilation of Codes, Rules and Regulations of the State of New York is amended by adding a new paragraph (9) to read as follows:

(9) New York State Department of State. The following publication published by the New York State Department of State is incorporated herein by reference: 2017 Uniform Code Supplement (publication date: March 2017). Copies of the 2017 Uniform Code Supplement may be obtained from the publisher at the following address: New York State Department of State, Division of Building Standards and Codes, One Commerce Plaza, 99 Washington Avenue, Suite 1160, Albany, NY 12231-0001. The 2017 Uniform Code Supplement is available for publication inspection and copy from the Office of the New York State Department of State located at One Commerce Plaza, 99 Washington Avenue, Albany, NY 12231-0001.

Subdivision (b) of section 1240.5 of Title 19 of the Official Compila-
tion of Codes, Rules and Regulations of the State of New York is amended by adding a new paragraph (7) to read as follows:

(7) New York State Department of State. The following publication published by the New York State Department of State is incorporated herein by reference: 2017 Uniform Code Supplement (publication date: March 1, 2017). Copies of the 2017 Uniform Code Supplement may be obtained from the publisher at the following address: New York State Department of State, Division of Building Standards and Codes, One Commerce Plaza, 99 Washington Avenue, Suite 1160, Albany, NY 12231-0001.

The text of proposed rule and any required statements and analyses may be obtained from: Gerard Hathaway, Department of State, 99 Washington Avenue, Suite 1160, Albany, NY 12231, (518) 474-4073, email: gerard.hathaway@nys.gov.

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

Regulatory Impact Statement

1. STATUTORY AUTHORITY AND LEGISLATIVE OBJECTIVES


The legislative objectives of Article 11 of the Energy Law include the adoption of the Energy Code to protect the health, safety and security of the people of the State of New York and to assure a continuing supply of energy for future generations and that such code mandate that economically reasonable energy conservation techniques be used in the design and construction of all public and private buildings in the State of New York.

The 2016 Energy Code Supplement includes a number of references to the 2016 Uniform Code Supplement. Currently, there is a proposed rule to amend and update the Uniform Code by replacing the 2016 Uniform Code Supplement with a new publication entitled the 2017 Uniform Code Supplement. The State Fire Prevention and Building Code Council (the “Code Council”) is expected to vote on approving a rule amending and updating the Uniform Code at the next meeting scheduled for June 14, 2017.

This proposed rule will amend Part 1240 so that references in Part 1240 to provisions in the prior version of the Uniform Code are changed to references to the corresponding provisions in the updated version of the Uniform Code. Particularly, this proposed rule will amend Part 1240 so that all references in the 2016 Energy Code Supplement to the 2016 Uniform Code Supplement will be deemed to be references to the 2017 Uniform Code Supplement. The proposed rule also amends the 2016 Energy Code by incorporating by reference the 2017 Uniform Code Supplement.

This rule makes no substantive changes to Part 1240.

2. NEEDS AND BENEFITS

Under this rule, references in Part 1240 to provisions in the prior version of the Uniform Code will be changed to references to the corresponding provisions in the updated version of the Uniform Code. In the absence of this rule, Part 1240 will make references to the 2016 Uniform Code Supplement which will have been replaced by the 2017 Uniform Code Supplement. This rule will minimize confusion on the part of regulated parties who must comply with Part 1240 and on the part of local governments that must enforce Part 1240. This rule will assure that the Legislative objectives of Article 11 of the Energy Law will continue to be achieved after the effective date of the updated version of the Uniform Code.

3. COSTS

With respect to regulated parties, this rule imposes no new requirements and imposes no new costs. This rule will impose no new requirements on the Department of State (“DOS”), the State of New York, or local governments.

4. PAPERWORK

This rule imposes no new paperwork requirements.

5. LOCAL GOVERNMENT MANDATES

This rule imposes no new mandates on local government.

6. DUPLICATION

This rule does not duplicate any rule or other legal requirement of the State or Federal government known to DOS.

7. ALTERNATIVES

No significant alternatives to this rule were considered by DOS.

8. FEDERAL STANDARDS

This rule does not exceed any minimum standards of the Federal government for the same or similar subject areas known to DOS.

9. COMPLIANCE SCHEDULE

DOS anticipates that regulated parties will be able to comply with this rule upon Notice of Adoption.

Regulatory Flexibility Analysis

EFFECT OF RULE


Part 1240 applies in all parts of the State. Therefore, Part 1240 currently applies to all small businesses and all local governments that construct buildings in any part of the State.

In addition, local governments are required to enforce Part 1240. Therefore, Part 1240 currently applies to all of the local governments in the State.

The 2016 Energy Code Supplement includes a number of references to the 2016 Uniform Code Supplement. Currently, there is a proposed rule to amend and update the Uniform Code by replacing the 2016 Uniform Code Supplement with a new publication entitled the 2017 Uniform Code Supplement. The State Fire Prevention and Building Code Council (the “Code Council”) is expected to vote on approving a rule amending and updating the Uniform Code at the next meeting scheduled for June 14, 2017.

This proposed rule will amend Part 1240 so that references in Part 1240 to provisions in the prior version of the Uniform Code are changed to references to the corresponding provisions in the updated version of the Uniform Code. Particularly, this proposed rule will amend Part 1240 so that all references in the 2016 Energy Code Supplement to the 2016 Uniform Code Supplement will be deemed to be references to the 2017 Uniform Code Supplement. The proposed rule also amends the 2016 Energy Code by incorporating by reference the 2017 Uniform Code Supplement.

This rule makes no substantive changes to Part 1240.

Small businesses and local governments that are currently subject to Part 1240 will continue to be subject to Part 1240 as amended by this rule.

This rule will apply to all small businesses and local governments that are currently subject to Part 1240.

2. COMPLIANCE REQUIREMENTS

This rule imposes no new reporting, recordkeeping or other compliance requirement on small businesses or local governments.

3. PROFESSIONAL SERVICES

This rule creates no new need for professional services.

4. COMPLIANCE COSTS

This rule imposes no new initial capital costs of complying with Part 1240. This rule will not result in any variation in initial capital costs of complying with Part 1240 for small businesses or local governments of different types and/or of differing sizes.

This rule imposes no new annual costs of complying with Part 1240 on small businesses or local governments. This rule will not result in any...
variation in annual costs of complying with Part 1240 for small businesses or local governments of different types and/or of different sizes.

5. ECONOMIC AND TECHNOLOGICAL FEASIBILITY

The Department of State believes that it has been economically and technologically feasible for regulated parties to comply with the existing Part 1240, that no substantial capital expenditures have been imposed by existing Part 1240, and that it has not been necessary to develop new technology for compliance with existing Part 1240.

This rule makes no substantive changes to Part 1240. Therefore, the Department of State believes that it will continue to be economically and technologically feasible for regulated parties to comply with Part 1240 as amended by this rule, that no substantial capital expenditures are imposed by Part 1240 as amended by this rule, and that it will not be necessary to develop new technology for compliance with Part 1240 as amended by this rule.

6. MINIMIZING ADVERSE IMPACT

This rule will have no adverse impact on small businesses and local governments.

7. SMALL BUSINESS AND LOCAL GOVERNMENT PARTICIPATION

The Department of State gave small business and local governments an opportunity to participate in this rule making by publishing a notice regarding the intent to propose this rule for adoption as a permanent rule in Building New York, a monthly electronic news bulletin covering topics related to the Uniform Code and the construction industry which is prepared by the Department of State and which is currently distributed to approximately 10,000 subscribers, including local governments, design professionals and others involved in all aspects of the construction industry.

Rural Area Flexibility Analysis

1. TYPES AND ESTIMATED NUMBERS OF RURAL AREAS


Part 1240 applies in all parts of the State. Therefore, Part 1240 applies in all rural areas of the State.

The 2016 Energy Code Supplement includes a number of references to the 2016 Uniform Code Supplement. Currently, there is a proposed rule to amend and update the Uniform Code by replacing the 2016 Uniform Code Supplement with a new publication entitled the 2017 Uniform Code Supplement. The proposed rule also amends the 2016 Energy Code by incorporating by reference the 2017 Uniform Code Supplement. This rule makes no substantive changes to Part 1240.

Since Part 1240 applies in all rural areas of the State, and since this rule amends Part 1240, this rule will apply in all rural areas of the State.

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

This rule imposes no new reporting, recordkeeping or other compliance requirement. This rule creates no new need for professional services in any rural area.

3. COMPLIANCE COSTS

This rule imposes no initial capital costs of complying with Part 1240. This rule will not result in any variation in initial capital costs of complying with Part 1240 for different types of public and private entities in rural areas.

This rule imposes no new annual costs of complying with Part 1240. This rule will not result in any variation in annual costs of complying with Part 1240 for different types of public and private entities in rural areas.

4. MINIMIZING ADVERSE IMPACT

This rule will have no adverse impact on rural areas or on any other area in the State.

Establishing different compliance requirements for public and private sector interests in rural areas and/or providing exemptions from coverage by the rule for public and private sector interests in rural areas was not contemplated because doing so (1) is not authorized by Article 11 of the Energy Law and (2) would endanger the public safety and general welfare.

5. RURAL AREA PARTICIPATION

The Department of State notified interested parties throughout the State, including interested parties in rural areas, of an opportunity to participate in this rule making by publishing a notice regarding the intent to propose this rule for adoption as a permanent rule in Building New York, a monthly electronic news bulletin covering topics related to the Uniform Code and the construction industry which is prepared by the Department of State and which is currently distributed to approximately 10,000 subscribers, including local governments, design professionals and others involved in all aspects of the construction industry.

Job Impact Statement

The Department of State has concluded after reviewing the nature and purpose of the rule that it will not have a “substantial adverse impact on jobs and employment opportunities” (as that term is defined in section 201-a of the State Administrative Procedures Act) in New York.


The 2016 Energy Code Supplement includes a number of references to the 2016 Uniform Code Supplement. Currently, there is a proposed rule to amend and update the Uniform Code by replacing the 2016 Uniform Code Supplement with a new publication entitled the 2017 Uniform Code Supplement. The State Fire Prevention and Building Code Council (the “Code Council”) is expected to vote on approving a rule amending and updating the Uniform Code at the next meeting scheduled for June 14, 2017.

This proposed rule will amend Part 1240 so that references in Part 1240 to provisions in the prior version of the Uniform Code are changed to references to the corresponding provisions in the updated version of the Uniform Code. Particularly, this proposed rule will amend Part 1240 so that all references in the 2016 Energy Code Supplement to the 2016 Uniform Code Supplement will be deemed to be references to the 2017 Uniform Code Supplement. The proposed rule also amends the 2016 Energy Code by incorporating by reference the 2017 Uniform Code Supplement. This rule makes no substantive changes to Part 1240.

Since Part 1240 applies in all rural areas of the State, and since this rule amends Part 1240, this rule will apply in all rural areas of the State.

This rule imposes no new reporting, recordkeeping or other compliance requirement. This rule creates no new need for professional services in any rural area.

3. COMPLIANCE COSTS

This rule imposes no initial capital costs of complying with Part 1240. This rule will not result in any variation in initial capital costs of complying with Part 1240 for different types of public and private entities in rural areas.

This rule imposes no new annual costs of complying with Part 1240. This rule will not result in any variation in annual costs of complying with Part 1240 for different types of public and private entities in rural areas.
Emergency Measures for the Homeless During Inclement Winter Weather

L.D. No. TDA-01-17-00002-ERP
Filing No. 185
Filing Date: 2017-03-15
Effective Date: 2017-03-15

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

Action Taken: Addition of Part 304 to Title 18 NYCRR

Statutory authority: Social Services Law, sections 17(a)-(b), (j), 20(2)(b), 3(3)(d), 34(3)(c)-(e)

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

Specific reasons underlying the finding of necessity: The Office of Temporary and Disability Assistance (OTDA) finds that immediate adoption of the rule is necessary for the preservation of the public health, public safety, and general welfare, and specifically, to protect homeless individuals from inclement winter weather in which air temperatures are at or below 32 degrees Fahrenheit, including National Weather Service calculations for windchill. The rule will help to ensure that homeless individuals are directed to shelter during inclement winter weather that can cause hypothermia, serious injury and death. The State will assist local social services districts (SSDs) if the SSDs lack facilities, resources or expertise.

Individuals experiencing homelessness are at much higher risk than the general population for suffering exposure-related conditions such as hypothermia and frostbite. These risks are exacerbated by other chronic problems often facing the homeless, including, but not limited to, inadequate clothing, malnutrition, fatigue and various underlying illnesses and infections. Many individuals facing homelessness also struggle with alcohol and/or drug addictions that can substantially increase their susceptibility to exposure-related conditions and thereby pose immediate and longer-term threats to their health, safety, and general welfare.

The rule will help ensure that individuals experiencing homelessness are protected from inclement winter weather and exposure-related conditions such as hypothermia and frostbite by requiring SSDs to work with police agencies, including the New York State Police, and State agencies to take necessary steps to identify individuals reasonably believed to be homeless and unwilling or unable to find the shelter necessary for protection of their safety and health in inclement winter weather, and to direct and offer to move such homeless individuals to appropriate shelters in accordance with relevant law. The rule also directs SSDs to: take necessary steps to extend shelter hours so that homeless individuals may remain indoors longer; instruct homeless service outreach workers to work with other relevant personnel and with police in relation to the involuntary transport of individuals who refuse to go inside and who appear to be mentally ill and at-risk for cold-related injuries to appropriate facilities for assessment consistent with the provisions of section 9.41 of the Mental Hygiene Law; (4) work in coordination with the State Police and all police agencies to ensure that individuals facing homelessness receive assistance as needed to protect their health and safety; and (5) ensure that all facilities used to shelter homeless individuals during periods of inclement winter weather are safe, clean, and well-maintained and supervised, as required by state and local laws, regulations, administrative directives, and guidelines including local building and fire codes.

This notice is intended to serve as both a notice of emergency adoption and a notice of revised rule making. The notice of proposed rule making was published in the State Register on January 4, 2017, L.D. No. TDA-01-17-00002-EP. The emergency rule will expire May 13, 2017. Emergency rule compared with proposed rule: Substantial revisions were made in section 304.1(b)(3).

Text of rule and any required statements and analyses may be obtained from: Address: Office of Temporary and Disability Assistance, 40 North Pearl Street, 16-C, Albany, NY 12243-0001, (518) 486-7503, email: richard.rhodesjr@otda.ny.gov

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

Revised Regulatory Impact Statement

1. Statutory Authority:

Social Services Law (SSL) § 17(a)-(b) and (j) provide, in part, that the Commissioner of the Office of Temporary and Disability Assistance (OTDA) shall “determine the policies and principles upon which public assistance, services and care shall be provided within the [S]tate both by the [S]tate itself and by the local governmental units ...”, shall “make known his policies and principles to local social services officials and to public and private institutions and welfare agencies subject to his regulatory and advisory powers ...”, and shall “exercise such other powers and perform such other duties as may be imposed by law.”

SSL § 20(2)(b) provides, in part, that the OTDA shall “supervise all social services work, as the same may be administered by any local unit of government and the social services officials thereof within the state, advise them in the performance of their official duties and regulate the financial assistance granted by the state in connection with said work.” Pursuant to SSL § 20(3)(d), OTDA is authorized to promulgate rules, regulations, and policies to fulfill its powers and duties under the SSL.

SSL § 34(3)(c) requires OTDA’s Commissioner to “take cognizance of the interests of health and welfare of the inhabitants of the [S]tate who lack or are threatened with the deprivation of the necessities of life and of all means of living therein.” In addition, pursuant to SSL § 34(3)(d), OTDA’s Commissioner must exercise general supervision over the work of all social services districts (SSDs), and SSL § 34(3)(e) provides that OTDA’s Commissioner must enforce the SSL and the State regulations within the State and in the local governmental units. Pursuant to SSL § 33(3)(a), OTDA’s Commissioner “may exercise such additional powers and duties as may be required for the effective administration of the department and of the [S]tate system of public aid and assistance.”

Purpose: To mitigate the effects and impact of inclement winter weather on individuals experiencing homelessness.

Text of emergency/revised rule: New Part 304 is added to Title 18 of the NYCRR to read as follows:

PART 304

PROTECTION OF VULNERABLE HOMELESS PERSONS

§ 304.1 Emergency Measures for the Homeless During Inclement Winter Weather.

(a) For purposes of this section, “inclement winter weather” shall mean air temperatures at or below 32 degrees Fahrenheit, including National Weather Service calculations for windchill.

(b) In order to mitigate the effects of inclement winter weather and the resulting impacts of such weather on individuals experiencing homelessness, each social service district shall:

1. work with police agencies, including the New York State Police, and state agencies to take all necessary steps to identify individuals reasonably believed to be homeless and unwilling or unable to find the shelter necessary for safety and health in inclement winter weather, and to direct and offer to move such individuals to the appropriate sheltered facilities; and

2. take all necessary steps to extend, or to have providers extend, shelter hours, to allow individuals experiencing homelessness to remain indoors;

3. instruct homeless service outreach workers to work with other relevant personnel and to work with local police in relation to the involuntary transport of individuals who refuse to go inside and who appear to be mentally ill and at-risk for cold-related injuries to appropriate facilities for assessment consistent with the provisions of section 9.41 of the Mental Hygiene Law;

4. work in coordination with the State Police and all police agencies to ensure that individuals facing homelessness receive assistance as needed to protect their health and safety; and

5. ensure that all facilities used to shelter homeless individuals during periods of inclement winter weather are safe, clean, and well-maintained and supervised, as required by state and local laws, regulations, administrative directives, and guidelines including local building and fire codes.

This rule only as a “regular rule making” as provided by the State Public Health, Safety and Welfare Law, § 34(6), OTDA’s Commissioner “may exercise such additional powers and duties as may be required for the effective administration of the department and of the [S]tate system of public aid and assistance.”

Office of Temporary and Disability Assistance

NOTICE OF EMERGENCY ADOPTION AND REVISED RULE MAKING NO HEARING(S) SCHEDULED

Emergency Measures for the Homeless During Inclement Winter Weather

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2. Legislative Objective: It is the intent of the Legislature in enacting the above statutes that OTDA establish rules, regulations and policies to provide for the health, safety and general welfare of vulnerable individuals.

3. Needs and Benefits: The rule is necessary to protect homeless individuals from inclement winter weather in which air temperatures are at or below 32 degrees Fahrenheit, including National Weather Service calculations for windchill. The rule will ensure that homeless individuals are directed to shelter during inclement winter weather which can cause hypothermia, serious injury and death. The State will assist SSDs lacking facilities, resources or expertise.

Individuals experiencing homelessness are at much higher risk than the general population for suffering exposure-related conditions such as hypothermia and frostbite. These risks are exacerbated by other chronic problems often facing the homeless, including, but not limited to, inadequate clothing, malnutrition, fatigue and various underlying illnesses or infections. Furthermore, many individuals facing homelessness also struggle with alcohol and/or drug addictions that can substantially increase their susceptibility to exposure-related conditions and thereby pose immediate and longer-term threats to their health, safety, and general welfare.

The rule will help ensure that individuals experiencing homelessness are protected from inclement winter weather and exposure-related conditions such as hypothermia and frostbite by requiring SSDs to work with police agencies, including the New York State Police, and State agencies to take necessary steps to identify individuals reasonably believed to be homeless and unwilling or unable to find the shelter necessary for protection of their safety and health in inclement winter weather, and to direct and offer to move such homeless individuals to appropriate shelters in accordance with relevant law. The rule further requires SSDs to extend shelter hours of operation to and allow homeless individuals to remain indoors, to instruct homeless service outreach workers to work with other relevant personnel and with police in relation to the involuntary transport of individuals who refuse to go inside and who appear to be mentally ill and at-risk for cold-related injuries for assessment consistent with the provisions of § 9.41 of the Mental Hygiene Law (MHL), and to work in coordination with the State Police and local police agencies to ensure that homeless individuals receive assistance as needed to protect them from periods of inclement winter weather and exposure-related conditions such as hypothermia and frostbite. Finally, the rule helps to ensure that facilities used for temporary housing assistance placements are safe, clean, well-maintained and supervised, and fully compliant with existing State and local laws, regulations, administrative directives, and guidelines.

In response to public comments received by OTDA, the rule has been amended to clarify that: (a) homeless individuals who appear to be of sound mind may refuse to enter homeless shelters during periods of inclement winter weather; and (b) only homeless persons who appear to be mentally ill and at risk for cold-related injuries should be involuntarily transported to appropriate facilities for assessment consistent with the provisions of § 9.41 of the Mental Hygiene Law (MHL).

4. Costs:
This rule is based on and is substantially similar to Executive Order (EO) 151, which was issued on January 5, 2016. In 2016, OTDA received plans for compliance with EO 151 from 35 SSDs incurring reimbursement. In total, the 38 SSDs sought $3,246,100 in funding. New York State approved plans totaling $3.4M in funding, and, at the program’s close on October 31, 2016, a total of $994,333 had been claimed and paid by the State. If the participation level remains similar to last year, OTDA anticipates that the 2017 costs will be indicative of future expenses.

5. Local Government Mandates:
Local governments are required to take steps necessary to expand shelter hours or provide access to alternative facilities to shelter homeless individuals during periods of inclement winter weather, so that persons experiencing homelessness may remain indoors longer to escape the cold. Local governments also are responsible for working with police agencies, including the New York State Police, and State agencies to take necessary steps to engage in outreach and identify individuals reasonably believed to be homeless and unwilling or unable to find shelter necessary for safety and health in inclement winter weather, and to direct and offer to move such individuals to the appropriate sheltered facilities. Local governments are further required to instruct homeless service outreach workers to work with other relevant personnel and local police in relation to the involuntary transport of individuals who refuse to go inside and who appear to be mentally ill and at-risk for cold-related injuries for assessment consistent with the provisions of § 9.41 of the MHL. Finally, local governments must ensure that all facilities used to shelter homeless individuals during periods of inclement winter weather are safe, clean, well-maintained and supervised, and fully compliant with existing State and local laws, regulations, administrative directives, and guidelines.

6. Paperwork:
Compliance plans may need to be submitted if SSDs intend to seek reimbursement for expenditures incurred to comply with this rule. SSDs also will be required to submit budget forms and narratives justifying the need for funds if they seek reimbursement from the State.

7. Duplication:
The rule does not duplicate, overlap, or conflict with any existing State or federal regulations.

8. Alternatives:
Inaction would jeopardize the health, safety, and general welfare of vulnerable homeless individuals by subjecting them to risks of exposure-related conditions such as hypothermia and frostbite; therefore, OTDA does not consider this a viable alternative to the rule. OTDA believes that the rule is necessary to protect homeless individuals from the dangers presented by inclement winter weather.

9. Federal Standards:
The rule does not conflict with federal statutes, regulations or policies.

10. Compliance Schedule:
To protect the public health, safety and general welfare of homeless individuals, the rule will be effective immediately upon its filing date.

**Revised Regulatory Flexibility Analysis**

1. Effect of rule:
Pursuant to the State Administrative Procedure Act § 102(8), a “small business,” in part, is any business which is independently owned and operated and employs 100 or fewer individuals. Some operators of shelters and other SSDs will incur costs, but may seek reimbursement from the State.

2. Compliance costs:
In response to public comments received by OTDA, the rule has been amended to clarify that: (a) homeless individuals who appear to be of sound mind may refuse to enter homeless shelters during periods of inclement winter weather; and (b) only homeless persons who appear to be mentally ill and at risk for cold-related injuries should be involuntarily transported to appropriate facilities for assessment consistent with the provisions of § 9.41 of the Mental Hygiene Law (MHL). SSDs also must take steps to expand shelter hours and provide access to other facilities used to shelter homeless individuals during periods of inclement winter weather.

3. Needs and Benefits:
SSDs further must ensure that facilities used to shelter homeless individuals during periods of inclement winter weather are safe, clean, well-maintained and supervised, and fully compliant with existing State and local laws, regulations, administrative directives, and guidelines.

4. Compliance costs:
In response to public comments received by OTDA, the rule has been amended to clarify that: (a) homeless individuals who appear to be of sound mind may refuse to enter homeless shelters during periods of inclement winter weather; and (b) only homeless persons who appear to be mentally ill and at-risk for cold-related injuries should be involuntarily transported to appropriate facilities for assessment consistent with the provisions of § 9.41 of the Mental Hygiene Law (MHL).

5. Economic and technological feasibility:
In response to public comments received by OTDA, the rule has been amended to clarify that: (a) homeless individuals who appear to be of sound mind may refuse to enter homeless shelters during periods of inclement winter weather; and (b) only homeless persons who appear to be mentally ill and at-risk for cold-related injuries should be involuntarily transported to appropriate facilities for assessment consistent with the provisions of § 9.41 of the Mental Hygiene Law (MHL).

6. Minimizing adverse impact:
The rule should not provide exemptions, because this would not serve the purposes of protecting vulnerable homeless persons from inclement winter weather that can cause hypothermia, serious injury, and death.

7. Small business and local government participation:
It is anticipated that some operators of shelters and other facilities used to serve homeless individuals will be asked to extend their operating hours. As discussed above, SSDs are required to coordinate with police and State agencies to engage in outreach to vulnerable homeless individuals and identify individuals who refuse to go inside and who appear to be mentally ill and at-risk for cold-related injuries. SSDs are also required to ensure
that facilities used to shelter homeless individuals during periods of inclement winter weather that are safe, clean, well-maintained and supervised, and fully compliant with existing State and local laws, regulations, administrative directives, and guidelines.

Revised Rural Area Flexibility Analysis
1. Types and estimated numbers of rural areas:
The Office of Temporary and Disability Assistance (OTDA) identifies 144 rural social services districts (SSDs).
2. Reporting, recordkeeping and other compliance requirements; and professional services:
Compliance plans may need to be submitted if rural SSDs wish to seek reimbursement for expenditures made to comply with this rule. The rule imposes obligations upon SSDs which OTDA anticipates should be fulfilled without the need for securing professional services.
3. Costs:
For rural SSDs, the fiscal impact of the rule is anticipated to be small because of the relatively small number of homeless persons in those rural SSDs. Moreover, rural SSDs may seek reimbursement from the State for expenditures made to protect vulnerable homeless persons from inclement winter weather which are consistent with this rule.
4. Minimizing adverse impact:
The rule should not provide exemptions, because this would not serve the purposes of protecting vulnerable homeless persons in rural SSDs from inclement winter weather that can cause hypothermia, serious injury and death.
5. Rural area participation:
Rural SSDs are required to coordinate with police and State agencies to engage in outreach to vulnerable homeless individuals and identify individuals who refuse to go inside and who appear to be mentally ill and at-risk for cold-related injuries. Rural SSDs are also required to ensure that facilities used to shelter homeless individuals during periods of inclement winter weather are safe, clean, well-maintained and supervised, and fully compliant with existing State and local laws, regulations, administrative directives, and guidelines.

Revised Job Impact Statement
A Revised Job Impact Statement is not required for this rule. The purpose of the rule is to mitigate the effects of inclement winter weather—specifically, air temperatures at or below 32 degrees Fahrenheit, including National Weather Service calculations for wind chill—and the resulting impacts of such inclement winter weather on individuals experiencing homelessness.
The rule will help to ensure that homeless individuals are directed to shelter during inclement winter weather that can cause hypothermia, serious injury, and death. The State will assist local social services districts (SSDs) lacking facilities, resources or expertise. The rule will help ensure that individuals experiencing homelessness are protected from inclement winter weather and exposure-related conditions such as hypothermia and frostbite by requiring SSDs to work with police agencies, including the New York State Police, and State agencies to take necessary steps to identify individuals reasonably believed to be homeless and unwilling or unable to find the shelter necessary for protection of their safety and health in inclement winter weather, and to direct and offer to move such homeless individuals to appropriate shelters in accordance with relevant law.
The rule also directs SSDs to: take necessary steps to extend shelter hours so that homeless individuals may remain indoors longer; instruct homeless service outreach workers to work with other relevant personnel and with police in relation to the involuntary transport of individuals who refuse to go inside and who appear to be mentally ill and at-risk for cold-related injuries to appropriate facilities for assessment consistent with the provisions of § 9.41 of the Mental Hygiene Law; work in coordination with the State Police and local police agencies to ensure that homeless individuals experiencing homelessness, and therefore should be raised.

MHL § 9.41 authorizes police officers to take into custody any person who (a) appears to be mentally ill and (b) is committing suicide or himself” (Boggs v. New York City Health & Healths. Corp., 132 AD2d 340, 368 [1st Dept 1987], quoting MHL § 9.39; app. dismissed, 70 NY2d 972 [1988]). It is well settled that refusal to accept medical treatment does not, by itself, establish that a person is dangerous to himself (see Cruzan v. Dir., Missouri Dep't of Health, 497 US 261 [1990]). However, a substantial risk of physical harm can result from a “refusal or inability to meet essential needs for food, clothing or shelter” (see Matter of Carl C., 126 AD2d 640 [2d Dept 1987]; see also Addington v. Texas, 441 US. 418, 426 [1979] [state has legitimate interest, under its parens patriae powers, in providing care to citizen who, because of emotional disorders, are unable to care for themselves]). In view of the foregoing, OTDA agrees that only persons who appear to be both mentally ill and at risk for cold-related injuries should be involuntarily transported to hospitals for assessment consistent with the provisions of MHL § 9.41. Accordingly, OTDA revises the emergency regulation to clarify that social services districts (SSDs) shall instruct homeless service outreach workers to work with other relevant personnel and to work with local police in relation to the involuntary transport of individuals who refuse to go inside and who appear to be mentally ill and at-risk for cold-related injuries to appropriate facilities for assessment consistent with the provisions of MHL § 9.41.

Rule Making Activities
One comment asserted that OTDA lacks authority to promulgate regulations interpreting the MHL. OTDA maintains that the emergency regulation does not, in fact, interpret the MHL, but merely directs SSDs to instruct homeless service outreach workers to work with other relevant personnel and police in relation to the involuntary transport of individuals who appear to be mentally ill and at-risk for cold-related injuries.

Comments asserted that the emergency regulation’s threshold of an air temperature of 32 degrees Fahrenheit with wind chill limits the effectiveness of the emergency regulation in achieving the stated goal of reducing the risk of cold-related injuries such as frostbite and hypothermia posed to individuals experiencing homelessness, and therefore should be raised. OTDA maintains that, as a practical matter, it would not be feasible to successfully implement the emergency regulation if the definition of “inclement winter weather” was expanded to include temperatures in excess of 32 degrees Fahrenheit, including wind chill.

One comment suggested that the emergency regulation be revised to require that all emergency shelterers remain open and accessible to homeless individuals for the entire duration of inclement weather, rather than between certain defined hours—for example, between the hours of 4:00 P.M. and 8:00 A.M.—during a given time period. OTDA notes that the emergency regulation already requires SSDs to “take all necessary steps to extend, or to have providers extend, shelter hours, to allow individuals experiencing homelessness to remain indoors” during periods of inclement winter weather, irrespective of the time of day or night. Consequently, OTDA believes that the suggested revision to the emergency regulation is unnecessary.

One comment asserted that the “regulation does not state for how long, or at what times of the day, the weather forecast must show temperatures of 32 degrees or below, including wind-chill.” OTDA notes that further clarification will be more appropriately provided through issuance of administrative guidance, and maintains that the amendment of the emergency regulation to add clarifying language is unnecessary.

One comment contended that the emergency regulation is unclear as to whether an SSD must continue emergency measures in cases when inclement winter weather is initially forecast, resulting in a “Code Blue” alert, but the forecast subsequently changes. OTDA reiterates that further clarification will be more appropriately provided through issuance of administrative guidance, and that amendment of the emergency regulation to add clarifying language is unnecessary.

One comment asserted that the emergency regulation does not specify for how long a period of time following the end of any forecasted “inclement winter weather” the regulation’s emergency measures are to remain in place. OTDA reiterates that further clarification will be more appropriately
provided through issuance of administrative guidance, and that amend-
ment of the emergency regulation to add clarifying language is
unnecessary.

One comment asserted that the emergency regulation does not indicate
any limitations on a finding of “inclement winter weather” based on the
time of year – for example, whether an SSD would be required to imple-
ment emergency measures if overnight temperatures were to fall below 32
degrees Fahrenheit, including windchill, during the months of May or
September. 18 NYCRR § 304.1(a) clearly defines “inclement winter
weather” as “air temperatures at or below 32 degrees Fahrenheit, includ-
ing National Weather Service calculations for windchill.” This definition
takes into account that weather conditions potentially harmful to the safety
and health of individuals experiencing homelessness are not necessarily
limited to traditional winter months; consequently, the emergency regu-
lation requires the implementation of emergency measures whenever the air
temperature is at or below 32 degrees Fahrenheit, including National
Weather Service calculations for windchill, irrespective of the calendar
month during which the inclement winter weather occurs. In view of the
foregoing, OTDA therefore believes that revision of the emergency regula-
tion is unnecessary.

One comment asserted that inclusion of National Weather Service
calculations for wind-chill in the determination of “inclement winter
weather” increases the number of days on which SSDs are required under
the emergency regulation to implement emergency measures. OTDA
agrees with this assertion.

Comments requested that the emergency regulation be revised to add
language providing that the State fund 100 percent of the costs relating to
implementation of the emergency regulation. It is not the purpose of the
emergency regulation to address financial reimbursement to the SSDs;
rather, the purpose of the emergency regulation is to mitigate the effects
and impact of inclement winter weather on individuals experiencing
homelessness. Consequently, revision of the emergency regulation is
unnecessary.