

RULE MAKING ACTIVITIES

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

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

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

Office for the Aging

NOTICE OF ADOPTION

Administration of the Long Term Care Ombudsman Program

I.D. No. AGE-42-17-00001-A

Filing No. 148

Filing Date: 2018-02-06

Effective Date: 2018-02-21

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

Action taken: Repeal of section 6660; and addition of new section 6660 to Title 9 NYCRR.

Statutory authority: Elder Law, section 218; The Federal Older Americans Act, 711 (42 USC section 3056f), 712 (42 USC section 3058g); 45 CFR section 1321.11 and 45 CFR Part 132

Subject: Administration of the Long Term Care Ombudsman Program.

Purpose: To bring NYSOFA's rules and regulations governing LTCOP into conformance with the Federal Statute and regulations.

Substance of final rule: The purpose of this rule is to bring NYSOFA's rules and regulations governing the New York State Long-Term Care Ombudsman Program (LTCOP) in line with federal statute and regulations. 9 NYCRR Part 6660 is being repealed and replaced with a new Part 6660 to bring NYSOFA's regulations into compliance with federal statute and regulations.

Section 6660.1 of the regulations provides the definitions to bring New York State LTCOP into conformance with the definitions found in the federal regulations.

Section 6660.2. This section enumerates the responsibilities of the LTCOP and includes the responsibilities that are required by federal law and regulation. This section also lists the qualifications required of an indi-

vidual who is being considered for the position of State Long-Term Care Ombudsman. This section also directs the LTCOP to develop a grievance procedure regarding determinations or actions of the state ombudsman, which are also dictated by federal law and regulation.

Section 6660.3 of the regulations lists requirements around identification, removal and remedy of both organizational and individual conflicts of interest. Specifically, it enumerates both organizational and individual conflicts of interest that are problematic to the LTCOP and the procedure for identifying, remedying or removing those conflicts. Additionally, this section puts forth the responsibilities of local ombudsman entities with regard to conflicts of interest. The requirements regarding organizational and individual conflicts of interest detailed in this section bring NYSOFA's regulations into conformance with the federal regulations.

Section 6660.4 addresses the responsibilities of local long-term care ombudsmen. This section is added to conform with federal regulations.

The new Section 6660.5 sets forth the requirements for the designation of an ombudsman. This section also brings the LTCOP's process of designating ombudsmen into compliance with federal regulations.

By adding section 6660.6 of the regulations, NYSOFA is bringing LTCOP's criteria for designating and de-designation of local ombudsman entities into compliance with federal requirements.

Section 6660.7 lists the responsibilities of local ombudsman entity coordinators and conforms them with federal requirements.

NYSOFA is adding section 6660.8 which enumerates the program standards for local long-term care ombudsman programs for the purpose of bringing LTCOP's program standards into compliance with federal law and regulations.

Section 6660.9 addresses ombudsmen access to residents and long-term care facilities. In addition, this section contains language that prohibits the interference with an ombudsman while the ombudsman is carrying out his or her duties.

Section 6660.10 specifically addresses ombudsmen access to resident and facility records. This section specifies the types of records to which the ombudsmen have access and under what circumstances ombudsmen may access those records. These requirements conform with the federal requirements that address access to resident and facility records.

NYSOFA added Section 6660.11 which dictates the circumstances under which ombudsmen may reveal a resident's personal information to an individual not associated with the LTCOP. This section also discusses the manner in which a resident may provide informed consent to an ombudsman for the purpose of disclosing the resident's personal information. Finally, this section addresses how ombudsmen can obtain permission to disclose a resident's personal information when that resident is unable to give consent for such disclosure. These additions bring NYSOFA's regulations into compliance with the federal regulations governing the program.

Section 6660.12 outlines the procedure that an ombudsmen must undertake when investigating a resident's complaint. This section is in conformance with federal regulations and lists the procedures to be followed by ombudsmen when they are investigating complaints.

A copy of the full text of the regulatory proposal is available on the New York State Office for the Aging's website at www.aging.ny.gov and <https://ltcombudsman.ny.gov/>.

Final rule as compared with last published rule: Nonsubstantial changes were made in section 6660.1(d).

Text of rule and any required statements and analyses may be obtained from: Stephen Syzdek, New York State Office for the Aging, Two Empire State Plaza, Albany, NY 12223-1251, (518) 474-5041, email: stephen.syzdek@aging.ny.gov

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

Although changes were made to the proposed 9 NYCRR Part 6660, they do not necessitate changes to the Regulatory Impact Statement, Regulatory Flexibility Analysis, Rural Area Flexibility Analysis and Job Impact Statement.

Initial Review of Rule

As a rule that requires a RFA, RAFA or JIS, this rule will be initially reviewed in the calendar year 2021, which is no later than the 3rd year after the year in which this rule is being adopted.

Assessment of Public Comment

The proposed rule was published in the State Register on October 18, 2017, and the 45-day public comment period expired on December 4, 2017. The Office received comments from one (1) entity.

The commenter raised a concern that the language found in Section 6660.10(a)(3) is unnecessary and invasive.

Response: We disagree with the commenter as the language found in Section 6660.10(a)(3) essentially mirrors the language found in the federal regulation that governs the Long-Term Care Ombudsman Program. In addition, the Ombudsman Program may need access to this information to investigate a complaint or determine if there is a trend of inappropriate behavior across facilities or ownership groups. The Ombudsman Program will only access this information when it is needed for investigatory purposes.

The commenter views the language found in section 6660.10(a)(4) as an invasion of residents' privacy.

Response: We disagree with the commenter as the federal regulations that govern the Long-Term Care Ombudsman Program contemplates the Ombudsmen having access to this information. In addition, one of the cornerstones of the Long-Term Care Ombudsman Program is resident privacy and confidentiality. As a result, this information will be used only for purposes within the scope of the Long-Term Care Ombudsman Program. At no time would a resident be required to speak to an Ombudsman if the resident did not desire to do so.

Department of Civil Service

NOTICE OF ADOPTION**New York State Income Protection Plan (IPP) and Paid Family Leave (PFL) Benefits for Certain New York State Employees****I.D. No.** CVS-49-17-00011-A**Filing No.** 147**Filing Date:** 2018-02-05**Effective Date:** 2018-02-21

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

Action taken: Addition of section 78.2(f) to Title 4 NYCRR.

Statutory authority: Civil Service Law, sections 159 and 159-a

Subject: New York State Income Protection Plan (IPP) and Paid Family Leave (PFL) benefits for certain New York State employees.

Purpose: To establish that IPP and PFL benefits may not be paid to a subject employee for the same day.

Text or summary was published in the December 6, 2017 issue of the Register, I.D. No. CVS-49-17-00011-EP.

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

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

Initial Review of Rule

As a rule that does not require a RFA, RAFA or JIS, this rule will be initially reviewed in the calendar year 2023, which is no later than the 5th year after the year in which this rule is being adopted.

Assessment of Public Comment

The agency received no public comment.

Department of Economic Development

**PROPOSED RULE MAKING
NO HEARING(S) SCHEDULED****Excelsior Jobs Program****I.D. No.** EDV-08-18-00002-P

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

Proposed Action: Amendment of Parts 190-196 of Title 5 NYCRR.

Statutory authority: Economic Development Law, art. 17; L. 2010, ch 59; L. 2015, ch. 59; L. 2016, ch. 59

Subject: Excelsior Jobs Program.

Purpose: To update provisions of Excelsior Jobs Program to conform to statute.

Substance of proposed rule (Full text is posted at the following State website: esd.ny.gov/excelsior-jobs-program): The regulation amends Parts 190-196 in 5 NYCRR as follows:

1) The regulation adds in certain definitions relevant to the Excelsior Jobs Program (the "Program") and currently in statute. Key definitions added include, but are not limited to, "entertainment company", "life sciences", "life sciences company", and "music production." The regulation updates the definitions of the terms -- "net new jobs", "regionally significant project", "significant capital project" and "software development" -- to conform to recent statutory changes.

2) The regulation next adds in life sciences, entertainment and music production as strategic industries eligible to be incentivized by the program. It then updates the minimum job requirements for strategic industries by decreasing the minimum thresholds to conform with statute.

3) Next, the regulation clarifies that businesses operating as entertainment companies and businesses engaged in music production are eligible for the program.

4) The regulation clarifies that no costs used by an entertainment company as the basis for the Excelsior tax credit may be used by the company to claim any other tax credits under New York's Tax Law.

5) The regulation clarifies that the Excelsior Research and Development Tax Credit is now calculated at 6% of the qualified research and development expenditures attributable to activities conducted in New York State. Previously, it was 3%.

The full text of the rule is available at the Department's website at www.esd.ny.gov/excelsior-jobs-program.

Text of proposed rule and any required statements and analyses may be obtained from: Thomas P. Regan, NYS Department of Economic Development, 625 Broadway, 8th Floor, Albany, NY 12245, (518) 292-5123, email: thomas.regan@esd.ny.gov

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

Public comment will be received until: April 30, 2018.

Regulatory Impact Statement**STATUTORY AUTHORITY:**

Section 356 of the Economic Development Law authorizes the Commissioner of Economic Development to promulgate regulations to implement the Excelsior Jobs Program. This rulemaking seeks to update the regulations to conform with recent statutory amendments to the program. For example, Part K of Chapter 59 of the Laws of 2015 inserts new strategic industries for inclusion in the program -- entertainment company and music production -- and further defines the term "software development." Part K of Chapter 59 of the Laws of 2017 adds life sciences to the list of eligible industries for the program. Part ZZ of Chapter 59 of the Laws of 2017 makes several other changes to the program, including reducing the specific job thresholds for eligibility as a regionally significant project, defining the term "significant capital investment" and also reducing certain job thresholds to participate in the program generally. In addition, Part YY of Chapter 59 of the Laws of 2017 increases the excelsior research and development tax credit from 3% to 6%.

LEGISLATIVE OBJECTIVES:

The rulemaking accords with the public policy objectives the Legislature sought to advance in creating competitive financial incentives for businesses to create jobs and invest in the new economy. The Excelsior Jobs Program is created to support the growth of the State's traditional economic pillars, including the manufacturing and financial industries,

and to ensure that New York emerges as the leader in the knowledge, technology and innovation based economy. The Program encourages the expansion in and relocation to New York of businesses in growth industries such as clean-tech, broadband, information systems, renewable energy and biotechnology. This rulemaking updates the regulations to conform with statutory changes over the past several years aimed at making the program a more effective economic development tool.

NEEDS AND BENEFITS:

The rule updates the Excelsior Jobs Program regulations to bring them into conformity with the statute. Section 365 of the Economic Development Law directs the Commissioner of Economic Development to promulgate regulations with respect to an application process and eligibility criteria.

This rule making updates the regulations for the continued administration of the Excelsior Jobs Program, which is one of the State's key economic development tools for ensuring that businesses in the new economy choose to expand or locate in New York State. It is imperative that the administration of this Program continues so that New York remains competitive with other States, regions, and even countries as businesses make their investment and location decisions.

Specifically, the rulemaking adds in certain definitions relevant to the Excelsior Jobs Program (the "Program") and currently in statute. Key definitions added include, but are not limited to, "entertainment company", "life sciences", "life sciences company", and "music production." The regulation updates the definitions of the terms -- "net new jobs", "regionally significant project", "significant capital project" and "software development" -- to conform to recent statutory changes. In addition, the regulation next adds in life sciences, entertainment and music production as strategic industries eligible to be incentivized by the program. It then updates the minimum job requirements for strategic industries by decreasing the minimum thresholds to conform with statute. It also clarifies that businesses operating as entertainment companies and businesses engaged in music production are eligible for the program but that no costs used by an entertainment company as the basis for the Excelsior tax credit may be used by the company to claim any other tax credits under New York's Tax Law. The regulation also clarifies that the Excelsior Research and Development Tax Credit is now calculated at 6% of the qualified research and development expenditures attributable to activities conducted in New York State. Previously, it was 3% of qualified research and development expenditures.

COSTS:

A. Costs to private regulated parties: None. There are no regulated parties in the Excelsior Jobs Program, only voluntary participants.

B. Costs to the agency, the state, and local governments: The Department of Economic Development does not anticipate any significant costs with respect to implementation of this program. There is no additional cost to local governments.

C. Costs to the State government: None. There will be no additional costs to New York State as a result of the rule making.

LOCAL GOVERNMENT MANDATES:

None. There are no mandates on local governments with respect to the Excelsior Jobs Program. This rule does not impose any costs to local governments for administration of the Excelsior Jobs Program.

PAPERWORK:

The rule requires businesses choosing to participate in the Excelsior Jobs Program to establish and maintain complete and accurate books relating to their participation in the Excelsior Jobs Program for a period of three years beyond their participation in the Program. However, this requirement does not impose significant additional paperwork burdens on businesses choosing to participate in the Program but instead simply requires that information currently established and maintained be shared with the Department in order to verify that the business has met its job creation and investment commitments.

DUPLICATION:

The rule does not duplicate any state or federal statutes or regulations.

ALTERNATIVES:

No alternatives were considered with regard to amending the regulations in response to statutory revisions.

FEDERAL STANDARDS:

There are no federal standards in regard to the Excelsior Jobs Program. Therefore, the rule does not exceed any federal standard.

COMPLIANCE SCHEDULE:

The period of time the state needs to assure compliance is negligible, and the Department of Economic Development expects to be compliant upon publication of the Notice of Adoption.

Regulatory Flexibility Analysis

The Excelsior Jobs Program is a statewide business assistance program. Although there are small businesses in New York State that are eligible to participate in the program, participation by the businesses is entirely at

their discretion. The proposed rule will not have a substantial adverse economic impact on small businesses and local governments. On the contrary, because the rule updates a tax credit program designed to attract business and jobs to New York State, it will have a positive economic impact on the State. Accordingly, a regulatory flexibility analysis for small business and local governments is not required and one has not been prepared.

Rural Area Flexibility Analysis

The Excelsior Jobs Program is a statewide business assistance program. Strategic businesses in rural areas of New York State are eligible to apply to participate in the program entirely at their discretion. Municipalities are not eligible to participate in the Program. The proposed rule does not impose any special reporting, record keeping or other compliance requirements on private entities in rural areas. Therefore, the proposed rule will not have a substantial adverse economic impact on rural areas nor on the reporting, record keeping or other compliance requirements on public or private entities in such rural areas. Accordingly, a rural area flexibility analysis is not required and one has not been prepared.

Job Impact Statement

The proposed rule relates to the Excelsior Jobs Program. The Excelsior Jobs Program necessarily enables New York State to provide financial incentives to businesses in strategic industries that commit to create new jobs and/or to make significant capital investment. This Program, given its design and purpose, will have a substantial positive impact on job creation and employment opportunities. Accordingly, a job impact statement is not required and one has not been prepared.

Public Service Commission

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Gas Service to Power Generators

I.D. No. PSC-08-18-00003-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 report on Phase Two of the Power Generation Collaborative filed by KeySpan Gas East Corporation d/b/a National Grid, as well as related proposed revisions to its schedule, P.S.C. No. 1—Gas.

Statutory authority: Public Service Law, sections 65 and 66

Subject: Gas service to power generators.

Purpose: To consider proposals in the report regarding service to power generators and related proposed tariff revisions.

Substance of proposed rule: The Public Service Commission (Commission) is considering proposals in a Report on Phase Two of the Power Generation Collaborative (Report) filed by KeySpan Gas East Corporation d/b/a National Grid (KEDLI) on January 9, 2018, as well as a related proposed tariff revision to its gas schedule, P.S.C. No. 1, filed on January 23, 2018, to effectuate proposals in the Report. The Commission's Order in Case 16-G-0058, et al., issued December 16, 2016, adopted the terms of a joint proposal that provided for the establishment of the Power Generation Collaborative to be conducted in two phases to consider power generation issues. The issues addressed in Phase Two include: issues associated with value-based and cost-based rate design for power generators; issues associated with balancing service for customers that take service pursuant to the tariff as well as customers with negotiated agreements; possible changes to distributed generation tariffs; and bill impacts associated with any recommended changes. KEDLI filed a proposed tariff modification recommended in the Report to eliminate the additional penalty charge of \$10/dth applied to certain customer imbalances in the Company's daily balancing charges. The proposed amendment has an effective date of May 21, 2018. The full text of the proposal 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 proposed and may resolve related matters.

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

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

Public comment will be received until: April 22, 2018.

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. (16-G-0058SP5)

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

Negative Revenue Adjustments Assessed for Alleged Gas Safety Violations in 2014, 2015, and 2016

I.D. No. PSC-08-18-00004-P

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

Proposed Action: The Commission is considering a joint proposal filed by Department of Public Service Staff and National Fuel Gas Distribution Corporation to resolve issues related to Negative Revenue Adjustments (NRAs) assessed for years 2014, 2015 and 2016.

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

Subject: Negative revenue adjustments assessed for alleged gas safety violations in 2014, 2015, and 2016.

Purpose: To encourage active efforts by the utility company to maximize gas safety.

Substance of proposed rule: The Public Service Commission is considering a joint proposal filed on January 23, 2018 by Department of Public Service Staff (Staff) and National Fuel Gas Distribution Corporation (NFGD). The joint proposal resolves disputes between Staff and NFGD regarding negative revenue adjustments (NRAs) assessed against NFGD for alleged violations of Gas Safety Performance Mechanisms that were established in the two-year rate plan approved by the Commission in May 2014. The NRAs were assessed for alleged violations discovered during Staff audits conducted in 2014, 2015 and 2016. Pursuant to the joint proposal, settlement of the disputes would cost NFGD \$930,000, which would be deposited into NFGD's Leak Prone Pipe Replacement and Safety Fund. The funds would be used to replace NFGD's aging infrastructure. In addition, NFGD proposes to withdraw various appeals and a rehearing petition currently pending before the Commission regarding the NRAs. In consideration, Staff proposes to waive its rights to seek further NRAs against NFGD with respect to NFGD's actions, inactions, or practices under the Gas Safety Performance Mechanisms established in the May 2014 Order. The full text of the joint proposal 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 proposed and may resolve related matters.

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

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

Public comment will be received until: April 22, 2018.

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

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

(13-G-0136SP7)

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

Notice of Intent to Submeter Electricity and Waiver Request

I.D. No. PSC-08-18-00005-P

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

Proposed Action: The Commission is considering the notice of intent of MP Owner LLC to submeter electricity at 146 Pierrepont Street, Brooklyn, New York and the request for a waiver of 16 NYCRR section 96.5(k)(3).

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: Notice of intent to submeter electricity and waiver request.

Purpose: To consider the notice of intent to submeter electricity and waiver request of 16 NYCRR section 96.5(k)(3).

Substance of proposed rule: The Commission is considering the Notice of intent of MP Owner LLC (Owner) filed on January 12, 2018, to submeter electricity at 146 Pierrepont Street, Brooklyn, New York, located in the service territory of Consolidated Edison Company of New York, Inc. (Con Edison). By stating its intent to submeter electricity, MP Owner LLC has requested authorization to take electric service from Con Edison and then distribute and meter that electricity to tenants. Submetering of electricity to residential tenants is allowed so long as it complies with the protections and requirements of the Commission's regulations at 16 NYCRR Part 96. The Commission is also considering the Owner's request for a waiver of 16 NYCRR § 96.5(k)(3), which requires proof that an energy audit has been conducted when 20 percent or more of the residents receive income-based housing assistance. The full text of the notice of intent and waiver request 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 proposed and may resolve related matters.

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

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

Public comment will be received until: April 22, 2018.

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.

(18-E-0022SP1)

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

Gas Service to Power Generators

I.D. No. PSC-08-18-00006-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 report on Phase Two of the Power Generation Collaborative filed by The Brooklyn Union Gas Company d/b/a National Grid, as well as related proposed revisions to its schedule, P.S.C. No. 12—Gas.

Statutory authority: Public Service Law, sections 65 and 66

Subject: Gas service to power generators.

Purpose: To consider proposals in the report regarding service to power generators and related proposed tariff revisions.

Substance of proposed rule: The Public Service Commission (Commission) is considering proposals in a Report on Phase Two of the Power Generation Collaborative (Report) filed by The Brooklyn Union Gas Company d/b/a National Grid (KEDNY) on January 9, 2018, as well as related proposed tariff revisions to its gas schedule, P.S.C. No. 12, filed on January 23, 2018, to effectuate proposals in the Report. The Commission's Order in Case 16-G-0059, et al., issued December 16, 2016, adopted the terms of a joint proposal that provided for the establishment of the Power Generation Collaborative to be conducted in two phases to consider power generation issues. The issues addressed in Phase Two include: issues associated with value-based and cost-based rate design for power generators; issues associated with balancing service for customers that take service pursuant to the tariff as well as customers with negotiated agreements; possible changes to distributed generation tariffs; and bill impacts associated with any recommended changes. KEDNY filed a proposed tariff modification recommended in the Report to eliminate the additional penalty charge of \$10/dth applied to certain customer imbalances in the Company's daily balancing charges. The proposed amendment has an ef-

fective date of May 21, 2018. The full text of the proposal 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 proposed and may resolve related matters.

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

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

Public comment will be received until: April 22, 2018.

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.

(16-G-0059SP4)

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

Notice of Intent to Submeter Electricity

I.D. No. PSC-08-18-00007-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 the notice of intent of 160 Leroy LLC to submeter electricity at 160 Leroy 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: Notice of intent to submeter electricity.

Purpose: To consider the notice of intent of 160 Leroy LLC to submeter electricity.

Substance of proposed rule: The Commission is considering the notice of intent of 160 Leroy LLC, filed on January 16, 2018, to submeter electricity at 160 Leroy Street, New York, New York, located in the service territory of Consolidated Edison Company of New York, Inc. (Con Edison). By stating its intent to submeter electricity, 160 Leroy LLC has requested authorization to take electric service from Con Edison and then distribute and meter that electricity to tenants. Submetering of electricity to residential tenants is allowed so long as it complies with the protections and requirements of the Commission's regulations at 16 NYCRR Part 96. The full text of the notice of intent 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 proposed and may resolve related matters.

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

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

Public comment will be received until: April 22, 2018.

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.

(18-E-0026SP1)

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

Notice of Intent to Submeter Electricity

I.D. No. PSC-08-18-00008-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 the notice of intent of MIP One Wall Street Acquisition, LLC to submeter electricity at One Wall 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: Notice of intent to submeter electricity.

Purpose: To consider the notice of intent of MIP One Wall Street Acquisition, LLC to submeter electricity.

Substance of proposed rule: The Commission is considering the notice of intent of MIP One Wall Street Acquisition, LLC (owner) filed on January 25, 2018, to submeter electricity at One Wall Street, New York, New York, located in the service territory of Consolidated Edison Company of New York, Inc. (Con Edison). By stating its intent to submeter electricity, MIP One Wall Street Acquisition, LLC has requested authorization to take electric service from Con Edison and then distribute and meter that electricity to tenants. Submetering of electricity to residential tenants is allowed so long as it complies with the protections and requirements of the Commission's regulations at 16 NYCRR Part 96. The full text of the notice of intent 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 proposed and may resolve related matters.

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

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

Public comment will be received until: April 22, 2018.

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.

(18-E-0065SP1)

**Department of Taxation and
Finance**

NOTICE OF ADOPTION

New York State, City of Yonkers and New York City Withholding Tables and Other Methods

I.D. No. TAF-49-17-00007-A

Filing No. 149

Filing Date: 2018-02-06

Effective Date: 2018-02-21

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

Action taken: Repeal of Appendixes 10, 10-A and 10-C; addition of new Appendixes 10, 10-A and 10-C to Title 20 NYCRR.

Statutory authority: Tax Law, sections 171, subdivision First, 671(a)(1), 697(a), 1309, 1312(a), 1321(a), 1329(a) and 1332(a); Codes of the City of Yonkers, sections 15-105, 15-108 and 15-111; Administrative Code of New York City, sections 11-1771(a) and 11-1797(a); L. 2016, ch. 60, part TT; L. 2017, ch. 59, part C

Subject: New York State, City of Yonkers and New York City withholding tables and other methods.

Purpose: To provide current New York State, City of Yonkers and New York City withholding tables and other methods.

Substance of final rule: Tax Law sections 671(a)(1), 1309 and 1329(a), section 15-105 of the Code of the City of Yonkers and section 11-1771 of the Administrative Code of the City of New York mandate that employers withhold from employee wages amounts that are substantially equivalent to the amount of New York State, City of Yonkers and New York City personal income tax on residents reasonably estimated to be due for the taxable year. The provisions authorize the Commissioner of Taxation and Finance to provide for withholding of these taxes through regulations promulgated by the Commissioner.

This rule repeals and adds new Appendixes 10, 10-A and 10-C of Title 20 NYCRR, the New York State, City of Yonkers and New York City withholding tables and other methods, respectively. The amendments to Appendixes 10 and 10-A reflect the incremental decrease in New York State personal income tax effected by Part TT of Chapter 60 of the Laws of 2016, beginning in tax year 2018. Changes to the City of Yonkers withholding tables and other methods were necessary because the City of Yonkers income tax surcharge is a specified percentage of New York State tax. New Appendix 10-C reflects the revision of the New York City withholding tables and other methods in accordance with changes in the New York City personal income tax effected by Part C of Chapter 59 of the Laws of 2017, implemented over a twelve-month period for tax year 2018, rather than the shorter period required for tax year 2017, and the requirement that the withholding rates reflect the full amount of tax liability as accurately as practicable.

Additionally, non-substantive changes were made to the text of the proposed rule to reinsert technical verbiage inadvertently omitted from that text.

The rule applies to wages and other compensation subject to withholding paid on or after January 1, 2018.

Final rule as compared with last published rule: Nonsubstantive changes were made in Appendixes 10, 10-A and 10-C.

Text of rule and any required statements and analyses may be obtained from: Kathleen D. O'Connell, Tax Regulations Specialist II, Department of Taxation and Finance, Building 9, W.A. Harriman Campus, Albany, NY 12227, (518) 530-4153, email: Kathleen.OConnell@tax.ny.gov

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

A Revised Regulatory Impact Statement, a Revised Regulatory Flexibility Analysis, a Revised Rural Area Flexibility Analysis and a Revised Job Impact Statement are not required because the revisions to the text of the rule merely reinsert technical verbiage inadvertently omitted from the text of the proposed rule.

Initial Review of Rule

As a rule that requires a RFA, RAFA or JIS, this rule will be initially reviewed in the calendar year 2021, which is no later than the 3rd year after the year in which this rule is being adopted.

Assessment of Public Comment

The agency received no public comment.

Department of Transportation

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Regulation of Commercial Motor Carriers in New York State

I.D. No. TRN-08-18-00001-P

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

Proposed Action: This is a consensus rule making to amend sections 154-1.1(f), 154-2.1(e), 720.12(a), 721.3(f), 721.6, 750.3, 820.13, 845.0 and 855.2 of Title 17 NYCRR.

Statutory authority: Transportation Law, sections 14(12), (18), 14-f(1)(a), 138(2), 140(2), art. 9-A; Vehicle and Traffic Law, arts. 19-A and 19-B

Subject: Regulation of commercial motor carriers in New York State.

Purpose: The rule making updates title 49 CFR provisions incorporated by reference pursuant to regulation of commercial motor carriers.

Text of proposed rule: 17 NYCRR sections 154-1.1(f), 154-2.1(e), 720.12(a), 721.3(f), 721.6, 750.3, 820.13, 845.0 and 855.2 are amended to read as follows:

17 NYCRR section 154-1.1.

(f) Incorporation by reference. The provisions of the Code of Federal Regulations which have been incorporated in this Part have been filed in the Office of the Secretary of State of the State of New York, the publications so filed being the books entitled: Code of Federal Regulations, Title 49, Parts 100 to 177, Parts 178 to 199, [Parts 200 to 299, and Parts 300 to 399,] revised as of October 1, 2013 and *Parts 300 to 399 revised as of October 1, 2016*, published by the Office of the Federal Register, National Archives and Records Administration, as a special edition of the Federal Register. The regulations incorporated by reference may be examined at

the office of the Department of State, One Commerce Plaza, 99 Washington Avenue, Albany, NY 12231-0001, at the Libraries of the New York Supreme Court, the Legislative Library, the New York State Department of Transportation, Office of Counsel or Central Permit Office, 50 Wolf Road, Albany, NY 12232. They may [also] be purchased [from the Superintendent of Documents, Government Printing Office, Washington, DC 20402-0001.] by mail from the US Government Printing Office, New Orders, P.O. Box 979050, St. Louis, MO 63197-9000.

17 NYCRR section 154-2.1.

(e) Incorporation by reference. The provisions of the Code of Federal Regulations which have been incorporated in this Part have been filed in the Office of the Secretary of State of the State of New York, the publications so filed being the books entitled: Code of Federal Regulations, Title 49, Parts 100 to 177, Parts 178 to 199, [Parts 200 to 299, and Parts 300 to 399,] revised as of October 1, 2013 and *Parts 300 to 399 revised as of October 1, 2016*, published by the Office of the Federal Register, National Archives and Records Administration, as a special edition of the Federal Register. The regulations incorporated by reference may be examined at the office of the Department of State, One Commerce Plaza, 99 Washington Avenue, Albany, NY 12231-0001, at the Libraries of the New York Supreme Court, the Legislative Library, the New York State Department of Transportation, Office of Counsel or Central Permit Office, 50 Wolf Road, Albany, NY 12232. They may [also] be purchased [from the Superintendent of Documents, Government Printing Office, Washington, DC 20402-0001.] by mail from the US Government Printing Office, New Orders, P.O. Box 979050, St. Louis, MO 63197-9000.

17 NYCRR 720.12 Incorporation by reference.

(a) Incorporation by reference. The provisions of the Code of Federal Regulations which have been incorporated in this Part have been filed in the Office of the Secretary of State of the State of New York, the publications so filed being the books entitled: Code of Federal Regulations, Title 49, [Parts 100 to 177, Parts 178 to 199, Parts 200 to 299, and Parts 300 to 399,] revised as of October 1, 2013] *Parts 300 to 399 revised as of October 1, 2016*, published by the Office of the Federal Register, National Archives and Records Administration, as a special edition of the Federal Register. The regulations incorporated by reference may be examined at the office of the Department of State, One Commerce Plaza, 99 Washington Avenue, Albany, NY 12231-0001, at the Libraries of the New York Supreme Court, the Legislative Library, the New York State Department of Transportation, Office of Counsel or Central Permit Office, 50 Wolf Road, Albany, NY 12232. They may [also] be purchased [from the Superintendent of Documents, Government Printing Office, Washington, DC 20402-0001.] by mail from the US Government Printing Office, New Orders, P.O. Box 979050, St. Louis, MO 63197-9000.

17 NYCRR 721.3

(f) FMCSR. Drivers of passenger carrying vehicles that carry more than 15 passengers, including the driver, or with a gross vehicle weight rating of more than 10,000 pounds shall comply with the applicable Federal Motor Carrier Safety Regulations (FMCSR) of the Federal Highway Administration, including: 49 CFR part 382 - Controlled Substances and Alcohol Use and Testing, part 383 - Commercial Driver's License Standards; Requirements and Penalties, part 390 - Federal Motor Carrier Safety Regulations; General, subdivisions 391.21, except for (b)(12), 391.23, except for (b) and (c), 391.25, 391.27, except for (c) and (d), 391.41, 391.43 and 391.51, except for (b)(3), (b)(7) and (d)(4), of part 391 - Qualifications of Drivers, part 392 Driving of Commercial Motor Vehicles, part 393 - Parts and Accessories Necessary For Safe Operation, part 396 - Inspection, Repair, and Maintenance, except for subdivisions 396.3(a)(2) and (b)(4) and part 397 - Transportation of Hazardous Materials; Driving and Parking Rules. With respect to commercial drivers that are licensed with a passenger endorsement to operate a bus on an intrastate basis only, parts 390 to 397 shall not apply to commercial drivers when operating a school bus, and the adopted portions of part 391 shall only apply to those drivers that received their initial commercial drivers license after the effective date of this regulation. With respect to hours of service of bus drivers, the requirements of section [723.10] 820.6 of this Title shall apply.

17 NYCRR 721.6. Incorporation by reference.

The provisions of the Code of Federal Regulations which have been incorporated by reference in this part have been filed in the Office of the Secretary of State of the State of New York, the publication so filed being the books entitled: Code of Federal Regulations, Title 49, [100 to 177, Parts 178 to 199, Parts 200 to 299, Parts 300 to 399, Parts 400 to 571 and Parts 572 to 999, revised as of October 1, 2013] *Parts 300 to 399, revised as of October 1, 2016* published by the Office of the Federal Register, National Archives and Records Administration, as a special edition of the Federal Register. The regulations incorporated by reference may be examined at the Office of the Department of State, One Commerce Plaza, 99 Washington Avenue, Albany, NY 12231-0001, at the law libraries of the New York State Supreme Court, the Legislative Library, the New York State Department of Transportation, Office of Counsel or Motor Carrier

Compliance Bureau, 50 Wolf Road, Albany, NY 12232. They may [also] be purchased [from the Superintendent of Documents, Government Printing Office, Washington, DC 20402-0001.] by mail from the US Government Printing Office, New Orders, P.O. Box 979050, St. Louis, MO 63197-9000.

Section 750.3. Minimum levels of financial responsibility for for-hire motor carriers of passengers.

The Commissioner of Transportation adopts part 387 of title 49 of the Code of Federal Regulations with the same force and effect as though herein fully set forth at length for for-hire motor carriers of passengers operating motor vehicles in interstate and foreign commerce. The provisions of the Code of Federal Regulations which have been incorporated by reference in this part have been filed in the Office of the Secretary of State of the State of New York, the publication so filed being the book entitled: Code of Federal Regulations, Title 49 Parts 300 to 399, revised as of October 1, 2013[3]6, published by the Office of the Federal Register, National Archives and Records Administration, as a special edition of the Federal Register. The regulations incorporated by reference may be examined at the Office of the Department of State, One Commerce Plaza, 99 Washington Avenue, Albany, NY 12231-0001, at the law libraries of the New York State Supreme Court, the Legislative Library, the New York State Department of Transportation, Office of Counsel or Motor Carrier Compliance Bureau, 50 Wolf Road, Albany, NY 12232. They may [also] be purchased [from the Superintendent of Documents, Government Printing Office, Washington, DC 20402-0001.] by mail from the US Government Printing Office, New Orders, P.O. Box 979050, St. Louis, MO 63197-9000.

Section 820.13. Incorporation by reference.

The provisions of the Code of Federal Regulations which have been incorporated by reference in this Part have been filed in the Office of the Secretary of State of the State of New York, the publication so filed being the book[s] entitled: Title 49 Code of Federal Regulations Parts 300 to 399, revised as of October 1, 2013[3]6, published by the Office of the Federal Register, National Archives and Records Administration, as a special edition of the Federal Register. The regulations incorporated by reference may be examined at the Office of the Department of State, One Commerce Plaza, 99 Washington Avenue, Albany, NY 12231-0001, at the law libraries of the New York State Supreme Court, the Legislative Library, the New York State Department of Transportation, Office of Counsel or Motor Carrier Compliance Bureau, 50 Wolf Road, Albany, NY 12232. They may [also] be purchased [from the Superintendent of Documents, Government Printing Office, Washington, DC 20401-0001.] by mail from the US Government Printing Office, New Orders, P.O. Box 979050, St. Louis, MO 63197-9000 with payment by check or with payment by credit card at 866-512-1800. The full text of the Code of Federal Regulations is available in electronic format at www.ecfr.gov.

Section 845.0. Applicability.

(b) Incorporation by reference. The provisions of the Code of Federal Regulations which have been incorporated by reference in this Part have been filed in the Office of the Secretary of State of the State of New York, the publication so filed being the book entitled: Code of Federal Regulations, Title 49, Parts 300 to 399, revised as of October 1, 2013[3]6, published by the Office of the Federal Register, National Archives and Records Administration, as a special edition of the Federal Register. The regulations incorporated by reference may be examined at the Office of the Department of State, One Commerce Plaza, 99 Washington Avenue, Albany, NY 12231-0001, at the law libraries of the New York State Supreme Court, the Legislative Library, the New York State Department of Transportation, Office of Counsel or Motor Carrier Compliance Bureau, 50 Wolf Road, Albany, NY 12232. They may [also] be purchased [from the Superintendent of Documents, Government Printing Office, Washington, DC 20401-0001.] by mail from the US Government Printing Office, New Orders, P.O. Box 979050, St. Louis, MO 63197-9000.

Section 855.2. Minimum levels of financial responsibility for interstate motor carriers of property.

Incorporation by reference. The Commissioner of Transportation adopts Part 387 of Title 49 of the Code of Federal Regulations with the same force and effect as though herein fully set forth at length for for-hire motor carriers of property operating motor vehicle in interstate and foreign commerce and motor carriers transporting hazardous materials, hazardous substances, or hazardous wastes in interstate, intrastate, or foreign commerce. The provisions of the Code of Federal Regulations which have been incorporated in this Part have been filed in the Office of the Secretary of State of the State of New York, the publications so filed being the books entitled: Code of Federal Regulations, Title 49, [Parts 100 to 185, Parts 186 to 199, Parts 200 to 299 and Parts 300-399, revised as of October 1, 2013] Parts 300-399, revised as of October 1, 2016, published by the Office of the Federal Register, National Archives and Records Administration, as a special edition of the Federal Register. The regulations incorporated by reference may be examined at the office of the Department of

State, One Commerce Plaza, 99 Washington Avenue, Albany, NY 12231-0001, at the Libraries of the New York State Supreme Court, the Legislative Library, the New York State Department of Transportation, Office of Counsel or Central Permit Office, 50 Wolf Road, Albany, NY 12232. They may [also] be purchased [from the Superintendent of Documents, Government Printing Office, Washington, DC 20401-0001.] by mail from the US Government Printing Office, New Orders, P.O. Box 979050, St. Louis, MO 63197-9000.

Text of proposed rule and any required statements and analyses may be obtained from: Alan Black, Legal Assistant 2, New York State Department of Transportation, 50 Wolf Road, Albany, NY 12232, (518) 485-9953, email: alan.black@dot.ny.gov

Data, views or arguments may be submitted to: David Winans, Associate Counsel, New York State Department of Transportation, 50 Wolf Road, Albany, NY 12232, (518) 457-2411, email: david.winans@dot.ny.gov

Public comment will be received until: April 23, 2018.

Consensus Rule Making Determination

The New York State Department of Transportation (NYSDOT) in partnership with the New York State Police Commercial Vehicle Enforcement personnel, engages in commercial motor vehicle enforcement activities under the federal Motor Carrier Safety Assistance Program (MCSAP), the regulatory guidelines for which are published in 49 CFR Part 350. MCSAP is a grant program that provides federal financial assistance to states to reduce the number and severity of accidents and hazardous materials incidents involving commercial motor vehicles. The Federal Motor Carrier Safety Administration sets the conditions for participation by states and local jurisdictions and promotes the adoption and uniform enforcement of safety rules, regulations, and standards compatible with the federal motor carrier safety regulations and federal hazardous material regulations for both interstate and intrastate motor carriers and drivers. Per 49 USCS section 31102, the goal is to ensure that the Secretary, States, local governments, other political jurisdictions, federally recognized Indian tribes, and other persons work in partnership to establish programs to improve motor carrier, commercial motor vehicle, and driver safety to support a safe and efficient surface transportation system by, among other things, adopting and enforcing effective motor carrier, commercial motor vehicle, and driver safety regulations and practices consistent with federal requirements. Pursuant to implementation of said goal under 49 USCS section 31136, the Secretary of Transportation shall adopt regulations on commercial motor vehicle safety. At a minimum, the regulations shall ensure the responsibilities imposed on operators of commercial motor vehicles do not impair their ability to operate the vehicles safely so that the operation of commercial motor vehicles does not have a deleterious effect on the physical condition of the operators.

Per 49 CFR 350.355, FMCSA may initiate a proceeding to withdraw Plan approval or withhold MCSAP funds in accordance with 49 CFR 320.215 under certain circumstances, one of which occurs when a State fails to adopt a new federal motor carrier safety regulation (FMCSR) or hazardous material regulation (HMR) or an amendment to an existing FMCSR or HMR within 3 years of its effective date. NYSDOT last incorporated such federally consistent standards in January 2015. Since then, new rules have been put into effect regarding Electronic Logging Devices (ELD), which function to document hours of service compliance on commercial vehicle operators. A component of said regulations implemented by 49 CFR Part 395 under the statutory authority of 49 USCS section 31137 mandates ELD requirements that a commercial motor vehicle involved in interstate commerce and operated by a driver subject to the hours of service and the record of duty status requirements be equipped with an electronic logging device to improve compliance by an operator of a vehicle with hours of service regulations prescribed by the Secretary; and that in general, such regulations shall allow law enforcement to access the data contained in the device during a road side inspection via a secure process for standardized data transfer and transportability for said law enforcement officers. Per 49 USCS section 31141(c), states may enforce regulations with the same effect and 17 NYCRR 820.6 makes 49 CFR 395 applicable to all motor carriers and drivers operating intrastate, with limited enumerated exceptions. Per 49 USCS section 31142(d), states are not prohibited from making random inspections of commercial motor vehicles to confirm compliance to operate within the mandatory prescriptions of MCSAP.

Per the preceding, NYSDOT has determined that no person is likely to object to the amendment of 17 NYCRR parts as herein proposed, as pursuant to SAPA section 102(11)(b), the rulemaking conforms to non-discretionary statutory provisions in Transportation Law Article 9-A and 49 USCS sections 31136 through 31142. The purpose of this rulemaking is to update Title 49 CFR regulations which are incorporated by reference into Title 17 NYCRR to the 10/1/2016 Title 49 CFR edition. This rulemaking does not represent a change in NYSDOT policy or practice, nor does it impose significant burdens on commercial motor vehicle carriers and drivers.

Job Impact Statement

1. Nature of impact: The proposed rule changes are advanced periodically to retain consistency of Title 17 NYCRR with Title 49 CFR provisions related to safe operation of commercial motor vehicles, most of which are incorporated by reference. Since the Department last adopted such updates by incorporation of the 10/1/2013 edition of CFR safety provisions in January 2015, commercial motor carriers subject to hours of service (HOS) requirements have been required under new federal mandates to transition from paper logbooks to electronic logging devices (ELD) to document compliance with limitations on hours behind the wheel, termed "record of duty status" (RODS). Said federal regulations were adopted with a compliance date of December 18, 2017 in 80 FR 78292. The present rule changes serve to capture that material by incorporation and are not expected to have a significant impact on jobs; the associated New York State Department of Transportation (NYSDOT) enforcement activity will be consistent with past practice.

2. Categories and numbers affected: Federal rules except limited numbers of commercial motor carriers from compliance with ELD; most carriers whose drivers currently maintain paper logbooks are required to transition to ELD and those excepted must continue to maintain paper logbooks if required to document RODS. Exclusion of small businesses was considered but ultimately rejected by FMCSA as inconsistent with the federal statutory framework under which rulemaking is undertaken (80 FR 78292, *78313). The sweep of the ELD compliance regulations is comprehensive.

3. Regions of adverse impact: Inspections and reviews are conducted pursuant to Department policy and there is no variance in the methodology across regions. No adverse impact on jobs in any particular region is anticipated.

4. Minimizing adverse impact: Cost estimates for compliance with the ELD mandate vary depending on the number of vehicles a carrier has in operation; larger carriers are expected to enjoy significant cost savings, whereas smaller carriers and single operators may see modest cost increases of a few hundred dollars per vehicle, which will evaporate over time as the ELD becomes standard equipment in newer model commercial vehicles and such vehicles replace older ones in the operator's fleets. FMCSA determined that time savings to drivers and carriers from filling out, submitting, and handling paper can exceed the annualized costs of equipping and maintaining ELD; the few hundred dollars of cost increases that may occur in certain cases were not considered to represent a significant impact. Business case studies performed by FMCSA following the implementation of electronic management systems consistently revealed the cost of compliance management, including truck mounted data terminal hardware, to be 30% lower than manual compliance management procedures used for paper logs (80 FR 78292, *78344).

Title 17 NYCRR regulations must remain consistent with the CFR, per 49 USCS section 31141. As such, NYSDOT reviews and inspections are performed using the standards that are found in the CFR regulations incorporated by reference in 17 NYCRR. Neither the frequency of inspections nor the basis for NYSDOT enforcement action is expected to change in any way post adoption of the instance rulemaking, so categories and numbers affected remain status quo. The purpose of performing motor carrier enforcement activities is the advancement of public safety through verification of compliance with state law and regulation pertaining to motor carrier safety; consequently, there are no adverse impacts.