

RULE MAKING ACTIVITIES

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

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

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

Department of Civil Service

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Jurisdictional Classification

I.D. No. CVS-52-13-00004-P

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

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

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

Subject: Jurisdictional Classification.

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

Text of proposed rule: Amend Appendix 2 of the Rules for the Classified Service, listing positions in the non-competitive class, in the Department of Mental Hygiene under the subheading “Office of Mental Health,” by increasing the number of positions of øDirector Mental Health Field Office 1 from 3 to 4.

Text of proposed rule and any required statements and analyses may be obtained from: Shirley LaPlante, NYS Department of Civil Service, Empire State Plaza, Agency Building 1, Albany, NY 12239, (518) 473-6598, email: shirley.laplante@cs.state.ny.us

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

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

Regulatory Impact Statement

A regulatory impact statement is not submitted with this notice because this rule is subject to a consolidated regulatory impact statement that was

previously printed under a notice of proposed rule making, I.D. No. CVS-02-13-00002-P, Issue of January 9, 2013.

Regulatory Flexibility Analysis

A regulatory flexibility analysis is not submitted with this notice because this rule is subject to a consolidated regulatory flexibility analysis that was previously printed under a notice of proposed rule making, I.D. No. CVS-02-13-00002-P, Issue of January 9, 2013.

Rural Area Flexibility Analysis

A rural area flexibility analysis is not submitted with this notice because this rule is subject to a consolidated rural area flexibility analysis that was previously printed under a notice of proposed rule making, I.D. No. CVS-02-13-00002-P, Issue of January 9, 2013.

Job Impact Statement

A job impact statement is not submitted with this notice because this rule is subject to a consolidated job impact statement that was previously printed under a notice of proposed rule making, I.D. No. CVS-02-13-00002-P, Issue of January 9, 2013.

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Jurisdictional Classification

I.D. No. CVS-52-13-00005-P

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

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

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

Subject: Jurisdictional Classification.

Purpose: To classify a position in the exempt class.

Text of proposed rule: Amend Appendix 1 of the Rules for the Classified Service, listing positions in the exempt class, in the Executive Department under the subheading “Office of Information Technology Services,” by adding thereto the position of Associate Counsel.

Text of proposed rule and any required statements and analyses may be obtained from: Shirley LaPlante, NYS Department of Civil Service, Empire State Plaza, Agency Building 1, Albany, NY 12239, (518) 473-6598, email: shirley.laplante@cs.state.ny.us

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

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

Regulatory Impact Statement

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Regulatory Flexibility Analysis

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Rural Area Flexibility Analysis

A rural area flexibility analysis is not submitted with this notice because this rule is subject to a consolidated rural area flexibility analysis that was previously printed under a notice of proposed rule making, I.D. No. CVS-02-13-00002-P, Issue of January 9, 2013.

Job Impact Statement

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

Jurisdictional Classification

I.D. No. CVS-52-13-00006-P

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

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

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

Subject: Jurisdictional Classification.

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

Text of proposed rule: Amend Appendix 2 of the Rules for the Classified Service, listing positions in the non-competitive class, in the Executive Department under the subheading "Justice Center for the Protection of People with Special Needs," by increasing the number of positions of Internal Investigator 2 (Justice Center) from 45 to 46.

Text of proposed rule and any required statements and analyses may be obtained from: Shirley LaPlante, NYS Department of Civil Service, Empire State Plaza, Agency Building 1, Albany, NY 12239, (518) 473-6598, email: shirley.laplante@cs.state.ny.us

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

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

Regulatory Impact Statement

A regulatory impact statement is not submitted with this notice because this rule is subject to a consolidated regulatory impact statement that was previously printed under a notice of proposed rule making, I.D. No. CVS-02-13-00002-P, Issue of January 9, 2013.

Regulatory Flexibility Analysis

A regulatory flexibility analysis is not submitted with this notice because this rule is subject to a consolidated regulatory flexibility analysis that was previously printed under a notice of proposed rule making, I.D. No. CVS-02-13-00002-P, Issue of January 9, 2013.

Rural Area Flexibility Analysis

A rural area flexibility analysis is not submitted with this notice because this rule is subject to a consolidated rural area flexibility analysis that was previously printed under a notice of proposed rule making, I.D. No. CVS-02-13-00002-P, Issue of January 9, 2013.

Job Impact Statement

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

Jurisdictional Classification

I.D. No. CVS-52-13-00007-P

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

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

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

Subject: Jurisdictional Classification.

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

Text of proposed rule: Amend Appendix 2 of the Rules for the Classified Service, listing positions in the non-competitive class, in the Department of Family Assistance under the subheading "Office of Temporary and Disability Assistance," by deleting therefrom the position of Minority Business Enterprise Liaison Specialist 4 (1) and by adding thereto the position of Minority Business Specialist 2 (1).

Text of proposed rule and any required statements and analyses may be obtained from: Shirley LaPlante, NYS Department of Civil Service, Empire State Plaza, Agency Building 1, Albany, NY 12239, (518) 473-6598, email: shirley.laplante@cs.state.ny.us

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

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

Regulatory Impact Statement

A regulatory impact statement is not submitted with this notice because this rule is subject to a consolidated regulatory impact statement that was previously printed under a notice of proposed rule making, I.D. No. CVS-02-13-00002-P, Issue of January 9, 2013.

Regulatory Flexibility Analysis

A regulatory flexibility analysis is not submitted with this notice because this rule is subject to a consolidated regulatory flexibility analysis that was previously printed under a notice of proposed rule making, I.D. No. CVS-02-13-00002-P, Issue of January 9, 2013.

Rural Area Flexibility Analysis

A rural area flexibility analysis is not submitted with this notice because this rule is subject to a consolidated rural area flexibility analysis that was previously printed under a notice of proposed rule making, I.D. No. CVS-02-13-00002-P, Issue of January 9, 2013.

Job Impact Statement

A job impact statement is not submitted with this notice because this rule is subject to a consolidated job impact statement that was previously printed under a notice of proposed rule making, I.D. No. CVS-02-13-00002-P, Issue of January 9, 2013.

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

Jurisdictional Classification

I.D. No. CVS-52-13-00008-P

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

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

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

Subject: Jurisdictional Classification.

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

Text of proposed rule: Amend Appendix 2 of the Rules for the Classified Service, listing positions in the non-competitive class, in the Department of Law, by adding thereto the positions of Information Technology Specialist 3 (6) and Information Technology Specialist 4 (2).

Text of proposed rule and any required statements and analyses may be obtained from: Shirley LaPlante, NYS Department of Civil Service, Empire State Plaza, Agency Building 1, Albany, NY 12239, (518) 473-6598, email: shirley.laplante@cs.state.ny.us

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

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

Regulatory Impact Statement

A regulatory impact statement is not submitted with this notice because this rule is subject to a consolidated regulatory impact statement that was previously printed under a notice of proposed rule making, I.D. No. CVS-02-13-00002-P, Issue of January 9, 2013.

Regulatory Flexibility Analysis

A regulatory flexibility analysis is not submitted with this notice because this rule is subject to a consolidated regulatory flexibility analysis that was previously printed under a notice of proposed rule making, I.D. No. CVS-02-13-00002-P, Issue of January 9, 2013.

Rural Area Flexibility Analysis

A rural area flexibility analysis is not submitted with this notice because this rule is subject to a consolidated rural area flexibility analysis that was previously printed under a notice of proposed rule making, I.D. No. CVS-02-13-00002-P, Issue of January 9, 2013.

Job Impact Statement

A job impact statement is not submitted with this notice because this rule is subject to a consolidated job impact statement that was previously

printed under a notice of proposed rule making, I.D. No. CVS-02-13-00002-P, Issue of January 9, 2013.

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

Jurisdictional Classification

I.D. No. CVS-52-13-00009-P

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

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

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

Subject: Jurisdictional Classification.

Purpose: To classify positions in the exempt class.

Text of proposed rule: Amend Appendix 1 of the Rules for the Classified Service, listing positions in the exempt class, in the Executive Department under the subheading "Office of General Services," by adding thereto the positions of Assistant Deputy Director Business Services Center (3).

Text of proposed rule and any required statements and analyses may be obtained from: Shirley LaPlante, NYS Department of Civil Service, Empire State Plaza, Agency Building 1, Albany, NY 12239, (518) 473-6598, email: shirley.laplante@cs.state.ny.us

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

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

Regulatory Impact Statement

A regulatory impact statement is not submitted with this notice because this rule is subject to a consolidated regulatory impact statement that was previously printed under a notice of proposed rule making, I.D. No. CVS-02-13-00002-P, Issue of January 9, 2013.

Regulatory Flexibility Analysis

A regulatory flexibility analysis is not submitted with this notice because this rule is subject to a consolidated regulatory flexibility analysis that was previously printed under a notice of proposed rule making, I.D. No. CVS-02-13-00002-P, Issue of January 9, 2013.

Rural Area Flexibility Analysis

A rural area flexibility analysis is not submitted with this notice because this rule is subject to a consolidated rural area flexibility analysis that was previously printed under a notice of proposed rule making, I.D. No. CVS-02-13-00002-P, Issue of January 9, 2013.

Job Impact Statement

A job impact statement is not submitted with this notice because this rule is subject to a consolidated job impact statement that was previously printed under a notice of proposed rule making, I.D. No. CVS-02-13-00002-P, Issue of January 9, 2013.

**Department of Corrections and
Community Supervision**

NOTICE OF ADOPTION

Temporary Release Program

I.D. No. CCS-31-13-00001-A

Filing No. 1196

Filing Date: 2013-12-09

Effective Date: 2013-12-24

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

Action taken: Amendment of sections 1900.4(m)(1), 1900.6(a) and (b) of Title 7 NYCRR.

Statutory authority: Correction Law, sections 112, 852 and 855

Subject: Temporary Release Program.

Purpose: To indicate that an inmate may appeal the decision of a facility Superintendent to deny a temporary release program application.

Text of final rule: The Department of Corrections and Community Supervision is amending subdivision 1900.6(a) and 1900.6(b) of 7 NYCRR as indicated below:

Section 1900.6. Appeal process.

(a) An inmate may appeal the following kinds of negative decisions:

- (1) point scores;
- (2) decision of the superintendent;
- (3) decision of TRC (including presumptive CASAT); and
- (4) decision of central office reviewer.

(b) Inmates with a low-point score can only appeal the scoring of their applications to central office. Inmates with a low-point score and who have received an open date may appeal the scoring of their application to central office. Inmates with a low-point score and an open date who have been referred to the TRC can appeal on grounds 1[-]and 3, above, provided each ground is relevant to the case. An inmate may appeal a denial by the superintendent under (a)(2) above, by submitting form 4145 and any pertinent information to the director of central office temporary release programs. *An inmate has ten working days from the date of the notice of denial to submit his or her intent to appeal a decision of the superintendent. A perfected appeal must be received within 30 days of the date of notice of denial by the superintendent [disapproval decision].* [Nonstatutory denials by the superintendent must be referred directly to the director of TRP for an automatic commissioner review. No appeal is necessary.]

The Department is also amending paragraph (1) of subdivision (m) of section 1900.4 to read as follows:

(m) Approved applications by the TRC shall be forwarded to the superintendent accompanied by any supporting documentation. The superintendent shall review the application and supporting documentation in deciding to accept or reject the application.

(1) If the superintendent rejects the program, he shall state his reasons in writing and a copy of his statement shall be given to the inmate. A copy of such statement shall also be immediately forwarded to the director of TRP, central office, along with any supporting documentation. *An inmate may appeal a denial by the superintendent in accordance with section 1900.6(d) of this Part.* Inmates will be informed by the commissioner, in writing, whether the superintendent's decision is accepted or rejected.

Final rule as compared with last published rule: Nonsubstantive changes were made in sections 1900.4(m)(1), 1900.6(a) and (b).

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

Revised Regulatory Impact Statement

1. Statutory Authority

Sections 112, 852 and 855 of Correction Law. Section 112 empowers the Commissioner of DOCCS to promulgate rules and regulations that are deemed necessary in order to maintain safe, secure and orderly operations within the Department that are not in conflict with any state statutes. Section 852 of Correction Law specifically empowers the Commissioner to promulgate rules and regulations to govern the Department's temporary release programs with consideration for the safety of the community and the welfare of the inmate. Section 855 of Correction Law lists the rules and regulations that provide the procedures for the temporary release of inmates.

2. Legislative Objective

By vesting the Commissioner with the rulemaking authority as provided for in these sections of Correction Law, the legislature intended the Commissioner to promulgate such rules and regulations that provide fair and reasonable inmate eligibility criteria, application processing and release procedures for temporary release programs that are consistent with the Department's mission to enhance public safety by providing programs and services that address the needs of inmates so they can return to their communities better prepared to lead successful and crime-free lives.

3. Needs and Benefits

This proposed rulemaking was determined to be necessary in order to reduce the administrative costs and burden that is associated with the automatic review of denials made by the facility Superintendent of inmate temporary release applications. Due to current Department staffing and limited resources, the automatic review of these denials is creating an unrealistic burden on staff to conduct the reviews in a timely manner. This rule does not limit an inmate's ability to appeal such denial to Central Office, it simply places the impetus on the inmate to make the choice to submit an appeal if they choose to do so.

4. Costs

a. To agency, state and local government: No discernable costs are anticipated.

b. Cost to private regulated parties: None. The proposed rule changes do not apply to private parties.

c. This cost analysis is based upon the fact that the rule change is being made to cut down on administrative costs associated with the review of all temporary release program denials. No additional procedures or new staff are necessary to implement the proposed changes.

5. Paperwork

There are no new reports, forms or paperwork that would be required as a result of amending these rules.

6. Local Government Mandates

There are no new mandates imposed upon local governments by these proposals. The proposed amendments do not apply to local governments.

7. Duplication

These proposed amendments do not duplicate any existing State or Federal requirement.

8. Alternatives

DOCCS considered the alternative of not promulgating this rule. However, DOCCS decided that this rule making was important in order to attempt to reduce burden on staff that conduct the reviews and the associated administrative costs.

9. Federal Standards

There are no minimum standards of the Federal government for this or a similar subject area.

10. Compliance Schedule

The Department of Corrections and Community Supervision will achieve compliance with the proposed rules immediately.

Revised Regulatory Flexibility Analysis

A regulatory flexibility analysis is not required for this proposal since it will not impose any adverse economic impact or reporting, recordkeeping or other compliance requirements on small businesses or local governments. This proposal is merely amending an internal procedure whereby an inmate must decide whether they wish to submit an appeal to a Superintendent's denial of their temporary release program application.

Revised Rural Area Flexibility Analysis

A rural area flexibility analysis is not required for this proposal since it will not impose any adverse economic impact or reporting, recordkeeping or other compliance requirements on rural areas. This proposal is merely amending an internal procedure whereby an inmate must decide whether they wish to submit an appeal to a Superintendent's denial of their temporary release program application.

Revised Job Impact Statement

A job impact statement is not submitted because this proposed rule will have no adverse impact on jobs or employment opportunities. This proposal is merely amending an internal procedure whereby an inmate must decide whether they wish to submit an appeal to a Superintendent's denial of their temporary release program application.

Initial Review of Rule

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

Assessment of Public Comment

Assessment of Public Comment received in response to proposed amendment to 7 NYCRR Section 1900.6(b) - the Temporary Release Appeal Process.

A Notice of Proposed Rule Making was published in the State Register on July 31, 2013. The Department of Corrections and Community Supervision (DOCCS) received one set of comments during the public comment period associated with the proposed rulemaking. The comments received and the Department's responses are set forth below.

Comment A:

The proposed amendment to 7 NYCRR Section 1900.6(b) is not consistent with 7 NYCRR Section 1900.4(m)(1) and will cause confusion.

The superintendent's stated reason for denial should be forwarded to the director of the TRC so that he or she is aware of the denial and for tracking purposes, even if no appeal is filed by the inmate.

Response:

As suggested in the comment, a nonsubstantial change to Section 1900.4(m)(1) will be made at time of adoption to reference proposed Section 1900.6(b), that requires an inmate seeking an appeal from the superintendent's denial of temporary release to submit a timely appeal to the director of the TRP.

The process of transmitting decisions made at the facility level to the director of TRP is now accomplished via computer and such decisions are based upon information gleaned from electronic inmate records that can be accessed department wide. Consequently, the exchange of supporting documentation as part of the appeal process is no longer necessary. As suggested in the comment, however, the regulation will continue to require

that the denial of temporary release by the superintendent, including his or her stated reason(s) for doing so, will continue to be transmitted to the director of TRP for tracking purposes, even in the absence of an inmate appeal.

Comment B:

The decision referenced in the phrase "disapproval decision" is unclear. The proposed amendment should be changed to instead specify the "notice of denial by the superintendent."

Response:

A nonsubstantial change to the last sentence of Section 1900.6(b) will be made at the time of adoption. The amended sentence referenced in the comment will read as follows:

A perfected appeal must be received within 30 days of the date of the notice of denial by the superintendent.

Comment C.1.:

Part 1900 should require that along with the superintendent's notice of the reason for denial, the inmate be given a notice of the right to appeal; information regarding time limits for filing form 4145 and perfecting the appeal; the documents that need to be included in perfecting an appeal; a copy of form 4145 with clear instructions for its completion; and documentation regarding the point system and criteria used to determine the number of points allotted.

Response:

A nonsubstantial change to section 1900.6(a) will also be made at the time of adoption to further clarify that the decision of the superintendent is one of the enumerated decisions that may be appealed. The notice that an inmate receives when the superintendent denies an application for temporary release states that the inmate may appeal the denial in accordance with 7 NYCRR Section 1900.6. It should be noted that form 4145 contains guidance on how it is to be completed. There are no required documents that must accompany an appeal from the superintendent's denial of temporary release. Furthermore, an appeal from the superintendent's denial of temporary release will be accepted, even if it is not submitted on form 4145. Superintendent denials are not denied on the basis of point score, point score denials are made earlier in the temporary release evaluation process.

Comment C.2.:

The reason for denial should be detailed and include the points assessed for each item in the point score system.

Response:

Point scores calculations occur prior to the superintendent's review and are not the basis for temporary release denials by the superintendent. Requiring the superintendent to provide more detailed denials would be overly burdensome and unnecessary.

Comment C.3.:

Part 1900 should be amended to require the amended rule be posted in all facility law libraries and other areas, such as housing units.

Response:

Part 1900 is currently available in correctional facility inmate law libraries statewide. It is part of the electronic inmate law library collection. Further distribution of the regulations is unnecessary and would be overly burdensome.

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Beacon Correctional Facility, Bayview Correctional Facility

I.D. No. CCS-52-13-00003-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 rulemaking to repeal sections 100.7 and 100.95 of Title 7 NYCRR.

Statutory authority: Correction Law, section 70

Subject: Beacon Correctional Facility, Bayview Correctional Facility.

Purpose: To remove the reference to correctional facilities that are no longer in operation.

Text of proposed rule: The Department of Corrections and Community Supervision repeals and reserves Section 100.7 of Title 7 NYCRR:

Section 100.7. Beacon Correctional Facility.

[(a) There shall be in the department an institution to be known as Beacon Correctional Facility, which shall be located on the site of the former Training Academy of the Fishkill Correctional Facility (known as building 60), in the Town of Beacon, Dutchess County, New York.

(b) Beacon Correctional Facility shall be a minimum security correctional facility, to be used as a general confinement facility for females 16 years of age or older.]

The Department of Corrections and Community Supervision repeals and reserves Section 100.95 of Title 7 NYCRR:

Section 100.95. Bayview Correctional Facility.

[(a) There shall be in the department a facility to be known as Bayview Correctional Facility, which shall be located in the borough of Manhattan, City and State of New York, and which shall consist of the property under the jurisdiction of the department on the land and building at 550 West 20th Street, New York, NY 10011.

(b) Bayview Correctional Facility shall be a correctional facility for females 16 years of age or older.

(c) Bayview Correctional Facility shall be classified as a medium security correctional facility, to be used for the following functions:

- (1) general confinement facility;
- (2) residential treatment facility;
- (3) detention center; and
- (4) work release facility.]

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

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

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

Consensus Rule Making Determination

The Department of Correctional and Community Supervision has determined that no person is likely to object to the proposed action. The repeal of this section removes the reference to correctional facilities that are no longer in operation. Since the facilities are no longer in operation the reference to it in the regulations is no longer applicable to any person. See SAPA Section 102(11)(a).

The Department’s authority resides in section 70 of Correction Law, which mandates that each correctional facility must be designated in the rules and regulations of the Department and assigns the Commissioner the duty to classify each facility with respect to the type of security maintained and the function as specified. See Correction Law § 70(6).

Job Impact Statement

A job impact statement is not submitted because this proposed rulemaking is removing the reference to correctional facilities that have been closed in accordance with the law; since the correctional facility is no longer in operation the removal of the reference to it has no adverse impact on jobs or employment opportunities.

Department of Financial Services

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

Financial Statement Filings and Accounting Practices and Procedures

I.D. No. DFS-52-13-00002-P

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

Proposed Action: This is a consensus rulemaking to amend Part 83 (Regulation 172) of Title 11 NYCRR.

Statutory authority: Financial Services Law, sections 202 and 302; Insurance Law, sections 107(a)(2), 301, 307, 308, 1109, 1301, 1302, 1308, 1404, 1405, 1407, 1411, 1414, 1501, 1505, 3233, 4117, 4233, 4239, 4301, 4310, 4321-a, 4322-a, 4327 and 6404; Public Health Law, sections 4403, 4403-a, 4403-(c)(12) and 4408-a; and L. 2002, ch. 599, L. 2008, ch. 311

Subject: Financial Statement Filings and Accounting Practices and Procedures.

Purpose: To update citations in Part 83 to the Accounting practices and Procedures Manual as of March 2013 (instead of 2012).

Text of proposed rule: Subdivision (c) of section 83.2 is amended to read as follows:

(c) To assist in the completion of the financial statements, the NAIC also adopts and publishes from time to time certain policy, procedures and instruction manuals. The latest of these manuals, the Accounting Practices and Procedures Manual as of March [2012] 2013 * (accounting manual) includes a body of accounting guidelines referred to as statements of statu-

tory accounting principles (SSAPs). The accounting manual shall be used in the preparation of quarterly statements and the annual statement for [2012] 2013, which will be filed in [2013] 2014.

* ACCOUNTING PRACTICES AND PROCEDURES MANUAL AS OF MARCH [2012] 2013. © Copyright 1999 – [2012] 2013 by National Association of Insurance Commissioners, in Kansas City, Missouri.

Text of proposed rule and any required statements and analyses may be obtained from: Sally Geisel, New York State Department of Financial Services, 1 State Street, New York, NY 10004, (212) 480-5287, email: sally.geisel@dfs.ny.gov

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

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

Consensus Rule Making Determination

No person is likely to object to amendment of the rule that adopts the most recent edition of the Accounting Practices and Procedures Manual As of March 2013 (“2013 Accounting Manual”), published by the National Association of Insurance Commissioners (“NAIC”), and replaces the rule’s current reference to the Accounting Practices and Procedures Manual As of March 2012. All states require insurers to comply with the 2013 Accounting Manual, which establishes uniform practices and procedures for U.S.-licensed insurers. Adoption of the rule is necessary for the Department to maintain its accreditation status with the NAIC. The NAIC-accreditation standards require that state insurance regulators have adequate statutory and administrative authority to regulate insurers’ corporate and financial affairs, and that they have the necessary resources to carry out that authority.

The Department determines this rule to be a consensus rule, as defined in State Administrative Procedure Act § 102(11) (SAPA), and is proposed pursuant to SAPA § 202(1)(b)(i). Accordingly, this rulemaking is exempt from the requirement to file a Regulatory Impact Statement, Regulatory Flexibility Analysis for Small Businesses and Local Governments or a Rural Area Flexibility Analysis.

Job Impact Statement

The Department does not believe that this rule will have any impact on jobs and employment opportunities, including self-employment opportunities. The rule codifies numerous accounting practices and procedures that had not previously been organized in such a unified and coherent manner. It adopts the most recent edition published by the National Association of Insurance Commissioners (“NAIC”) of the Accounting Practices and Procedures Manual As of March 2013 (“2013 Accounting Manual”), replacing the rule’s current reference to the Accounting Practices and Procedures Manual As of March 2012. All states require insurers to comply with the 2013 Accounting Manual, which establishes uniform practices and procedures for U.S.-licensed insurers. Adoption of the rule is necessary for the Department to maintain its accreditation status with the NAIC. The NAIC accreditation standards require that state insurance regulators have adequate statutory and administrative authority to regulate insurers’ corporate and financial affairs, and that they have the necessary resources to carry out that authority.

Department of Health

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

Expand Medicaid Coverage of Enteral Formula

I.D. No. HLT-52-13-00001-EP

Filing No. 1172

Filing Date: 2013-12-04

Effective Date: 2013-12-04

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

Proposed Action: Amendment of section 505.5 of Title 18 NYCRR.

Statutory authority: Social Services Law, sections 363-a and 365-a(2)(g); and Public Health Law, section 201(1)(v)

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

Specific reasons underlying the finding of necessity: The 2011-2012 Executive Budget placed limitations on Medicaid coverage of enteral formula. In response, stakeholders expressed the concern that these benefits limits were too restrictive as applied to a small population of individuals substantially at risk and nutritionally compromised who require oral supplemental nutrition. Consequently, in Chapter 56 of the Laws of 2012, the Legislature amended section 365-a of the Social Services Law to authorize the Department to establish standards for Medicaid coverage of enteral formula for persons with a diagnosis of HIV infection, AIDS or HIV-related illness, or other diseases and conditions. The proposed regulations carry out this Legislative intent. The Department has determined that it is necessary to adopt the regulations on an emergency basis to protect the health of medically fragile persons with declining medical and nutritional status who need access to enteral formula.

Subject: Expand Medicaid Coverage of Enteral Formula.

Purpose: To expand Medicaid coverage of enteral formula for individuals with HIV infection, AIDS or HIV-related illness or other diseases.

Text of emergency/proposed rule: Paragraph (3) of subdivision (g) of section 505.5 of Title 18 is amended to read as follows:

(3) Enteral nutritional formulas are limited to coverage for:

(i) tube-fed individuals who cannot chew or swallow food and must obtain nutrition through formula via tube;

(ii) individuals with rare inborn metabolic disorders requiring specific medical formulas to provide essential nutrients not available through any other means; [and for]

(iii) children under age 21 when caloric and dietary nutrients from food cannot be absorbed or metabolized[.] ; and

(iv) persons with a diagnosis of HIV infection, AIDS, or HIV-related illness, or other disease or condition, who are oral-fed and who:

(a) require supplemental nutrition, demonstrate documented compliance with an appropriate medical and nutritional plan of care, and have a body mass index under 18.5 as defined by the Centers for Disease Control, up to 1,000 calories per day; or

(b) require supplemental nutrition, demonstrate documented compliance with an appropriate medical and nutritional plan of care, and have a body mass index under 22 as defined by the Centers for Disease Control and a documented, unintentional weight loss of 5 percent or more within the previous 6 month period, up to 1,000 calories per day; or

(c) require total nutritional support, have a permanent structural limitation that prevents the chewing of food, and the placement of a feeding tube is medically contraindicated.

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 March 3, 2014.

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

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

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

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

Regulatory Impact Statement

Statutory Authority:

Social Services Law (SSL) section 363-a and Public Health Law section 201(1)(v) provide that the Department is the single state agency responsible for supervising the administration of the State's medical assistance ("Medicaid") program and for adopting such regulations, not inconsistent with law, as may be necessary to implement the State's Medicaid program. In addition, SSL section 365-a(2)(g) authorizes the Commissioner of the Department to establish standards related to enteral formula therapy and nutritional supplements for persons with a diagnosis of HIV infection, AIDS or HIV-related illness or other diseases and conditions.

Legislative Objective:

The legislative objective of this authority is to expand Medicaid coverage of enteral formula for individuals with HIV infection, AIDS or HIV-related illness or other diseases and conditions which can result in poor nutritional status.

Needs and Benefits:

Enteral nutritional formulas are ordered by practitioners and dispensed by pharmacy or durable medical equipment providers. Medicaid reimburses the cost of enteral formulas for administration via tube, or for oral nutrition when used for treatment of an inborn metabolic disorder, or to address growth and development issues in children. In 2012, the Legislature expanded Medicaid coverage of enteral formulas to persons with a diagnosis of HIV infection, AIDS or HIV-related illness (and potentially to persons with other diseases and conditions), subject to standards estab-

lished by the Commissioner of the Department. The statutory change was intended to benefit underweight adults and adults who have rapid short term weight loss, who need oral enteral formula to supplement their diet.

The proposed rule would provide coverage of enteral formulas to persons with a diagnosis of HIV infection, AIDS, or HIV-related illness, or other disease or condition, who are oral-fed and who: (a) require supplemental nutrition, demonstrate documented compliance with an appropriate medical and nutritional plan of care, and have a body mass index under 18.5 as defined by the Centers for Disease Control, up to 1,000 calories per day; or (b) require supplemental nutrition, demonstrate documented compliance with an appropriate medical and nutritional plan of care, and have a body mass index under 22 as defined by the Centers for Disease Control and a documented, unintentional weight loss of 5 percent or more within the previous 6 month period, up to 1,000 calories per day; or (c) require total nutritional support, have a permanent structural limitation that prevents the chewing of food, and the placement of a feeding tube is medically contraindicated.

Costs:

Costs to the State and Local Government:

The expansion of coverage of enteral formula is estimated to result in an increase in Medicaid expenditures of \$3.5 million. Because the local social services districts' share of Medicaid costs is statutorily capped, it is expected that there will be no additional costs to local governments as a result of this proposed regulation.

Costs to Private Regulated Parties:

Regulated entities will not incur any costs as a result of this rule.

Costs to the Regulatory Agency:

DOH will incur an estimated cost of \$20,000 to implement necessary changes to the automated phone authorization system, which processes the majority of enteral related authorizations for providers. Utilization management measures will reallocate existing staff resources equivalent to one full time employee.

Local Government Mandates:

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

Paperwork:

This amendment will require practitioners and dispensers to obtain any necessary authorizations and complete the related required paperwork to the extent they provide enteral formula to individuals who qualify for coverage under the new benefit expansion.

Duplication:

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

Alternatives:

The Department could expand the coverage of enteral formula to a more defined group based on age, diagnosis, or other factors. However, the proposed changes are felt to represent the most cost effective method of expanding coverage to at risk individuals not currently covered by the existing benefit limit.

Federal Standards:

This amendment does not exceed any minimum standards of the federal government for the same or similar subject areas and does not result in reimbursement by Medicaid at a higher level than established federal reimbursement for enterals.

Compliance Schedule:

It is anticipated that regulated persons would be able to comply with the rule immediately.

Regulatory Flexibility Analysis

Effect on Small Business and Local Governments:

This amendment affects 3,123 pharmacies and 369 durable medical equipment providers enrolled in the Medicaid program that actively bill Medicaid for enterals. The amendment will expand the enteral benefit which will increase Medicaid utilization and billable claims for these businesses.

The expansion of coverage of enteral formula is estimated to result in an increase in Medicaid expenditures of \$3.5 million. Because the local social services districts' share of Medicaid costs is statutorily capped, it is expected that there will be no additional costs to local governments as a result of this proposed regulation.

Compliance Requirements:

This amendment does not impose new reporting, record keeping or other compliance requirements on small businesses or local governments.

Professional Services:

No new professional services are required as a result of this amendment.

Compliance Costs:

There are no direct costs of compliance with this amendment.

Economic and Technological Feasibility:

The enteral benefit limit is operationalized through beneficiary information and the practitioner's fiscal order for the enteral formula. Based on

this information, a dispenser is able to provide enteral formula for tube-fed individuals who cannot chew or swallow food, individuals with rare inborn metabolic disorders, children when necessary to address growth and development concerns, adults who require supplemental nutrition up to 1,000 calories per day and are either underweight, or have a body mass index under 22 and have demonstrated an unintentional 5% weight loss within the previous 6 month period, and adults with a permanent structural limitation that prevents the chewing of food, for whom a feeding tube is medically contraindicated. Since the amendment will not change the way providers bill for services or affect the way the local districts contribute their local share of Medicaid expenses, there should be no concern about economic or technological difficulties associated with compliance of the proposed regulation.

Minimizing Adverse Impact:

No adverse impact is anticipated as the legislation amendment will expand the existing benefit limit.

Small Business and Local Government Participation:

The Department invited participation in developing coverage standards through email outreach, a webinar presentation and social media. Proposed coverage change options were presented. The stakeholder feedback received was given substantial weight when making the proposed regulation amendment. A second webinar will be scheduled to inform stakeholders of the specific changes that are being proposed. Upon adoption of the regulation, DOH will inform stakeholders of the changes in coverage and associated prior authorization modifications.

Cure Period:

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

Rural Area Flexibility Analysis

Types and Estimated Number of Rural Areas:

Rural areas are defined as counties with a population less than 200,000 and, for counties with a population greater than 200,000, includes towns with population densities of 150 persons or less per square mile. The following 43 counties have a population less than 200,000:

Allegany	Hamilton	Schenectady
Cattaraugus	Herkimer	Schoharie
Cayuga	Jefferson	Schuyler
Chautauqua	Lewis	Seneca
Chemung	Livingston	Steuben
Chenango	Madison	Sullivan
Clinton	Montgomery	Tioga
Columbia	Ontario	Tompkins
Cortland	Orleans	Ulster
Delaware	Oswego	Warren
Essex	Otsego	Washington
Franklin	Putnam	Wayne
Fulton	Rensselaer	Wyoming
Genesee	St. Lawrence	Yates
Greene		

The following 9 counties have certain townships with population densities of 150 persons or less per square mile:

Albany	Erie	Oneida
Broome	Monroe	Onondaga
Dutchess	Niagara	Orange

This rule will apply to 3,123 pharmacies and 369 durable medical equipment providers in New York State. These businesses are located in rural, as well as suburban and metropolitan areas of the State.

Compliance Requirements:

No new reporting, record keeping, or other compliance requirements are being imposed as a result of this proposal.

Professional Services:

No new additional professional services are required in order for providers in rural areas to comply with the proposed amendments.

Compliance Costs:

No initial capital costs will be imposed as a result of this rule, nor is there an annual cost of compliance.

Minimizing Adverse Impact:

The rule is not expected to have any adverse impact on public and private sector interests in rural areas.

Opportunity for Rural Area Participation:

The Department meets on a regular basis with providers groups such as the New York Medical Equipment Providers (NYMEP), who represents some rural providers. Webinar and social media sessions are accessible to providers statewide, including rural providers.

Job Impact Statement

Nature of Impact:

This rule will result in increased Medicaid billable claims for 3,123 pharmacies and 369 durable medical equipment providers. The increase in revenue should not have an adverse impact on jobs and employment opportunities within these businesses.

Categories and Numbers Affected:

This rule, which increases Medicaid revenue for providers, should not have any adverse effect on employment opportunities.

Regions of Adverse Impact:

No region of New York State should realize adverse impact from this rule given the potential increase in Medicaid revenue for providers.

Minimizing Adverse Impact:

No adverse impact is anticipated given that this rule expands the existing benefit limit.

Self-Employment Opportunities:

The rule is expected to have minimal impact on self-employment opportunities since it expands the benefit limit and the majority of providers that will be affected by the rule are not small businesses or sole proprietorships solely dispensing enterals to Medicaid beneficiaries.

Department of Labor

NOTICE OF ADOPTION

Farmworker Minimum Wage

I.D. No. LAB-41-13-00011-A

Filing No. 1198

Filing Date: 2013-12-10

Effective Date: 2013-12-31

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

Action taken: Amendment of Part 190 of Title 12 NYCRR.

Statutory authority: Labor Law, sections 21(11), 652, 673 and 674

Subject: Farmworker Minimum Wage.

Purpose: To comply with chapter 57 of the Laws of 2013 that increased the minimum wage.

Text or summary was published in the October 9, 2013 issue of the Register, I.D. No. LAB-41-13-00011-P.

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

Text of rule and any required statements and analyses may be obtained from: Harry Dunsker, Department of Labor, State Office Campus, Building 12, Room 509, Albany, NY 12240, (518) 457-4380, email: regulations@labor.ny.gov

Additional matter required by statute: Pursuant to Section 674(3) of the, Labor Law, Notice of Promulgation was given in the State Register on October 9, 2013, that this rulemaking will be adopted, effective December 31, 2013.

Initial Review of Rule

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

Assessment of Public Comment

1. The regulations should contain a training wage set at less than the statutory minimum wage.

The wage order already contains provisions for wage rates paid through educational and vocational programs approved by the Commissioner.

Lake George Park Commission

REVISED RULE MAKING NO HEARING(S) SCHEDULED

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

I.D. No. LGP-34-13-00001-RP

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

Proposed Action: Addition of Subpart 646-9 to Title 6 NYCRR.

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

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

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

Text of revised rule: A new Subpart, 6 NYCRR Subpart 646-9: Prohibition of Aquatic Invasive Species Introduction Into Lake George, is added to read as follows:

Section 646-9.1 Purpose, Scope and Applicability

Aquatic invasive species (AIS) pose a serious threat to the waters of Lake George and can cause significant detrimental impacts to the ecology and economy of the Lake George Park. This rule is intended to prohibit introduction of aquatic invasive species to Lake George, and to minimize spread of AIS from Lake George to other waterbodies. This Subpart creates a program whereby trailered vessels are inspected prior to launch into Lake George and upon retrieval from Lake George, to help ensure vessels are free from AIS.

This Subpart will expire as of December 31, 2015. The Commission will reevaluate the effectiveness, cost and regulatory impact of the mandatory trailered boat inspection program during the second year after the adoption of this Subpart to determine whether to continue the program, with or without modifications.

Section 646-9.2 Definitions

The following terms shall have the stated meanings whenever used in this Subpart or in documents referenced or prepared by the Commission. Other terms defined in section 645-2.1 of this Title shall have the meanings set forth in that section.

(a) "Aquatic invasive species (AIS)" means an aquatic animal or plant species that is:

(i) nonnative to the waters of Lake George; and

(ii) whose introduction causes or is likely to cause economic or environmental harm or harm to human health.

(b) "Boating season" shall mean April 15 to December 1 of each calendar year.

(c) "Cleaned, Drained and Dry" means that a trailered vessel is cleaned of all visible plant and animal growth, has had all bilges and other areas capable of storing water drained and is fully dried.

(d) "Cleaned and drained" means that a trailered vessel is cleaned of all visible plant and animal growth and has had all bilges and other areas capable of storing water drained.

(e) "Decontamination" means High Pressure Hot Water (HPHW) wash of a vessel and/or trailer, or other method determined to be as effective by the Commission, to eliminate any threat of introduction of AIS to Lake George.

(f) "Introduce" means the intentional or unintentional escape, release, dissemination or placement of a species into an ecosystem as the result of human activity.

(g) "Launch site" means any boat launch, ramp, hoist or other area on a lakefront lot that is or may be used to allow a trailered vessel to enter or launch into Lake George.

(h) "Launch operator" means the owner of the private lakefront lot upon which a launch site is located, or the operator of such launch site.

(i) "Reasonable precautions" means intentional actions that prevent or minimize the transport or introduction of invasive species.

(j) "Trailered vessel" means any vessel as defined in section 645-2.1(ca) of this Title which is towed by another vehicle. The term includes a vessel's motor, trailer, compartments, and any other associated equipment or containers that routinely or reasonably could be expected to contain, or come into contact with, water. Trailered vessel does not include seaplanes, hand-launched rafts, kayaks, belly boards, float tubes, canoes, row boats, windsurfer boards, sail boards, inner tubes, standup paddleboards or similar devices.

(k) "Vehicle inspection station" means a location designated by the Commission where inspection and, if necessary, decontamination services will take place.

(l) "Vessel inspection control seal (VICS)" means a plunger seal which is certified by the Commission and applied by a VIT or authorized launch operator and which connects a vessel to its trailer, or other device determined by the Commission to be equally as effective, to verify that vessels have met the requirements of this Subpart.

(m) "Vessel inspection technician (VIT)" means a person who is certified by the Commission to provide services in the form of inspections only, or both inspection and decontamination.

Section 646-9.3 Prohibitions

(a) It shall be unlawful for any person to launch or attempt to launch a trailered vessel into the waters of Lake George during the boating season without an intact VICS.

(b) It shall be unlawful for any person to leave a launch site during the boating season with a trailered vessel retrieved from the waters of Lake George that has not been cleaned and drained in accordance with Section 646-9.4 of this Subpart.

(c) It shall be unlawful for any person to introduce an aquatic invasive species into the waters of Lake George by any means including but not limited to aquaculture, aquarium dump, animal release, non-motorized vessels, docks, construction equipment, fishing equipment, and bait, unless such person has taken reasonable precautions as defined in this Subpart.

(d) It shall be unlawful for any person to knowingly provide inaccurate or false information to Commission personnel or a VIT concerning prior launches, launch registration, or any other information required to be provided pursuant to this Subpart.

(e) It shall be unlawful for a launch operator to allow the launch of a trailered vessel into the waters of Lake George during the boating season that is not equipped with an intact VICS applied by a VIT or authorized launch operator in accordance with this Subpart.

(f) It shall be unlawful for any person to alter or modify any VICS. This prohibition shall not apply to the removal of a VICS that has been properly installed pursuant to this Subpart prior to the vessel being launched into Lake George.

(g) It shall be unlawful for any person to use, or attempt to secure a vessel to its trailer, with an unauthorized VICS so as to avoid the requirements of this Subpart.

(h) Unless otherwise exempted by this Subpart, it shall be unlawful for any launch operator to operate a launch site without registering such launch site with the Commission and maintaining launch records as required by this Subpart.

Section 646-9.4 Vessel Inspections, Decontamination and Administration

(a) Except for activities exempted by this Subpart, all trailered vessels shall be inspected by a VIT prior to launch into Lake George during the boating season to determine that the vessel has met the clean, drained and dry standard. Trailered vessels identified by a VIT as meeting this standard shall receive a VICS.

(b) All vessels inspected pursuant to subdivision (a) of this section shall be subject to decontamination if determined not to meet the cleaned, drained and dry standard by any VIT prior to launching into Lake George during the boating season. Trailered vessels decontaminated by a VIT shall receive a VICS.

(c) Upon retrieval from the waters of Lake George during boating season, all trailered vessels must meet the cleaned and drained standard prior to leaving a launch site. Such vessels may receive a VICS by an authorized launch operator to demonstrate compliance with this Subpart. If intact, a VICS received from an authorized launch operator shall preclude the need for a trailered vessel to receive inspection by a VIT as described in subdivision (a) of this section.

(d) Within 60 days of the effective date of these regulations, a launch operator must register the launch site with the Commission on such form as the Commission may prescribe. Following the initial registration, launch sites must be registered annually by the launch operator by May 15 of each year. A launch site created after the enactment of these regulations must be registered with the Commission prior to any trailered vessels being launched or retrieved from that launch site. This requirement shall not apply to any launch sites which are owned by a State or local government or which are staffed by Commission personnel.

(e) The Commission may enter into written agreements with public launch owners and operators to implement the trailered vessel inspection program on public launch sites.

(f) All launch operators required to register pursuant to this section shall keep true and accurate records during the boating season in a manner specified by the Commission showing the following: the boat registration number of each trailered vessel launched into or retrieved from the waters of Lake George at its launch site; the VICS inventory maintained

by the launch operator; the VICS removed by the launch operator prior to a trailered vessel being launched into the waters of Lake George; the VICS applied to a trailered vessel by a launch operator upon retrieval at its launch site of a trailered vessel from the waters of Lake George. These records shall be maintained on a daily basis and retained for a minimum of three years and shall be available for inspection upon request by the Commission.

(g) Launch operators shall maintain their launch sites in a manner authorized by the Commission so as to prevent trailered vessels not equipped with an intact VICS from launching into the waters of Lake George.

(h) All VITs will be trained and certified annually by the Commission. A reasonable training fee may be charged to individuals taking the course. The Commission will identify the type and hours of training to be completed by VITs on an annual basis.

Section 646-9.5 Exemptions

Compliance with this Subpart shall not apply to:

(a) Any person who has entered into or is subject to a written agreement with the Commission in which provides for the substantial equivalent of the protections described in this Subpart.

Section 646-9.6 Severability

If any provision of this Subpart or its application to any person or circumstance is determined to be contrary to law by a court of competent jurisdiction, such determination shall not affect or impair the validity of the other provisions of this Subpart or the application to other persons and circumstances.

Revised rule compared with proposed rule: No longer repealing Subpart 646-8. Proposed addition of new Subpart 646-8 is now new Subpart 646-9. Substantial revisions were made in sections 646-9.1, 646-9.2, 646-9.3, 646-9.4, 646-9.5 and 646-9.6.

Text of revised proposed rule and any required statements and analyses may be obtained from David Wick, Executive Director, Lake George Park Commission, 75 Fort Orange Road, P.O. Box 749, Lake George, NY 12845, (518) 668-9346, email: dave@lgpc.state.ny.us

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

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

Summary of Revised Regulatory Impact Statement

This summary of the regulatory impact statement (RIS) has been prepared for the revised proposed regulation, 6 NYCRR Subpart 646-9, promulgated by the Lake George Park Commission (Commission). Articles one and two of the State Administrative Procedures Act (SAPA) contain procedural and substantive requirements with which the agencies must comply when proposing and adopting rules.

The Legislature established the Commission as an independent agency and delegated to it broad powers to protect, enhance and regulate the resources of the Lake George Park, and particularly the waters of Lake George. Environmental Conservation Law (ECL) § 43-0117(4) directs the Commission to promulgate regulations relative to the permitting of boats, the regulation of marinas, and the regulation of recreational activities to protect and preserve the water quality of Lake George, and further provides that no person "shall operate any boat or vessel, or undertake any regulated activity without complying with such regulations." ECL § 43-0107(8) provides that the Commission shall have the power to adopt, amend and repeal rules and regulations, consistent with ECL Article 43, as it deems necessary to administer Article 43, and "to do any and all things necessary or convenient to carry out the purpose and policies of this article and to exercise all powers granted by law."

The revised proposed regulations would be consistent with the legislative objectives of ECL Article 43 by regulating the use of boats on Lake George to enhance and preserve the quality of those waters for the public benefit. The revised proposed regulations are intended to protect the waters of Lake George from further infestation of Aquatic Invasive Species (AIS) and to reduce the spread and proliferation of the five AIS that are currently found in Lake George.

The Lake George communities have already expended more than \$6 million to manage three of these AIS in Lake George. It is estimated that failure to adopt appropriate measures to reduce the spread of AIS would result in more aggressive and unmanageable AIS entering Lake George. The further spread of AIS into Lake George would be expected to result in significant losses to tourism and visits to the Lake George area, with a corresponding loss of approximately \$9 million to as much as \$48 million to the local economies who depend on tourism. The RIS describes the threat of AIS in more detail.

The revised proposed regulations were drafted after a two year outreach and study of possible methods to prevent the further spread of AIS into the waters of the Lake George Park. The outreach and study looked at methods to preserve the excellent water quality of Lake George and the economic and recreational benefits associated with the Lake George Park. The results of this study determined that the most effective and practical means of

reducing the spread and infestation of new AIS into the waters of Lake George Park was through a mandatory inspection program of all trailered vessels prior to being launched into Lake George.

The revised proposed regulations would require all trailered vessels to undergo mandatory inspection and possible decontamination prior to launching into Lake George. The revised proposed regulations would require all trailered vessels to visit a regional inspection station in the Lake George watershed, and undergo a 7-10 minute invasive species inspection of the vessel and trailer. The standard for boats to pass inspection would be "cleaned, drained and dry" (CDD), which would work to prevent both visible and non-visible aquatic invasive threats.

Inspectors would be authorized by the Commission to enter the interior of boats in order to complete the inspection of all hull compartments. As part of the proposed boat inspection program, boat owners would also be required to drain the bilge and properly dispose of visible plant and animal growth prior to leaving the launch site to prevent Lake George from being a source of AIS to other water bodies. The standard for a boat exiting Lake George is "Cleaned and Drained" (C-D).

Boats that do not meet the C-D-D inspection standard would need to be washed and decontaminated at the inspection station with High Pressure Hot Water (HPHW) prior to launching. Boats with ballast tanks and bilges would need to be drained and possibly flushed with HPHW. Once the inspection and, if necessary, decontamination process is complete, the boat would be fitted with an inspection tag (Vehicle Inspection Control Seal or VICS) securing the boat to the trailer. Boats with an intact VICS would be permitted to proceed to the marina or other launch site of choice and launch into Lake George. As long as the boat's inspection tag is secured/connected to the trailer, the boat would be able to lawfully launch. Boats exiting Lake George launch sites and which meet the C-D standard could also be fitted with a VICS. These boats would be permitted to re-launch into Lake George without being re-inspected as long as the inspection tag is intact immediately prior to launch.

The revised proposed regulations would avoid undue deleterious economic effects or overly burdensome impacts to boat owners because the inspection process is expected to take less than 10 minutes and, at present, the Commission does not intend to charge a fee for such service.

Costs to launch operators are expected to be slight. Businesses would be required to register with the Commission, to monitor boats entering and leaving their launch sites, to maintain records of launches from their properties, and to secure their launch sites in some manner during off-hours. The revised proposed regulations do not mandate the method by which the launch site must be secured and businesses and other launch operators would be able to develop the most cost-effective, authorized means to meet these requirements. Marinas and other launch operators generally employ staff to assist customers in the launching of their boats and it is expected that these same employees can perform the tasks to comply with the revised proposed regulations. Most marinas and other launch operators also require a fee from boaters prior to launching from their facilities and these facilities are usually closed during off-hours. It is not expected that these businesses would incur much, if any, additional expense to comply with this regulation. The reporting requirement is also expected to be minimal. The Commission would streamline the process as much as possible by exempting from inspection boats whose last launch was in Lake George. It is expected that the mandatory boat washing program would be administered on municipal and state public launches through Memoranda of Understanding, temporary revocable permits, or other written agreements.

The costs to the Commission for administering the proposed mandatory boat inspection and washing program are expected to be approximately \$700,000 annually. The RIS provides a description of these costs as well as a description of the cost of compliance on regulated parties. The RIS also describes the possible funding alternatives available for this program.

The RIS provides a description of the various alternatives to the regulation considered by the Commission and a description of the benefits and potential adverse impacts as a result of the Regulation, including a description of the potential adverse and beneficial impacts on tourism and the local economy.

The RIS describes the reporting and compliance requirements for the regulated parties and local governments. The RIS also describes the interaction of the proposed regulations with existing state and local Laws, as well as the Commission's own regulations. The RIS also describes the expected interaction with the Department of Environmental Conservation and other state and local agencies in implementing the proposed program.

As discussed in the RIS, the revised proposed regulations provide for an expiration of the regulations after two years to allow the Commission the opportunity to review and reassess the efficacy, cost and benefits of the program at the end of the second season after its implementation.

Revised Regulatory Flexibility Analysis

1. Effect of the Rule:

The revised proposed regulation may impose some slight additional

costs to small businesses in the Lake George area who would be required to maintain records of launches from their properties and who would be required to register their launch sites with the Commission prior to allowing any launches. These businesses would also be required to secure their launch sites in some manner during off-hours. This might require the launch operator to install a gate or surveillance equipment for its launch sites. These costs are expected to be minor, however, because the regulation does not mandate the method by which launch sites must be secured, only that the Commission approve the method of security. Most businesses already limit launches to business hours only so this requirement is anticipated to have little effect on these businesses.

Under the proposed program, an employee of a business would be expected to check each trailered vessel that is launched from the property to insure that the boat had an inspection tag or "seal," called a Vehicle Inspection Control Seal (VICS), indicating it has been inspected by one of the Commission staff or that it was last launched in Lake George. Boat owners that are exiting Lake George would also be required to drain their bilges and remove visible plant and animal matter from their boats and trailers prior to leaving the launch site. Launch operators may then re-seal the boat to its trailer to allow the boat to re-launch into Lake George without being re-inspected. Businesses would be required to keep and maintain records of all trailered vessels that were launched from the facility and to keep all VICS tags that were removed from the boats, as well records of all trailered vessels leaving the launch site and to which VICS were attached, and VICS that were not used.

Public launch sites and those launch sites that are staffed by Commission personnel would not be required to register with the Commission. It is anticipated that the Commission would enter into written Memoranda of Understanding (MOU) with the municipalities that own the public launch sites to implement the program on those launch sites.

There are currently only two municipalities with public launch sites: the Town of Putnam and the Town of Hague. The Town of Hague has previously employed a boat steward to assist at its launches and may not be required to hire any additional employees in order to implement the proposed program. The Town of Putnam may need to hire additional persons to monitor boats coming in and out of the lake at its two launch sites. The Commission anticipates entering into MOUs with these municipalities to ensure that municipal launch sites are adequately secured and monitored in an effective and efficient manner. The Town of Bolton has an interest in Norwal Marina, as does the Department of Environmental Conservation (DEC). The Commission anticipates staffing inspectors at this launch site, however, thereby minimizing any cost to the Town.

Marinas and other launch operators generally require a fee from boaters prior to allowing them to launch from their facilities and these facilities are usually closed during off-hours. It is, therefore, not expected that these businesses would incur much, if any, expense to comply with the revised proposed regulation and implement the proposed mandatory boat inspection program.

Moreover, boats whose last launch was in Lake George are exempt from further inspections. Thus the rule might result in an increase in sales and reservations at local businesses, such as marinas and quick launches, for boats that are only launched in Lake George during a boating season. The program would be implemented only during the boating season, from April 15 to December 1, of each year. Boats would be permitted to launch into Lake George from December 1 to April 15 without being inspected.

Requiring boat inspections may also cause some potential tourists to stay away from Lake George or choose to visit the Lake less frequently. This would have impacts on tourism and the regional economy. Data from other lakes with inspection programs indicate that the changes in boat usage after mandatory boat inspections are implemented have been minimal or within the normal range of annual variability.¹

The inconvenience and costs of the revised proposed regulations would be offset by the enormous benefit the regulation is expected to have on the quality of the waters of Lake George, which, in turn, would have a benefit on public health and recreation, the local economy, and tourism in the Lake George area. There are currently 5 invasive species in Lake George and the Commission actively manages three of these: Eurasian Water Milfoil (EWM), zebra mussels and Asian clams. Without an effective prevention strategy, dozens of additional AIS may be introduced to the waters of Lake George. The primary vector by which these species may arrive is trailered boats coming in from nearby waterways such as Lake Champlain, the Hudson River, and from the Great Lakes and Finger Lakes region. AIS have the potential to cause significant, long-term damage to the Lake George environment and cost millions of dollars to control in the future. These negative impacts could extend to the local tax base and the robust tourism industry.

The cost of managing AIS is reported to be a minimum of 16 times higher than the cost of prevention.² Over the last 26 years (1986-2012), it has cost the Lake George community an estimated \$6.5 million dollars to combat EWM, zebra mussels and Asian clams. The future threat of new

AIS introductions to Lake George itself is high and the outcome of large or extensive uncontrolled growth of AIS may result in significant impacts to the regional economy. Most AIS are more likely to occur in the "littoral zone" of the lake. This zone is described as the shallow water area extending from the shoreline to a point where water depth is approximately ten (10) meters in depth.³ The littoral zone of Lake George comprises approximately 8,058 acres or twenty-nine percent (29%) of the overall water coverage area and is the area where activities such as boating, swimming, scuba diving, and much of the other recreational activities occur. This area also serves as the primary habitat for many game fish attracting recreational and sport fishermen or "anglers."

The adverse economic effect of future AIS invasions and outbreaks would be most felt along the 3,130 shoreline properties around Lake George and extending through eight (8) municipalities (the Towns of Dresden, Fort Ann, Putnam, Bolton, Hague, Lake George (inclusive of the Village of Lake George), Queensbury and Ticonderoga) within three (3) counties (Washington, Warren and Essex). Additionally, it is acknowledged that the economic impact of AIS may have implications to upland (off shore) properties. The revised proposed rule is needed to reduce the risk of introduction and spread of AIS by subjecting all trailered vessels to inspection, and if determined necessary, decontamination prior to launch into the waters of Lake George and by requiring boaters exiting Lake George to clean and drain their boats and trailers. It is anticipated that a mandatory boat inspection program would have a net positive impact on the water quality, ecology, recreational uses and economic health of the Lake George Park by significantly reducing the threat of AIS from being introduced into Lake George and causing new ecological impacts. Additionally, the requirement to clean and drain boats exiting Lake George would help limit the spread of AIS from Lake George to other waterbodies.

2. Compliance Requirements:

Local launch operators would be required to secure their launch sites in off-hours in some fashion that is acceptable to the Commission. This might require the launch operator to install a gate or surveillance equipment at its launch site. Most businesses already limit launches to business hours only; therefore, this requirement would have little effect on these businesses.

Businesses would also be expected to keep and maintain records of trailered vessels that launch from their facilities to ensure that such boats have been properly inspected prior to launching into Lake George. Boats that have been properly inspected would arrive at the launch sites sealed to their trailers with an inspection tag or VICS. The launch operator would need to cut the seal from the boat's trailer prior to allowing the boat to launch into the Lake. The launch operator would be required to keep a record of each trailered vessel launched from its facility and maintain each seal removed. The launch operator or employee would also re-seal any trailered vessel requesting to be re-sealed upon exiting the Lake, if the boat and trailer are cleaned and dried. Boats that are re-sealed upon leaving the Lake may reenter the lake without being re-inspected. The launch operator would be required to keep records of any boats that leave the Lake from its facility which are re-sealed, and to keep any unused seals. These record-keeping requirements are not expected to be extensive or burdensome because most businesses that operate a launch already employ sufficient staff to perform these tasks. Moreover, the Commission is committed to work with the affected businesses to find the most cost-effective solutions to implement the regulations. Local businesses currently are required to obtain authorization or permits from the Commission for their marina activities and prior to constructing and installing docks on their facilities. The additional interaction with the Commission that would be required by this regulation is therefore not expected to be overly burdensome.

There are three municipal launches on Lake George: one at the Town of Hague and two in the Town of Putnam. The Commission anticipates that these launch sites would be operated under MOUs between the Commission and the public launch owners.

3. Professional Services:

No professional services are anticipated to be necessary for any marina or other launch operator to comply with the revised proposed regulations.

4. Compliance Costs:

The costs for compliance for marinas and other businesses around Lake George with launch sites would be the cost of additional personnel, if any, to monitor launches and maintain records and the cost to secure the business or municipality's launch during off-hours. Each launch operator would be permitted to use whatever method it chose, with the Commission's authorization, to secure its launch site, thus allowing the property owner to use the most cost-effective means available to comply with the rule.

Municipal launches may incur some slight additional costs to voluntarily operate the proposed boat inspection program on their launch sites. The Town of Hague is not expected to require any additional personnel to operate the program because it previously employed a boat steward to assist at its launch. The Town of Putnam may need to hire two additional

personnel to monitor boats coming in and out of Lake George at its launch sites. The Commission anticipates entering into an MOU with these towns to resolve security and operational issues at these municipal launch sites and to minimize the cost of implementing the program. The Commission anticipates staffing the Norowal marina and thereby minimizing the cost to the Town of Bolton.

5. Economic and Technological Feasibility:

Compliance with the rule is both economically and technologically feasible. As set forth above, most marinas and other businesses with launch sites already restrict launches to business hours and employ staff to assist customers in launching their boats. These staff members could perform the additional requirement of ensuring that those trailered vessels launched from their facilities have been properly inspected prior to launch. The recordkeeping and reporting requirements would not require any specific expertise and businesses should be able to comply with these requirements with minimum additional effort.

6. Minimizing Adverse Impact:

The revised proposed regulations minimize adverse impact to the potentially affected businesses and local communities. The mandatory boat inspection program is the most feasible method to prevent the further spread of aquatic invasive species into Lake George, while also minimizing impacts to boaters, local businesses, and others. Although there may be some initial adverse impacts to boaters who are unfamiliar with the cleaned, drained and dry protocol and who do not understand the boat inspection program, the Commission has and will continue a boater education and public outreach program to educate boaters. The revised proposed regulation also provides that boats that were last launched in Lake George would not need to be re-inspected before re-launching into the Lake and may provide a means whereby "frozen boats," i.e. boats which have been out in below-freezing temperatures for at least 3 weeks could be certified as invasives-free, and tagged as if they were inspected. The Commission estimates that approximately two-thirds of all boats that annually launch in Lake George only launch in Lake George.

7. Small Business and Local Government Participation:

The Commission has conducted many meetings with municipalities, local chambers of commerce, business representatives and environmental groups related to the proposed program and regulations. These conversations included discussion of alternative means and methods of preventing the spread of aquatic invasive species into the Lake. No alternative methods have been revealed that would be less adverse to small businesses and, at the same time, meet the objectives of the proposed program. The municipalities and the majority of the businesses involved in these discussions have been in favor of the regulation. Some businesses, while not opposed to the regulation, have expressed concern that they may lose customers to other lakes or businesses who do not comply with the regulations. Education and, if necessary, enforcement would be key to ensuring that any adverse effects to businesses are minimized. The Commission has held two additional public meetings in the Lake George area on the proposed regulations and has reviewed and summarized all public comment received. The revised proposed regulations reflect these comments. The Commission will provide educational information about the program on its web site and would work with the local media, not-for-profit groups and other agencies such as the DEC and the Office of Parks, Recreation and Historic Preservation to seek their assistance in a public outreach and education campaign.

8. Cure Period:

There is no "cure period" in these regulations as described in the State Administrative Procedures Act § 207. Because of the extensive public outreach during the two years prior to the adoption of these regulations, the continuing public outreach that is expected to occur during the implementation of the program, and the extensive media coverage of the program, it has been determined that a cure period would not be necessary. Moreover, the revised proposed regulations themselves, which strive to reduce the spread of invasive species into Lake George, do not lend themselves to allowing a cure period. The Commission anticipates that it would adopt the final regulations several months prior to their effective date, thereby providing additional time for regulated entities to be educated about, and comply with, the regulations.

¹ The Affects of Mandatory Boat Inspections on Recreational Boating; Brad Wright; University of Northern Colorado; 2009.

² U.S. Congress, Office of Technology Assessment, Harmful Non-Indigenous Species in the United States, OTA-F-565 (Washington, DC: U.S. Government Printing Office, September 1993).

³ Boylen, C.W. and A. Kuliopulos, Further Studies on the Bathymetry of Lake George, reprinted from The Lake George Ecosystem, ed. C.W. Boylen, Lake George Association (1981).

Revised Rural Area Flexibility Analysis

1. Types and Estimated Numbers of Rural Areas:

The Lake George Park is a rural area comprising some 300 square miles

in land and water surface area. Of the approximately 255 miles of land surface, some 100 square miles is State-owned forest preserves. The whole area is located within the Adirondack Mountain region occupying an area at the south-eastern portion of the Adirondack Park. It is characterized by steeply sloped forested mountains and hillside areas with a number of streams and smaller lakes and ponds. Lake George is a 44 square mile glacially-formed lake that is 32 miles long, has an average width of 1.5 miles and an average depth of approximately 70 feet. Lake George includes approximately 131 miles of shoreline and is fed by more than 150 streams.

Development in the Lake George Park is concentrated along the lakeshore and nearby State highways of Route 9, 9L and 9N. There are fifteen local government entities, three counties and twelve municipalities all, or partially, within the Lake George Park. The population of the park expands by ten-fold in the summer months.

2. Reporting, Recordkeeping and Other Compliance Requirements, and Professional Services:

Local launch operators would be required to secure their launch sites in off-hours in some manner that is acceptable to the Commission. This might require the launch operator to install a gate or surveillance equipment for its launch sites. Most businesses already limit launches to business hours only, so this is anticipated to have little effect on these businesses.

Under the program, the launch operator or employee would be required to check each trailered vessel that is launched from the property to ensure that the boat has an authorized tag or "seal," called the Vehicle Inspection Control Seal (VICS) indicating that it had been inspected by one of the Commission staff at an inspection station or that it was last launched in Lake George. The launch operator or employee would be expected to cut the VICS from the boat's trailer prior to allowing the boat to launch in the Lake. The launch operator or employee would also need to re-seal any trailered vessel if the boat owner requested it after having cleaned and drained ("C-D") the trailer and boat, meaning that all bilges were drained and all plant and animal matter removed from the boat and trailer, upon exiting the Lake. Boats that are re-sealed upon leaving the Lake may re-enter the Lake without being re-inspected. Businesses would be required to keep and maintain records of all trailered vessels that were launched or retrieved from the facility and to keep all VICS that were removed from the boats as well as those that were not used.

These record-keeping requirements are not expected to be extensive or burdensome because most businesses that operate a launch already employ sufficient staff to perform these tasks. Moreover, the Commission is committed to work with the affected businesses to find the most cost-effective solution to implement the revised proposed regulations. Local businesses currently are required to obtain authorization or permits from the Commission for their marina activities and prior to constructing and installing docks on their facilities. The additional interaction with the Commission that would be required by this regulation is therefore not expected to be overly burdensome on these businesses. Further, the program would be implemented during the boating season, from April 15 to December 1. Boats may enter Lake George from December 1 to April 15 without being inspected. Residences along Lake George from which trailered vessels may launch into the Lake would also need to register with the Commission prior to allowing any trailered vessels to launch from their property. This would create a new burden for some of these property owners, but the Commission would work with these owners as well to assist them in complying with the regulation.

There are three municipal public launches on Lake George: one at the Town of Hague and two in the Town of Putnam. In addition, the Town of Bolton has an interest in the Norowal Marina, as does the Department of Environmental Conservation. The Commission anticipates that these launch sites would be operated under Memoranda of Understanding (MOU) between the Commission and the public launch operators.

No professional services are anticipated to be necessary for any marina, other private launch operator, or municipality.

3. Costs:

The costs for compliance for marinas and other businesses around Lake George with launch sites would be the cost of additional personnel, if any, to monitor launches and maintain records, and the cost to secure launch site during off-hours. Each launch operator would be permitted to use whatever method it chose, with the Commission's authorization, to secure its launch site, thus allowing the property owner to use the most cost-effective means available to comply with the rule. The costs for private residences that allow launch of trailered vessels from their property is anticipated to be minimal because there should not be a high volume of boats launching into Lake George from any property and therefore any record keeping and reporting requirements would be minimal.

Municipal launches may incur some slight additional costs to voluntarily operate the proposed trailered vessel inspection program on their launch sites. The Town of Hague has previously employed a boat steward to assist at its launches and is not expected to require any additional

personnel to implement the program. The Town of Putnam may need to hire two additional persons to monitor boats coming in and out of Lake George at its launch sites. The Commission anticipates entering into an MOU with these towns to resolve security and operational issues at these municipal launch sites and to minimize the cost of implementing the program. The Commission also anticipates staffing inspectors at the Norowal marina, thereby minimizing any cost to the Town of Bolton.

Requiring boat inspections may cause some individuals to stay away from Lake George or choose to visit the Lake less frequently. This would have impacts on tourism and the regional economy. Data from other lakes with inspection programs indicate that changes in boat usage after mandatory boat inspections are implemented have been minimal or within the annual variability. The inconvenience and costs of the revised proposed regulations would be offset by the enormous benefit the regulation is expected to have on the quality of the waters of Lake George, which, in turn, would have a benefit on public health and recreation, the local economy, and tourism in the Lake George area.

The revised proposed regulations if adopted might result in an increase in sales and/or reservations at marinas and local businesses for vessels that are and are moored or docked at these facilities and only launched in Lake George once during a boating season, because such boats would be exempt from multiple inspections during the boating season. Overall, the program is expected to increase the quality of the water of Lake George and thereby preserve and increase tourism and jobs for the area.

The revised proposed regulation would increase costs and demands on the Commission staff due to the need for staffing a minimum of five inspection and decontamination stations; increased public outreach and education; and enforcement of the revised proposed regulation. The annual cost for staffing the proposed program is anticipated to be \$700,000.

4. Minimizing Adverse Impact:

The revised proposed regulation minimizes adverse impact to the potentially affected businesses and local communities. The mandatory boat inspection program is the most feasible method to prevent the further spread of AIS into Lake George, while minimizing impacts to boaters, local businesses, private residences, and others. Although there may be some initial adverse impacts to boaters who are unfamiliar with the cleaned, drained and dry protocol and who do not understand the boat inspection program, the Commission has and will continue a boater education program and public outreach to educate boaters on the importance of achieving the C-D-D standard prior to launching into Lake George and the cleaned and drained (C-D) standard when existing Lake George. The revised proposed regulations also provides that boats that were last launched in Lake George would not need to be re-inspected before re-launching into the Lake and may provide a means whereby "frozen boats," i.e. boats which have been out in below-freezing temperatures for at least 3 weeks could be certified as invasive-free, and tagged as if they were inspected. The Commission estimates that approximately two-thirds of all boats that annually launch in Lake George only launch in Lake George during a boating season.

5. Rural Area Participation:

The Commission has conducted many meetings with municipalities, local chambers of commerce, business representatives, and environmental groups related to the proposed program and regulations. These conversations included discussion of alternative means and methods of preventing the spread of aquatic invasive species into the Lake. No alternative methods have been revealed that would be less adverse to small businesses and, at the same time, meet the objectives of the proposed program. The municipalities and the majority of the businesses involved in these discussions have been in favor of the regulation. Some businesses, while not opposed to the regulation, have expressed concern that they may lose customers to other lakes or businesses who do not comply with the regulations. Education and, if necessary, enforcement would be key to ensuring that any adverse effects to businesses are minimized. The Commission has held two additional public meetings in the Lake George area on the proposed regulations and has reviewed and summarized all public comment received. The revised proposed regulations reflect these public comments. The Commission would provide educational information about the program on its web site and would work with the local media, not-for-profit groups and other agencies such as DEC and the Office of Parks, Recreation and Historic Preservation to seek their assistance in a public outreach and education campaign.

Revised Job Impact Statement

1. Nature of Impact:

The revised proposed regulation is not expected to have any significant impact on job numbers. There are some businesses, such as marinas, hotels and motels, and quick launches, which would be required to maintain records of launches from their properties and who would be required to register their launch sites with the Commission prior to allowing any launches. These businesses would also be required to secure their launch sites in some manner during off-hours. This might require the launch

operator to install a gate or surveillance equipment for its launch sites. The costs of complying with the revised proposed regulation are expected to be minor, however, because the regulation does not mandate the method by which launch sites must be secured, only that the Commission approve the method of security. Most businesses already limit launches to business hours only and already employ sufficient staff to perform these tasks, so it is anticipated to have little effect on these businesses.

Requiring boat inspections may also cause some potential tourists to stay away from Lake George or choose to visit the lake less frequently. This would have impacts on tourism and regional economy. Data from other lakes with inspection programs indicate that changes in boat usage after mandatory boat inspections are implemented is minimal or is within the annual variability.¹

The inconvenience and costs of the regulation are offset by the enormous benefit the revised proposed regulation would be expected to have on Lake George's water quality, to the public health and recreation, and to the local economy and tourism in the Lake George area. AIS have the potential to cause significant, long-term damage to the Lake George environment and cost millions of dollars to control in the future. These negative impacts could extend to the local tax base and the robust tourism industry.

The cost of managing existing AIS is extensive. Over the last 26 years (1986-2012), it has cost the Lake George community an estimated \$6.5 million dollars to combat three different AIS in the Lake. The future threat of new AIS introductions into Lake George is high and the outcome of large or extensive uncontrolled growth of AIS may result in significant impacts to the regional economy. The areas where AIS are expected to proliferate are in the same areas where most recreational activities occur and most launches, docks and moorings are located. The adverse economic effect of future AIS invasions and outbreaks will be most felt along the 3,130 shoreline properties along Lake George and extending through eight (8) municipalities (the Towns of Dresden, Fort Ann, Putnam, Bolton, Hague, Lake George (inclusive of the Village of Lake George), Queensbury and Ticonderoga) within three (3) counties (Washington, Warren and Essex). The proliferation of additional AIS into Lake George is expected to have a significant negative impact on tourism to the region, negatively impacting jobs in the area. If nothing is done to stop the spread of existing and new AIS into Lake George, the loss in total annual tourism expenditures is estimated to range between \$9.74 million to \$48.7 million. The annual loss in visitor events is estimated to be approximately 146,600 to 733,000 events. Tourism-related employment is estimated to experience a net loss of approximately 162 to 800 jobs with a corresponding reduction in wages paid ranging from approximately \$4.55 million to \$22.74 million.

The revised proposed rule is the most efficient and effective method of reducing spread of existing AIS within Lake George and to other waterbodies and preventing the introduction of new AIS into Lake George. The revised proposed rule is expected to reduce the risk of introduction and spread of aquatic invasive species by subjecting all trailered vessels to inspection, and if determined necessary, decontamination prior to launch into Lake George. It is anticipated that a mandatory boat inspection program would have a net positive impact on the water quality, ecology, recreational uses and economic health of Lake George by significantly reducing the threat of AIS from being introduced to the waters into Lake George and causing new ecological impacts.

The overall impact on jobs is expected to be positive, because the Commission anticipates hiring 30-40 additional staff to perform inspections and, if necessary, decontamination, if this proposed program is implemented.

2. Categories and Numbers Affected:

The jobs affected would primarily be laborer types, requiring some training related to inspection and decontamination of boats. These jobs would be seasonal from April through November, depending annually on weather conditions.

3. Regions of Adverse Impact:

The revised proposed regulations would apply only to Lake George.

4. Minimizing Adverse Impacts:

The revised proposed regulation minimizes adverse impact to the potentially affected businesses and local communities. The mandatory boat inspection program is the most feasible method to prevent the further spread of aquatic invasive species into Lake George, while also minimizing impacts to boaters, private residences, and others. Although there may be some initial adverse impacts to boaters who are unfamiliar with the cleaned, drained and dry protocol and who do not understand the boat inspection program, the Commission has and will continue a boater education and public outreach program to educate boaters. The revised proposed regulation also provides that boats that were last launched in Lake George would not need to be re-inspected before re-launching into the Lake and may provide a means whereby "frozen boats," i.e. boats which have been out in below-freezing temperatures for at least 3 weeks could be certified as invasive-free, and tagged as if they were inspected. The Commission

estimates that approximately two-thirds of all boats that annually launch in Lake George only launch in Lake George.

The proposed mandatory trailered vessel inspection program is expected to have a positive impact on jobs because of the anticipated need for additional staffing at the Commission. Local businesses and municipalities may also hire additional personnel to ensure that trailered vessels launched from their facilities have been properly sealed evidencing prior inspection, and that trailered vessels are cleaned and drained prior to leaving the launch, and re-sealed, if requested.

5. Self-employment Opportunities:

All inspectors would be hired and trained by the Commission, so the program does not anticipate any self-employment opportunities.

¹ The Affects of Mandatory Boat Inspections on Recreational Boating; Brad Wright; University of Northern Colorado; 2009.

Assessment of Public Comment

1. Introduction

The Lake George Park Commission (Commission) held two public hearings on the proposed Aquatic Invasive Species Prevention Regulations. Public Hearing #1 was held on October 10, 2013 at 1:00 p.m. at the Roaring Brook Ranch, Lake George, NY. Public Hearing #2 was held on October 10, 2013 at 6:00 p.m. at the Best Western Motel in Ticonderoga, NY. Both hearings were attended by Bruce E. Young, Commission Chairperson, as well as Thomas K. Conerty, James T. Kneeshaw, Joe Stanek, Dave G. Floyd, and Kenneth W. Parker.

Below is a summary of the comments received at these hearings, as well as the written comments received, and the Commission's responses. Similar comments are grouped together.

2. Public Hearing # 1

Approximately 26 members of the public were in attendance at this meeting. Seven members of the public commented at the hearing.

a. Village of Lake George Mayor Robert Blaise applauded the Commission members and staff for the proposed regulations. He also spoke on behalf of the members in the S. A. V. E. Lake George group in supporting the regulations and advised that SAVE is willing to fund half of the money necessary to start the program. The S.A.V.E. group is also prepared to front the money necessary to train inspectors and to raise money to fund additional wash stations if necessary. He also recommended locking access to the Lake.

Dennis Dickinson, Lake George Town Supervisor, spoke in support of the program.

Rosemary Pusateri spoke in favor of the program and asked that the regulations be further restricted to eliminate all "loop holes."

Walt Lender, Executive Director of the Lake George Association (LGA), said that the LGA is very supportive of this program and is willing to partner with the program with data collection, public outreach, etc. Mr. Lender also presented an approved LGA Board Resolution showing support for this program.

Bob Henke, Argyle Town Supervisor and representative for the Washington County Sportsman Federation, spoke in favor of the program and said that he is concerned about the green algae forming in areas in Lake George affecting its water quality. Mr. Henke said that, in addition to addressing invasive species, the Commission should also address wastewater as this provides nutrients for invasive plant species to grow.

Response: These comments were noted by the Commission and the Commission extended its great appreciation to the S.A.V.E. group in working to protect Lake George from new aquatic invasive species.

b. John Salvador of Dunham's Bay expressed concern that the regulations did not include the statement on the statutory authority of the Lake George Park Commission and that the Regulatory Impact Statement, Regulatory Flexibility Analysis and the Job Impact Statement had not been prepared. He further indicated that the regulations referred to "the Lake George Park" which might include Trout Lake. He also asked if Sea Planes are exempt from the regulations.

Response: The Commission submitted a Job Impact Statement, Summary Regulatory Impact Statement, Regulatory Flexibility Analysis and Rural Area Flexibility Analysis to the New York State Register as required by the State Administrative Procedures Act. Those documents, as well as a full Regulatory Impact Statement, were also available at the Commission office. Trout Lake was considered for inclusion in the proposed regulations, but has been removed because of logistical reasons. The revised proposed regulations have been modified to apply only to Lake George and not its tributaries. Sea Planes are not included in the definition of trailered vessels as they are not considered to be a primary vector for the introduction of AIS.

c. Phillip Mitchell of Dunham's Bay questioned the funding and possible fee increases for boaters on Lake George.

Response: The Final Lake George Aquatic Invasive Species Prevention Plan/Generic Environmental Impact Statement and the Revised Regula-

tory Impact Statement discuss the potential funding sources for the proposed program. Currently, there has been an offer made by the local S.A.V.E. group (comprised of local municipalities and non-profit organizations) to fund 50% of the program cost annually if the other 50% would be provided by New York State. As such, the proposed regulations have been revised to eliminate fees for boat inspections or decontaminations.

3. Public Hearing #2:

The hearing opened with an informal question and answer period and then the Commission received comments on the proposed regulations. Six members of the public commented at the hearing.

a. Steve Ramant, Hague Councilman, thanked the Commission for initiating this program. He and others believed that the introduction of Aquatic Invasive Species into Lake George did not come from local boaters, but from visitors to the Lake. He believed that boaters visiting the lake should be required to pay a fee so that they will feel more invested in the process. He was also concerned about the cost to the Town of Hague to employ someone to monitor the site.

Bernard Renois from Hague agreed with Mr. Ramant's comments.

Bruce Clark from Hague also agreed with Mr. Ramant.

Response: An equitable funding scenario for the implementation of the proposed program has been discussed at all levels and at every step of the Plan's development. There is no easy means by which to define "visitor" boats, as any boat can be retrieved from Lake George at any time, travel to another waterbody and return to launch into Lake George. As such, there is no known provision for segregating "visitors" from "locals" in relation to funding this program. Comment on launch security at the Hague launch site is noted. The Commission anticipates coordinating with the Town of Hague on implementation of the proposed program at the Town's public launch site through a written agreement.

f. Al Rider, Chairman of the Hague Water Quality Awareness Committee, said that every launch needs to have an attendant or this program will never work.

Response: Each private launch site on Lake George would be required to register with the Commission, and launch operators would need to have Commission-approved security plans in place to ensure against uninspected launch. The program would be operated at public launch sites through agreements with the State or local government owners.

g. Chris Navitsky, Lake George Waterkeeper and resident of the Town of Hague, also spoke in favor of the program and expressed concerns about loopholes at public launch sites during off-hours.

Response: The Commission believes that the language presented in the draft regulations and the revised proposed regulations does not include any "loopholes" or double standards. It would be unlawful to launch a trailered vessel into Lake George unless that boat has been inspected pursuant to these regulations. The mandatory boat inspection program would be administered on public launch sites through agreements between the public owners of the sites and the Commission. In addition, it is anticipated that the inspection station at Mossy Point would have extended hours to allow for early morning launches by fishermen and other Lake users. Further, it is anticipated that all public launch sites would be staffed up to 24 hours per day to prevent unlawful launches.

h. John Hanna from Hague spoke in favor of the program.

Response: The Commission noted this comment.

4. Written Comments Received by the Commission:

The Commission received 51 written comments about the regulations, from private citizens, hotel and motel owners, fishermen and women, and environmental groups, including the Nature Conservancy and the Lake George Land Conservancy. Each of these groups expressed approval of the proposed mandatory boat inspection program. Many expressed concerns that all launch sites be gated or secured during off-hours to prevent uninspected boats from entering Lake George. Many groups and residents expressed concern about the funding of the program and the possible increase in boat registration or dock fees. Similar to the comments received at the public hearings, many residents and groups believed that the majority of the cost of the program should be placed on visitors to the Lake.

a. Private businesses expressed some concern about implementing the program at their hotels and motels.

b. Some members of the public commented that the Commission should consider adding rules requiring boats to be inspected and decontaminated on exit from Lake George as well as entrance. Others commented that non-trailered vessels, such as canoes, should also be included.

Response: The proposed regulations have been revised to require boats leaving Lake George to be clean and drained prior to leaving the launch site. It is economically and logistically unfeasible for boats leaving the Lake to be decontaminated again. The proposed mandatory boat inspection program does not apply to non-trailered vessels. However, under existing Commission regulations, any vessel, regardless of size, which has visible plant or animal material attached to it, is currently prohibited from

entering Lake George. The Commission has assured businesses that it would meet with each launch operator prior to the start of the proposed program to assist them in complying with the regulations and implementing the inspection program at their launch sites.

c. Some comments suggested that those boats that are used exclusively on Lake George should be exempt from the program and that inspection sites should be more conveniently located. These members also suggested charging a fee for decontamination, rather than inspection.

Response: Many of the details of the program in this comment are discussed in the Plan. The proposed program is focused on boats which are trailered and launched into Lake George. Inherent in this program is the premise that boats which do not leave Lake George not need to be launched except once per year, and therefore those boats would only be inspected once. They would not need to be inspected again as long as they did not leave the Lake. The revised proposed regulation reflect this change. The Commission is in discussions with Hulett's Landing Marina in the Town of Dresden to train its staff to conduct inspections and decontamination of trailered vessels at its marina.

The concept of a fee for decontamination rather than inspection was discussed in great detail over the course of development of the proposed program. However, as stated above, it is currently proposed that there would be no fee to boaters for inspection or decontamination. The revised proposed regulations reflect this change.

d. Some comments expressed concern about how the launch registrations would work with the existing marina regulations. There was a concern that launch operators who are not classified as marinas may be required to meet the requirements of a "class A marina" under the regulations. There was also a concern whether marina owners who do not register as a launch site would lose their class A marina permit.

Response: Only those facilities which meet the criteria for Class A marinas under 656-2.1(f) are required to have a Class A Marina permit; the proposed regulations do not affect this requirement. Any launch operator failing to comply with the proposed regulations, if adopted, would be subject to legal action by the Commission under its powers and authorities provided in ECL Articles 43 and 71.

Public Service Commission

PROPOSED RULE MAKING HEARING(S) SCHEDULED

Central Hudson Proposes to Retain a Portion of the Property Tax Refunds

I.D. No. PSC-52-13-00013-P

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

Proposed Action: The Commission is considering a petition filed by Central Hudson Gas & Electric Corporation (Central Hudson) for approval to retain about \$1.02 million of the approximate \$2.71 million total property tax refund proceeds.

Statutory authority: Public Service Law, section 113(2)

Subject: Central Hudson proposes to retain a portion of the property tax refunds.

Purpose: To consider Central Hudson's proposal to retain a portion of the property tax refunds.

Public hearing(s) will be held at: 10:00 a.m., March 18, 2014 at Public Service Commission, Three Empire State Plaza, 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: The Commission is considering a proposal filed by Central Hudson Gas & Electric Corporation (Central Hudson or the Company) to share approximately \$2.71 million in property tax refunds between ratepayers and the Company. Public Service Law § 113(2) provides that the Commission, after hearing, may determine the extent to which such refunds to a regulated utility will be passed on to the utility's customers. Under its two tiered sharing proposal, Central Hudson would retain, after subtracting expenses, 25% of the refund due for 2001 through

June 2007 and, 15% of the refund due for July 2007 through 2013. The Company also proposes to retain about \$238,600 of the approximate \$290,500 total interest expected. The Commission may accept, reject or modify Central Hudson's proposal, and resolve related matters.

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

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

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

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

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

(13-M-0505SP1)

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

New York State Reliability Council's Establishment of an Installed Reserve Margin of 17.0%

I.D. No. PSC-52-13-00010-P

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

Proposed Action: The Commission is considering whether to adopt, modify, or reject, in whole or in part, an Installed Reserve Margin of 17.0% established by the New York State Reliability Council for the Capability Year beginning May 1, 2014, and ending April 30, 2015.

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

Subject: New York State Reliability Council's establishment of an Installed Reserve Margin of 17.0%.

Purpose: To adopt an Installed Reserve Margin for the Capability Year beginning May 1, 2014, and ending April 30, 2015.

Substance of proposed rule: The Public Service Commission (Commission) is considering whether to adopt, modify, or reject, in whole or in part, an Installed Reserve Margin (IRM) of 17.0% established by the New York State Reliability Council's Executive Committee on December 6, 2013, for the Capability Year beginning May 1, 2014, and ending April 30, 2015. The IRM is based on the Technical Study Report dated December 6, 2013, and entitled "New York Control Area Installed Capacity Requirements For the Period May 2014 to April 2015" (Report), which was filed with the Commission on December 9, 2013.

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

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

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

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

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

(07-E-0088SP8)

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Petition for Submetering of Electricity

I.D. No. PSC-52-13-00011-P

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

Proposed Action: The Public Service Commission is considering whether to grant, deny or modify, in whole or part, the petition filed by Riverview Commons I LLC to submeter electricity at 168-176 North Water Street, Rochester, New York.

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

Subject: Petition for submetering of electricity.

Purpose: To consider the request of Riverview Commons I LLC to submeter electricity at 168-176 North Water Street, Rochester, New York.

Substance of proposed rule: The Public Service Commission is considering whether to grant, deny or modify, in whole or part, the petition filed by Riverview Commons I LLC to submeter electricity at 168-176 North Water Street, Rochester, New York, located in the territory of Rochester Gas & Electric Corporation.

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

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

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

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

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

(13-E-0522SP1)

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

Development of Reliability Contingency Plan(s) to Address the Potential Retirement of Indian Point Energy Center (IPEC)

I.D. No. PSC-52-13-00012-P

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

Proposed Action: The Commission is considering whether to adopt, modify, or reject, in whole or in part, the petition for rehearing and reconsideration, and motion for clarification, which were filed in response to the Commission's Order issued on November 4, 2013.

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

Subject: Development of reliability contingency plan(s) to address the potential retirement of Indian Point Energy Center (IPEC).

Purpose: To address the petition for rehearing and reconsideration/motion for clarification of the IPEC reliability contingency plan(s).

Substance of proposed rule: The Public Service Commission (Commission) is considering whether to adopt, modify, or reject, in whole or in part, the petition for rehearing and reconsideration, and motion for clarification, which were filed in response to the Commission's Order issued on November 4, 2013. The Commission may address the petition for rehearing and reconsideration, which was filed by the Retail Energy Supply Association on November 29, 2013, and the motion for clarification, which was filed by the Long Island Power Authority on December 4, 2013, and any related matters, in establishing reliability contingency plan(s) to address the potential retirement of the Indian Point Energy Center.

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

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

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

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

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

(12-E-0503SP5)

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

Whether a Proposed Agreement for the Provision of Water Service by Saratoga Water Services, Inc. is in the Public Interest

I.D. No. PSC-52-13-00014-P

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

Proposed Action: The Public Service Commission is considering whether to approve, deny, or modify, in whole or in part, the petition of Saratoga Water Services, Inc. for a waiver of the company's tariff and approval of the terms of a service agreement.

Statutory authority: Public Service Law, sections 4(1), 20(1) and 89-b

Subject: Whether a proposed agreement for the provision of water service by Saratoga Water Services, Inc. is in the public interest.

Purpose: Whether the Commission should issue an order approving the proposed provision of water service.

Substance of proposed rule: The Commission is considering whether to approve, deny, or modify, in whole or in part a Petition in which Saratoga Water Services, Inc. (Saratoga) seeks issuance of an Order (a) approving the terms and conditions of a certain "Agreement For The Provision of Water Service", dated July 16, 2012 (Agreement) between Saratoga and Mark Breslin and Patricia Breslin as being in the public interest; (b) determining that the provision of water service by Saratoga in accordance with the terms set forth in the Agreement is in the public interest; (c) waiving Saratoga's tariff provisions to the extent they are inconsistent with the Agreement, and (d) waiving the applicability certain provisions of 16 NYCRR § 501 regarding main extensions to the extent they are inconsistent with the Agreement.

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

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

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

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

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

(12-W-0429SP1)

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

To Enter into a Loan Agreement with the Banks for Up to an Amount of \$94,000

I.D. No. PSC-52-13-00015-P

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

Proposed Action: The Commission is considering a petition filed by Knolls Water Company for approval of a loan of up to \$94,000 to install a new storage tank. The Company is requesting that the loan be paid back through a customer surcharge.

Statutory authority: Public Service Law, section 89-f

Subject: To enter into a loan agreement with the banks for up to an amount of \$94,000.

Purpose: To consider allowing Knolls Water Company to enter into a long-term loan agreement.

Substance of proposed rule: The Public Service Commission is considering whether to approve, deny or modify, in whole or in part, a petition by Knolls Water Company for approval of a loan agreement. The Company plans to use the funds to replace an old water storage tank and install a

new tank. Knolls Water Company wants to borrow, on a long-term basis, an amount not to exceed \$94,000. The Company is requesting that the loan be repaid through a customer surcharge. The Commission shall consider all other related matters.

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

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

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

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

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

(13-W-0494SP1)

Department of Taxation and Finance

ERRATUM

A Notice of Adoption, I.D. No. TAF-39-13-00008-A, pertaining to Offers in Compromise, published in the December 11, 2013 issue of the *State Register* contained the incorrect statements. Following are the correct statements:

Substance of final rule: This rule amends the Compromises Regulations, as published in Chapter XIII of Title 20 NYCRR, in response to legislative changes enacted by Chapter 469 of the Laws of 2011.

Chapter 469 of the Laws of 2011 amended the Tax Law to expand the commissioner's authority to compromise liability for a tax or other imposition administered by the commissioner to cover situations where collection in full would cause the taxpayer undue economic hardship. The legislation eliminated the requirement that the amount payable through an offer in compromise must be at least the amount recoverable through legal proceedings and provided instead that the amount payable through an offer in compromise is an amount that reasonably reflects collection potential or is otherwise justified by proofs offered by the taxpayer. The legislation also provided that no offer in compromise will be acceptable if it would undermine tax compliance by other taxpayers or be adverse to the interests of the State.

The purpose of this rule is to update the regulations to reflect these legislative changes and to define what constitutes undue economic hardship, as required by Chapter 469.

Section 1 of the rule repeals obsolete section 7-4.5 of the Business Corporation Franchise Regulations based on statutory amendments made by Chapter 469 of the Laws of 2011. In addition, this provision is unnecessary because offers in compromise for all taxpayers are governed by Chapter XIII.

Section 2 amends section 4000.4 for the Bureau of Conciliation and Mediation Services Regulations to delete reference to outdated internal procedures.

Section 3 amends section 5000.1 of the Compromises Regulations to provide that a tax or other imposition administered by the commissioner may be compromised if collection in full would cause an individual taxpayer undue economic hardship. The amendments reflect statutory changes made by Chapter 469 of the Laws of 2011, including deletion of an obsolete reference to article 2-E of the General City Law.

Sections 4 and 12 add new sections 5000.1(c) and 5005.1(b)(5), respectively, to reflect the statutory changes that an offer in compromise will not be accepted for any reason where acceptance of the offer would undermine voluntary compliance with the Tax Law or would not be in the best interests of the State.

Sections 5 and 13 amend sections 5000.3 and 5005.1, respectively, to delete obsolete requirements regarding payments, provide that forms are available on the department's website, and make other technical amendments.

Section 6 amends section 5000.4 to reflect the statutory change raising the threshold for requiring an opinion of counsel from \$25,000 to \$50,000 and to make other technical amendments.

Section 7 amends section 5000.5(b)(2) to provide for an offer in compromise based on undue economic hardship and to modify the minimum offer requirement to indicate that the amount acceptable in compromise must reasonably reflect collection potential. Reasonable collection potential is based on the total realizable value of the taxpayer's assets and the amount that could reasonably be expected to be collected from the taxpayer's anticipated future income. This section further explains how to value assets and future income.

Section 8 amends section 5005.1(a) to provide that other impositions administered by the commissioner, as well as taxes, may be compromised. The amendments reflect statutory changes made by Chapter 469 of the Laws of 2011.

Section 9 amends section 5005.1(b)(1) to provide for an offer in compromise based on undue economic hardship and to modify the minimum offer requirement to indicate that the amount acceptable in compromise must reasonably reflect collection potential. The amendments reflect statutory changes made by Chapter 469 of the Laws of 2011.

Section 10 adds new paragraph (3) to section 5005.1(b) to provide that being unable to pay reasonable basic living expenses constitutes undue economic hardship. The section further elaborates what expenses are considered basic living expenses, and other factors that support an undue economic hardship determination.

Section 11 amends renumbered section 5005.1(b)(4) to provide that reasonable collection potential is based on the total realizable value of the taxpayer's assets and the amount that could reasonably be expected to be collected from the taxpayer's anticipated future income. This section further explains how to value the assets and future income.

Section 14 amends section 5005.1(e)(2)(i) to add failure to show that collection in full would cause an individual taxpayer undue economic hardship to the reasons that the department may reject an offer in compromise, and clarifies that evidence of conveyance of assets for less than fair market value is another reason that the department may reject an offer in compromise if the conveyance is after the taxpayer has knowledge of the liability.

Section 15 amends section 5005.1(e)(3) to delete language related to obsolete procedures regarding the refunding of money paid on offers that have been withdrawn.

Revised Regulatory Impact Statement, Regulatory Flexibility Analysis, Rural Area Flexibility Analysis and Job Impact Statement: A revised Regulatory Impact Statement, Statement in Lieu of a Regulatory Flexibility Analysis for Small Businesses and Local Governments, Statement in Lieu of a Rural Area Flexibility Analysis, and Job Impact Exemption are not required to be submitted with this rule because the revisions made to the proposed rule are not substantial and do not affect any of the statements made in the documents submitted with the proposal.

Amendments to section 4000.4 were added to the rule to delete reference to outdated internal procedures and section 5000.3(f) was further amended to make a minor editorial change and modify an incomplete Tax Law reference.

Assessment of Public Comment: Written comments were received on behalf of The Legal Aid Society's Low-Income Taxpayer Clinic regarding proposal TAF-39-13-00008-P, which amends Parts 5000 and 5005 of Title 20 NYCRR.

Chapter 469 of the Laws of 2011 amended the Tax Law to expand the Commissioner's authority to compromise liability for taxes or other impositions administered by the Commissioner to cover situations where collection in full would cause the taxpayer undue economic hardship. In addition, the legislation also provided that no offer in compromise will be acceptable if it would undermine tax compliance or be adverse to the interests of the State (Tax Law, section 171, subdivision fifteenth, as amended.)

The primary purpose of the proposed rule is to define what constitutes undue economic hardship, as required by Chapter 469. In addition, the rule reflects other legislative changes.

The writer indicates, "The proposed provision lacks critical guidance with respect to consideration of criminal convictions, despite the fact that this information is considered by the Department." She states that the Department requests information concerning certain criminal convictions and that, based on her organization's experience, the offers are rejected on public policy grounds if the applicants have the subject criminal convictions. She suggests the rule be amended to preclude automatic

rejection of offers based on criminal convictions and to set forth factors to be considered in determining whether to accept the offer in these cases. She cites provisions of Article 23-A of the Correction Law regarding licensure and employment of persons previously convicted of criminal offenses.

20 NYCRR section 5005.1(e)(2)(i)(h), which is not being amended by the proposed rule, includes, among examples of reasons an offer in compromise may be rejected, where the tax liability sought to be compromised directly relates to any crime for which the taxpayer has been convicted. The rule does not require automatic rejection of an offer for any specific reason. While taxpayers seeking to compromise their liabilities are asked to provide information about convictions within the past five years for crimes involving unlawful possession or acquisition of property or income obtained by fraud, theft, or other illegal means, the Department looks at the facts and circumstances of each case in determining whether acceptance of an offer would undermine voluntary compliance or not be in the best interests of the State. Therefore, the Department made no changes to the proposal in response to the comments.