

# RULE MAKING ACTIVITIES

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

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

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

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## Board of Commissioner of Pilots

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

#### Supplementary Fees—Port of New York

I.D. No. COP-15-15-00014-P

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

**Proposed Action:** Amendment of section 55.1 of Title 21 NYCRR.

**Statutory authority:** Navigation Law, section 95

**Subject:** Supplementary fees—Port of New York.

**Purpose:** Establishes rates and charges for pilotage in the Port of New York.

**Text of proposed rule:** Section 55.1. Supplementary fees—Port of New York

(a) For transporting a vessel between points indicated on the chart below, the fee shall be [\$1.25] \$2.90 per pilotage unit, with a minimum charge of [\$75] \$700 and a maximum charge of [\$500] \$1,450.

Charges

(b) Charges for other services.

(1) In any case where no other fee shall have been established by the Navigation Law or these regulations, the fee for transporting a vessel within the Port of New York shall be [\$100] \$700.

(2) Vessels returning from sea in consequence of head winds or stress of weather shall pay full pilotage.

(3) [For delivering a letter on board a vessel coming to New York ordering it to go instead to another port without entering the Port of New York, the fee shall be \$50.] *When a pilot, for the convenience of the vessel*

*awaiting berth or tide, is detained or delayed, the fee shall be \$150 per half hour or part of thereof.*

[(4)] A pilot detained on board a vessel on account of quarantinable disease shall be entitled to a fee of \$50 for each hour detained.]

[(5)] In any case when the rendering of service is delayed for the convenience of the vessel, the pilot shall be entitled to \$50 for each hour or part thereof. However, if the pilot's services are used within one hour, no charge will be incurred.] (4) *When a pilot is dismissed without rendering service, the pilot shall be entitled to \$1,000 or Base Pilotage Tariff, whichever is less.*

[(6)] (5) When a pilot, for the convenience of the vessel for any reason, is ordered to stand by, the fee shall be [\$50] \$150 [an] *per half hour* for the time on board but the minimum fee shall be [\$150] \$600.

[(7)] A vessel that passes the Narrows inbound after 6:00 p.m. and anchors, and then gets underway after 6:00 the following morning shall be subject to a transporting fee per the tables.]

[(8)] When a pilot is discharged from a vessel within the Port of New York and the vessel later proceeds to a berth or another anchorage with a Sandy Hook pilot on board, a transporting fee shall apply.] (6) *When an additional pilot is requested by a vessel, the fee shall be one half of Base Pilotage Tariff.*

[(9)] (7) Whenever, under permission granted by commissioners' regulations, a pilot shall assist in either the docking or the undocking of a vessel in the Port of New York, such pilot may collect fees as follows in addition to any fee otherwise established:

(i) without assistance of tugs or bow thruster, [25] 33 percent of the [statutory rate for registered vessels] *base pilotage tariff*;

(ii) without assistance of tugs but with assistance of a bow thruster, [15] 26 percent of the [statutory rate for registered vessels] *base pilotage tariff*;

(iii) with the assistance of a tug or tugs, [10] 20 percent of the [statutory rate for registered vessels] *base pilotage tariff*.

[(10)] (8) When a pilot is called upon to swing a ship for the purpose of adjusting compasses or calibration of direction finders or both, there shall be a fee of [\$50] \$150 in addition to the regular pilotage.

[(11)] (9) The fee for anchoring in the vicinity of the pilot station, when a Sandy Hook pilot is employed for that purpose, shall be [\$175] \$700.

[(12)] (10) Vessels arriving at the pilot station *requesting a pilot* without at least [six] *twenty-four* hours prior notice shall be charged an additional fee of [\$250] 20 percent of base pilotage tariff but the minimum fee shall be \$500.

[(13)] (11) If the arrival of a vessel is cancelled less than six hours before its scheduled arrival time, there shall be a charge of [\$150] 20 percent of base pilotage tariff but the minimum fee shall be \$500.

[(14)] (12) If a vessel arrives at the pilot station more than [one] *two* hours later than its scheduled arrival time and the pilot vessel on station or the pilot office has not been notified of the delayed arrival at least [three] six hours before the scheduled arrival time, there shall be a charge of [\$50] \$150 *per half hour* or part thereof. The maximum charge shall *not exceed* [be \$300] 20 percent of base pilotage tariff.

[(15)] (13) If an order to pilot a vessel outbound is received less than three hours prior to sailing time, there shall be a charge of [\$100] \$300 [in addition to the regular pilotage].

All charges covered by this subdivision shall be in addition to other fees prescribed by the Navigation Law and these regulations.

**Text of proposed rule and any required statements and analyses may be obtained from:** Frank Keane, Board of Commissioner of Pilots of the State of New York, 17 Battery Place, Suite 1230, New York, NY 10004, (212) 425-5027, email: FWKeane@bdcommpilotsny.org

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

**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.

## Department of Corrections and Community Supervision

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

**Taconic Correctional Facility**

**I.D. No.** CCS-15-15-00002-P

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

**Proposed Action:** This is a consensus rule making to repeal section 100.82(d) and (e) of Title 7 NYCRR.

**Statutory authority:** Correctional Law, section 70

**Subject:** Taconic Correctional Facility.

**Purpose:** Remove reference to functions that are no longer operational at this correctional facility.

**Text of proposed rule:** Amend Section 100.82 of 7 NYCRR, as follows:

100.82 Taconic Correctional Facility.

(a) There shall be in the department an institution to be known as Taconic Correctional Facility, which shall be located on the grounds of Bedford Hills Correctional Facility at Bedford Hills in Westchester County, New York, on that portion of the property under the jurisdiction of the department located on the northeast side of Harris Road.

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

(c) Taconic Correctional Facility shall be classified as a medium security correctional facility, to be used as a general confinement facility.

[(d) An approximate 200-bed annex/unit on the grounds of Taconic Correctional Facility shall also be used as an alcohol and substance abuse treatment correctional annex.

(e) An approximate 30-bed unit on the grounds of Taconic Correctional Facility shall also be used as a residential treatment facility.]

**Text of proposed rule and any required statements and analyses may be obtained from:** Kevin P. Bruen, 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@DOCCS.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 Corrections and Community Supervision (DOCCS) has determined that no person is likely to object to the proposed action. The amendment of this section removes the reference to functions that are no longer operational at a correctional facility and are 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 will merely amend the regulation to be consistent with the current functions of Taconic Correctional Facility; therefore it has no adverse impact on jobs or employment opportunities.

## Department of Environmental Conservation

### EMERGENCY RULE MAKING

**Extend Bay Scallop Open Season for 2015**

**I.D. No.** ENV-15-15-00001-E

**Filing No.** 226

**Filing Date:** 2015-03-27

**Effective Date:** 2015-03-27

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

**Action taken:** Amendment of Part 49 of Title 6 NYCRR.

**Statutory authority:** Environmental Conservation Law, section 13-0327

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

**Specific reasons underlying the finding of necessity:** Promulgating this regulation on an emergency basis is necessary to extend the bay scallop season by one month before the season closes on March 31. The extremely harsh winter and freezing temperatures made most of the areas in Peconic Bays and adjacent waters inaccessible for scallop harvest for up to 5 weeks, causing commercial harvesters to lose a significant portion of their income potential during the winter. This regulation would provide additional economic opportunities for commercial harvesters to make up revenues lost during the winter months while still providing for the conservation of viable bay scallop resources in State waters. It is in the best interests of the general welfare of New York State's commercial shellfish industry to implement these regulations before the closure of the current bay scallop season on March 31.

New York's bay scallop resource is primarily located in the waters of Peconic and Gardiners Bays in eastern Suffolk County and situated within the five east end townships of Riverhead, Southold, Shelter Island, Southampton and East Hampton. The open season for bay scallop harvest is the first Monday in November (opened on November 3, 2014) through March 31. Bay scallop harvest has been increasing in the past few years, providing a new source of income for commercial shellfishermen during the late fall/winter months. In 2014, bay scallop landings were just over 100,000 pounds with a dockside value of \$1.5 million dollars as compared to 2013 landings of 32,000 pounds. The 2014 bay scallop landings represent the highest annual harvest reported since 1985. The current bay scallop season opened in November with more than one hundred boats working in the Peconic Bays and was expected to be another banner year for bay scallop harvest.

Bay scallop harvest in Peconic Bays historically averaged about 300,000 pounds per year and provided commercial harvesters with a significant portion of their income in the late fall and winter months. The bay scallop population on the east end was decimated in 1985 and through 1994 due to the occurrence and repeated blooms of the harmful algal bloom known as the Brown Tide. State law was amended in 2005 and subsequently DEC adopted regulations in 2006, with the support of commercial harvesters and east end towns, to delay the opening date of the bay scallop season by 3 weeks to allow for growth, maturity and spawning potential to be maximized before scallops could be harvested. Additionally, bay scallop restoration efforts have been undertaken in Peconic Bays to help restore this commercially important fishery.

The record cold temperatures this winter have caused widespread freezing of creeks, bays and harbors, preventing commercial harvesters from harvesting bay scallops in most areas since early February. Some of these areas remain inaccessible due to ice, which leaves very little opportunity to harvest bay scallops in these areas before the season closes on March 31.

Bay scallops are short-lived and only live about two years. Because of the bay scallop's short lifespan, legal-sized adult scallops will likely die before the summer spawning period and will not survive for the opening of the next season in November. This will be an unnecessary loss of a valuable marine resource and source of income potential for commercial fishery participants while providing only minimal conservation results toward ensuring the long-term viability of the bay scallop population. The juvenile "bug" scallops would not be affected by a one month extension of the open season since they are not large enough to be legally taken this season and will represent the spawning and adult population for next year's harvest.

The promulgation of this regulation on an emergency basis is necessary because the normal rule making process would not promulgate these regulations in the time frame necessary to provide for additional harvesting opportunities before the end of the open season on March 31.

**Subject:** Extend bay scallop open season for 2015.

**Purpose:** To provide additional harvesting opportunities to commercial bay scallop harvesters due to extreme winter conditions this year.

**Text of emergency rule:** New paragraph 6 NYCRR 49.1(b)(1) is adopted to read as follows:

(1) For 2015, bay scallops may be taken during the period from January 1 to April 30, both inclusive.

New subparagraph 49.1(f)(1)(i) is adopted to read as follows:

(i) For 2015, no person shall possess bay scallops for sale for food purposes from May 1 to the first Monday in November. For 2015, the provisions of this section shall not prohibit the possession of bay scallops, or sale of such bay scallops, which have been taken from approved areas during the period from January 1 to April 30, both inclusive, shucked and packed in approved packages and frozen, and thereafter kept in a frozen state.

**This notice is intended** to serve only as an emergency adoption, to be valid for 90 days or less. This rule expires June 24, 2015.

**Text of rule and any required statements and analyses may be obtained from:** Debra Barnes, New York State Department of Environmental Conservation, 205 North Belle Mead Road, Suite 1, East Setauket, NY 11733, (631) 444-0477, email: debra.barnes@dec.ny.gov

**Additional matter required by statute:** Pursuant to the State Environmental Quality Review Act, a short environmental assessment form is on file at NYSDEC.

#### Regulatory Impact Statement

##### 1. Statutory authority:

Environmental Conservation Law (ECL) Section 13-0327 authorizes the Department of Environmental Conservation (DEC) to fix by regulation measures for the management of scallops including size limits, catch and possession limits, open and closed seasons, closed areas, restrictions on manner of taking and landing, requirements for permits and eligibility, recordkeeping and identification requirements, and requirements relating to transportation, possession and sale.

##### 2. Legislative objectives:

It is the objective of the above cited statutory authority that DEC establishes conservation measures necessary to promote and restore the viability of sustainable bay scallop populations in Peconic Bays and other waters of the marine district.

##### 3. Needs and benefits:

The extraordinary record cold temperatures this winter have caused widespread freezing of the creeks, harbors and bays, preventing shellfish harvesters from harvesting bay scallops in State waters since early February. Some areas in the Peconic bays are still inaccessible due to ice, creating a significant financial hardship for commercial harvesters that rely on this important fishery for a significant portion of their income during the winter months. The bay scallop season opened on November 3, 2014 and landing reports for November and December projected a significantly productive harvest for this year's season. This emergency rule is needed to extend the bay scallop season for one month from March 31 to April 30, 2015 for the current season only. The extension will provide increased harvesting opportunities for harvesters to make up income lost during the season due to extreme winter icing conditions which prevented harvesting in Peconic Bays and other areas of the marine district for about 5 weeks this winter.

##### 4. Costs:

###### (a) Cost to State government:

There are no new costs to state government resulting from this action.

###### (b) Cost to local government:

There will be no costs to local governments.

###### (c) Cost to private regulated parties:

There are no costs to regulated parties resulting from this action. The rule will provide additional economic opportunities for the regulated parties to make up for revenues lost during the winter months in 2015.

(d) Costs to the regulating agency for implementation and continued administration of the rule:

There will be no costs to DEC for implementation and administration of this rule.

##### 5. Local government mandates:

The proposed rule does not impose any mandates on local government.

##### 6. Paperwork:

None.

##### 7. Duplication:

The proposed rule does not duplicate any state or federal requirement.

##### 8. Alternatives:

A "no action" alternative was considered. If this rule is not adopted by March 31, 2015, the bay scallop season will close. Because of the bay scallop's short lifespan (about 2 years), legal-sized adult scallops will likely die before the summer spawning period and will not survive for the opening of the season in November. Failure to adopt this rule as a one-time extension of the bay scallop season would result in an unnecessary loss of a valuable marine resource and income potential for commercial shellfish harvesters and would serve as a minimal protection or conservation measure for ensuring the long-term viability of the bay scallop population. This alternative was rejected because it does not provide any economic relief and compensation to the fishery participants and affords only minimal conservation of bay scallop resources.

A "15 day extension" of the open season for this year was considered. The record cold temperatures this winter caused extensive freezing of local waters making them inaccessible to bay scallop harvest for up to 5 weeks. Some areas in the western portion of Peconic Bays are still frozen and inaccessible to harvest. Commercial harvesters have lost a significant portion of their income this winter due to the severe weather conditions that prevented harvesting in state waters. A one-time extension of the open season for 15 days would only provide minimal economic relief to fishermen who were out of work for more than one month. This alternative was rejected as not providing the greatest practicable economic benefit to the shellfish industry.

##### 9. Federal standards:

None.

##### 10. Compliance schedule:

The emergency regulations will take effect upon filing of the rule with the Department of State. Compliance with the rule would be required immediately. DEC will provide electronic and mail notifications to regulated parties to advise them of the extension of the open season, and dates for legal possession and sale of bay scallops. DEC will update its public website to reflect these changes and also anticipates issuing a press release to provide additional notification to the public and regulated parties.

#### Regulatory Flexibility Analysis

##### 1. Effect of rule:

Small businesses affected by this rule will include shellfish harvesters, shippers, and bay scallop shucker/packers. The number of shellfish harvesters engaged in the commercial harvest of bay scallops varies each year based on availability of the resource. For 2014, there were a total of 1,859 shellfish digger permit holders, 197 shellfish shipper permit holders and 41 bay scallop shipper permit holders (shucker/packer). In an average year, the number of commercial scallop harvesters landing bays scallops ranges from 125 to 150 at the beginning of the season in November and decreases to about 20 to 30 full-time harvesters in the winter months.

The record cold temperatures this winter caused widespread freezing of the creeks, harbors and bays, preventing commercial harvesters from harvesting bay scallops in State waters of the Peconic Bays since early February. Commercial scallop harvesters expect some of these areas to be inaccessible for at least several weeks leaving very little opportunity to harvest and make up for lost income before the season closes on March 31. This emergency rule will extend the open bay scallop season by one month from March 31 to April 30, 2015 for the current season only. Commercial harvesters will be afforded additional harvest opportunities to make up income lost due to the extraordinary icing and inaccessibility of the bay scallop resource this season. It is expected that this rule will provide increased revenues to shellfish harvesters, bay scallop shippers (shucker/packers) and local seafood markets, allowing them to take advantage of increased harvesting opportunities and availability of scallop resources by an extension of the open season for bay scallop harvest, possession, and sale.

##### 2. Compliance requirements:

The rule would extend the open season for bay scallops in state waters by one month from March 31 to April 30, 2015. The provisions of the rule would impose no additional compliance requirements on the industry and would provide for additional income to be made by harvesters, shippers and local seafood markets.

##### 3. Professional services:

None.

##### 4. Compliance costs:

There are no capital costs that will be incurred by the regulated business or industry to comply with the rule.

##### 5. Economic and technological feasibility:

There is no additional technology required for small businesses or local governments, so there are no economic or technological impacts for these entities. This action has been determined to be economically feasible for all affected parties. The rule will provide additional economic opportunities for the regulated parties to make up for revenues lost during the winter months in 2015.

##### 6. Minimizing adverse impact:

The rule would not impose any adverse impacts on the regulated shellfish industry and businesses. The extension of the bay scallop open season, and legal possession and sale provisions will have a positive effect on the shellfish industry as well as wholesale and retail markets for these food products. The rule is designed to afford adequate protection of bay scallop resources, while at the same time allow for additional harvest to be undertaken at levels that do not adversely impact the long term viability of the resource.

7. Small business and local government participation:

The rule is supported by commercial harvesters, shippers and local seafood markets. The rule is in response to several requests received from shellfishermen from the east end towns of Southold and Southampton who were significantly impacted by the harsh winter conditions which prevented harvest of bay scallops and resulted in the loss of income from this important commercial fishery.

8. Cure period or other opportunity for ameliorative action:

Pursuant to SAPA 202-b (1-a)(b), no such cure period is included in the rule because of the potential adverse impact on the resource. Cure periods for the illegal taking of shellfish is neither desirable nor recommended. Immediate compliance is required to ensure the general welfare of the public and the resource is protected.

9. Initial review of rule:

DEC will conduct an initial review of the rule within three years as required by SAPA section 207.

**Rural Area Flexibility Analysis**

The Department of Environmental Conservation has determined that this rule will not impose any adverse impact on rural areas. There are no rural areas within the marine and coastal district. The bay scallop fishery which is directly affected by the proposed rule is primarily located in the waters of Peconic and Gardiners Bays in eastern Suffolk County and situated within the five east end townships of Riverhead, Southold, Shelter Island, Southampton and East Hampton. The bay scallop fishery is located entirely within the marine and coastal district, and is not located adjacent to any rural areas of the state. Further, the proposed rule does not impose any reporting, record-keeping, or other compliance requirements on public or private entities in rural areas. Since no rural areas will be affected by the proposed amendments of 6 NYCRR Part 49, a Rural Area Flexibility Analysis is not required.

**Job Impact Statement**

The Department of Environmental Conservation (DEC) has determined that the proposed rule will not have a substantial adverse impact on jobs and employment opportunities. Therefore, a job impact statement is not required.

The emergency rule is needed to extend the bay scallop season for one month from March 31 to April 30, 2015 for the current season only. The rule also extends the legal possession and sale provisions of regulations for the same time period to be consistent with the extension of the open season. The rule is intended to have a positive impact on commercial scallop harvesters, shippers and local seafood markets by providing additional opportunities to harvest bay scallops and make up for income lost as a result of the extensive icing of marine embayments this winter. Approximately 125 to 150 commercial shellfish harvesters participate in bay scallop harvest during a portion of the season and about 20 to 30 are likely to be actively engaged in commercial harvest during the winter months. These permit holders are expected to benefit from the rule which provides for additional harvesting opportunities and increased income potential by the extension of the bay scallop season by one month for this year.

This rule making will impact bay scallop harvesters working in State waters primarily located in Peconic and Gardiners Bays in eastern Suffolk County and situated within the five east end townships of Riverhead, Southold, Shelter Island, Southampton and East Hampton. This rule making will have a positive impact on the shellfish industry by providing additional harvesting opportunities for commercial harvesters and increasing availability of seafood products for shippers and local seafood markets. Failure to adopt this rule will result in lost income for commercial permit holders and loss of revenues to the local economy. In 2014, commercial bay scallop landings were just over 100,000 pounds with a dockside value of approximately \$1.5 million.

The open season extension is intended to maximize the potential income by commercial harvesters and mitigate financial hardship caused by loss of shellfishing opportunities due to extensive icing of local embayments this winter. The extension of the open season by one month will provide for increased revenues by commercial harvesters and shippers while providing protection for the viability of bay scallop resources in the Peconic Bays.

Based on the above and DEC's knowledge of similar regulations in other states, DEC has concluded that there will not be any substantial adverse impacts on jobs or employment opportunities to shellfish harvesters or shellfish shippers as a consequence of this rule.

## Department of Health

### NOTICE OF ADOPTION

**Medical Use of Marihuana**

**I.D. No.** HLT-52-14-00013-A

**Filing No.** 227

**Filing Date:** 2015-03-31

**Effective Date:** 2015-04-15

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

**Action taken:** Addition of Part 1004; and amendment of Subpart 55-2 of Title 10 NYCRR.

**Statutory authority:** Public Health Law, section 3369-a

**Subject:** Medical Use of Marihuana.

**Purpose:** To comprehensively regulate the manufacture, sale and use of medical marihuana.

**Substance of final rule:** Pursuant to the authority vested in the Commissioner of Health by Section 3369-a of the Public Health Law (PHL), a new Chapter XIII, Part 1004 is hereby added to Title 10 (Health) of the Official Compilation of Codes, Rules and Regulations of the State of New York, and in accordance with section 502 of the PHL, Subpart 55-2 of Title 10 is amended, to be effective upon publication of a Notice of Adoption in the New York State Register, to read as follows:

§ 1004.1 Practitioner registration. Establishes a process for practitioners who have completed an educational course approved by the Commissioner on the use of medical marihuana under Title V-A of the Public Health Law to register with the department to issue patient certification.

§ 1004.2 Practitioner issuance of certification. Establishes a process for registered practitioners to issue a certification to patients with certain severe debilitating or life-threatening conditions, with certain clinically associated conditions or complications that are likely to receive therapeutic or palliative benefit from the treatment of medical marihuana to be able to receive approved medical marihuana products from a registered organization.

§ 1004.3 Application for registration as a certified patient. Provides the criteria by which a person may obtain a registration as a certified patient and receive a registry identification card.

§ 1004.4 Designated caregiver registration. Caregivers designated to handle approved medical marihuana products on behalf of certified patients are required to register with the department according to the procedures detailed in this section and to obtain a registry identification card.

§ 1004.5 Application for initial registration as a registered organization. Establishes the application process for registered organizations interested in manufacturing and dispensing approved medical marihuana products. Provides that no person or entity shall manufacture or dispense medical marihuana without such registration.

§ 1004.6 Consideration of registered organization applications. Requires potential registered organizations to submit an application fee of \$10,000, accompanied by a check for an additional \$200,000, the latter of which will be refunded to applicants not selected as registered organizations. Provides that the department shall initially register up to five applicants as registered organizations according to enumerated factors. Requires that the applicant allow for reasonable access to its facilities for inspection by the department. Provides that registrations shall be valid for two years, except that initial registrations may be extended up to eleven months by the commissioner.

§ 1004.7 Application for renewal of registered organization registrations. Establishes the process by which registered organizations renew their registration. Requires an application fee of \$10,000, accompanied by a check for an additional \$200,000, the latter of which will be refunded to applicants not granted renewal registration. Provides an opportunity to submit additional information or to demand a hearing for applicants not granted renewal registration.

§ 1004.8 Registrations non-transferable. Prohibits the transfer or assignment of registrations issued under this part.

§ 1004.9 Failure to operate. Provides that a registration shall be surrendered to the department if a registered organization fails to begin operations to the satisfaction of the department within six months of the issuance of a registration.

§ 1004.10 Registered organizations; general requirements. Lists

requirements for registered organizations, including making its books and facilities available for monitoring by the department; submitting medical marihuana product samples to the department for quality assurance testing; implementing policies and procedures to investigate complaints and adverse events; as well as closure procedures.

§ 1004.11 Manufacturing requirements for approved medical marihuana product(s). Contains requirements for the manufacturing of medical marihuana products. Provides the brands, forms and routes of administration of medical marihuana products authorized for manufacturing, as well as product labeling requirements. Provides that no synthetic marihuana additives shall be used in the production of any medical marihuana product.

§ 1004.12 Requirements for dispensing facilities. Details the requirements for the operation of dispensing facilities as well as the required patient specific label required to be affixed to each medical marihuana product dispensed. Provides that no medical marihuana product shall be consumed or vaporized on the premises of such facilities.

§ 1004.13 Security requirements for manufacturing and dispensing facilities. Details the minimum security requirements for manufacturing and dispensing facilities and for the transportation of medical marihuana products.

§ 1004.14 Laboratory testing requirements for medical marihuana. Details the minimum laboratory testing requirements for medical marihuana products. Testing shall be performed by a DOH approved laboratory located within NYS.

§ 1004.15 Pricing. Requires registered organizations submit proposed prices for medical marihuana products to the department for approval. The department may approve the proposed price, refuse approval of a proposed price, or modify or reduce the proposed price.

§ 1004.16 Medical marihuana marketing and advertising by registered organizations. Restricts the marketing and advertising of medical marihuana.

§ 1004.17 Reporting dispensed medical marihuana products. Details reporting requirements for dispensed medical marihuana products.

§ 1004.18 Prohibition of the use of medical marihuana in certain places. Restricts the vaporization of medical marihuana in certain places.

§ 1004.19 Reporting requirements for practitioners, patients and designated caregivers. Details reporting requirements for practitioners related to changes in circumstances affecting the patient's certification. Defines reporting requirements for patients and designated caregivers for scenarios where certain information contained on the patient certification changes or if the certified patient or designated caregiver loses his or her registry identification card.

§ 1004.20 Proper disposal of medical marihuana products by patients or designated caregivers. Details the required disposal procedures for medical marihuana products.

§ 1004.21 General prohibitions. Contains general prohibitions.

§ 1004.22 Practitioner prohibitions. Lists prohibitions on practitioners.

§ 1004.23 Designated caregiver prohibitions. Lists prohibitions on designated caregivers.

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Subpart 55-2 is amended as follows:

§ 55-2.2 Certificates of approval. Paragraph 5 is renumbered paragraph 6 and a new paragraph 5 is added to provide for certification of laboratories to test medical marihuana.

§ 55-2.15 Requirements for laboratories performing testing for medical marihuana. Adds requirements for laboratories.

**Final rule as compared with last published rule:** Nonsubstantive changes were made as follows: rule proposed as Subpart 80-1, being adopted as Part 1004; nonsubstantive changes were made in sections 1004.5, 1004.12 and 1004.21.

**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.ny.gov

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

Changes made to the last published rule do not necessitate revision to the previously published Regulatory Impact Statement, Regulatory Flexibility Analysis, Rural Area Flexibility Analysis and Job Impact Statement.

**Assessment of Public Comment**

New York State recognizes that possession and use of marijuana is illegal in the United States. However, the State also recognizes the benefit in making available medical marijuana to qualified individuals with debilitating and life threatening illnesses and conditions. To that end, the Compassionate Care Act (PHL § 3360 et. seq.) (the "Act") is balanced legislation that ensures appropriate access through comprehensive regulations and safeguards.

The State subsequently developed the regulations through this very critical lens to ensure that the entire program would not be subject to enforcement action or legal challenges. Expanding the initial set of regulations would have subjected the State to unnecessary scrutiny and jeopardized the program's ability to move forward in any meaningful manner. The Compassionate Care Act and the proposed regulations strike the required balance by implementing a strong and effective medical marijuana program in New York State.

The Department of Health (the "Department") received comments from hundreds of stakeholders (many of whom were affiliated with the same entity or organization). A summary of the comments received is set forth below. The full text of the regulations and the full assessment of public comment are available on the Department's website.

The Department reviewed and assessed each comment. Some comments were not incorporated as they were inconsistent with the statutory authority underlying the rulemaking or concerned issues outside the scope of the rulemaking. Other comments appeared to warrant further consideration as to whether clarification would be helpful in guidance or for possible inclusion in future rulemaking. Revisions were determined to be unnecessary for other comments, as the regulations are adequate to address the topic areas raised.

Several comments were received on similar topics, including the following:

- Comments were received concerning practitioner education requirements, and the exclusion of health care practitioners (other than physicians) from those authorized to issue patient certifications. The regulations require practitioners complete a four hour course, which is consistent with the Act. The course will be available online. With respect to issuance of certifications, Public Health Law (PHL) § 3360(12) defines "practitioner" as a licensed physician, and authorizes the Commissioner of Health to consider the inclusion of nurse practitioners. The Commissioner will consider adding nurse practitioners in the future.

- Commenters recommended expanding the list of serious conditions, and including a transparent process for adding new conditions. PHL § 3360(7)(a) authorizes the Commissioner to add conditions to those already included in statute, and to consider expanding the list of conditions in the future. The Department will issue guidance concerning the process to add new conditions.

- Comments were received concerning the patient certification process as well as the financial hardship waiver of the registry identification card application fee. A single electronic system for practitioners to issue certifications, and for patients and designated caregivers to apply for registry identification cards, will be utilized to ensure a more timely process. The Department is authorized to waive application fees and will provide guidance for applying for a hardship waiver.

- Comments were received concerning whether a registered organization must perform both manufacturing and dispensing activities in order to obtain a registration, and recommended that registered organizations be allowed to manufacture and dispense from the same location. The Act requires registered organizations to manufacture and dispense medical marijuana. With respect to authorizing such activities at the same location, however, there is a risk of theft and diversion in allowing co-location of these facilities, and it is therefore prohibited.

- Comments were received concerning the qualifications and consideration of applicants seeking to become a registered organization. PHL § 3360(17) defines a registered organization applicant as "a for-profit entity or not-for-profit corporation." Although New York State residency, or formation of the entity or corporation in New York State, is not a requirement of the statute, all manufacturing, processing, and dispensing must occur within the State. Upon receipt the Department will evaluate the application pursuant to the criteria in Section 80-1.6.

- Commenters wanted to increase the number of registered organizations, and to allow for delivery services. The Act and the regulations provide that the Commissioner shall register no more than five registered organizations, but the Commissioner may register additional registered organizations thereafter as needed. The regulations are consistent. Delivery services are prohibited unless prior written approval has been obtained from the Department.

- Commenter wanted to know how the Department would consider whether an applicant is ready to begin operations. The Department will carefully review an applicant's operating plans and other documentation to ensure that the registered organization will be able to successfully begin operations within six months of the date of issuance of the registration, and will issue guidance if necessary.

- Comments were received concerning how the registered organization will ensure availability of at least a one year supply of any offered brand. The regulations require the registered organization to demonstrate, through their standard operating procedures, that they are able to ensure availability of the brand for a one year time period. The regulation does not require physical availability of a one year supply of product.

- Comments were received concerning the one thousand foot prohibition as it relates to the location of a dispensing facility. Section 80-1.10(7) provides that a dispensing facility may not be located on the same street or avenue and within one thousand feet of a building occupied exclusively as a school, church, synagogue or other place of worship. Accordingly, the restriction only applies if both conditions are met. Should it be determined that this limitation restricts access, the Department will consider revising its policy in subsequent rulemaking.

- Comments were received concerning a registered organization's ability to transfer or wholesale marijuana or approved products between registered organizations or from one dispensing facility to another. While the regulations allow a registered organization that intends to cease operations to transfer its supply, it must first submit a plan to DOH for doing so. With respect to transfers between dispensing facilities, the regulations limit transporting medical marijuana from a manufacturing site to a dispensing site, and to a laboratory for submission of samples for required testing.

- Comments were received concerning the use of pesticides or, in the alternative, imposing labeling requirements to show all elements in the product. The regulations allow a registered organization to use pesticides, fungicides or herbicides if approved by the NYS Department of Agriculture and Markets. With respect to labeling, the Department must approve a registered organization's package safety insert which must include a list of excipients used.

- Comments were received regarding limits on brands, forms and extraction methods. Section 80-1.11(c)(1) provides that each registered organization may initially produce up to five brands of medical marijuana, and thereafter, the Department has discretion to approve additional brands. Section 80-1.11(g) authorizes the Commissioner to approve additional forms of medical marijuana. Similarly, with respect to extraction methods, Section 80-1.11(b) allows the use of other extraction methods than those listed in the regulations (carbon dioxide (CO<sub>2</sub>, super-critical) or alcohol for cannabinoid extraction) with the prior written approval from the Department.

- Comments were received objecting to the prohibitions on whole plant and plant based products. PHL § 3360(8) provides that any form of medical marijuana not approved by the Commissioner is expressly prohibited. At this time, the Commissioner has not approved medical marijuana in plant form. Section 80-1.11 authorizes the Commissioner to approve additional forms.

- Comments were received concerning why a pharmacist must be on-site at dispensing facilities and over liability. Pharmacists have the training and skill-set necessary to identify drug-related issues that a patient may face. The regulations require the pharmacist complete a course approved by the Department, which is the same as that required of physicians who seek registration to certify patients. With respect to liability concerns, the statute makes clear that medical marijuana is not deemed a "drug" for purposes of Article 137 of the Education Law, in relation to the practice of pharmacy (PHL § 3368(1)(b)). In addition, PHL § 3369(1) provides protection from arrest, prosecution or penalty in any manner, including but not limited to disciplinary actions by a professional licensing board, to employees of registered organizations, which would include pharmacists.

- Comments were received in opposition to the prohibition on consuming food or drink, and limitation of visitors, on the premises of the dispensing facility. The regulations allow food or beverage consumption if necessary for medical reasons. With respect to visitors, the limitation is a proper security measure to ensure that only individuals authorized to obtain medical marijuana products are permitted on the premises of a dispensing facility, unless waived by the Department upon prior written request. The regulations provide that if an unforeseen circumstance requires the presence of a visitor and makes it impractical for the dispensing facility to obtain a waiver, the dispensing facility shall record in the visitor log, the name of the visitor, date, time, purpose of the visit and the facts upon which the access was granted.

- Comments were received concerning the Commissioner's ability to set prices for medical marijuana, and affordability and access to medical marijuana by low income patients. PHL § 3369-d requires the Commissioner to set the price per dose for each form of medical marijuana sold, and to take into account the fixed and variable costs of producing the form of marijuana in approving such price. The statute does not provide for differentiation of price based on income. Although the regulations prohibit distribution of products or samples at no cost, they allow exceptions to be authorized by the Commissioner, which could include a charity program offered by a registered organization.

- Comments were received concerning restrictions on advertising. PHL § 3364 authorizes the Commissioner to make rules and regulations restricting the advertising and marketing of medical marijuana, which must be consistent with the federal regulations governing prescription drug advertising and marketing. The advertising requirements in the regulations are consistent with federal regulations.

- Comments were received concerning the prohibition of the use of approved medical marijuana products in certain places. PHL § 3362(2)(a) provides that possession of medical marijuana shall not be lawful if it is consumed or vaporized in a public place. No changes have been made to the regulations in response to these comments.

- Commenters indicated that the regulations fail to provide expedited access to medical marijuana, including for children who suffer from intractable epilepsy. Compassionate Care Act establishes a comprehensive system for the manufacture, dispensing, obtaining and use of medical marijuana in this State. The Department is moving forward aggressively to implement the provisions of the Act.

- Finally, technical, non-substantive clarifications have been made to the regulations as a result of comments received. The Department made a technical change in the numbering of the regulations. A new Part 1004 is added entitled "Medical Use of Marijuana". This document refers to the regulations as numbered in the published Notice of Proposed Rulemaking. In addition, the following technical, non-substantive clarifications have been made: (1) § 80-1.5(b)(4)(vi) was revised to change the word "incidence" to "incidents"; (2) § 80-1.5(b)(13) was revised to clarify that any prior bankruptcy of the applicant entity must be disclosed, as it must with its owners, managers and others listed in this section; (3) § 80-1.12(h)(2) was revised to change the word "ordering" to "certifying"; (4) § 80-1.14(f) was revised to correctly reference § 80-1.11(c)(2); (5) § 80-1.21(c) was revised to remove an inaccurate citation and (6) § 55-2.15(c)(2)(iii)(a) was revised to reference contaminants listed in § 80-1.14(g).

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## Power Authority of the State of New York

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### NOTICE OF ADOPTION

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

**I.D. No.** PAS-01-15-00012-A

**Filing Date:** 2015-03-31

**Effective Date:** 2015-03-31

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

**Action taken:** Decrease in the Fixed Costs Component of the Production Rates.

**Statutory authority:** Public Authorities Law, section 1005, 3rd undesignated paragraph and (6)

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

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

**Substance of final rule:** The Power Authority's Notice of Proposed Rulemaking published January 7, 2015, proposed to increase the Fixed Costs component of the production rates by 1.9% to be charged to the New York City Governmental Customers ("Customers"). Comments on the proposal were received from the Customers. Based on those comments and further analysis by staff, the Authority determined that the Fixed Costs component of the production rates should be decreased by 1.8%. The new rates will be effective commencing with the March 2015 billing period.

**Final rule as compared with last published rule:** Substantial revisions were made in paragraph 1, ln. 1, ln. 3 and ln. 4.

**Text of rule and any required statements and analyses may be obtained from:** Karen Delince, Power Authority of the State of New York, 123 Main Street, 11-P, White Plains, NY 10601, (914) 390-8085, email: secretaries.office@nypa.gov

#### Revised Regulatory Impact Statement

A revised regulatory impact statement is not submitted with this notice because the rule is within the definition contained in section 102(2)(a)(ii) of the State Administrative Procedure Act.

#### Revised Regulatory Flexibility Analysis

A revised regulatory flexibility analysis is not submitted with this notice because the rule is within the definition contained in section 102(2)(a)(ii) of the State Administrative Procedure Act.

#### Revised Rural Area Flexibility Analysis

A revised rural area flexibility analysis is not submitted with this notice because the rule is within the definition contained in section 102(2)(a)(ii) of the State Administrative Procedure Act.

**Revised Job Impact Statement**

A revised job impact statement is not submitted with this notice because the rule is within the definition contained in section 102(2)(a)(ii) of the State Administrative Procedure Act.

**Assessment of Public Comment**

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

**NOTICE OF ADOPTION**

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

**I.D. No.** PAS-01-15-00013-A

**Filing Date:** 2015-03-31

**Effective Date:** 2015-03-31

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

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

**Statutory authority:** Public Authorities Law, section 1005, 3rd undesignated paragraph and (6)

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

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

**Substance of final rule:** The Power Authority’s Notice of Proposed Rulemaking published January 7, 2015, proposed to increase the production rates by 8.00% to be charged to the Westchester County Governmental Customers (“Customers”). No comments on the proposal were received from the Customers. Based on further analysis by staff, the Authority determined that the production rates should be decreased by 12.8%. The new rates will be effective commencing with the March 2015 billing period.

**Final rule as compared with last published rule:** Substantial revisions were made in paragraph 1, ln. 1, ln. 5, ln. 6 and ln. 7.

**Text of rule and any required statements and analyses may be obtained from:** Karen Delince, Power Authority of the State of New York, 123 Main Street, 11-P, White Plains, NY 10601, (914) 390-8085, email: secretaries.office@nypa.gov

**Revised Regulatory Impact Statement**

A revised regulatory impact statement is not submitted with this notice because the rule is within the definition contained in section 102(2)(a)(ii) of the State Administrative Procedure Act.

**Revised Regulatory Flexibility Analysis**

A revised regulatory flexibility analysis is not submitted with this notice because the rule is within the definition contained in section 102(2)(a)(ii) of the State Administrative Procedure Act.

**Revised Rural Area Flexibility Analysis**

A revised rural area flexibility analysis is not submitted with this notice because the rule is within the definition contained in section 102(2)(a)(ii) of the State Administrative Procedure Act.

**Revised Job Impact Statement**

A revised job impact statement is not submitted with this notice because the rule is within the definition contained in section 102(2)(a)(ii) of the State Administrative Procedure Act.

**Assessment of Public Comment**

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

**Public Service Commission**

**NOTICE OF ADOPTION**

**Approving the Reorganization and Addressing the Financing Arrangements for UWW**

**I.D. No.** PSC-32-14-00017-A

**Filing Date:** 2015-03-26

**Effective Date:** 2015-03-26

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

**Action taken:** On 3/25/15, the PSC adopted an order approving the reorganization and addressing the financing arrangements for United Waterworks, Inc. (UWW).

**Statutory authority:** Public Service Law, sections 89-h and 89-f

**Subject:** Approving the reorganization and addressing the financing arrangements for UWW.

**Purpose:** To approve the reorganization and address the financing arrangements for UWW.

**Substance of final rule:** The Commission, on March 25, 2015, adopted an order approving the reorganization of United Water New York, Inc., United Water Westchester, Inc., United Water Owego Nichols, Inc., United Water New Jersey, Inc., United Water Resources, Inc., and United Waterworks, Inc. (UWW). The Commission also addressed the financing arrangements for United Water Works, by directing UWW to file a cash pooling agreement within 60 days of issuance of this order, subject to the terms and conditions set forth in the order.

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

**Text of rule may be obtained from:** Elaine Agresta, Public Service Commission, Three Empire State Plaza, Albany, New York 12223, (518) 486-2660, email: elaine.agresta@dps.ny.gov An IRS employer ID no. or social security no. is required from firms or persons to be billed 25 cents per page. Please use tracking number found on last line of notice in requests.

**Assessment of Public Comment**

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

(14-W-0258SA1)

**NOTICE OF ADOPTION**

**Allowing Village of Sherburne to Increase its Annual Electric Revenues**

**I.D. No.** PSC-39-14-00012-A

**Filing Date:** 2015-03-25

**Effective Date:** 2015-03-25

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

**Action taken:** On 3/25/15, the PSC adopted an order approving the Village of Sherburne’s request, with modifications to increase its annual electric revenues by \$237,292 or 6.4%.

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

**Subject:** Allowing Village of Sherburne to increase its annual electric revenues.

**Purpose:** To allow the Village of Sherburne to increase its annual electric revenues.

**Substance of final rule:** The Commission, on March 25, 2015, adopted an order approving, with modifications, a petition filed by the Village of Sherburne to increase its annual electric revenues by \$237,292 or 6.4%, subject to the terms and conditions set forth in the order.

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

**Text of rule may be obtained from:** Elaine Agresta, Public Service Commission, Three Empire State Plaza, Albany, New York 12223, (518) 486-2660, email: elaine.agresta@dps.ny.gov An IRS employer ID no. or social security no. is required from firms or persons to be billed 25 cents per page. Please use tracking number found on last line of notice in requests.

**Assessment of Public Comment**

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

(14-E-0410SA1)

**NOTICE OF ADOPTION**

**Tariff Filing to Define the Incremental Cost of Gas and Streamline the General Information Section**

**I.D. No.** PSC-44-14-00021-A

**Filing Date:** 2015-03-25

**Effective Date:** 2015-03-25

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

**Action taken:** On 3/25/15, the PSC adopted an order approving a tariff filing of Niagara Mohawk Power Corporation d/b/a National Grid to define the incremental cost of gas and streamline the Definitions and Abbreviations Section.

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

**Subject:** Tariff filing to define the incremental cost of gas and streamline the General Information Section.

**Purpose:** To approve a tariff filing to define the incremental cost of gas and streamline the General Information Section.

**Substance of final rule:** The Commission, on March 25, 2015, adopted an order allowing the tariff revisions filed by Niagara Mohawk Power Corporation d/b/a National Grid, to PSC 219-Gas, to define the incremental cost of gas and to streamline the General Information Section 1 - Definitions and Abbreviations, to become effective on April 1, 2015, subject to the terms and conditions set forth in the order.

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

**Text of rule may be obtained from:** Elaine Agresta, Public Service Commission, Three Empire State Plaza, Albany, New York 12223, (518) 486-2660, email: elaine.agresta@dps.ny.gov An IRS employer ID no. or social security no. is required from firms or persons to be billed 25 cents per page. Please use tracking number found on last line of notice in requests.

**Assessment of Public Comment**

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

(14-G-0371SA1)

### NOTICE OF ADOPTION

#### Denying the Petition for Rehearing of West Valley Crystal Water, Submitted on October 9, 2014

**I.D. No.** PSC-44-14-00023-A

**Filing Date:** 2015-03-31

**Effective Date:** 2015-03-31

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

**Action taken:** On 3/25/15, the PSC adopted an order denying a petition for rehearing of the West Valley Crystal Water Company, Inc., submitted on October 9, 2014, on the Order Determining Revenue Requirement, issued on September 8, 2014.

**Statutory authority:** Public Service Law, sections 22 and 89-c(10)

**Subject:** Denying the petition for rehearing of West Valley Crystal Water, submitted on October 9, 2014.

**Purpose:** To deny the petition for rehearing of West Valley Crystal Water, submitted on October 9, 2014.

**Substance of final rule:** The Commission, on March 25, 2015, adopted an order denying, with clarification, a petition for rehearing of the West Valley Crystal Water Company, Inc., submitted on October 9, 2014, on the Order Determining Revenue Requirement, issued on September 8, 2014, subject to the terms and conditions set forth in the order.

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

**Text of rule may be obtained from:** Elaine Agresta, Public Service Commission, Three Empire State Plaza, Albany, New York 12223, (518) 486-2660, email: elaine.agresta@dps.ny.gov An IRS employer ID no. or social security no. is required from firms or persons to be billed 25 cents per page. Please use tracking number found on last line of notice in requests.

**Assessment of Public Comment**

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

(14-W-0070SA2)

### NOTICE OF ADOPTION

#### Approving, with Modifications, Con Edison's Aggregator Eligibility Standards

**I.D. No.** PSC-49-14-00002-A

**Filing Date:** 2015-03-30

**Effective Date:** 2015-03-30

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

**Action taken:** On 3/25/15, the PSC adopted an order approving, with modifications, Consolidated Edison Company of New York, Inc.'s (Con Edison) aggregator eligibility standards.

**Statutory authority:** Public Service Law, sections 66(1), (12)(a) and (b)

**Subject:** Approving, with modifications, Con Edison's aggregator eligibility standards.

**Purpose:** To approve, with modifications, Con Edison's aggregator eligibility standards.

**Substance of final rule:** The Commission, on March 25, 2015, adopted an order approving, with modifications, Consolidated Edison Company of New York, Inc.'s aggregator eligibility standards, subject to the terms and conditions set forth in the order.

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

**Text of rule may be obtained from:** Elaine Agresta, Public Service Commission, Three Empire State Plaza, Albany, New York 12223, (518) 486-2660, email: elaine.agresta@dps.ny.gov An IRS employer ID no. or social security no. is required from firms or persons to be billed 25 cents per page. Please use tracking number found on last line of notice in requests.

**Assessment of Public Comment**

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

(13-E-0573SA4)

### NOTICE OF ADOPTION

#### Authorization for Port Byron Telephone Company, Inc. to Recover Revenue from the SUSF

**I.D. No.** PSC-01-15-00016-A

**Filing Date:** 2015-03-26

**Effective Date:** 2015-03-26

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

**Action taken:** On 3/25/15, the PSC adopted an order authorizing Port Byron Telephone Company, Inc. to withdraw \$446,079 from the State Universal Service Fund (SUSF) for its first rate year beginning April 2015 and a pro-rated share of \$371,537 for its second rate year.

**Statutory authority:** Public Service Law, sections 92 and 97

**Subject:** Authorization for Port Byron Telephone Company, Inc. to recover revenue from the SUSF.

**Purpose:** To authorize Port Byron Telephone Company, Inc. to recover revenue from the SUSF.

**Substance of final rule:** The Commission, on March 25, 2015 adopted an order approving Port Byron Telephone Company, Inc.'s (Port Byron) request to withdraw funds from the State Universal Service Fund (SUSF) for the purposes of general rate relief. Port Byron is authorized to withdraw \$446,079 from the SUSF for its first rate year beginning in April 2015. For the second rate year beginning in April 2016, Port Byron is directed to work with the SUSF Administrator to compute the pro-rated amount of the \$371,537 it would otherwise be allowed to withdraw, to reflect the expiration of the SUSF scheduled to occur on December 31, 2016. Such withdrawals are subject to the terms and conditions set forth in the order.

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

**Text of rule may be obtained from:** Elaine Agresta, Public Service Commission, Three Empire State Plaza, Albany, New York 12223, (518) 486-2660, email: elaine.agresta@dps.ny.gov An IRS employer ID no. or social security no. is required from firms or persons to be billed 25 cents per page. Please use tracking number found on last line of notice in requests.

**Assessment of Public Comment**

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

(14-C-0402SA1)

### NOTICE OF ADOPTION

#### Authorization for Township Telephone Company, Inc. to Recover Revenue from the SUSF

**I.D. No.** PSC-01-15-00018-A

**Filing Date:** 2015-03-26

**Effective Date:** 2015-03-26

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

**Action taken:** On 3/25/15, the PSC adopted an order authorizing Township Telephone Company, Inc. to withdraw \$452,014 from the State Universal Service Fund (SUSF) for its first rate year beginning in April 2015 and a pro-rated share of \$396,447 for its second rate year.

**Statutory authority:** Public Service Law, sections 92 and 97

**Subject:** Authorization for Township Telephone Company, Inc. to recover revenue from the SUSF.

**Purpose:** To authorize Township Telephone Company, Inc. to recover revenue from the SUSF.

**Substance of final rule:** The Commission, on March 25, 2015 adopted an order approving Township Telephone Company, Inc.'s (Township) request to withdraw funds from the State Universal Service Fund (SUSF) for the purposes of general rate relief. Township is authorized to withdraw \$452,014 from the SUSF for its first rate year beginning in April 2015. For the second rate year beginning in April 2016, Township is directed to work with the SUSF Administrator to compute the pro-rated amount of the \$396,447 it would otherwise be allowed to withdraw, to reflect the expiration of the SUSF scheduled to occur on December 31, 2016. Such withdrawals are subject to the terms and conditions set forth in the order.

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

**Text of rule may be obtained from:** Elaine Agresta, Public Service Commission, Three Empire State Plaza, Albany, New York 12223, (518) 486-2660, email: elaine.agresta@dps.ny.gov An IRS employer ID no. or social security no. is required from firms or persons to be billed 25 cents per page. Please use tracking number found on last line of notice in requests.

**Assessment of Public Comment**

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

(14-C-0405SA1)

### NOTICE OF ADOPTION

#### Allowing Niagara Mohawk Power Corporation to Modify Rule 50 Contained in P.S.C. No. 220

**I.D. No.** PSC-01-15-00019-A

**Filing Date:** 2015-03-25

**Effective Date:** 2015-03-25

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

**Action taken:** On 3/25/15, the PSC, adopted an order allowing Niagara Mohawk Power Corporation to modify Rule 50 - Reliability Support Services contained in P.S.C. No. 220 Electricity.

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

**Subject:** Allowing Niagara Mohawk Power Corporation to modify Rule 50 contained in P.S.C. No. 220.

**Purpose:** To allow Niagara Mohawk Power Corporation to modify Rule 50 contained in P.S.C. No. 220.

**Substance of final rule:** The Commission, on March 25, 2015, adopted an order allowing Niagara Mohawk Power Corporation to modify Rule 50 – Reliability Support Services contained in P.S.C. No. 220 Electricity, subject to terms and conditions set forth in the order.

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

**Text of rule may be obtained from:** Elaine Agresta, Public Service Commission, Three Empire State Plaza, Albany, New York 12223, (518) 486-2660, email: elaine.agresta@dps.ny.gov An IRS employer ID no. or social security no. is required from firms or persons to be billed 25 cents per page. Please use tracking number found on last line of notice in requests.

**Assessment of Public Comment**

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

(14-E-0550SA1)

### NOTICE OF ADOPTION

#### Approving the 2014 Electric Emergency Response Plans, As Modified, of the Six Major Electric Utilities

**I.D. No.** PSC-02-15-00005-A

**Filing Date:** 2015-03-26

**Effective Date:** 2015-03-26

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

**Action taken:** On 3/25/15, the PSC adopted an order approving the 2014 Electric Emergency Response Plans, as modified, of the six major electric utilities.

**Statutory authority:** Public Service Law, sections 5(1)(b), 65(1)-(3), 66(1)-(3), (5) and (21)

**Subject:** Approving the 2014 Electric Emergency Response Plans, as modified, of the six major electric utilities.

**Purpose:** To approve the 2014 Electric Emergency Response Plans, as modified, of the six major electric utilities.

**Substance of final rule:** The Commission, on March 25, 2015, adopted an order approving the 2014 Electric Emergency Response Plans, as modified, filed by Consolidated Edison Company of New York, Inc., Orange and Rockland Utilities, Inc., Central Hudson Gas and Electric Corporation, New York State Electric and Gas Corporation, Rochester Gas and Electric Corporation and Niagara Mohawk Power Corporation d/b/a National Grid, subject to the terms and conditions set forth in the order.

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

**Text of rule may be obtained from:** Elaine Agresta, Public Service Commission, Three Empire State Plaza, Albany, New York 12223, (518) 486-2660, email: elaine.agresta@dps.ny.gov An IRS employer ID no. or social security no. is required from firms or persons to be billed 25 cents per page. Please use tracking number found on last line of notice in requests.

**Assessment of Public Comment**

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

(14-E-0524SA1)

### NOTICE OF ADOPTION

#### Allowing Con Edison's Filing to Modify Rider L—Direct Load Control Program to Become Effective

**I.D. No.** PSC-04-15-00013-A

**Filing Date:** 2015-03-27

**Effective Date:** 2015-03-27

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

**Action taken:** On 3/25/15, the PSC adopted an order allowing Consolidated Edison Company of New York, Inc. to modify Rider L—Direct Load Control Program contained in P.S.C. No. 10—Electricity, and the Residential Smart Appliance Program.

**Statutory authority:** Public Service Law, sections 65(1), 66(1) and (12)

**Subject:** Allowing Con Edison's filing to modify Rider L—Direct Load Control Program to become effective.

**Purpose:** To allow Con Edison's filing to modify Rider L—Direct Load Control Program to become effective.

**Substance of final rule:** The Commission, on March 25, 2015, adopted an order approving, with modifications, a petition filed by Consolidated Edison Company of New York, Inc. (the Company) to modify Rider L – Direct Load Control Program contained in P.S.C. No 10—Electricity, and the Residential Smart Appliance Program, and directed the Company to file the tariff amendments to effectuate the changes, subject to the terms and conditions set forth in the order.

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

**Text of rule may be obtained from:** Elaine Agresta, Public Service Commission, Three Empire State Plaza, Albany, New York 12223, (518) 486-2660, email: elaine.agresta@dps.ny.gov An IRS employer ID no. or social security no. is required from firms or persons to be billed 25 cents per page. Please use tracking number found on last line of notice in requests.

**Assessment of Public Comment**

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

(15-E-0012SA1)

## NOTICE OF ADOPTION

**Tariff Filing for a Surcharge to Recover Costs for Leak Prone Pipe Removal and Related Construction**

I.D. No. PSC-05-15-00005-A

Filing Date: 2015-03-25

Effective Date: 2015-03-25

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

**Action taken:** On 3/25/15, the PSC adopted an order approving a tariff filing of KeySpan Gas East Corporation d/b/a National Grid implementing a surcharge for cost recovery for leak prone pipe removal and related construction.

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

**Subject:** Tariff filing for a surcharge to recover costs for leak prone pipe removal and related construction.

**Purpose:** To approve a tariff filing for a surcharge to recover costs for leak prone pipe removal and related construction.

**Substance of final rule:** The Commission, on March 25, 2015, adopted an order allowing the tariff revisions filed by KeySpan Gas East Corporation d/b/a National Grid, to PSC 1 — Gas to implement a surcharge to recover costs associated with leak prone pipe removal and related construction, to become effective on April 1, 2015, subject to the terms and conditions set forth in the order.

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

**Text of rule may be obtained from:** Elaine Agresta, Public Service Commission, Three Empire State Plaza, Albany, New York 12223, (518) 486-2660, email: elaine.agresta@dps.ny.gov An IRS employer ID no. or social security no. is required from firms or persons to be billed 25 cents per page. Please use tracking number found on last line of notice in requests.

**Assessment of Public Comment**

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

(14-G-0214SA2)

**PROPOSED RULE MAKING  
NO HEARING(S) SCHEDULED****Whether to Permit the Use of the GE/Dresser Model 5 Transfer Prover with 20M and 5M Reference Standards**

I.D. No. PSC-15-15-00004-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, a petition filed by Niagara Mohawk Power Corporation for approval to use the GE/Dresser Model 5 transfer prover, with 20M and 5M reference standards.

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

**Subject:** Whether to permit the use of the GE/Dresser Model 5 transfer prover with 20M and 5M reference standards.

**Purpose:** Whether to approve the use of the Model 5 transfer prover, with 20M, and 5M reference standards.

**Substance of proposed rule:** The Public Service Commission is considering whether to grant, deny or modify, in whole or part, the petition filed by Niagara Mohawk Power Corporation, to use the GE/Dresser Model 5 transfer prover with 20M and 5M reference standards. This test standard will be used to determine the performance of commercial and industrial gas meters in New York State.

**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:** Elaine Agresta, Public Service Commission, Three Empire State Plaza, Albany, NY 10007, (518) 486-2660, email: Elaine.Agresta@dps.ny.gov

**Data, views or arguments may be submitted to:** Kathleen H. Burgess, Secretary, Public Service Commission, Three Empire State Plaza, Albany, NY 10007, (518) 474-6530, email: Secretary@dps.ny.gov

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

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

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

(14-G-0519SP1)

**PROPOSED RULE MAKING  
NO HEARING(S) SCHEDULED****Approval of Artech's Medium Voltage Class Metering Instrument Transformers in New York State**

I.D. No. PSC-15-15-00005-P

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

**Proposed Action:** The Commission is considering whether to grant, reject or modify the petition of Artech USA for approval of use of the Artech Medium Voltage Class Metering Instrument Transformers in New York State.

**Statutory authority:** Public Service Law, section 67(4)

**Subject:** Approval of Artech's Medium Voltage Class Metering Instrument Transformers in New York State.

**Purpose:** Whether to approve the use of Artech's Medium Voltage Class Metering Instrument Transformers in New York State.

**Substance of proposed rule:** On December 4, 2014, Artech USA filed a petition requesting approval of the use of its Medium Voltage Class Metering Instrument Transformers by New York State electric utilities. The Commission is considering whether to approve, reject or modify the petition and may consider 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:** Elaine Agresta, Public Service Commission, 3 Empire State Plaza, Albany, New York 12223-1350, (518) 486-2660, email: Elaine.Agresta@dps.ny.gov

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

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

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

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

(14-E-0548SP1)

**PROPOSED RULE MAKING  
NO HEARING(S) SCHEDULED****Area Code Overlay**

I.D. No. PSC-15-15-00006-P

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

**Proposed Action:** The Commission is considering whether to grant or deny, in whole or in part a petition filed by Neustar Inc., in its role as the North American Numbering Plan Administrator to add a new area code within or adjacent to the current 212/646/917 area code.

**Statutory authority:** Public Service Law, section 97(2)

**Subject:** Area Code Overlay.

**Purpose:** To authorize an area code overlay in the current 212/646/917 area code.

**Substance of proposed rule:** The Commission is considering whether to grant or deny, in whole or in part a petition filed by Neustar Inc., in its role as the North American Numbering Plan Administrator to add a new area code within or adjacent to the current 212/646/917 area code that serves the Manhattan area of New York City (the 917 area code also services Bronx, Queens and Staten Island). Neustar's proposal would overlay a new area code over the current 212/646/917 area code. The area's current dialing plan would continue. The reason for Neustar's request is a projection that indicates the current 212/646/917 area code area will be exhausted

in the first quarter of 2018. The full text of the petition may be reviewed online at the Department of Public Service web page: [www.dps.ny.gov](http://www.dps.ny.gov). The Commission may take such further action as deemed warranted.

**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:** Elaine Agresta, Public Service Commission, 3 Empire State Plaza, Albany, New York 12223-1350, (518) 486-2660, email: [Elaine.Agresta@dps.ny.gov](mailto:Elaine.Agresta@dps.ny.gov)

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

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

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

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

(15-C-0168SP1)

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

**Notification Concerning Tax Refunds**

**I.D. No.** PSC-15-15-00007-P

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

**Proposed Action:** The PSC is considering Verizon New York Inc.'s petition seeking the retention of a portion of a property tax refund received from the Town of Hempstead in relation to its regulated, intrastate New York operations during the 1992—2002 tax years.

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

**Subject:** Notification concerning tax refunds.

**Purpose:** To consider Verizon New York Inc.'s request to retain a portion of a property tax refund.

**Substance of proposed rule:** The Commission is considering whether to approve or reject, in whole or in part, Verizon New York Inc.'s request to retain the portion of a \$8,398,000 property tax refund received from the Town of Hempstead, associated with the 1992-2002 tax years that is allocable to Verizon's regulated, intrastate New York operations and any other related actions. Verizon proposes to retain such tax refund in accordance with earlier Commission Orders involving previous Verizon tax refunds.

**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:** Elaine Agresta, Public Service Commission, 3 Empire State Plaza, Albany, New York 12223-1350, (518) 486-2660, email: [Elaine.Agresta@dps.ny.gov](mailto:Elaine.Agresta@dps.ny.gov)

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

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

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

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

(15-C-0095SP1)

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

**Minor Electric Rate Filing**

**I.D. No.** PSC-15-15-00008-P

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

**Proposed Action:** The Public Service Commission is considering whether to approve, reject or modify, in whole or in part, a proposal by the City of Jamestown to make various changes in the rates, charges, rules and regulations contained in PSC No. 7—Electricity.

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

**Subject:** Minor electric rate filing.

**Purpose:** To approve an increase in annual electric revenues by approximately \$1,197,760 or 2.48%.

**Substance of proposed rule:** The Commission is considering whether to approve, modify or reject, in whole or in part, a tariff filing by the City of Jamestown, requesting approval to increase its annual electricity revenues by approximately \$1,197,760 or 2.48% to P.S.C. No. 7—Electricity. The monthly bill of a residential customer using 750 kilowatt-hours will increase from \$53.65 to approximately \$55.73 or 3.9%. The proposed amendments have an effective date of September 1, 2015. The Commission may also consider 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:** Elaine Agresta, Public Service Commission, 3 Empire State Plaza, Albany, New York 12223-1350, (518) 486-2660, email: [elaine.agresta@dps.ny.gov](mailto:elaine.agresta@dps.ny.gov)

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

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

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

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

(15-E-0184SP1)

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

**Commercial System Relief Program, Direct Load Control Program**

**I.D. No.** PSC-15-15-00009-P

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

**Proposed Action:** The Commission is considering a tariff filing by Central Hudson Gas and Electric Corporation to effectuate distribution-level Demand Response programs in compliance with the Commission's December 15, 2014 Order in Case 14-E-0423.

**Statutory authority:** Public Service Law, sections 65(1), 66(1) and (12)

**Subject:** Commercial System Relief Program, Direct Load Control Program.

**Purpose:** To establish the Commercial System Relief Program, Direct Load Control Program, and a concomitant cost recovery mechanism.

**Substance of proposed rule:** The Commission is considering whether to approve, modify or reject, in whole or in part, a tariff filing by Central Hudson Gas and Electric Corporation in compliance with the Commission's "Order Instituting Proceeding Regarding Dynamic Load Management and Directing Tariff Filings" in Case No. 14-E-0423 issued December 15, 2014 and notice issued January 2, 2015. The tariff filing establishes two distribution-level demand response programs and a mechanism to recover the associated costs. The tariff leaves do not have an effective date.

**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:** Elaine Agresta, Public Service Commission, 3 Empire State Plaza, Albany, New York 12223-1350, (518) 486-2660, email: [elaine.agresta@dps.ny.gov](mailto:elaine.agresta@dps.ny.gov)

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

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

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

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

(15-E-0186SP1)

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

**Distribution Load Relief Program, Commercial System Relief Program, Direct Load Control Program**

**I.D. No.** PSC-15-15-00010-P

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

**Proposed Action:** The Commission is considering a tariff filing by New York State Electric and Gas Corporation to effectuate distribution-level Demand Response programs in compliance with the Commission's December 15, 2014 Order in Case 14-E-0423.

**Statutory authority:** Public Service Law, sections 65(1), 66(1) and (12)

**Subject:** Distribution Load Relief Program, Commercial System Relief Program, Direct Load Control Program.

**Purpose:** To establish the Distribution Load Relief Program, Commercial System Relief Program, Direct Load Control Program.

**Substance of proposed rule:** The Commission is considering whether to approve, modify or reject, in whole or in part, a tariff filing by New York State Electric and Gas Corporation in compliance with the Commission's "Order Instituting Proceeding Regarding Dynamic Load Management and Directing Tariff Filings" in Case No. 14-E-0423 issued December 15, 2014 and notice issued January 2, 2015. The tariff filing establishes three distribution-level demand response programs and a mechanism to recover the associated costs. The tariff leaves do not have an effective date.

**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:** Elaine Agresta, Public Service Commission, 3 Empire State Plaza, Albany, New York 12223-1350, (518) 486-2660, email: [elaine.agresta@dps.ny.gov](mailto:elaine.agresta@dps.ny.gov)

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

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

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

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

(15-E-0188SP1)

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

**Distribution Load Relief (DLR) Program, Peak Shaving Load Relief (PSLR) Program, and Direct Load Control (DLC) Program**

**I.D. No.** PSC-15-15-00011-P

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

**Proposed Action:** The Commission is considering a filing by Niagara Mohawk Power Corporation d/b/a/ National Grid to effectuate distribution-level Demand Response programs in compliance with the Commission's December 15, 2014 Order in Case 14-E-0423.

**Statutory authority:** Public Service Law, sections 65(1), 66(1) and (12)

**Subject:** Distribution Load Relief (DLR) Program, Peak Shaving Load Relief (PSLR) Program, and Direct Load Control (DLC) Program.

**Purpose:** To establish DLR, PSLR, and DLC demand response programs, as well as enable recovery of program costs.

**Substance of proposed rule:** The Commission is considering whether to approve, modify or reject, in whole or in part, a tariff filing by Niagara Mohawk Power Corporation d/b/a/ National Grid in compliance with the Commission's "Order Instituting Proceeding Regarding Dynamic Load Management and Directing Tariff Filings" in Case No. 14-E-0423 issued December 15, 2014 and notice issued January 2, 2015. The tariff filing establishes three distribution-level demand response programs and a mechanism to recover the associated costs. The tariff leaves do not have an effective date.

**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:** Elaine Agresta, Public Service Commission, 3 Empire State Plaza, Albany, New York 12223-1350, (518) 486-2660, email: [elaine.agresta@dps.ny.gov](mailto:elaine.agresta@dps.ny.gov)

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

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

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

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

(15-E-0189SP1)

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

**Distribution Load Relief Program, Commercial System Relief Program, Direct Load Control Program**

**I.D. No.** PSC-15-15-00012-P

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

**Proposed Action:** The Commission is considering a tariff filing by Orange and Rockland Utilities, Inc. to effectuate distribution-level Demand Response programs in compliance with the Commission's December 15, 2014 Order in Case 14-E-0423.

**Statutory authority:** Public Service Law, sections 65(1), 66(1) and (12)

**Subject:** Distribution Load Relief Program, Commercial System Relief Program, Direct Load Control Program.

**Purpose:** To establish the Distribution Load Relief Program, Commercial System Relief Program, Direct Load Control Program.

**Substance of proposed rule:** The Commission is considering whether to approve, modify or reject, in whole or in part, a tariff filing by Orange and Rockland Utilities, Inc. in compliance with the Commission's "Order Instituting Proceeding Regarding Dynamic Load Management and Directing Tariff Filings" in Case No. 14-E-0423 issued December 15, 2014 and notice issued January 2, 2015. The tariff filing establishes three distribution-level demand response programs and a mechanism to recover the associated costs. The tariff leaves do not have an effective date.

**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:** Elaine Agresta, Public Service Commission, 3 Empire State Plaza, Albany, New York 12223-1350, (518) 486-2660, email: [elaine.agresta@dps.ny.gov](mailto:elaine.agresta@dps.ny.gov)

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

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

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

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

(15-E-0191SP1)

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

**Distribution Load Relief Program, Commercial System Relief Program, Direct Load Control Program**

**I.D. No.** PSC-15-15-00013-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 tariff filing by Rochester Gas and Electric Corporation to effectuate distribution-level Demand Response programs in compliance with the Commission's December 15, 2014 Order in Case 14-E-0423.

**Statutory authority:** Public Service Law, sections 65(1), 66(1) and (12)  
**Subject:** Distribution Load Relief Program, Commercial System Relief Program, Direct Load Control Program.

**Purpose:** To establish the Distribution Load Relief Program, Commercial System Relief Program, Direct Load Control Program.

**Substance of proposed rule:** The Commission is considering whether to approve, modify or reject, in whole or in part, a tariff filing by Rochester Gas and Electric Corporation in compliance with the Commission's "Order Instituting Proceeding Regarding Dynamic Load Management and Directing Tariff Filings" in Case No. 14-E-0423 issued December 15, 2014 and notice issued January 2, 2015. The tariff filing establishes three distribution-level demand response programs and a mechanism to recover the associated costs. The tariff leaves do not have an effective date.

**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:** Elaine Agresta, Public Service Commission, 3 Empire State Plaza, Albany, New York 12223-1350, (518) 486-2660, email: [elaine.agresta@dps.ny.gov](mailto:elaine.agresta@dps.ny.gov)

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

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

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

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

(15-E-0190SP1)

## Department of State

### EMERGENCY RULE MAKING

#### Use of Truss Type, Pre-Engineered Wood or Timber Construction in Residential Structures

**I.D. No.** DOS-02-15-00004-E

**Filing No.** 225

**Filing Date:** 2015-03-26

**Effective Date:** 2015-03-26

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

**Action taken:** Addition of Part 1265 to Title 19 NYCRR.

**Statutory authority:** Executive Law, sections 376(5), 382-b; and State Administrative Procedure Act, section 202

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

**Specific reasons underlying the finding of necessity:** This rule is readopted as an emergency measure to preserve public safety and general welfare and because time is of the essence.

This rule was originally adopted by the State Fire Prevention and Building Code Council (the Code Council) as an emergency measure. The Notice of Emergency Adoption and Proposed Rule Making relating to the original emergency adoption was filed on December 30, 2014, and the original emergency adoption of this rule became effective on December 31, 2014.

This rule implements Executive Law § 382-b, as added by Chapter 353 of the Laws of 2014. This rule requires any person who uses truss type, pre-engineered wood or timber construction in the construction of a new residential structure or an addition to or rehabilitation of an existing residential structure to give written notice of that fact to the local code enforcement official and to place a sign or symbol on the exterior of the structure to indicate to firefighters and first responders that truss type, pre-engineered wood or timber construction has been used in the structure. This rule also prescribes the form to be used to provide notification to the code enforcement official; prescribes the sign or symbol to be affixed to the structure; provides for the notification and coordination between and among the code official, the fire department, and the emergency response

personnel contemplated by Executive Law § 382-b; and directs fire departments and emergency dispatch personnel to provide for the warnings to firefighters and first responders contemplated by Executive Law § 382-b.

Readoption of this rule on an emergency basis is necessary to preserve public health, safety, and general welfare, for the following reasons:

(1) As stated in the Memorandum in Support of the bill enacting Executive Law § 382-b, "(w)hile truss construction is very durable, when weakened by a fire, major components of a truss foundation can collapse suddenly without warning. When responding to a fire emergency, firefighters are unable to differentiate between a building constructed of truss foundation or another type of construction. As a result, in recent years truss constructions have been the cause of many preventable deaths of fire-fighters. It is imperative that firefighters are notified of the use of truss type construction so they can take appropriate measures that will protect the lives of residents and ensure their own safety. With the enactment of this bill, emergency responders will be able to take proper precautions in responding to a fire in a residential structure where truss type construction was utilized."

(2) Executive Law § 382-b provides that when truss type, pre-engineered wood or timber construction is used in the construction of a new residential structure or in the addition to or rehabilitation of an existing residential structure, the owner must notify the code enforcement official of that fact and must place an approved sign or symbol on the exterior of the structure to warn firefighters and other first responders of that fact;

(3) as of January 1, 2015, the effective date of Executive Law § 382-b, local code officials are not permitted to issue certificates of occupancy for residential structures using truss type, pre-engineered wood or timber construction unless the required sign or symbol has been affixed to the structure;

(4) Executive Law § 382-b provides that the form to be used to notify code enforcement officials of the use of truss type, pre-engineered wood or timber construction in residential structures must be prescribed by the Code Council and the sign or symbol to be affixed to a residential structure using truss type, pre-engineered wood or timber construction must be designed and approved by the Code Council;

(5) by the initial emergency adoption of this rule, the Code Council prescribed the notification form contemplated by Executive Law § 382-b and designed and approved the sign or symbol contemplated by Executive Law § 382-b;

(6) the initial emergency adoption of this rule will expire on March 29, 2015; and

(7) continuing this rule on an emergency basis is necessary to assure that the provisions of this rule will continue in effect after March 29, 2015 (the date on which the original emergency adoption of this rule otherwise would have expired) and to assure that (i) the notification form required by required Executive Law § 382-b may continue to be used to notify code enforcement officials after March 29, 2015; (ii) the sign or symbol required by required Executive Law § 382-b may continue to be placed on structures after March 29, 2015; (iii) certificates of occupancy for residential structures using truss type, pre-engineered wood or timber construction may continue to be issued after March 29, 2015; and (iv) the provisions of this rule which otherwise implement the provision of Executive Law § 382-b will remain in effect after March 29, 2015.

**Subject:** Use of truss type, pre-engineered wood or timber construction in residential structures.

**Purpose:** To implement the provisions of new section 382-b of the Executive Law, as added by chapter 353 of the Laws of 2014.

**Substance of emergency rule:** This rule adds a new Part 1265 to Title 19 of the Official Compilation of Codes, Rules and Regulations of the State of New York.

Part 1265 shall apply to (1) the construction of a new residential structure; (2) an addition to an existing residential structure, and (3) the rehabilitation of an existing residential structure.

Part 1265 shall not apply in any city having a population in excess of one million persons.

The following terms will have the following meanings for the purposes of new Part 1265:

**ADDITION.** The term "addition" shall mean an extension or increase in floor area or height of a residential structure.

**AUTHORITY HAVING JURISDICTION.** The term "authority having jurisdiction" shall mean the city, town, village, county, agency or other governmental unit responsible for administration and enforcement of the State Uniform Fire Prevention and Building Code with respect to the subject residential structure.

**BCNYS.** The term "BCNYS" shall mean the publication which is entitled Building Code of New York State and which is incorporated by reference in Part 1221 of this Title.

**ELECTRIC BOX.** The term "electric box" shall mean the box, if any, mounted on the exterior of the residential structure at the service point (as that term is defined in section E3401 of the RCNYS).

**EXISTING RESIDENTIAL STRUCTURE.** The term “existing residential structure” means a residential structure that is already in existence at the time an addition or rehabilitation is commenced, without regard to the date of original construction of the residential structure.

**NEW RESIDENTIAL STRUCTURE.** The term “new residential structure” means a residential structure constructed on or after January 1, 2015.

**PRE-ENGINEERED WOOD CONSTRUCTION.** The term “pre-engineered wood construction” shall mean construction that uses, for any load-supporting purpose(s), girders, beams, or joists made using wood components (or wood-based components) that are bonded together with adhesives (including, but not limited to, prefabricated wood I-joists, structural glued laminated timbers, structural log members, structural composite lumber, and cross-laminated timber).

**RCNYS.** The term “RCNYS” shall mean the publication which is entitled Residential Code of New York State and which is incorporated by reference in Part 1220 of this Title.

**REHABILITATION.** The term “rehabilitation” shall mean any repair, renovation, alteration or reconstruction work undertaken in an existing residential building.

**RESIDENTIAL STRUCTURE.** The term “residential structure” shall include one-family dwellings, two-family dwellings, and townhouses (as those terms are defined in the publication entitled RCNYS) and structures or portions of structures classified as Residential Group R in accordance with Chapter 3 of the BCNYS (excluding, however, hotels and motels which are classified as Group R-1 or R-2 occupancy in accordance with Chapter 3 of the BCNYS and which are subject to the provisions of Part 1264 of this Title).

**TIMBER CONSTRUCTION.** The term “timber construction” shall mean construction that uses, for any load-supporting purpose(s), solid or laminated wood having the minimum dimensions required for structures built using type IV construction (HT) in accordance section 602.4 of the BCNYS.

**TRUSS TYPE CONSTRUCTION.** The term “truss type construction” shall mean construction that uses, for any load-supporting purpose(s), a fabricated structure of wood or steel, made up of a series of members connected at their ends to form a series of triangles to span a distance greater than would be possible with any of the individual members on their own. Truss type construction shall not include (1) individual wind or seismic bracing components which form triangles when diagonally connected to the main structural system or (2) structural components that utilize solid plate web members.

When truss type construction, pre-engineered wood construction, and/or timber construction is to be utilized in the construction of a new residential structure or in an addition to or rehabilitation of an existing residential structure, the owner of such structure, or the owner’s duly authorized representative, shall notify the authority having jurisdiction of that fact. Such notice shall be in writing and shall be provided to the authority having jurisdiction with the application for a building permit. In the case of a construction, addition or rehabilitation project commenced prior to January 1, 2015 and not completed prior to January 1, 2015, such notice shall be given as soon as practicable after January 1, 2015 and in any event prior to the issuance of the certificate of occupancy or certificate of compliance for such project.

The form to be used to give the required notice to the authority having jurisdiction shall be substantially similar to the following, with all applicable lines checked and all blanks filed in with the appropriate information:

**NOTICE OF UTILIZATION OF TRUSS TYPE CONSTRUCTION, PRE-ENGINEERED WOOD CONSTRUCTION AND/OR TIMBER CONSTRUCTION**

To: [insert name of authority having jurisdiction]  
 Owner: [insert name of owner of the subject property]  
 Subject Property: [insert street address and tax map number, if any, of the subject property]

Please take notice that the (check applicable line):  
 new residential structure  
 addition to existing residential structure  
 rehabilitation to existing residential structure to be constructed or performed at the subject property reference above will utilize (check each applicable line):

truss type construction (TT)  
 pre-engineered wood construction (PW)  
 timber construction (TC)

In the following location(s) (check applicable line):  
 floor framing, including girders and beams (F)  
 roof framing (R)  
 floor framing and roof framing (FR).

Date: [insert date form is signed]  
 Signature: [signature of person submitting form to the authority having jurisdiction]

Name: [print or type name of person signing and submitting form]

Capacity: [insert “Owner” or “Owner’s Representative” as applicable]

An authority having jurisdiction shall be permitted to prescribe its own form to be used to give the required notice, provided that such form requests at least same information mentioned above.

Each new residential structure and each addition to or rehabilitation of an existing residential structure that utilizes truss type construction, pre-engineered wood construction and/or timber construction shall be identified by a sign or symbol in accordance with the provisions of Part 1265.

The sign or symbol required by this Part shall be affixed to the electric box attached to the exterior of the residential structure; provided, however, that:

(1) if affixing the sign or symbol to the electric box would obscure any meter on the electric box, or if the utility providing electric service to the residential structure does not allow the sign or symbol to be affixed to the electric box, the sign or symbol shall be affixed to the exterior wall of the residential structure at a point immediately adjacent to the electric box; and

(2) if no electric box is attached to the exterior of the residential structure or if, in the opinion of the authority having jurisdiction, the electric box attached to the exterior of the building is not located in a place likely to be seen by firefighters or other first responders responding to a fire or other emergency at the residential structure, the sign or symbol required by this Part shall be affixed to the exterior of the residential structure in a location approved by the authority having jurisdiction as a location likely to be seen by firefighters or other first responders responding to a fire or other emergency at the residential structure.

The sign or symbol shall be affixed prior to the issuance of a certificate of occupancy or a certificate of compliance. The authority having jurisdiction shall not issue a certificate of occupancy or certificate of compliance until the sign or symbol shall have been affixed.

The property owner shall be responsible for maintaining the sign or symbol and shall promptly replace any such sign or symbol that is affixed to an electric box when any change or modification is made to such electric box. The property owner shall promptly replace the sign or symbol if such sign or symbol is removed or becomes damaged, faded, worn or otherwise less conspicuous to firefighters or other first responders responding to a fire or other emergency at the residential structure. The property owner shall keep the area in the vicinity of the sign or symbol clear of all plants, vegetation, and other obstructions that may hide or obscure such sign or symbol or otherwise cause such sign or symbol to be less conspicuous to firefighters or other first responders responding to a fire or other emergency at the residential structure.

The sign or symbol indicating the utilization of truss type construction, pre-engineered wood construction and/or timber construction shall comply with the following requirements:

(1) The sign or symbol shall consist of a circle six inches (152.4 mm) in diameter, with a stroke width of 1/2 inch (12.7 mm). The background of the sign or symbol shall be reflective white in color. The circle and contents shall be reflective red in color, conforming to Pantone matching system (PMS) #187.

(2) The sign or symbol shall be of sturdy, non-fading, weather-resistant material; provided, however, that a sign or symbol applied directly to a door or sidelight may be a permanent non-fading sticker or decal.

(3) The sign or symbol shall contain an alphabetic construction type designation to indicate the construction type of the residential structure, as follows:

(i) if the residential structure is subject to the provisions of the RCNYS, the construction type designation shall be “V” and

(ii) if the residential structure is subject to the provisions of the BCNYS, the construction type designation shall be “I”, “II”, “III”, “IV” or “V” to indicate the construction classification of the structure under section 602 of the BCNYS.

(4) The sign or symbol shall contain an alphabetic location designation to indicate the locations(s) containing truss type construction, pre-engineered wood construction and/or timber construction structural components, as follows:

(i) “F” shall mean floor framing, including girders and beams;

(ii) “R” shall mean roof framing; and

(iii) “FR” shall mean floor framing and roof framing.

(5) The construction type designation shall be placed at the 12 o’clock position of the sign or symbol, over the location designation, which shall be placed at the six o’clock position of the sign or symbol.

Upon receipt of a form indicating that truss type, pre-engineered wood or timber construction is to be used in a residential structure, the authority having jurisdiction shall notify the chief of the fire district, fire department or fire company having jurisdiction over the structure of that fact.

The chief of the fire district, fire department, or fire company having jurisdiction over the residential structure to be erected, added to, or modified, or his or her designee shall use the information so provided to warn

persons conducting fire control and other emergency operations of the existence of truss type, pre-engineered wood or timber construction in the structure.

The local building department or local code enforcement official for the authority having jurisdiction shall consult with the county fire coordinator, local 911 and emergency dispatchers, and the local fire protection provider or entity deemed pertinent to determine the manner sufficient to warn persons conducting fire control and other emergency operations of the existence of truss type, pre-engineered wood or timber construction in the structure.

Subdivision 4 of section 382-b of the Executive Law directs local governments to provide for enforcement of section 382-b of the Executive Law. Enforcement of section 382-b of the Executive Law shall include, but shall not be limited to, enforcement of the provisions of this Part.

Nothing contained in Part 1265 shall in any way affect or diminish section 205-b of the General Municipal Law.

**This notice is intended** to serve only as a notice of emergency adoption. This agency intends to adopt the provisions of this emergency rule as a permanent rule, having previously submitted to the Department of State a notice of proposed rule making, I.D. No. DOS-02-15-00004-EP, Issue of January 14, 2015. The emergency rule will expire May 24, 2015.

**Text of rule and any required statements and analyses may be obtained from:** Mark Blanke, Department of State, 99 Washington Ave., Albany, NY 12231-0001, (518) 474-4073, email: Mark.Blanke@dos.ny.gov

#### **Regulatory Impact Statement**

##### **1. STATUTORY AUTHORITY AND LEGISLATIVE OBJECTIVES**

Executive Law § 382-b authorizes the State Fire Prevention and Building Code Council (the Code Council) to promulgate rules and regulations it deems necessary to carry into effect the provisions that section. This rule was originally adopted by the Code Council as an emergency measure to implement the provisions of and to further and effectuate the specific objectives of Executive Law § 382-b.

The original emergency adoption of this rule will expire on March 29, 2015. Executive Law § 376(5) authorizes the Secretary of State to do all things necessary or desirable to further and effectuate the general purposes and specific objectives of Article 18 of the Executive Law. The Secretary of State has determined that this emergency re-adoption of this rule is necessary and desirable to further and effectuate the general purposes and specific objectives of Article 18, including the specific objectives of Executive Law § 382-b.

The Legislative objectives of Executive Law § 382-b include (1) providing a means of notifying a local code enforcement official when truss type, pre-engineered wood or timber construction is to be utilized in the construction of a new residential structure or in the addition to or rehabilitation of an existing residential structure; (2) providing for the placement and maintenance of a sign or symbol on the exterior of such residential structures to provide notice to firefighters and other first responders that one or more of those construction types have been used; and (3) providing for communication and coordination between and among code enforcement officials, fire departments, and emergency dispatch personnel for the purpose of providing warning to firefighters and other first responders that one or more of those construction types have been used.

##### **2. NEEDS AND BENEFITS**

The Memorandum in Support of the bill enacting Executive Law § 382-b states that "(w)hile truss construction is very durable, when weakened by a fire, major components of a truss foundation can collapse suddenly without warning. When responding to a fire emergency, firefighters are unable to differentiate between a building constructed of truss foundation or another type of construction. As a result, in recent years truss constructions have been the cause of many preventable deaths of fire-fighters. It is imperative that firefighters are notified of the use of truss type construction so they can take appropriate measures that will protect the lives of residents and ensure their own safety. With the enactment of this bill, emergency responders will be able to take proper precautions in responding to a fire in a residential structure where truss type construction was utilized."

Executive Law § 382-b provides that any person utilizing truss type, pre-engineered wood or timber construction for the erection of any new residential structure, for any addition to an existing residential structure, or for any rehabilitation of an existing residential structure must (1) notify the local government that will issue the building permit for the that truss type, pre-engineered wood or timber construction is being utilized and (2) affix a sign or symbol to the electric box, if any, on the exterior of the structure indicating that truss type, pre-engineered wood or timber construction has been used. Executive Law § 382-b provides that the form to be used to notify the local code official that truss type, pre-engineered wood or timber construction is to be used shall be prescribed by the Code Council and that the sign or symbol to be fixed to the electric box shall be as approved by the Code Council.

Executive Law § 382-b also provides that (1) upon receipt of a form indicating that truss type, pre-engineered wood or timber construction is to be used in a residential structure, the code enforcement official must notify the chief of the fire district, fire department or fire company having jurisdiction over the structure of that fact; (2) the chief of the fire district, fire department, or fire company having jurisdiction over the residential structure to be erected, added to, or modified, or his or her designee shall use the information so provided to warn persons conducting fire control and other emergency operations of the existence of truss type, pre-engineered wood or timber construction in the structure; (3) the local building department or local code enforcement official must consult with the county fire coordinator, local 911 and emergency dispatchers, and the local fire protection provider or entity deemed pertinent to determine the manner sufficient to warn persons conducting fire control and other emergency operations of the existence of truss type, pre-engineered wood or timber construction in the structure; (4) local governments shall provide by local law or resolution for the enforcement of the provisions of Executive Law § 382-b, if necessary; and (5) the Code Council shall promulgate rules and regulations it deems necessary to carry into effect the provisions of Executive Law § 382-b including, but not limited to, the dimensions and color of the required sign or symbol.

By the initial emergency adoption of this rule, the Code Council prescribed the notification form contemplated by Executive Law § 382-b, designed and approved the sign or symbol contemplated by Executive Law § 382-b, and otherwise implemented the provisions of Executive Law § 382-b. This emergency re-adoption of this rule assure that the notification form prescribed by the Code Council and the sign or symbol designed and approved by the Code Council can continue to be used after the date on which the original adoption of this rule otherwise would have expired, and that the other implementing provisions of the original emergency adoption of this rule will remain in effect after that date, pending the anticipated adoption of this rule as a permanent measure.

##### **3. COSTS**

###### **A. Regulated Parties**

For a regulated party who chooses to use truss type, pre-engineered wood or timber construction in the construction of a new residential structure or the addition to or rehabilitation of an existing residential structure, the initial costs of complying with this rule will include (1) any increase in the fees currently charged by the local code enforcement officials to cover the additional costs associated with processing the form notifying the official that truss-type, pre-engineered wood or timber construction is to be used and/or for inspecting the structure to confirm that the required sign or symbol has been affixed to the exterior of the structure and (2) the cost of obtaining any affixing the required sign or symbol. Fees charged by local code enforcement officials are fixed by local governments, and not by this rule; the Department of State (DOS) anticipates that for the most part, any fee increase imposed by local governments by reason of this rule will be modest. DOS estimates that the cost of purchasing and affixing the sign or symbol required by this rule will be \$20 to \$30.

For regulated parties who own residential structures covered by this rule, the annual or ongoing costs for continuing compliance with this rule will include the cost of replacing the sign or symbol required by this rule when the electric box to which the sign or symbol is affixed is changed or modified or when the sign or symbol becomes worn, faded, or otherwise less conspicuous. DOS estimates that the cost of purchasing and affixing a replacement sign or symbol required will be \$20 to \$30. For regulated parties who own residential structures covered by this rule will also be required to keep the area in the vicinity of the sign or symbol required by this rule clear of all plants, vegetation, and other obstructions that may hide or obscure such sign or symbol or otherwise cause such sign or symbol less conspicuous to firefighters or other first responders responding to a fire or other emergency at the residential structure. DOS anticipates that this requirement will not significantly increase the cost of normal property maintenance.

The estimated cost of obtaining and affixing the required sign or symbol was determined by prices for signs currently posted on the website of a manufacturer of the signs now required under Part 1264 (ranging from \$12.45 to \$21.45 for a single sign to as low as \$8.95 per sign when purchased in quantity: <http://www.safetysign.com/products/p5973/ny-type-v-floor-truss-sign> [accessed 3/20/2015]); the cost of affixing the sign to the structure is assumed to be nominal.

###### **B. Department of State, the State, and Local Governments**

DOS does not anticipate that DOS or the State of New York will incur any significant costs for the implementation of, and continued administration of, this rule.

For local governments, the initial costs for implementation of this rule will include the cost of training their code enforcement personnel on the requirements of this rule. However, code enforcement personnel are required by existing law to receive 24 hours of in-service training each

year, and DOS anticipates that training on the requirements of the new this rule can be provided within the already required annual in-service training.

For local governments, the on-going costs for the continued compliance with and administration of this rule will include the costs associated with the inspecting residential structures to confirm that the required sign or symbol has been affixed; notifying the fire department when truss type, pre-engineered wood or timber construction is to be used in the construction of a new residential structure; consulting with the county fire coordinator, local 911 and emergency dispatchers, and the local fire protection provider or entity deemed pertinent to determine the manner sufficient to warn persons conducting fire control and other emergency operations of the existence of truss type, pre-engineered wood or timber construction in the structure; and warning persons conducting fire control and other emergency operations of the existence of truss type, pre-engineered wood or timber construction in the structure. However, DOS anticipates that a local government will be able to fulfill these obligations using its existing code enforcement, fire department, and emergency dispatch personnel, at little or no additional cost to the local government. Further, local governments are authorized by existing law to charge fees to defray the cost of their code enforcement activities.

Any local government or state agency that chooses to construct, add to, rehabilitate or won a residential structure will subject to this rule, and will be subject to the same costs of initial compliance and on-going compliance as any other regulated party.

#### 4. PAPERWORK

A property owner utilizing truss type, pre-engineered wood or timber construction for the erection of any new residential structure, for any addition to an existing residential structure, or for any rehabilitation of an existing residential structure will be required to notify the local code enforcement official of that fact. That notice must be given using the form prescribed in this rule or using a substantially similar form prescribed by the local code enforcement office.

#### 5. LOCAL GOVERNMENT MANDATES

Upon receipt of notification that a residential structure will use truss type, pre-engineered wood or timber construction, the local code enforcement official will be required to notify the chief of the fire district, fire department or fire company having jurisdiction over the structure of that fact. The chief of the fire district, fire department, or fire company must use the information so provided to warn persons conducting fire control and other emergency operations of the existence of truss type, pre-engineered wood or timber construction in the structure.

The local building department or local code enforcement official must consult with the county fire coordinator, local 911 and emergency dispatchers, and the local fire protection provider or entity deemed pertinent to determine the manner sufficient to warn persons conducting fire control and other emergency operations of the existence of truss type, pre-engineered wood or timber construction in the structure.

Before issuing a certificate of occupancy, the local code enforcement official will be required to determine that the required sign has been affixed to the structure.

Local governments will be required to enforce Executive Law § 382-b and this new rule. Local governments, fire departments, and emergency dispatch personnel will be required to see that their personnel receive training on these new requirements.

DOS anticipates that local governments will be able to enforce the new requirements added by Executive Law § 382-b and implemented by this rule with their current code enforcement personnel, and will not require any additional professional services.

#### 6. DUPLICATION

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

#### 7. ALTERNATIVES

No significant alternatives to this rule were considered by DOS. DOS believes that the provisions of this rule are necessary to implement Executive Law § 382-b.

#### 8. FEDERAL STANDARDS

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

#### 9. COMPLIANCE SCHEDULE

DOS anticipates that regulated parties will be able to comply with this rule immediately.

#### *Regulatory Flexibility Analysis*

##### 1. TYPES AND NUMBER OF SMALL BUSINESSES AND LOCAL GOVERNMENTS TO WHICH THE RULE WILL APPLY

This rule implements Executive Law § 382-b, which relates to the use of truss-type, pre-engineered wood and timber construction in the construction of new residential structures and the addition to or rehabilitation of existing residential structures. Executive Law § 382-b, and this rule, apply in all parts of the State except New York City. Therefore, this rule will apply to all small businesses and all local governments that

construct new residential buildings or add to or rehabilitate existing residential structures in any part of the State except New York City.

In addition, Executive Law § 382-b requires local governments to enforce section 382-b, and to communicate and coordinate with fire departments and emergency dispatch personnel in warning firefighters and other first responders when responding to a fire in a residential structure that utilizes truss-type, pre-engineered wood and timber construction in the construction. This rule implements those requirements. Therefore, this rule will apply to all or most of the local governments in the State other than New York City.

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

A small business or local government that chooses to utilize truss type, pre-engineered wood or timber construction in the construction of any new residential structure or in any addition to or rehabilitation of an existing residential structure to include with the building permit application a notification advising the local code enforcement official that truss type, pre-engineered wood or timber construction is being utilized.

Upon receipt of such notification, the local code enforcement official will be required to notify the chief of the fire district, fire department or fire company having jurisdiction over the structure that truss type, pre-engineered wood or timber construction is being utilized is being used. The chief of the fire district, fire department, or fire company must use the information so provided to warn persons conducting fire control and other emergency operations of the existence of truss type, pre-engineered wood or timber construction in the structure.

The local building department or local code enforcement official must consult with the county fire coordinator, local 911 and emergency dispatchers, and the local fire protection provider or entity deemed pertinent to determine the manner sufficient to warn persons conducting fire control and other emergency operations of the existence of truss type, pre-engineered wood or timber construction in the structure.

A small business or local government that uses truss type, pre-engineered wood or timber construction in the construction of a residential structure or an addition to or rehabilitation of an existing residential structure will be required to place a sign or symbol of the type described in this rule on the exterior wall of the structure.

Before issuing a certificate of occupancy, the local code enforcement official will be required to determine that the required sign has been affixed to the structure.

A small business or local government that owns a residential structure that is subject to this rule will be required to keep the area in the vicinity of the sign or symbol required by this rule clear of all plants, vegetation, and other obstructions that may hide or obscure such sign or symbol or otherwise cause such sign or symbol less conspicuous to firefighters or other first responders responding to a fire or other emergency at the residential structure. A small business or local government that owns such a residential structure will be required to replace the sign or symbol if the electric box to which the sign or symbol is affixed is changed or modified or if the sign or symbol becomes worn, faded, or otherwise less conspicuous.

Local governments will be required to enforce Executive Law § 382-b and this rule. Local governments, fire departments, and emergency dispatch personnel will be required to see that their personnel receive training on these new requirements.

DOS anticipates that local governments will be able to enforce the requirements added by Executive Law § 382-b, and implemented by this rule, with their current code enforcement personnel, and will not require any additional professional services.

##### 3. PROFESSIONAL SERVICES

A small business or local government that constructs a new residential structure or adds to or rehabilitates an existing residential structure will typically find it to be necessary or desirable to use the services of a design professional to design a new residential building or an addition to or rehabilitation of an existing residential structure. The new requirements added by Executive Law § 382-b, and implemented by this rule, should not increase the level of professional services required.

##### 4. COMPLIANCE COSTS

The initial costs of complying with this rule for small business or local government that uses truss type, pre-engineered wood or timber construction in the construction of a residential structure or an addition to or rehabilitation of an existing residential structure will include (1) any increase in the fees currently charged by the local code enforcement officials for processing permit applications, issuing permits, conducting inspections, and issuing permits to cover the additional costs associated with processing the form notifying the official that truss-type, pre-engineered wood or timber construction is to be used and/or for inspecting the structure to confirm that the required sign or symbol has been affixed to the exterior of the structure and (2) the cost of obtaining any affixing the required sign or symbol. Fees charged by local code enforcement officials are fixed by lo-

cal governments, and not by this rule; the Department of State anticipates that for the most part, any fee increase imposed by local governments by reason of new section 382-b (and this rule) will be modest. The Department of State estimates that the cost of purchasing and affixing the sign or symbol required by this rule will be \$20 to \$30.

The initial costs of compliance described in the preceding paragraph are not likely to vary for small businesses or local governments of different types and of differing sizes.

The annual or ongoing costs to building owners for continuing compliance with this rule for a small business or local government that used truss type, pre-engineered wood or timber construction in the construction of a new residential structure or the addition to or rehabilitation of an existing residential structure will include the cost of replacing the sign or symbol required by this rule when the electric box to which the sign or symbol is affixed is changed or modified or when the sign or symbol becomes worn, faded, or otherwise less conspicuous. The Department of State estimates that the cost of purchasing and affixing a replacement sign or symbol required will be \$20 to \$30. A small business or local government that owns such a residential structure will also be required to keep the area in the vicinity of the sign or symbol required by this rule clear of all plants, vegetation, and other obstructions that may hide or obscure such sign or symbol or otherwise cause such sign or symbol less conspicuous to fire fighters or other first responders responding to a fire or other emergency at the residential structure. The Department of State anticipates that this requirement will not significantly increase the cost of normal property maintenance.

The annual / ongoing costs described in the preceding paragraph are not likely to for small businesses or local governments of different types and of differing sizes.

The initial costs to be incurred by local governments will include the cost of training their code enforcement personnel on the requirements of this rule. However, code enforcement personnel are required by existing law to receive 24 hours of in-service training each year, and the Department of State anticipates that training on the requirements of the new this rule can be provided within the already required annual in-service training.

The annual or on-going compliance costs for a local government will include the costs associated with fulfilling the notification, warning, and consultation obligations established by Executive Law § 382-b. However, the Department of State anticipates that a local government will be able to fulfill these obligations using its existing code enforcement, fire department, and emergency dispatch personnel, at little or no additional cost to the local government. Further, local governments are authorized by existing law to charge fees to defray the cost of their code enforcement activities.

Any variation in local governments' costs of complying with this rule is likely to be attributable to the number of residential structures within the local government that utilize truss type, pre-engineered wood or timber construction and not to the type and/or size of the local government.

#### 5. ECONOMIC AND TECHNOLOGICAL FEASIBILITY

It is economically and technologically feasible for regulated parties to comply with the rule. No substantial capital expenditures are imposed and no new technology need be developed for compliance.

The Department of State anticipates that local governments will be able to provide training to their code enforcement personnel through the already required annual in-service training; that local governments will be able to this rule with their existing code enforcement personnel; and that local governments will be able to recoup any additional code enforcement expenses through fees they are authorized to impose by existing law.

#### 6. MINIMIZING ADVERSE IMPACT

This rule was designed to minimize any adverse impact on small businesses and local governments by (1) implementing only those requirements that are specified in the underlying statute (Executive Law § 382-b) and (2) prescribing a simple notification form and permitting local governments to prescribe their own notification forms if they wish to do so.

Approaches such as establishing differing compliance or reporting requirements or timetables that take into account the resources available to small businesses and local governments and/or providing exemptions from coverage by the rule, or by any part thereof, for small businesses and local governments were not considered because doing so (1) is not authorized by Executive Law § 382-b and (2) would endanger the public safety and general welfare.

#### 7. SMALL BUSINESS AND LOCAL GOVERNMENT PARTICIPATION

The Department of State gave small business and local governments an opportunity to participate in this rule making by posting a notice regarding this rule on the Department of State's website and by publishing a notice regarding this rule in Building New York, a monthly electronic news bulletin covering topics related to the Uniform Code and the construction industry which is prepared by the Department of State and which is currently distributed to approximately 10,000 subscribers, including local

governments, design professionals and others involved in all aspects of the construction industry.

#### 8. VIOLATIONS AND PENALTIES ASSOCIATED WITH VIOLATIONS

This rule will neither establish or modify a violation nor establish or modify penalties associated with a violation. Therefore, for the purposes of Chapter 524 of the Laws of 2011 and subdivision 1-a of section 202-b of the State Administrative Procedure Act, this rule is not required to include a cure period or other opportunity for ameliorative action, the successful completion of which will prevent the imposition of penalties on the party or parties subject to enforcement.

#### *Rural Area Flexibility Analysis*

##### 1. TYPES AND ESTIMATED NUMBERS OF RURAL AREAS.

This rule implements new Executive Law § 382-b, as added by Chapter 353 of the Laws of 2014, relating to the use of truss-type, pre-engineered wood and timber construction in the construction of new residential structures and in the addition to or rehabilitation of existing residential structures. Executive Law § 382-b and this rule apply in all parts of the State except cities having a population greater than 1,000,000 persons. Therefore, this rule will apply in all rural areas of the State.

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

This rule will require residential property owners wishing to utilize truss type, pre-engineered wood or timber construction in the construction of any new residential structure or in any addition to or rehabilitation of an existing residential structure to include with the building permit application a notification advising the local code enforcement official that truss type, pre-engineered wood or timber construction is being utilized.

Upon receipt of such notification, the local code enforcement official will be required to notify the chief of the fire district, fire department or fire company having jurisdiction over the structure that truss type, pre-engineered wood or timber construction is being utilized is being used. The chief of the fire district, fire department, or fire company must use the information so provided to warn persons conducting fire control and other emergency operations of the existence of truss type, pre-engineered wood or timber construction in the structure.

The local building department or local code enforcement official must consult with the county fire coordinator, local 911 and emergency dispatchers, and the local fire protection provider or entity deemed pertinent to determine the manner sufficient to warn persons conducting fire control and other emergency operations of the existence of truss type, pre-engineered wood or timber construction in the structure.

The owner of the structure will be required to place a sign or symbol of the type described in this rule on the exterior wall of the structure. Property owners will be required to keep the area in the vicinity of the sign or symbol required by this rule clear of all plants, vegetation, and other obstructions that may hide or obscure such sign or symbol or otherwise cause such sign or symbol less conspicuous to fire fighters or other first responders responding to a fire or other emergency at the residential structure. Property owners will be required to replace the sign or symbol if the electric box to which the sign or symbol is affixed is changed or modified or if the sign or symbol becomes worn, faded, or otherwise less conspicuous.

Local governments will be required to enforce Executive Law § 382-b and this rule. Local governments, fire departments, and emergency dispatch personnel will be required to see that their personnel receive training on these new requirements.

The Department of State anticipates that local governments will be able to enforce the requirements added by Executive Law § 382-b, and implemented by this rule, with their current code enforcement personnel, and will not require any additional professional services.

Building owners will typically find it to be necessary or desirable to use the services of a design professional to design a new residential building or an addition to or rehabilitation of an existing residential structure. The requirements added by Executive Law § 382-b, and implemented by this rule, should not increase the level of professional services required.

##### 3. COMPLIANCE COSTS.

The initial costs of complying with this rule for the owner of a residential structure utilizing truss type, pre-engineered wood or timber construction for the erection of any new residential structure, for any addition to an existing residential structure, or for any rehabilitation of an existing residential structure will include (1) any increase in the fees currently charged by the local code enforcement officials for processing permit applications, issuing permits, conducting inspections, and issuing permits to cover the additional costs associated with processing the form notifying the official that truss-type, pre-engineered wood or timber construction is to be used and/or for inspecting the structure to confirm that the required sign or symbol has been affixed to the exterior of the structure and (2) the cost of obtaining any affixing the required sign or symbol. Fees charged by local code enforcement officials are fixed by local governments, and not by this

rule; the Department of State anticipates that for the most part, any fee increase imposed by local governments by reason of Executive Law § 382-b (and this rule) will be modest. The Department of State estimates that the cost of purchasing and affixing the sign or symbol required by this rule will be \$20 to \$30. Such costs are not likely to vary for different types of public and private entities in rural areas.

The annual or ongoing costs to building owners for continuing compliance with this rule will include the cost of replacing the sign or symbol required by this rule when the electric box to which the sign or symbol is affixed is changed or modified or when the sign or symbol becomes worn, faded, or otherwise less conspicuous. The Department of State estimates that the cost of purchasing and affixing a replacement sign or symbol required will be \$20 to \$30. Property owners will also be required to keep the area in the vicinity of the sign or symbol required by this rule clear of all plants, vegetation, and other obstructions that may hide or obscure such sign or symbol or otherwise cause such sign or symbol less conspicuous to fire fighters or other first responders responding to a fire or other emergency at the residential structure. The Department of State anticipates that this requirement will not significantly increase the cost of normal property maintenance. The annual / ongoing costs described in this paragraph are not likely to be different types of public and private entities in rural areas.

The initial costs to be incurred by local governments will include the cost of training their code enforcement personnel on the requirements of this rule. However, code enforcement personnel are required by existing law to receive 24 hours of in-service training each year, and the Department of State anticipates that training on the requirements of the new this rule can be provided within the already required annual in-service training.

The annual or on-going compliance costs for a local government will include the costs associated with fulfilling the notification, warning, and consultation obligations established by Executive Law § 382-b. However, the Department of State anticipates that a local government will be able to fulfill these obligations using its existing code enforcement, fire department, and emergency dispatch personnel, at little or no additional cost to the local government. Further, local governments are authorized by existing law to charge fees to defray the cost of their code enforcement activities.

#### 4. MINIMIZING ADVERSE IMPACT.

This rule was designed to minimize any adverse impact on all areas of the State, including rural areas, by (1) implementing only those requirements that are specified in the underlying statute (Executive Law § 382-b) and (2) prescribing a simple notification form and permitting local governments to prescribe their own notification forms if they wish to do so.

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

#### 5. RURAL AREA PARTICIPATION.

The Department of State notified interested parties throughout the State, including interested parties in rural areas, of the proposed adoption of this rule by means of notices posted on the Department's website and published in Building New York, a monthly electronic news bulletin covering topics related to the Uniform Code and the construction industry which is prepared by the Department of State and which is currently distributed to approximately 10,000 subscribers, including local governments, design professionals and others involved in all aspects of the construction industry.

#### Job Impact Statement

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

This rule amends adds a new Part 1265 (entitled "Residential Structures with Truss Type Construction, Pre-Engineered Wood Construction or Timber Construction") to Title 19 of the NYCRR. Part 1265 implements new section 382-b of the Executive Law, as added by Chapter 353 of the Laws of 2014. Under section 382-b, and this rule, any person who uses truss-type, pre-engineered wood or timber construction in the construction of a new residential structure or in the addition to or rehabilitation of an existing residential structure will be required to notify the local code enforcement official of that fact and to place a sign or symbol on the exterior wall of the structure intended to notify firefighters and other first responders that truss-type, pre-engineered wood or timber construction has been used in the structure. This rule prescribes (1) the form to be used by the property owner or property owner's representative to designate a residential structure as truss type, pre-engineered wood or timber construction and (2) the sign or symbol to be affixed to the exterior of a residential building that utilizes truss type, pre-engineered wood and/or timber construction.

The Department of State has concluded that although provisions of this

rule will impose certain new obligations on regulated parties, the cost of complying with these new obligations will be minimal. For example, Part 1265 requires that each new residential structure and each addition to or rehabilitation of an existing residential structure that utilizes truss type construction, pre-engineered wood construction and/or timber construction be identified by signs or symbols in accordance with the provisions of this Part before receiving a certificate of occupancy or a certificate of compliance. The Department of State estimates that the cost of obtaining and posting a sign or symbol required by this rule will be \$20 to \$30. Therefore, the Department of State anticipates that the impact of this rule on the cost of any new construction, addition or rehabilitation project will be negligible.

New section 382-b of the Executive Law also requires, and this rule also provides, that local governments must enforce these new requirements, and that local governments, fire departments, and emergency dispatch personnel must consult with each other in developing means to warn firefighters and other first responders responding to a fire in a residential structure that truss-type construction, pre-engineered wood construction and/or timber construction has been utilized in the structure. The Department of State anticipates that, for the most part, these tasks can be accomplished by existing personnel, at little or no additional cost to local governments, fire departments or emergency dispatchers. Therefore, the Department of State anticipates that the impact of this rule on the costs of obtaining building permits, conducting construction inspections, issuing certificates of occupancy, and performing other code enforcement activities will be negligible.

Therefore, this rule should have no substantial adverse impact on the cost of obtaining a building permit, constructing a new residential structure, adding to or rehabilitating an existing residential structure, or obtaining a certificate of occupancy or a certificate of compliance and, consequently, this rule should have no substantial adverse impact on jobs and employment opportunities related to constructing a new residential structure or adding to or rehabilitating an existing residential structure utilizing truss type construction, pre-engineered wood construction and/or timber construction.

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## Office of Temporary and Disability Assistance

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

#### Video Hearings

I.D. No. TDA-15-15-00003-P

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

**Proposed Action:** Addition of section 358-5.13 to Title 18 NYCRR.

**Statutory authority:** Social Services Law, sections 20(3)(d) and 22(8)

**Subject:** Video Hearings.

**Purpose:** The rule would specifically allow the Office of Administrative Hearings to conduct fair hearings by means of video equipment.

**Text of proposed rule:** A new section 358-5.13 is added to Title 18 NYCRR to read as follows:

#### § 358-5.13 Video Hearings

(a) OAH may provide that a fair hearing held pursuant to this Part be conducted by means of video equipment. When a hearing is conducted using video equipment, the parties and the hearing officer need not be physically present at the same location.

(b) All provisions of this Part, which are not inconsistent with the specific provisions of this section, shall apply to hearings conducted using video equipment.

(c) An appellant who objects to OAH conducting the fair hearing by video equipment should notify OAH at the earliest possible opportunity before the time set for the hearing, but no later than at the commencement of the hearing. The request must be made in writing, in person, by video equipment, or by telephone.

(d) A fair hearing, with the appellant and the hearing officer physically present at the same location, will be held in the following circumstances:

(1) when, in the judgment of OAH, an appellant's due process rights would best be served by conducting a hearing in-person; or

(2) when, in the judgment of OAH, there are circumstances presented

by the appellant which make proceeding with the hearing by video equipment fundamentally unfair.

**Text of proposed rule and any required statements and analyses may be obtained from:** Jeanine S. Behuniak, NYS Office of Temporary and Disability Assistance, 40 North Pearl Street, 16C, Albany, New York 12243-0001, (518) 474-9779, email: Jeanine.Behuniak@otda.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.

#### **Regulatory Impact Statement**

##### 1. Statutory authority:

Social Services Law (SSL) § 20(3)(d) authorizes the Office of Temporary and Disability Assistance (OTDA) to promulgate regulations to carry out its powers and duties.

SSL § 22(8) requires OTDA to promulgate regulations, not inconsistent with federal and State law, as may be necessary to administer its fair hearings process.

##### 2. Legislative objectives:

It was the intent of the Legislature in enacting SSL §§ 20(3)(d) and 22(8) that OTDA establish rules to help ensure that the due process rights of appellants are adequately protected during the fair hearings process. These statutes give OTDA the authority to promulgate regulations concerning the administration of the fair hearings process.

##### 3. Needs and benefits:

OTDA's Office of Administrative Hearings (OAH) receives approximately 300,000 requests for fair hearings every year. OAH anticipates that the use of video hearings, in addition to the existing in-person hearings, would promote efficiency. With video hearings, OAH could assign individual hearing officers to hold fair hearings at multiple locations throughout the State on the same day. OAH would be able to schedule more hearings, and ultimately, the appellants' fair hearings requests would be addressed and resolved more quickly.

The video fair hearing experience would be the same as the current in-person hearings, except the hearing officer and the parties would not be physically present at the same location. The hearings would be conducted in the social services districts' (SSDs)' current hearing rooms. The appellant and the SSD representative would be able to see and hear the hearing officer, and the hearing officer would be able to see and hear the testimony of the parties.

The hearing officer would be able to look at the documents that the appellants and the SSDs' representatives wish to submit into evidence. Each video hearing room would have scanning equipment that is connected to the hearing officer's computer. When a document is scanned, it would appear on the hearing officer's screen where he or she would review it just as if the hearing officer were present in the hearing room.

An appellant who objects to OAH conducting the fair hearing by video equipment should notify OAH at the earliest possible opportunity before the time set for the hearing, but no later than at the commencement of the hearing. An appellant objecting to a video hearing must make his or her request for an in-person hearing in writing, in person, by video equipment, or by telephone.

When in the judgment of OAH, an appellant's due process rights would best be served by conducting a hearing in-person, arrangements will be made for the in-person hearing. In addition, when, in the judgment of OAH, an appellant presents circumstances which make proceeding with a video hearing fundamentally unfair, OAH will conduct an in-person hearing, rather than a video hearing.

##### 4. Costs:

The costs for the implementation of this proposed regulation are anticipated to be minimal. New York State has provided the necessary hardware for nearly all SSDs to participate in video hearings. Also New York State has provided the bandwidth for nearly all SSDs to participate in video hearings. It is noted that the installation of a networking drop is still needed in the hearing room of one SSD. Any OTDA costs associated with the training of SSD staff and the development of new notices and forms would be absorbed within OTDA's current budget.

The SSDs would use existing arrangements to help comply with the proposed regulations. It is anticipated that the SSDs would have their current fair hearing representatives participate in the video hearings, and they would use their current hearing rooms for the new video hearings.

The SSDs would incur costs for continuing compliance with the proposed regulations. The SSDs would be responsible for any loss or damage to the video and scanning equipment, and they would need to maintain sufficient insurance coverage to reflect this responsibility. It is anticipated that the SSDs would occasionally need to replace fuses contained in the video equipment at an estimated cost of less than five dollars for five fuses, and the SSDs may incur an increase in electricity costs to power the video and scanning equipment. The impact of the costs for fuses and electricity would be greater in SSDs that participate in fair hearings by

video more frequently. Additionally, there is a potential offset to these costs, as the SSDs will no longer have to incur the cost of providing a paper copy of the evidence packet to OAH.

##### 5. Local government mandates:

The proposed rule would not impose any programs upon the SSDs. However, the SSDs would need to identify contact persons who would serve as liaisons with OTDA regarding the video hearing equipment. During the video hearings, the fair hearing representatives for the SSDs would need to operate the scanning equipment in accordance with all security, privacy, confidentiality and compliance requirements, and if there were technical issues during the fair hearings, the counties' Local Area Network (LAN) administrators would provide assistance with connectivity issues. To assist the SSDs, OTDA would provide training regarding the use of the video hearings equipment, if needed.

##### 6. Paperwork:

OTDA would need to develop a limited number of new notices and forms to implement the video hearings and advise the appellants of their due process rights. However, the SSDs would not need to undertake additional reporting or recordkeeping to support this process. Instead of providing the hearing officer a paper copy of the evidence packet for each hearing, the SSDs would scan and transmit the evidence packet electronically to the hearing officer.

##### 7. Duplication:

These proposed amendments would not duplicate, overlap or conflict with any existing State or federal statutes or regulations governing OTDA's fair hearings process.

##### 8. Alternatives:

The alternative is to leave 18 NYCRR Part 358 intact. However, the proposed regulations would specifically allow OTDA to utilize new technology to streamline the fair hearings process and, at the same time, protect the appellants' due process rights.

##### 9. Federal standards:

The proposed amendments would not conflict with federal standards governing OTDA's fair hearings process.

##### 10. Compliance schedule:

After the remaining network drop is completed, all SSDs would be in compliance with this rule on its effective date.

#### **Regulatory Flexibility Analysis**

##### 1. Effect of rule:

The proposed regulatory amendments would not impact small businesses, but they would have an impact on the 58 social services districts (SSDs) in New York State. The video fair hearing experience would be the same as the current in-person hearings, except the hearing officer and the parties would not be physically present at the same location. The hearings would be conducted in the SSDs' current hearing rooms. The appellant and the SSD representative would be able to see and hear the hearing officer, and the hearing officer would be able to see and hear the testimony of the parties.

##### 2. Compliance requirements:

The SSDs would not need to undertake additional reporting or recordkeeping to support this process. The proposed rule would not impose any programs upon the SSDs. However, the SSDs would need to identify contact persons who would serve as liaisons with the Office of Temporary and Disability Assistance (OTDA) regarding the video hearing equipment. During the video hearings, the fair hearing representatives for the SSDs would need to operate the scanning equipment in accordance with all security, privacy, confidentiality and compliance requirements, and if there were technical issues during the fair hearings, the counties' Local Area Network (LAN) administrators would provide assistance with connectivity issues. To assist the SSDs, OTDA would provide training regarding the use of the video hearings equipment, if needed.

##### 3. Professional services:

The proposed amendments would not require SSDs to hire additional professional services.

##### 4. Compliance costs:

The majority of the SSDs would not incur initial capital costs to comply with the proposed regulations. New York State has provided the necessary hardware for nearly all SSDs to participate in video hearings. Also, New York State has provided the bandwidth for nearly all SSDs to participate in video hearings. It is noted that the installation of a networking drop is still needed in the hearing room of one SSD. Consequently, this SSD may incur initial capital costs to comply with the proposed rule.

The SSDs would use existing arrangements to help comply with the proposed regulations. It is anticipated that the SSDs would have their current fair hearing representatives participate in the video hearings, and they would use their current hearing rooms for the new video hearings.

The SSDs would incur annual costs to comply with the proposed regulations. The SSDs would be responsible for any loss or damage to the video and scanning equipment, and they would need to maintain sufficient insurance coverage to reflect this responsibility. It is anticipated that the

SSDs would occasionally need to replace fuses contained in the video equipment at an estimated cost of less than five dollars for five fuses, and the SSDs may incur an increase in electricity costs to power the video and scanning equipment. The impact of the costs for fuses and electricity would be greater in SSDs that participate in fair hearings by video more frequently.

5. Economic and technological feasibility:

The SSDs would have the economic and technological ability to comply with these proposed regulations. New York State has offered to assist the one remaining SSD to install its network drop.

6. Minimizing adverse impact:

OTDA has attempted to minimize any adverse impact upon the SSDs. New York State has provided the necessary hardware for nearly all SSDs to participate in video hearings. Also New York State has provided the bandwidth for nearly all SSDs to participate in video hearings and has offered to assist the one remaining SSD to install its network drop. OTDA would provide training to the SSDs regarding the use of the video hearings equipment, if needed.

7. Small business and local government participation:

SSDs are in favor of video hearings. Video hearings, in addition to the existing in-person hearings, would promote efficiency. With video hearings, the Office of Administrative Hearings (OAH) could assign individual hearing officers to hold fair hearings at multiple locations throughout the State on the same day. As a result, OAH would be able to schedule more hearings. Thus SSDs, which are sometimes quite distant from OAH's regional offices, would have their hearings scheduled sooner, and ultimately, the appellants' fair hearings requests would be addressed and resolved more quickly.

**Rural Area Flexibility Analysis**

1. Types and estimated numbers of rural areas:

The proposed regulatory amendments would not impact small businesses in rural areas, but they would have an impact on the 44 rural social services districts (rural SSDs) in New York State. The video fair hearing experience would be the same as the current in-person hearings, except the hearing officer and the parties would not be physically present at the same location. The hearings would be conducted in the rural SSDs' current hearing rooms. The appellant and the rural SSD representative would be able to see and hear the hearing officer, and the hearing officer would be able to see and hear the testimony of the parties.

2. Reporting, recordkeeping and other compliance requirements; and professional services:

No additional reporting or recordkeeping would be required by the rural SSDs. The proposed rule would not impose any programs upon the rural SSDs. However, the rural SSDs would need to identify contact persons who would serve as liaisons with the Office of Temporary and Disability Assistance (OTDA) regarding the video hearing equipment. During the video hearings, the fair hearing representatives for the rural SSDs would need to operate the scanning equipment in accordance with all security, privacy, confidentiality and compliance requirements, and if there were technical issues during the fair hearings, the counties' Local Area Network (LAN) administrators would provide assistance with connectivity issues. To assist the rural SSDs, OTDA would provide training regarding the use of the video hearings equipment, if needed.

3. Costs:

The majority of the rural SSDs would not incur initial capital costs to comply with the proposed regulations. New York State has provided the necessary hardware for nearly all rural SSDs to participate in video hearings. Also, New York State has provided the bandwidth for nearly all rural SSDs to participate in video hearings. It is noted that the installation of a networking drop is still needed in the hearing room of one rural SSD. Consequently, this SSD may incur initial capital costs to comply with the proposed rule.

The rural SSDs would use existing arrangements to help comply with the proposed regulations. It is anticipated that the rural SSDs would have their current fair hearing representatives participate in the video hearings, and they would use their current hearing rooms for the new video hearings.

The rural SSDs would incur annual costs to comply with the proposed regulations. The rural SSDs would be responsible for any loss or damage to the video and scanning equipment, and they would need to maintain sufficient insurance coverage to reflect this responsibility. It is anticipated that the rural SSDs would occasionally need to replace fuses contained in the video equipment at an estimated cost of less than five dollars for five fuses, and the rural SSDs may incur an increase in electricity costs to power the video and scanning equipment. The impact of the costs for fuses and electricity would be greater in rural SSDs that participate in fair hearings by video more frequently.

4. Minimizing adverse impact:

OTDA has attempted to minimize any adverse impact upon the rural SSDs. New York State has provided the necessary hardware for nearly all rural SSDs to participate in video hearings. Also, New York State has

provided the bandwidth for nearly all rural SSDs to participate video hearings and has offered to assist the one remaining SSD to install its network drop. OTDA would provide training to the rural SSDs regarding the use of the video hearings equipment, if needed.

5. Rural area participation:

Rural SSDs are in favor of video hearings. Video hearings, in addition to the existing in-person hearings, would promote efficiency. With video hearings, the Office of Administrative Hearings (OAH) could assign individual hearing officers to hold fair hearings at multiple locations throughout the State on the same day. As a result, OAH would be able to schedule more hearings. Thus rural SSDs, which are sometimes quite distant from OAH's regional offices, would have their hearings scheduled sooner, and ultimately, the appellants' fair hearings requests would be addressed and resolved more quickly.

**Job Impact Statement**

A Job Impact Statement is not required for the proposed amendments. It is apparent from the nature and the purpose of the proposed amendments that they would not have a substantial adverse impact on jobs and employment opportunities in the public or private sectors. The proposed amendments would not substantively affect the jobs of the employees of the social services districts or the Office of Temporary and Disability Assistance. Also the amendments would not have any adverse impact on jobs and employment opportunities in New York State.