

# 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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## Department of Civil Service

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

#### Jurisdictional Classification

**I.D. No.** CVS-34-15-00006-P

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

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

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

**Subject:** Jurisdictional Classification.

**Purpose:** To classify a position in the exempt class.

**Text of proposed rule:** Amend Appendix 1 of the Rules for the Classified Service, listing positions in the exempt class, in the Executive Department under the subheading “Gaming Commission,” by adding thereto the position of Deputy Director Division of Gaming.

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

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

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

#### Regulatory Impact Statement

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

#### Regulatory Flexibility Analysis

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

#### Rural Area Flexibility Analysis

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

#### Job Impact Statement

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

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

#### Jurisdictional Classification

**I.D. No.** CVS-34-15-00007-P

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

**Proposed Action:** Amendment of Appendixes 1 and 2 of Title 4 NYCRR.

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

**Subject:** Jurisdictional Classification.

**Purpose:** To classify a position in the exempt class and to classify a position in the non-competitive class.

**Text of proposed rule:** Amend Appendix 1 of the Rules for the Classified Service, listing positions in the exempt class, in the Department of State, by increasing the number of positions of Special Assistant from 16 to 17; and

Amend Appendix 2 of the Rules for the Classified Service, listing positions in the non-competitive class, in the Department of State, by adding thereto the position of Minority Business Specialist 1 (1).

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

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

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

#### Regulatory Impact Statement

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

#### Regulatory Flexibility Analysis

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

#### Rural Area Flexibility Analysis

A rural area flexibility analysis is not submitted with this notice because this rule is subject to a consolidated rural area flexibility analysis that was

previously printed under a notice of proposed rule making, I.D. No. CVS-01-15-00005-P, Issue of January 7, 2015.

#### **Job Impact Statement**

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

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

#### **Jurisdictional Classification**

**I.D. No.** CVS-34-15-00008-P

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

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

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

**Subject:** Jurisdictional Classification.

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

**Text of proposed rule:** Amend Appendix 2 of the Rules for the Classified Service, listing positions in the non-competitive class, in the Department of Health, by decreasing the number of positions of AIDS Program Representative 1 (Spanish Language) from 2 to 1 and by deleting therefrom the positions of øAffirmative Action Administrator 2 (1), øAffirmative Action Officer 3 (1), Apprentice Epidemiologist, Apprentice Public Health Physician (Group of Classes) (Employment not to exceed twelve months), Assistant Director of Dental Health, Biostatistician (Part time), øChief Bureau Policy Analysis, Planning and Evaluation (1), Clinic Aide (Part time) (6), Clinical Physician 2 (1), øCoordinator of Federal Programs Management (1), Dental Public Health Resident, øDeputy Director of Laboratories and Research (1), øDirector of Affirmative Action Programs 3 (1), øDirector of Birth Defects Institute (1), Director, Bureau of Health Care Standards (1) (Until first vacated after September 23, 1980), Director, Bureau of Medicaid Standards (1) (Until first vacated after September 23, 1980), øDirector of Epidemiology and Population Genetics (1), øExecutive Director (1) (Low Level Radioactive Waste Citizens Advisory Committee), Indian Health Aide, Information Systems Auditor 3 (1), Laboratory Trainee (6), Medicaid Hearing Examiner 1 (1), Medical Social Worker in Training, Metropolitan Area Public Health Dentist, Physician in Training (Group of Classes) (Employment not to exceed twelve months), Public Health Dentist (Local Medical Assistance Program) (Part time), Public Health Educator in Training (Employment not to exceed twelve months), Public Health Nurse (Part time) at St. Regis Indian Reservation Health Clinic, Public Health Physician (Local Medical Assistance Program) (Part time), Public Health Physician 1 (Various Specialties), Radiological Laboratory Technical Assistant (1), Radiological Scientist 1, Radiological Scientist 2, Radiological Scientist 3, øRegional Health Director, øSecretary 2 (1) (in the Governor's Health Care Advisory Board), Stenographer at the St. Regis Indian Reservation (1) and Supervising Public Health Dentist.

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

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

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

#### **Regulatory Impact Statement**

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

#### **Regulatory Flexibility Analysis**

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

#### **Rural Area Flexibility Analysis**

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

#### **Job Impact Statement**

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

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

#### **Jurisdictional Classification**

**I.D. No.** CVS-34-15-00009-P

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

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

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

**Subject:** Jurisdictional Classification.

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

**Text of proposed rule:** Amend Appendix 2 of the Rules for the Classified Service, listing positions in the non-competitive class, in the Department of Economic Development, by deleting therefrom the positions of øJob Training Partnership Specialist 1 (2) and øJob Training Partnership Specialist 2 (2) and by increasing the number of positions of Associate Agency Services Analyst from 5 to 7 and Senior Certification Analyst from 10 to 16.

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

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

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

#### **Regulatory Impact Statement**

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

#### **Regulatory Flexibility Analysis**

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

#### **Rural Area Flexibility Analysis**

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

#### **Job Impact Statement**

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

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

#### **Jurisdictional Classification**

**I.D. No.** CVS-34-15-00010-P

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

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

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

**Subject:** Jurisdictional Classification.

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

**Text of proposed rule:** Amend Appendix 2 of the Rules for the Classified Service, listing positions in the non-competitive class, in the Department of Family Assistance under the subheading "Office of Temporary and

Disability Assistance,” by increasing the number of positions of Minority Business Specialist 1 from 1 to 2.

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

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

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

**Regulatory Impact Statement**

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

**Regulatory Flexibility Analysis**

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

**Rural Area Flexibility Analysis**

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

**Job Impact Statement**

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

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

**Jurisdictional Classification**

**I.D. No.** CVS-34-15-00011-P

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

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

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

**Subject:** Jurisdictional Classification.

**Purpose:** To delete positions from and classify positions in the exempt class.

**Text of proposed rule:** Amend Appendix 1 of the Rules for the Classified Service, listing positions in the exempt class, in the Financial Control Board, by decreasing the number of positions of Secretary from 4 to 2, by deleting therefrom the positions of Counsel, Executive Director, Financial Control Board Analyst 2 (10), Financial Control Board Analyst 3 (5) and Special Office Assistant and by adding thereto the positions of Financial Control Board Analyst (15).

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

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

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

**Regulatory Impact Statement**

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

**Regulatory Flexibility Analysis**

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

**Rural Area Flexibility Analysis**

A rural area flexibility analysis is not submitted with this notice because this rule is subject to a consolidated rural area flexibility analysis that was

previously printed under a notice of proposed rule making, I.D. No. CVS-01-15-00005-P, Issue of January 7, 2015.

**Job Impact Statement**

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

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

**Jurisdictional Classification**

**I.D. No.** CVS-34-15-00012-P

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

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

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

**Subject:** Jurisdictional Classification.

**Purpose:** To delete positions from and classify positions in the exempt class.

**Text of proposed rule:** Amend Appendix 1 of the Rules for the Classified Service, listing positions in the exempt class, in the Executive Department under the subheading “Office of General Services,” by deleting therefrom the positions of Director Vietnam Memorial and Program Associate (3) and by increasing the number of positions of Special Assistant from 14 to 21.

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

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

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

**Regulatory Impact Statement**

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

**Regulatory Flexibility Analysis**

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

**Rural Area Flexibility Analysis**

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

**Job Impact Statement**

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

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

**Jurisdictional Classification**

**I.D. No.** CVS-34-15-00013-P

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

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

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

**Subject:** Jurisdictional Classification.

**Purpose:** To delete a position from and classify a position in the exempt class.

**Text of proposed rule:** Amend Appendix 1 of the Rules for the Classified

Service, listing positions in the exempt class, in the Department of State under the subheading "Joint Commission on Public Ethics," by decreasing the number of positions of Compliance Auditor (JCOPE) from 8 to 7 and by increasing the number of positions of Program Manager from 2 to 3.

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

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

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

**Regulatory Impact Statement**

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

**Regulatory Flexibility Analysis**

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

**Rural Area Flexibility Analysis**

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

**Job Impact Statement**

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

**Department of Environmental Conservation**

**NOTICE OF WITHDRAWAL**

**To Remove Regulatory Requirements That Exclude Individuals with Felonies from Obtaining Certain Licenses and Authorizations**

**I.D. No.** ENV-30-15-00004-W

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

**Action taken:** Notice of proposed rule making, I.D. No. ENV-30-15-00004-P, has been withdrawn from consideration. The notice of proposed rule making was published in the *State Register* on July 29, 2015.

**Subject:** To remove regulatory requirements that exclude individuals with felonies from obtaining certain licenses and authorizations.

**Reason(s) for withdrawal of the proposed rule:** The Express Terms for Part 183 did not appear in the State Register when the proposed rule making was published.

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

**Sportfishing and Associated Activities**

**I.D. No.** ENV-34-15-00003-P

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

**Proposed Action:** Amendment of sections 10.1, 10.2, 10.3 and 10.4 of Title 6 NYCRR.

**Statutory authority:** Environmental Conservation Law, sections 3-0301, 11-0303, 11-0305, 11-0317, 11-1301, 11-1303, 11-1316 and 11-1319

**Subject:** Sportfishing and associated activities.

**Purpose:** To revise sportfishing regulations and associated activities including the commercial collection, sale and use of baitfish.

**Text of proposed rule:** New paragraph 10.1(c)(8) is added to read as follows:

(8) *Catch and release angling (i.e. catching and returning a fish to the water without causing it harm) is only permitted during the open season for a particular fish species. Measuring, weighing and photographing the fish are permitted as long as the fish is not removed from the water for an extended period or handled in a manner that could cause harm. Fish may not be held on a string, or placed in a bucket, tub, livewell, or any other holding device.*

Existing clause 10.2(c)(1)(ii)(d) is amended to read as follows:

(d) Use of hooks with added weight is prohibited, except that artificial flies and jigs weighing [of] no more than one-eighth ounce [added weight] are permitted.

Existing paragraph 10.2(h)(2) is amended to read as follows:

(2) Table C- Fishing regulations for Lake Champlain and its tributaries.

Species	Open Season	Minimum Length	Daily Limit
(a) Trout	All year	12"	3
Lake Trout	All year	15"	3
Landlocked Salmon	All year	15"	2
(b) Black Bass	Second Saturday in June through November 30 December 1 through the Friday [proceeding] preceding the second Saturday in June	10" Catch and release only; artificial lures only	5
(c) Walleye [Sauger]	First Saturday in May through March 15	18"	[Any] 3 [in combination]
(d) Musklunge	Last Saturday in May through November 30th	40"	1
(e) Northern Pike	All year	20"	5
(f) Crappie	All year	8"	25
(g) Pickerel	All year	Any size	10
(h) Yellow perch and Sunfish	All year	Any size	Any number
(i) Lake Sturgeon	May not be taken or possessed at any time		
(j) All other species not listed	All year	Any size	Any number

Existing subparagraph 10.2(h)(3)(iii) is repealed.

[(iii) Yellow perch taken from Cumberland Bay, and tributaries of Cumberland Bay to their first impassable barrier to fish, must not be sold, traded or bartered, offered for sale, or exposed for sale. Cumberland Bay is defined as that portion of Lake Champlain north and west of a line extending from Cumberland Head Light to the northern tip of Crab Island then westerly to the southerly of two piers at the oil terminal known locally as the Copeland Oil Terminal.]

Existing paragraph 10.2(k)(3) is amended to read as follows:

(1) Ice fishing is permitted for the taking of any species during its open season.

[Five] Seven tip-ups [and two-hand lines] may be used.

10.3 Additional special fishing regulations for certain inland waters.

(b) Table A – Fishing regulations for specifically designated waters.

Water	Species	Open Season	Minimum Length	Daily Limit	Method
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New clause 10.3(b)(22)(a) is amended to read as follows:

(a)	All waters except as listed below or listed in subdivision 10.6(h) of this Part	Trout	April 1 through October 15	Any size	5 with no more than 2 longer than 12"
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New clause 10.3(b)(25)(a) is amended to read as follows:

(a)	All waters except as listed below or listed in subdivision 10.6(i) of this Part	Trout	April 1 through October 15	Any size	5 with no more than 2 longer than 12"
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Existing clause 10.3(b)(26)(d) is amended to read as follows:

(d)	Spring Creek on Caledonia State Fish Hatchery property as posted	April 1 through October 15 8[7:30] a.m. to 4 [3:30] pm
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New clause 10.3(b)(33)(a) is amended to read as follows:

(a)	All waters except as listed below or listed in subdivision 10.6(j) of this Part	Trout	April 1 through October 15	Any size	5 with no more than 2 longer than 12"
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New clause 10.3(b)(45)(a) is amended to read as follows:

(a)	All waters except as listed below or listed in subdivision 10.6(l) of this Part	Trout	April 1 through October 15	Any size	5 with no more than 2 longer than 12"
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Existing section 10.4 is amended to read as follows:

10.4 Ice fishing and use of [ice-fishing lines] *tip-ups*.

(a) For the purposes of this Part, a [n ice-fishing line] *tip-up* means any device used for fishing through the ice, including but not limited to hand line, tip-up, tip down[s], etc.

(b) General provisions.

(1) No person shall fish through the ice in any water inhabited by trout except those waters specified in this Part.

(2) No person shall [use ice fishing lines] *fish through the ice* on the frozen waters of the State during the period from May 1st through November 14th except *by the use of hand lines*.

(3) Fish may be taken through the ice in accordance with open seasons, minimum sizes and daily limits set forth in this Part.

(4) Wherever ice fishing is permitted, no more than seven [ice fishing lines] *tip-ups*[, with an ice fishing line meaning any device use for ice fishing through the ice (including but not limited to hand line, tip-up, tip down, rod and reel, etc.)] may be used except where specified in this section or other sections of this Part.

(5) No more than 15 *tip-ups* [ice fishing lines with an ice fishing line meaning any device use for ice fishing through the ice (including but not limited to hand line, tip-up, tip down, rod and reel, etc.)] may be used in Lake Champlain.

(6) No person shall operate *tip-ups* [ice fishing lines] without being in immediate attendance while the *tip-ups* [ice fishing lines] are in the water.

(7) No person shall use a [n ice-fishing line] *tip-up* that has more than five lures or baits or a combination of both.

(8) No person shall use a [n ice-fishing line] *tip-up* that has more than 15- hook points in any combination of single, double or treble hooks.

**Text of proposed rule and any required statements and analyses may be obtained from:** Shaun Keeler, New York State Department of Environmental Conservation, 625 Broadway, Albany, NY 12233, (518) 402-8928, email: shaun.keeler@dec.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.

**Additional matter required by statute:** A Programmatic Impact Statement pertaining to these actions is on file with the Department of Environmental Conservation.

**Reasoned Justification for Modification of the Rule**

General revisions to the State’s regulations governing freshwater sportfishing and related activities (Part 10) are continuously needed to meet the management needs for specific waters as well as part of an effort to accommodate angler and other stakeholder desires. To meet this need the Division of Fish, Wildlife and Marine Resources conducts a biennial revision of regulations governing sportfishing and associated activities. Conducting a review of and proposing amendments to 6NYCRR Part 10, every two years, is responsive and adequate towards meeting the 5 Year Existing Rules review requirement.

**Regulatory Impact Statement**

1. Statutory Authority

Section 3-0301 of the Environmental Conservation Law (ECL) establishes the general functions, powers and duties of the Department of Environmental Conservation (department) and the Commissioner, including general authority to adopt regulations. Sections 11-0303 and 11-0305 of the ECL authorize the department to provide for the management and protection of the State’s fisheries resources, taking into consideration ecological factors, public safety, and the safety and protection of private property. Section 11-0317 of the ECL empowers the department to adopt regulations, after consultation with the appropriate agencies of the neighboring states and the Province of Ontario, establishing open seasons, minimum size limits, manner of taking, and creel and seasonal limits for the taking of fish in the waters of Lake Erie, Lake Ontario, the Niagara River and the St. Lawrence River. Sections 11-1301 and 11-1303 of the ECL empower the department to fix by regulation open seasons, size and catch limits, and the manner of taking of all species of fish, except certain species of marine fish (listed in section 13-0339 of the ECL), in all waters of the State. Section 11-1319 of the ECL governs possession of fish taken in waters of the State.

2. Legislative Objectives

Open seasons, size restrictions, daily creel limits, and restrictions regarding the manner of taking fish are tools used by the department in achieving the intent of the legislation referenced above. The purpose of setting seasons is to prevent over-exploitation of fish populations during vulnerable periods, such as spawning, thereby ensuring a healthy population. Size limits are necessary to maintain quality fisheries and to ensure that adequate numbers survive to spawning age. Creel limits are used to distribute the harvest of fish among many anglers and optimize resource benefits. Catch and release fishing regulations are used in waters capable of sustaining outstanding growth and providing a large population of desirable-sized fish, creating an outstanding opportunity for anglers willing to forego harvesting fish.

Regulations governing the manner of taking fish upgrade the quality of the recreational experience, provide for a variety of harvest techniques and angler preferences, limit exploitation, and guard against unethical practices such as “snagging”.

3. Needs and Benefits

Most significant fishery resources in New York State are monitored through annual or periodic surveys and inventories, conducted by Bureau of Fisheries staff and DEC partners such as Cornell University and SUNY ESF. These fisheries surveys identify particular situations where changes in fishing regulations may be required to maintain the quality of a particular fishery or where significant opportunity for improvement or enhancement of the fishery exists. Additional regulation changes are prompted by the recommendation of user groups or the need to correct or clarify existing regulations. Concepts for regulation amendments that address identified needs are developed by Bureau of Fisheries staff and reviewed with sportsmen’s groups at the local, regional, or state-wide level, depending upon the significance of the proposal.

The proposed amendments are necessary to maintain or improve the quality of the State’s fisheries resources, including as described above (#2 Legislative Objectives Section). Changes to sportfishing regulations are intended to promote optimum opportunity for public use consistent with resource conservation.

In order to facilitate compliance by the angling public, significant revisions of the department’s fishing regulations are currently conducted on a biennial schedule.

The modifications contained here were actually intended to be included in the last Sportfish rule making which was finalized and filed on February 23, 2015, but inadvertently left out. The changes contained and proposed here are as follows:

1. Addition of a definition of "Catch & Release" (C & R) fishing. Catch and Release has been described in the DEC Fishing Regulations Guide for some time now, but has yet to be established in regulation;

2. Elimination of a separate special regulation allowing for the taking of sauger on Lake Champlain. This will be consistent with the statewide closure for sauger which was established effective 4/1/15;

3. Removal of a prohibition on the sale of yellow perch taken from Cumberland Bay on Lake Champlain. With the previous removal of the separate creel limit for yellow perch and panfish for Cumberland Bay, the accompanying section pertaining to restrictions on sale of yellow perch is no longer necessary;

4. Re-establishment of a definition of "tip-up", as the current definition for the equipment that can be used for ice fishing (entitled as "ice fishing devices") is not included as a method of take currently provided for by a fishing license, whereas tip-ups are;

5. Clarification of the wording pertaining to the maximum weight allowed for artificial flies and jigs used for fishing Great Lake tributaries;

6. Replacement of the special regulation, for trout, of "five fish with no more than two fish longer than 12 inches", with the statewide regulation, for the group of waters where the use of baitfish is prohibited in Herkimer, Lewis, Oneida and St. Lawrence Counties;

7. Adjustment of the daily fishing hours at Spring Creek on the Caledonia State Fish Hatchery by half an hour, from the current 7:30 AM to 3:30 PM, to 8:00 AM to 4:00 PM.

#### 4. Costs

Enactment of the rules and regulations described herein governing fishing will not result in increased expenditures by the State, local governments, or the general public.

#### 5. Local Government Mandates

These amendments of 6 NYCRR will not impose any programs, services, duties or responsibilities upon any county, city, town, village, school district, or fire district.

#### 6. Paperwork

No additional paperwork will be required as a result of these proposed changes in regulations.

#### 7. Duplication

There are no other State or federal regulations which govern the taking of freshwater sportfish.

#### 8. Alternatives

A no-action alternative would prevent these modifications, from becoming established in regulation. Not promulgating these changes would not likely provide for the improvements in fish communities and increases in sportfishing opportunity that these modifications are intended to support. Secondly, the no-action alternative will result in the discrepancy that exists for the above seven items, between the Freshwater Fishing Regulations Guide and the current regulations (NYCRR), as a result of an earlier filing error.

#### 9. Federal Standards

There are no minimum federal standards that apply to the regulation of sportfishing.

#### 10. Compliance Schedule

These regulations, if adopted, will become effective immediately upon filing. It is anticipated that regulated persons will be able to immediately comply with these regulations once they take effect.

### **Regulatory Flexibility Analysis**

The purpose of this rule making is to amend and update the Department of Environmental Conservation's (department) general regulations governing sportfishing. These amendments were developed as a result of the department's review of existing sportfishing regulations for needed and desired changes. Changes to these regulations are intended to promote optimum opportunity for public use consistent with resource conservation.

The department has determined that the proposed regulations will not impose an adverse impact or any new or additional reporting, record-keeping or other compliance requirements on small businesses or local governments. All reporting or record-keeping requirements associated with sportfishing are administered by the department. Since small businesses and local governments have no management or compliance role in the regulation of sport fisheries, there is no impact upon these entities. Small businesses may, and town or village clerks do issue fishing licenses. However, the department's rule making proposal does not change this process.

Fishing guides, and tackle/baitfish shops (to some extent), are the only business entities directly affected and impacted by changes to regulations pertaining to sport fishing. However, the actions proposed in this rule making (e.g. adjustments to season dates, bag limits, minimum size limits, gear restrictions etc.) are not measures that result in an overall loss of

angling opportunities or diminish opportunities for taking fish. Therefore, guide businesses should not lose clientele as a result or otherwise be adversely impacted by the changes. In fact, positive impacts are anticipated for these businesses because the proposed regulations would enhance the likelihood that angling opportunities will remain high and sustainable for future anglers and fishing-related businesses. The proposed changes do not contain any changes specific to the use of baitfish. Therefore commercial baitfish operators will not be adversely effected.

Based on the above, the department has determined that a regulatory flexibility analysis is not required.

Finally, Chapter 524 of the New York Laws of 2011 is not applicable as this proposed rule making does not establish or modify a violation or a penalty associated with a violation.

### **Rural Area Flexibility Analysis**

The purpose of this rule making is to amend and update the Department of Environmental Conservation's (department) general regulations governing sportfishing. These amendments were developed as a result of the department's review of existing sportfishing regulations. Changes to these regulations are intended to promote optimum opportunity for public use consistent with resource conservation.

The department has determined that the proposed rules will not impose an adverse impact or any new or additional reporting, record-keeping, or other compliance requirements on public or private entities in rural areas. All reporting or record-keeping requirements associated with sportfishing are administered by the department. The proposed regulations are not anticipated to negatively change the number of participants or the frequency of participation in regulated activities.

Fishing guides, and tackle/baitfish shops (to some extent), are the only business entities directly affected and impacted by changes to regulations pertaining to sport fishing. However, the actions proposed in this rule making (e.g. adjustments to season dates, bag limits, minimum size limits, gear restrictions etc.) are not measures that result in an overall loss of angling opportunities or diminish opportunities for taking fish. Therefore, guide businesses should not lose clientele as a result or otherwise be adversely impacted by the changes. In fact, positive impacts are anticipated for these businesses because the proposed regulations would enhance the likelihood that angling opportunities will remain high and sustainable for future anglers and fishing-related businesses. The proposed changes do not contain any changes specific to the use of baitfish. Therefore commercial baitfish operators will not be adversely effected.

Small businesses may, and town or village clerks do issue fishing licenses. However, the department's rule making proposal does not change this process.

Since the department's proposed rule making will not impose an adverse impact on public or private entities in rural areas and will have no effect on current reporting, record-keeping, or other compliance requirements, the department has concluded that a rural area flexibility analysis is not required for this regulatory proposal.

### **Job Impact Statement**

The purpose of this rule making is to amend and update the Department of Environmental Conservation's (department) general regulations governing sportfishing. These amendments were developed as a result of the department's biennial review of existing sportfishing regulations. Changes to these regulations are intended to promote optimum opportunity for public use consistent with resource conservation.

Fishing guides, and tackle/baitfish shops (to some extent), are the only business entities directly affected and impacted by changes to regulations pertaining to sport fishing. However, the actions proposed in this rule making (e.g. adjustments to season dates, bag limits, minimum size limits, gear restrictions etc.) are not measures that result in an overall loss of angling opportunities or diminish opportunities for taking fish. Therefore, guide businesses should not lose clientele as a result or otherwise be adversely impacted by the changes, and no jobs are expected to be lost. The proposed changes do not contain any changes specific to the use of baitfish. Therefore commercial baitfish operators will not be adversely effected, and therefore there should not be any job impacts. In fact, positive impacts are anticipated for these businesses because the proposed regulations would enhance the likelihood that angling opportunities will remain high and sustainable for future anglers and fishing-related businesses.

Based on the above, the department has concluded that the proposed regulatory changes will not have an adverse impact on jobs or employment opportunities in New York, and that a job impact statement is not required.

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

**Qualifications for License Issuing Agents and Wildlife Rehabilitators**

**I.D. No.** ENV-34-15-00028-P

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

**Proposed Action:** Amendment of Parts 183 and 184 of Title 6 NYCRR.

**Statutory authority:** Environmental Conservation Law, sections 11-0305, 11-0713, 11-0515 and 11-0919

**Subject:** Qualifications for License Issuing Agents and Wildlife Rehabilitators.

**Purpose:** To remove regulatory requirements that exclude individuals with felonies from obtaining certain licenses and authorizations.

**Text of proposed rule:** Title 6 of the Codes, Rules and Regulations of New York State, Part 183, License – Issuing Officers, is amended as follows: Subdivision (c) of section 183.1 is amended; subdivision 183.2(a) is amended, subdivision 183.2(b) is removed, subdivisions 183.2(c)-(e) are renumbered to be subdivisions (b)-(d) and a new subdivision (e) is added; subdivision 183.3(a) is amended.

Part 183: License - Issuing Officers

§ 183.1 Definitions

(c) Licenses mean all resident and nonresident hunting, fishing, trapping, [big game,] bowhunting and muzzleloading licenses and [stamps] privileges and other special licenses or permits, issued pursuant to Environmental Conservation Law, section 11-0713.

§ 183.2 Qualifications for Appointment as a License Issuing Officer

A person may be eligible for appointment as a license issuing officer if the following requirements have been met:

(a) Applicant is over the age of 18 years and[,] meets the residency requirements, if any, contained in Environmental Conservation Law, section 11-0713(1)(a)(4), is of good character and reputation in the community and furnishes three business references attesting thereto.

(b) Applicant has not been convicted of or pleaded guilty to a misdemeanor under the Environmental Conservation Law within the past three years, and has not been convicted of a crime under any other law](3).

[(c)](b) There are no outstanding liens against or judgments in the name of the proprietor.

[(d)](c) The proprietor conducts a business catering to the needs of hunters, trappers or fishermen for at least three months each year.

[(e)](d) The annual license sales at the place of business are at least 100 in the third and subsequent years of appointment.

(e) If the applicant has been convicted of one or more criminal offenses, he or she must be found eligible after a balancing of the factors set out in Article 23-A of Correction Law. In accordance with that Article, no license shall be denied by reason of the applicant having been previously convicted of one or more criminal offenses unless (i) there is a direct relationship between one or more of the previous criminal offenses and the duties required of the license or (ii) licensing the applicant would involve an unreasonable risk to property or the safety or welfare of a specific individual or the general public. In determining these questions, the agency will look at all factors listed under New York State Correction Law Section 753.

§ 183.3 Qualifications for Appointment as an Assistant License Issuing Officer

(a) A license issuing officer may nominate for appointment as assistant license issuing officers employees in [his]their place of business.

Paragraph 184.3(a)(1) is amended; paragraph 184.3(a)(2) is removed and paragraphs (3) and (4) of subdivision (a) are renumbered as paragraphs (2) and (3) and a new paragraph (4) is added. Subdivision (a) of section 184.4 is amended. Paragraphs 184.6(a)(4), (5), (7) and (8) are amended; subdivision 184.6(b) is amended.

§ 184.3 Qualifications for appointment

(a) The Class I Wildlife Rehabilitator and Class II Wildlife Rehabilitator must:

(1) be over the age of 16 years[,] and a resident of New York State[, of good character and reputation in the community as judged by two character references written by persons not related to the applicant or to each other;

(2) not have been convicted of or pleaded guilty to a violation or misdemeanor under the Environmental Conservation Law or settled and compromised a civil liability therefor, nor have been convicted of any misdemeanor or felony within the previous three years];

[(3)](2) receive a grade of 80 percent or higher on a written examination administered by the department and designed to test knowledge in the field of wildlife rehabilitation;[ and]

[(4)](3) be interviewed, by a regional department employee responsible for the wildlife rehabilitation program, to assess the applicant's proficiency in wildlife rehabilitation[.]; and

(4) if convicted of one or more criminal offenses, be found eligible after a balancing of the factors set out in Article 23-A of Correction Law. In accordance with that Article, no license shall be denied by reason of the applicant having been previously convicted of one or more criminal offenses unless (i) there is a direct relationship between one or more of the previous criminal offenses and the duties required of the license or (ii) licensing the applicant would involve an unreasonable risk to property or the safety or welfare of a specific individual or the general public. In determining these questions, the agency will look at all factors listed under New York State Correction Law Section 753.

§ 184.4 Additional criteria for appointments

(a) The Class II Wildlife Rehabilitator may be assisted by and provide training to one or more assistant wildlife rehabilitators upon approval by the department of an outline of training methods and procedures to assure control over the activities of appointed assistant wildlife rehabilitators, [but]and the Class II Wildlife Rehabilitator [must]shall be responsible for the proper performance of duties of all assistant wildlife rehabilitators under their supervision[whom he or she nominated, trained, and employs].

§ 184.6 Duties

(a) The wildlife rehabilitator must:

(4) comply with applicable provisions of the Environmental Conservation Law and rules and regulations adopted pursuant thereto and with the department's instructions concerning methods of wildlife rehabilitation, reporting requirements and any conditions contained in [his/her]their license;

(5) display in a prominent place the license provided by the department. A wildlife rehabilitator identification card must be carried by the [permittee]licensee when in possession of wildlife afield;

(7) notify the department at least 90 days in advance of moving [his/her]their place of operation to a new location;

(8) allow authorized department employees to inspect [his/her]their wildlife rehabilitation operations and records at any reasonable time; and

(b) Additionally, the wildlife rehabilitator may distribute, if appropriate, to persons who submit wildlife to [him/her]them, any material supplied by the department relating to wildlife rehabilitation.

**Text of proposed rule and any required statements and analyses may be obtained from:** Joseph Therrien, New York State Department of Environmental Conservation, 625 Broadway, Albany, NY 12233-4752, (518) 402-8987, email: joseph.therrien@dec.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.

**Additional matter required by statute:** A programmatic environmental impact statement is on file with the Department of Environmental Conservation.

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

**Regulatory Impact Statement**

1. Statutory Authority

Subdivision 2 of Section 11-0305 of the Environmental Conservation Law authorizes the department to issue licenses and designate agents to sell and promote the sale of licenses. Paragraph 1.a. of Section 11-0713 provides for the qualifications and regulatory compliance requirements of license issuing officers.

Subdivision 3 of Section 11-0515 of the Environmental Conservation Law directs the department to promulgate regulations pertaining to the rehabilitation of wildlife. Subdivision 2 of Section 11-0919 provides the criteria for a licensed wildlife rehabilitator to handle rabies vector species (skunks, raccoons and bats).

2. Legislative Objectives

The legislative objectives of the statutory provisions listed above are to establish, or authorize the department to establish, qualifications and duties of becoming a license issuing agent and of becoming a wildlife rehabilitator in New York State.

3. Needs and Benefits

The purpose of this rulemaking is to amend both 6 NYCRR Part 183 and 184 by ensuring that Correction Law Article 23-A balancing test will be used in evaluating applicants for these licenses who have criminal convictions.

4. Costs

There are no costs to the department or local governments. The proposed changes will not alter any existing programs and will not increase requirements or fees associated with these licenses.

5. Local Government Mandates

These amendments will not impose any programs, services, duties or responsibilities upon any county, city, town, village, school district or fire district.

## 6. Paperwork

The proposed rule will not impose any additional paperwork requirements. Individuals seeking license from the department will be required to complete and submit a license application. Applicants for a wildlife rehabilitation license are also required to pass a written minimum standards test administered by the Department.

## 7. Duplication

There are no other regulations similar to this proposal.

## 8. Alternatives

There are no additional alternatives.

## 9. Federal Standards

The federal rehabilitation standards appear in Title 50 of the Code of Federal Regulations Section 21.31. The proposed rule does not exceed any minimum standards of the federal government. There are no federal standards associated with license issuing agents.

## 10. Compliance Schedule

These regulations, if adopted, will become effective immediately. No additional steps will be required of current license holders.

**Regulatory Flexibility Analysis**

The proposed regulation would amend the Department of Environmental Conservation's (department) regulations governing the qualifications and appointment as a License Issuing Officer and Wildlife Rehabilitator found in Title 6 of the New York Codes Rules Regulations, Parts 183 and 184, by allowing individuals who have been convicted of or pled guilty to a misdemeanor or felony to apply for and become a license issuing officer or a wildlife rehabilitator.

The proposed rule will ensure that Correction Law Article 23-A balancing test will be used in evaluating applicants for these licenses who have criminal convictions. The rulemaking removes the restrictions which currently prohibit the acquisition of these licenses by any individual that has been convicted of or pled guilty to a misdemeanor or felony. The rulemaking will allow store proprietors or employees, who were previously prohibited from becoming License Issuing Officers, to offer this service at their stores. The proposed rulemaking may increase sales at these businesses as proprietors will be able to offer the additional service of sport license sales. In addition, the rulemaking will allow individuals, who were previously prohibited from becoming wildlife rehabilitators, to create their own rehabilitation center where they can develop their business and professional images. The proposed changes will not impose any new record keeping or compliance requirements.

Based on the proposed regulations having little to no impact on businesses and, the potential for enhanced business opportunities, the department has determined that the proposed rule will not impose an adverse economic impact or reporting, record keeping, or other compliance requirements on small business or local governments. There will be no impacts on local governments. The regulation removes previous restrictions to obtaining a license from the department.

Since the department's proposed rule making will not impose an adverse impact on businesses or local governments, including little effect on current reporting, record-keeping or compliance requirements, the department has concluded that this proposed regulation does not require a Regulatory Flexibility Analysis.

**Rural Area Flexibility Analysis**

## 1. Types and estimated numbers of rural areas:

The proposed rule will ensure that Correction Law Article 23-A balancing test will be used in evaluating applicants for these licenses who have criminal convictions. The rule allows individuals in New York State who have a felony record to become a License Issuing Officer or Wildlife Rehabilitator. Consequently, the proposed regulation impacts rural areas throughout the state.

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

The proposed rule does not add any additional requirements for record keeping or requirements for obtaining a license.

## 3. Costs:

There are no application or license fees associated with the License Issuing Officer or Wildlife Rehabilitation licenses. There are no additional costs associated with obtaining these licenses. To qualify for a Wildlife Rehabilitation license an applicant must first pass a written exam administered by the department which tests the knowledge and skill of potential licensees. There is no fee for this examination and a free study guide is available on line to aide in preparation for the exam.

## 4. Minimizing adverse impact:

The proposed rulemaking will allow individuals who were previously prohibited from obtaining these licenses to now obtain them. The proposed changes will provide new opportunities to a percentage of the population that was previously excluded from these activities thereby having a positive effect on rural areas. The proposed rule may also have a beneficial impact on small businesses as some business owners may opt to provide the additional service of selling sport licenses.

## 5. Rural area participation:

The regulation removes previous restrictions to obtaining a license from the department.

**Job Impact Statement**

The purpose of this rulemaking is to amend both 6 NYCRR Part 183 and 184 by ensuring that Correction Law Article 23-A balancing test will be used in evaluating applicants for these licenses who have criminal convictions. The proposed rulemaking will provide opportunities to individuals who have been convicted of or pled guilty to a misdemeanor or felony by allowing them to obtain department issued licenses that will enable them to integrate back into the work force. The proposed rulemaking will provide regulatory relief by removing the requirement that individuals applying to be license issuing agents or wildlife rehabilitators must not have been found guilty or pled to a felony or misdemeanor charge within three years of application.

The proposed rulemaking will allow access to individuals who previously could not partake in these activities. The proposed rulemaking will not have a substantial adverse impact on jobs or employment opportunities. Moreover, this rule making is not expected to adversely affect the number of participants or frequency of participation in the regulated activities.

For these reasons, the department anticipates that the proposed regulatory changes will not have an adverse impact on jobs or employment opportunities in New York, and that a Job Impact Statement is not required.

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## Department of Health

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

**Prohibit Additional Synthetic Cannabinoids**

**I.D. No.** HLT-34-15-00005-EP

**Filing No.** 679

**Filing Date:** 2015-08-06

**Effective Date:** 2015-08-06

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

**Proposed Action:** Amendment of section 9.1 of Title 10 NYCRR.

**Statutory authority:** Public Health Law, section 225

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

**Specific reasons underlying the finding of necessity:** "Synthetic cannabinoids" encompass a wide variety of chemicals that are designed to stimulate the same receptor in the body as cannabinoid 9-tetrahydrocannabinol (THC). However, they cause additional side effects that mimic other controlled substances and have been linked to severe adverse reactions, including death and acute renal failure. Reported side effects include: tachycardia (increased heart rate); paranoid behavior, agitation and irritability; nausea and vomiting; confusion; drowsiness; headache; hypertension; electrolyte abnormalities; seizures; and syncope (loss of consciousness). Additional signs and symptoms of synthetic cannabinoids include: anxiety; tremor; hallucinations; and violent behavior. These effects can be similar to those of phencyclidine (PCP). It has been reported that some recent patients are also presenting with both somnolence (drowsiness) and bradycardia (decreased heart rate), some requiring endotracheal intubation.

Synthetic cannabinoids are frequently applied to plant materials and then packaged as incense, herbal mixtures or potpourri. They often carry a "not for human consumption" label, and are not approved for medical use in the United States. Products containing synthetic cannabinoids are, in actuality, consumed by individuals, most often by smoking, either through a pipe, a water pipe, or rolled in cigarette papers.

Products containing synthetic cannabinoids have become prevalent drugs of abuse. When 10 NYCRR Part 9 was first promulgated, calls to New York State Poison Control Centers relating to the consumption of synthetic cannabinoids had increased dramatically. Over half of the calls to the Upstate Poison Control Center in 2011 involved children under the age of 19 years of age which is consistent with the results of a 2011 Monitoring the Future national survey of youth drug-use trends that showed that 11.4% of 12th graders used a synthetic cannabinoid during the twelve months prior to the survey, making it the second most commonly used illicit drug among high school seniors at that time.

In 2012, the Department issued 10 NYCRR Part 9, which addressed this emergent threat to public health by prohibiting the possession, manufacture, distribution, sale or offer of specified synthetic cannabinoids and other substances. Thereafter, New York State experienced a substantial decrease in reported cases of adverse health effects related to synthetic cannabinoid use, an achievement that was sustained until the early part of this year.

Recently, however, New York State experienced a dramatic increase in synthetic cannabinoid-related adverse events and emergency department visits. During April 1 to June 30, New York State has seen more than 1,900 emergency department visits and 680 poison control center calls due to reports of adverse health effects associated with synthetic cannabinoid use. This represents more than a tenfold increase over the same time period in 2014, when there was more than 150 emergency department visits and 50 poison control center calls reported. Nationally, there have been 15 synthetic cannabinoid-related deaths reported to poison control centers during from January to May of 2015. In New York, no fatalities have been reported to date, although there has been a 44% increase in the proportion of patients being admitted to critical care units from April 6 to June 30, 2015 when compared to the proportion of patients admitted to the critical care unit from Jan 1, 2011 to April 5, 2015. Calls received by poison control centers generally reflect only a small percentage of actual instances of poisoning.

Testing has identified synthetic cannabinoids that were not known to the Department in 2012, when 10 NYCRR Part 9 was first issued, and that are associated with the recent increase in cannabinoid-related adverse events and emergency department visits. Identifying these new synthetic cannabinoids in the regulation will simplify and enhance the efforts of local governments to control these dangerous chemicals.

Because synthetic cannabinoids continue to be an urgent public health issue, and because the Department has learned of additional specific synthetic cannabinoids since the regulation was first promulgated, the Commissioner of Health and the Public Health and Health Planning Council have determined it necessary to file these regulations on an emergency basis. Public Health Law § 225, in conjunction with State Administrative Procedure Act § 202(6), empowers the Council and the Commissioner to adopt emergency regulations when necessary for the preservation of the public health, safety or general welfare and that compliance with routine administrative procedures would be contrary to the public interest.

**Subject:** Prohibit Additional Synthetic Cannabinoids.

**Purpose:** To add additional chemicals to the list of explicitly prohibited synthetic cannabinoids.

**Text of emergency/proposed rule:** Subdivision (b) of section 9.1 is amended as follows:

(b) Synthetic Cannabinoid means any *manufactured* chemical compound that is a cannabinoid receptor agonist and includes, but is not limited to any material, compound, mixture, or preparation that is not listed as a controlled substance in Schedules I through V of § 3306 of the Public Health Law, and not approved by the federal Food and Drug Administration (FDA), and contains any quantity of the following substances, their salts, isomers (whether optical, positional, or geometric), homologues (analogs), and salts of isomers and homologues (analogs), unless specifically exempted, whenever the existence of these salts, isomers, homologues (analogs), and salts of isomers and homologues (analogs) is possible within the specific chemical designation:

(1) Naphthoylindoles. Any compound containing a 3-(1-Naphthoyl)indole structure with substitution at the nitrogen atom of the indole ring by an alkyl, haloalkyl, alkenyl, cycloalkylmethyl, cycloalkylethyl, 1-(N-methyl-2-piperidinyl)methyl, or 2-(4-morpholinyl)ethyl group, whether or not further substituted in the indole ring to any extent and whether or not substituted in the naphthyl ring to any extent. (Other names in this structural class include but are not limited to: *JWH 007*, *JWH 015*, *JWH 018*, *JWH 019*, *JWH 073*, *JWH 081*, *JWH 98*, *JWH 122*, *JWH 164*, *JWH 200*, *JWH 210*, *JWH 398*, *AM 2201*, *MAM 2201*, *EAM 2201* and *WIN 55 212*.)

(2) Naphthylmethylindoles. Any compound containing a 1 H-indol-3-yl-(1-naphthyl)methane structure with substitution at the nitrogen atom of the indole ring by an alkyl, haloalkyl, alkenyl, cycloalkylmethyl, cycloalkylethyl, 1-(N-methyl-2-piperidinyl)methyl, or 2-(4-morpholinyl)ethyl group, whether or not further substituted in the indole ring to any extent and whether or not substituted in the naphthyl ring to any extent. (Other names in this structural class include but are not limited to: *JWH-175*, and *JWH-184*.)

(3) Naphthoylpyrroles. Any compound containing a 3-(1-naphthoyl)pyrrole structure with substitution at the nitrogen atom of the pyrrole ring by an alkyl, haloalkyl, alkenyl, cycloalkylmethyl, cycloalkylethyl, 1-(N-methyl-2-piperidinyl)methyl, or 2-(4-morpholinyl)ethyl group, whether or not further substituted in the pyrrole ring to any extent and whether or not substituted in the naphthyl ring to any extent. (Other names in this structural class include but are not limited: *JWH 307*.)

(4) Naphthylmethylindenes. Any compound containing a naphthylmethyl indenes structure with substitution at the 3-position of the indene ring by an alkyl, haloalkyl, alkenyl, cycloalkylmethyl, cycloalkylethyl, 1-(N-methyl-2-piperidinyl)methyl, or 2-(4-morpholinyl)ethyl group, whether or not further substituted in the indene ring to any extent and whether or not substituted in the naphthyl ring to any extent. (Other names in this structural class include but are not limited: *JWH-176*.)

(5) Phenylacetylindoles. Any compound containing a 3-phenylacetylindole structure with substitution at the nitrogen atom of the indole ring by an alkyl, haloalkyl, alkenyl, cycloalkylmethyl, cycloalkylethyl, 1-(N-methyl-2-piperidinyl)methyl, or 2-(4-morpholinyl)ethyl group, whether or not further substituted in the indole ring to any extent and whether or not substituted in the phenyl ring to any extent. (Other names in this structural class include but are not limited to: *RCS-8 (SR-18)*, *JWH 201*, *JWH 250*, *JWH 203*, *JWH-251*, and *JWH-302*.)

(6) Cyclohexylphenols. Any compound containing a 2-(3-hydroxycyclohexyl)phenol structure with substitution at the 5-position of the phenolic ring by an alkyl, haloalkyl, alkenyl, cycloalkylmethyl, cycloalkylethyl, 1-(N-methyl-2-piperidinyl)methyl, or 2-(4-morpholinyl)ethyl group, whether or not substituted in the cyclohexyl ring to any extent. (Other names in this structural class include but are not limited to: *CP 47,497* (and homologues (analogs)), *cannabicyclohexanol*, and *CP 55,940*.)

(7) Benzoylindoles. Any compound containing a 3-(benzoyl)indole structure with substitution at the nitrogen atom of the indole ring by an alkyl, haloalkyl, alkenyl, cycloalkylmethyl, cycloalkylethyl, 1-(N-methyl-2-piperidinyl)methyl, or 2-(4-morpholinyl)ethyl group, whether or not further substituted in the indole ring to any extent and whether or not substituted in the phenyl ring to any extent. (Other names in this structural class include but are not limited to: *AM 694*, *Pravadoline (WIN 48,098)*, *RCS 4*, *AM-2233* and *AM-679*.)

(8) [2,3-Dihydro-5-methyl-3-(4-morpholinylmethyl)pyrrolo [1,2,3-de]-1, 4-benzoxazin-6-yl]-1-naphthalenylmethanone. (Other names in this structural class include but are not limited to: *WIN 55,212-2*.)

(9) (6aR,10aR)-9-(hydroxymethyl)-6, 6-dimethyl-3-(2-methyloctan-2-yl)-6a,7,10, 10a-tetrahydrobenzo[c]chromen-1-ol. (Other names in this structural class include but are not limited to: *HU-210*.)

(10) (6aS, 10aS)-9-(hydroxymethyl)-6,6-demethyl-3-(2-methyloctan-2-yl)-6a,7,10,10a-tetrahydrobenzo{c}chromen-1-ol (Deznanabinol or *HU-211*)

(11) Adamantoylindoles. Any compound containing a 3-(1-adamantoyl)indole structure with substitution at the nitrogen atom of the indole ring by an alkyl, haloalkyl, alkenyl, cycloalkylmethyl, cycloalkylethyl, 1-(N-methyl-2-piperidinyl)methyl, or 2-(4-morpholinyl)ethyl group, whether or not further substituted in the adamantyl ring system to any extent. (Other names in this structural class include but are not limited to: *AM-1248*.)

(12) Adamantoylindazoles including but not limited to Adamantyl Carboxamide Indazoles. Any compound containing a 3-(1-adamantoyl)indazole structure with substitution at the nitrogen atom of the indazole ring by an alkyl, haloalkyl, alkenyl, cycloalkylmethyl, cycloalkylethyl, 1-(N-methyl-2-piperidinyl)methyl, or 2-(4-morpholinyl)ethyl group, whether or not further substituted in the adamantyl ring system to any extent. (Other names in this structural class include but are not limited to: *AKB-48*, *MAB-CHMINACA*, *5F-AKB-48*.)

(13) Tetramethylcyclopropylcarbonylindoles or any compound structurally derived from 3-(2,2,3,3-tetramethylcyclopropylcarbonyl)indole by substitution at the nitrogen atom of the indole ring with alkyl, haloalkyl, alkenyl, cyanoalkyl, hydroxyalkyl, cycloalkylmethyl, cycloalkylethyl, (N-methylpiperidin-2-yl)methyl or 2-(4-morpholinyl)ethyl, whether or not further substituted in the indole ring to any extent, including without limitation the following: *UR-11*, *XLR-11*, *A-796,260*.

(14) Any other synthetic chemical compound that is a cannabinoid receptor agonist that is not listed in Schedules I through V of § 3306 of the Public Health Law, or is not an FDA approved drug.

**This notice is intended:** to serve as both a notice of emergency adoption and a notice of proposed rule making. The emergency rule will expire November 3, 2015.

**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](mailto:regsqna@health.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.

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

**Regulatory Impact Statement**

Statutory Authority:

The Public Health and Health Planning Council (PHHPC) is authorized

by Section 225 of the Public Health Law (PHL) to establish, amend and repeal sanitary regulations to be known as the State Sanitary Code (SSC) subject to the approval of the Commissioner of Health. PHL Section 225(5)(a) provides that the SSC may deal with any matter affecting the security of life and health of the people of the State of New York.

**Legislative Objectives:**

PHL Section 225(4) authorizes PHHPC, in conjunction with the Commissioner of Health, to protect public health and safety by amending the SSC to address issues that jeopardize health and safety. Accordingly, PHHPC has issued 10 NYCRR Part 9, which prohibits the possession, manufacture, distribution, sale or offer of synthetic phenethylamines and cannabinoids. This amendment would add additional chemicals to the list of explicitly prohibited synthetic cannabinoids.

**Needs and Benefits:**

"Synthetic cannabinoids" encompass a wide variety of chemicals that are designed specifically to stimulate the same receptor in the body as cannabinoid 9-tetrahydrocannabinol (THC). However, they cause additional side effects that mimic other controlled substances and have been linked to severe adverse reactions, including death and acute renal failure. Reported side effects include: tachycardia (increased heart rate); paranoid behavior, agitation and irritability; nausea and vomiting; confusion; drowsiness; headache; hypertension; electrolyte abnormalities; seizures; and syncope (loss of consciousness). Additional signs and symptoms of synthetic cannabinoids include: anxiety; tremor; hallucinations; and violent behavior. These effects can be similar to those of phencyclidine (PCP). It has been reported that some recent patients have presented with both somnolence (drowsiness) and bradycardia (decreased heart rate), some requiring endotracheal intubation.

Synthetic cannabinoids are frequently applied to plant materials and then packaged as incense, herbal mixtures or potpourri. They often carry a "not for human consumption" label, and are not approved for medical use in the United States. Products containing synthetic cannabinoids are, in actuality, consumed by individuals, most often by smoking, either through a pipe, a water pipe, or rolled in cigarette papers.

Products containing synthetic cannabinoids have become prevalent drugs of abuse. In 2012, before 10 NYCRR Part 9 was promulgated, calls to New York State Poison Control Centers relating to the consumption of synthetic cannabinoids had increased dramatically. Over half of the calls to the Upstate Poison Control Center in 2011 involved children under the age of 19, which was consistent with the results of a 2011 "Monitoring the Future" national survey of youth drug-use trends that showed that 11.4% of 12th graders used a synthetic cannabinoid during the twelve months prior to the survey, making it the second most commonly used illicit drug among high school seniors at the time.

In 2012, the Department issued 10 NYCRR Part 9, which addressed this emergent threat to public health by prohibiting the possession, manufacture, distribution, sale or offer of synthetic cannabinoids and other substances. Thereafter, New York State experienced a substantial decrease in reported cases of adverse health effects related to synthetic cannabinoid use, an achievement that was sustained until the early part of this year.

Recently, however, New York State experienced a dramatic increase in synthetic cannabinoid-related adverse events and emergency department visits. During April 1 to June 30, New York State has seen more than 1,900 emergency department visits and 680 poison control center calls due to reports of adverse health effects associated with synthetic cannabinoid use. This represents more than a tenfold increase over the same time period in 2014, when there was more than 150 emergency department visits and 50 poison control center calls reported. Nationally, there have been 15 synthetic cannabinoid-related deaths reported to poison control centers during from January to May of 2015. In New York, no fatalities have been reported to date, although there has been a 44% increase in the proportion of patients being admitted to critical care units from April 6 to June 30, 2015 when compared to the proportion of patients admitted to the critical care unit from Jan 1, 2011 to April 5, 2015. Calls received by poison control centers generally reflect only a small percentage of actual instances of poisoning.

Testing has identified synthetic cannabinoids that were not known to the Department in 2012, when 10 NYCRR Part 9 was first issued, and that are associated with the recent increase in cannabinoid-related adverse events and emergency department visits. Identifying these new synthetic cannabinoids in the regulation will simplify and enhance the efforts of local governments to control these dangerous chemicals.

**Costs:**

**Costs to Private Regulated Parties:**

The regulation imposes no new costs for private regulated parties.

**Costs to State Government and Local Government:**

There will be no additional cost to State Government. Local governments are already enforcing 10 NYCRR Part 9, which prohibits the possession, manufacture, distribution, sale or offer of synthetic phenethylamines and cannabinoids. The addition of these chemicals is expected to have negligible cost on local enforcement programs.

**Local Government Mandates:**

The SSC establishes a minimum standard for regulation of health and sanitation. Local governments can, and often do, establish more restrictive requirements that are consistent with the SSC through a local sanitary code. PHL § 228. Local governments have the power and duty to enforce the provisions of the State Sanitary Code, including 10 NYCRR Part 9, utilizing both civil and criminal options available. PHL § § 228, 229, 309(1)(f) and 324(1)(e).

**Paperwork:**

The regulation imposes no new reporting or filing requirements.

**Duplication:**

The federal Synthetic Drug Abuse Prevention Act of 2012 banned the sale and distribution of products containing the synthetic cannabinoids identified in this regulation, by placing them on the federal schedule I list of substances under the federal Controlled Substances Act (21 U.S.C. § 812[c]). This regulation does not conflict with or duplicate that federal law, because it provides local enforcement authority, which the federal law does not provide.

**Alternatives:**

The Department considered relying on the existing regulation to address these recently identified synthetic cannabinoids. However, the Department determined that amending the regulation to explicitly identify these substances would enhance state and local enforcement authority and more effectively address this public health threat.

**Federal Standards:**

As noted above, the Synthetic Drug Abuse Prevention Act of 2012 places synthetic cannabinoids on the federal schedule I list of substances under the federal Controlled Substances Act (21 U.S.C. § 812[c]). This regulation does not conflict with or duplicate that federal law, because it provides local enforcement authority, which the federal law does not provide.

**Compliance Schedule:**

Regulated parties should be able to comply with these regulations effective upon filing with the Secretary of State.

**Regulatory Flexibility Analysis**

**Effect of Rule:**

The amendment will affect only the small businesses that are engaged in selling products containing synthetic cannabinoids. The Department does not have information concerning the number of small businesses that currently sell these products. However, in 2011 and 2012, Commissioner's Orders were issued banning certain synthetic phenethylamines and synthetic cannabinoids, resulting in approximately 8,000 establishments being served with one or both Orders by public health authorities. Banned product was found in 286 of these locations. Subsequent to these efforts, the number of related complaints dropped significantly.

This regulation affects local governments by establishing a minimum standard regarding the possession, manufacture, distribution, sale or offer of sale of additional synthetic cannabinoids. Local governments have the power and duty to enforce the provisions of the State Sanitary Code, including Part 9, utilizing any civil and criminal remedies that may be available. PHL § § 228, 229, 309(1)(f) and 324(e). Local governments are also empowered to establish a local sanitary code that is more restrictive than the State Sanitary Code.

**Compliance Requirements:**

Small businesses must comply by not engaging in any possession, manufacturing, distribution, sale, or offer of sale of the additional synthetic cannabinoids.

Local governments must comply by enforcing the State Sanitary Code. Local boards of health may impose civil penalties for a violation of this regulation of up to \$2,000 per violation, pursuant to PHL § 309(1)(f). Pursuant to PHL § 229, local law enforcement may seek criminal penalties for a first offense of up to \$250 and 15 days in prison, and for each subsequent offense up to \$500 and 15 days in prison.

**Professional Services:**

Small businesses will need no additional professional services to comply. Local governments, in certain instances where local governments enforce, will need to secure laboratory services for testing of substances.

**Compliance Costs:**

**Costs to Private Regulated Parties:**

The regulation imposes no new costs for private regulated parties.

**Costs to State Government and Local Government:**

There will be no additional cost to State Government. Local governments are already enforcing 10 NYCRR Part 9, which prohibits the possession, manufacture, distribution, sale or offer of synthetic phenethylamines and cannabinoids. The addition of these chemicals is expected to have negligible cost on local enforcement programs.

**Economic and Technological Feasibility:**

Although there will be an impact on small businesses that sell these products, the prohibition is justified by the extremely dangerous nature of these products.

**Minimizing Adverse Impact:**

The New York State Department of Health will assist local governments by providing consultation, coordination and information and updates on its website.

**Small Business and Local Government Participation:**

The Department will work with local governments to provide technical information concerning the newly-listed synthetic cannabinoids.

**Cure Period:**

Violation of this regulation can result in civil and criminal penalties. In light of the magnitude of the public health threat posed by these substances, the risk that some small businesses will not comply with regulations and continue to make or sell or distribute the substance justifies the absence of a cure period.

**Rural Area Flexibility Analysis**

Pursuant to Section 202-bb of the State Administrative Procedure Act (SAPA), a rural area flexibility analysis is not required. These provisions apply uniformly throughout New York State, including all rural areas.

The proposed rule will not impose an adverse economic impact on rural areas, nor will it impose any additional reporting, record keeping or other compliance requirements on public or private entities in rural areas.

**Job Impact Statement****Nature of the Impact:**

The Department of Health does not expect there to be a positive or negative impact on jobs or employment opportunities.

**Categories and Numbers Affected:**

The Department anticipates no negative impact on jobs or employment opportunities as a result of the amended rule.

**Regions of Adverse Impact:**

The Department anticipates no negative impact on jobs or employment opportunities in any particular region of the state.

**Minimizing Adverse Impact:**

Not applicable.

**NOTICE OF ADOPTION****School Immunization Requirements**

**I.D. No.** HLT-11-15-00020-A

**Filing No.** 687

**Filing Date:** 2015-08-11

**Effective Date:** 2015-09-01

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

**Action taken:** Amendment of Subpart 66-1 of Title 10 NYCRR.

**Statutory authority:** Public Health Law, sections 2164 and 2168

**Subject:** School Immunization Requirements.

**Purpose:** Update regulations to ensure children entering grades kindergarten through 12 receive adequate number of required immunizations.

**Text or summary was published** in the March 18, 2015 issue of the Register, I.D. No. HLT-11-15-00020-P.

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

**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: regsqa@health.ny.gov

**Assessment of Public Comment**

The New York State Department of Health (NYSDOH) received 19 comments from school nurses and physicians during the comment period. Commenters strongly supported the proposed requirement that students complete the measles, mumps, rubella (MMR), diphtheria, tetanus, and pertussis (DTaP) and polio vaccine series upon kindergarten entry. Additional comments were as follows:

**Comment:** Amendments to the regulations should not take effect until the Fall of 2016. Schools need more time to update systems and materials and to communicate the new immunization requirements to parents. Many schools have already completed kindergarten registration, and some of those children entering kindergarten have already completed their kindergarten entry physical examinations for the 2015-16 school year. The new immunization requirements should be phased in over a series of years to ease implementation.

**Response:** The implementation of the proposed revisions to the immunization requirements in the 2015-16 school year is of utmost public health importance. From December 2014 through April 2015, the United States experienced a large, multi-state measles outbreak linked to an amusement park in California. In total, 147 people from seven states were reported to have measles linked to the outbreak; the majority were unvac-

inated against measles. Three additional cases of measles have occurred in New York State (NYS), including New York City, since January 2015. Measles continues to circulate in many countries, including Canada, and international travelers continue to bring measles into the United States. Individuals who are not fully vaccinated against measles are at increased risk of contracting measles if they are exposed to it, and measles can spread rapidly among undervaccinated populations. Therefore, it is critically important that the NYSDOH ensure that children attending school in NYS are fully vaccinated with two doses of MMR vaccine prior to kindergarten entry.

**Comment:** All students who were enrolled during the 2013-14 school year should be deemed in compliance with immunization requirements if they had satisfied the immunization requirements in effect on June 30, 2014. Only new entrants and students in select grades should be required to meet the immunization requirements that took effect in the 2014-15 school year, with a phase-in of requirements for additional grades over a seven-year period.

**Response:** The 2014-15 varicella and polio requirements already included a seven-year phase-in period. The amendments for the 2015-16 school year would keep the seven-year phase-in of varicella and polio requirements intact.

As a result of changes already adopted in February 2014, existing school immunization regulations require students in all grades to receive age-appropriate doses of DTaP vaccine as established by the Advisory Committee on Immunization Practices (ACIP). Prior to July 1, 2014, students younger than grade six were only required to have three doses of DTaP vaccine. The revisions to regulations adopted in February 2014 required four or five doses, depending on age and vaccine history. Based on these most recent proposed revisions, students in grades six through twelve would still meet the 2014-15 DTaP vaccine requirements with three doses of DTaP vaccine plus a dose of Tdap vaccine – effectively the same requirement in effect on or before June 30, 2014.

Allowing students in grades five or below to be in compliance if they had met immunization requirements in effect on June 30, 2014 would not be in the best interests of public health. Four or five doses of DTaP vaccine, depending on age and vaccine history, are necessary for optimal protection against pertussis infection which continues to circulate widely in the United States. Therefore, it is of critical public health importance to ensure that students in all grades in NYS are fully vaccinated against pertussis.

**Comment:** School nurses have difficulty implementing a requirement that Tdap be received in grade six at 11 to 12 years of age because many children enter grade six at 10 years of age. Many school nurse hours are spent tracking 10 year old students who had not yet received Tdap upon entering grade six. The minimum age for Tdap vaccine should be decreased to 10 years of age or move the Tdap requirement to grade seven.

**Response:** Public Health Law § 2164 requires the administration of Tdap in grade six. A statutory change would be necessary to instead require Tdap for grade seven.

**Comment:** The NYSDOH should notify health care providers of the new school immunization requirements being adopted as a result of this rulemaking as soon as possible.

**Response:** The NYSDOH recognizes the importance of rapid, timely and complete education of providers on the new school immunization requirements. Health care provider professional associations have already been notified of the proposed amendments to regulations, and the NYSDOH will work through multiple channels to educate health care providers on the new requirements that are being adopted as a result of this rulemaking.

**Comment:** Health care providers, not schools, should be responsible for monitoring immunization intervals.

**Response:** PHL § 2164 requires schools to ensure that students comply with applicable immunization requirements. However, health care providers should follow best practices to ensure that vaccines are administered at appropriate ages and intervals. The NYSDOH will continue to work with health care providers to ensure that they are aware of minimum ages and intervals for vaccine doses, to implement systems to prevent administration of vaccine doses prior to minimum ages and intervals, and to encourage use of the New York State Immunization Information System and Citywide Immunization Registry to track vaccine intervals, appropriate schedules, and the validity of doses administered.

**Comment:** With respect to the amendment allowing a foreign immunization record to be accepted without a health care provider's signature, some foreign records list a student's name and date of birth on a separate page from the immunization history. If a parent submits only the immunization history, the school may be unable to verify that the documented immunization history belongs to the student.

**Response:** A complete official record from a foreign nation would be necessary to be considered an official record. If the parent submits only a portion of a foreign record, it would be deemed incomplete and the rest of

the document would need to be produced in order for the record to be considered an official record. The assessment of records must be handled on a case-by-case basis, but if the immunization record given does not include a name and date of birth, the record would be incomplete and not accepted as an official record.

Comment: The requirement for five doses of DTaP vaccine, or four doses if the fourth dose was given at four years of age or older, enables vaccine-hesitant parents to defer the fourth dose of DTaP vaccine until four years of age. Similarly, the requirement for four doses of polio vaccine, or three doses if the third dose was given at four years of age or older, could enable vaccine hesitant parents seeking to defer vaccination. All students should be required to have five doses of DTaP vaccine and four doses of polio vaccine.

Response: The NYSDOH agrees that all children should receive all doses of vaccine at the earliest recommended ages. The regulations, however, are aligned with the current ACIP recommendations for DTaP and polio. The ACIP does not recommend that a fifth dose of DTaP vaccine nor a fourth dose of polio vaccine be administered if the fourth and third doses of DTaP and polio vaccines, respectively, were administered on or after the fourth birthday. The final doses of DTaP and polio vaccine given on or after the fourth birthday boosts the immune system prior to kindergarten entry.

## Higher Education Services Corporation

### EMERGENCY RULE MAKING

#### New York State Get on Your Feet Loan Forgiveness Program

**I.D. No.** ESC-34-15-00001-E

**Filing No.** 676

**Filing Date:** 2015-08-06

**Effective Date:** 2015-08-06

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

**Action taken:** Addition of section 2201.15 to Title 8 NYCRR.

**Statutory authority:** Education Law, sections 653, 655 and 679-g

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

**Specific reasons underlying the finding of necessity:** This statement is being submitted pursuant to subdivision (6) of section 202 of the State Administrative Procedure Act and in support of the New York State Higher Education Services Corporation's ("HESC") Emergency Rule Making seeking to add a new section 2201.15 to Title 8 of the Official Compilation of Codes, Rules and Regulations of the State of New York.

This regulation implements a statutory student financial aid program providing for awards to be made to students who receive their undergraduate degree from a college or university located in New York State in December 2014 and thereafter. Emergency adoption is necessary to avoid an adverse impact on the processing of awards to eligible applicants. The statute provides for student loan relief to such college graduates who continue to live in New York State upon graduation, earn less than \$50,000 per year, participate in either the federal Pay as You Earn (PAYE) or Income Based Repayment (IBR) program, which cap a federal student loan borrower's payments at 10 percent of discretionary income, and apply for this program within two years after graduating from college. Eligible applicants will have up to twenty-four payments made on their behalf towards their federal income-based repayment plan commitment. For those students who graduated in December 2014, their first student loan payment will become due upon the expiration of their grace period in June 2015. Therefore, it is critical that the terms of this program as provided in the regulation be effective immediately in order for HESC to process applications so that timely payments can be made on behalf of program recipients. To accomplish this mandate, the statute further provides for HESC to promulgate emergency regulations to implement the program. For these reasons, compliance with section 202(1) of the State Administrative Procedure Act would be contrary to the public interest.

**Subject:** New York State Get on Your Feet Loan Forgiveness Program.

**Purpose:** To implement the New York State Get on Your Feet Loan Forgiveness Program.

**Text of emergency rule:** TITLE 8. EDUCATION DEPARTMENT

PART 2201. GENERAL ELIGIBILITY CRITERIA

New section 2201.15 is added to Title 8 of the New York Code, Rules and Regulations to read as follows:

*Section 2201.15 New York State Get on Your Feet Loan Forgiveness Program.*

(a) *Definitions. As used in section 679-g of the education law and this section, the following terms shall have the following meanings:*

(1) *"Adjusted gross income" shall mean the applicant's adjusted gross income as reported to the Internal Revenue Service for the most recently completed tax year or may be that used by the U.S. Department of Education to qualify the applicant for the federal income-driven repayment plan. For a married applicant filing jointly, adjusted gross income shall mean the income of both the applicant and the applicant's spouse as reported to the Internal Revenue Service for the most recently completed tax year. For a married applicant filing separately, adjusted gross income shall mean only the applicant's income as reported to the Internal Revenue Service for the most recently completed tax year.*

(2) *"Award" shall mean a New York State Get on Your Feet Loan Forgiveness Program award pursuant to section 679-g of the education law.*

(3) *"Deferment" shall have the same meaning applicable to the William D. Ford Federal Direct Loan Program as set forth in 34 CFR Part 685.*

(4) *"Delinquent" shall mean the failure to timely pay a required scheduled payment on the student loan, or repayment obligation, within thirty days of such payment's due date.*

(5) *"Forbearance" shall have the same meaning applicable to the William D. Ford Federal Direct Loan Program as set forth in 34 CFR Part 685.*

(6) *"Income" shall mean the total adjusted gross income of the applicant and the applicant's spouse, if applicable.*

(7) *"Program" shall mean the New York State Get on Your Feet Loan Forgiveness Program.*

(8) *"Undergraduate degree" shall mean an associate or baccalaureate degree.*

(b) *Eligibility. An applicant must satisfy the following requirements:*

(1) *have graduated from a high school located in the State or attended an approved State program for a State high school equivalency diploma and received such diploma;*

(2) *have graduated and obtained an undergraduate degree from a college or university located in the State in or after the two thousand fourteen-fifteen academic year;*

(3) *apply for this program within two years of obtaining such undergraduate degree;*

(4) *not have earned a degree higher than an undergraduate degree at the time of application;*

(5) *be a participant in a federal income-driven repayment plan whose payment amount is generally ten percent of discretionary income;*

(6) *have income of less than fifty thousand dollars;*

(7) *comply with subdivisions three and five of section 661 of the education law;*

(8) *work in the State, if employed;*

(9) *not be delinquent or in default on a student loan made under any statutory New York State or federal education loan program or repayment of any New York State award; and*

(10) *be in compliance with the terms of any service condition imposed by a New York State award.*

(c) *Administration.*

(1) *An applicant for an award shall apply for program eligibility at such times, on forms and in a manner prescribed by the corporation. The corporation may require applicants to provide additional documentation evidencing eligibility.*

(2) *A recipient of an award shall:*

(i) *request payment at such times, on such forms and in a manner as prescribed by the corporation;*

(ii) *confirm he or she has adjusted gross income of less than fifty thousand dollars, is a resident of New York State, is working in New York State, if employed, and any other information necessary for the corporation to determine eligibility at such times prescribed by the corporation. Said submissions shall be on forms or in a manner prescribed by the corporation;*

(iii) *notify the corporation of any change in his or her eligibility status including, but not limited to, a change in address, employment, or income, and provide the corporation with current information;*

(iv) *not receive more than twenty four payments under this program; and*

(v) *provide any other information or documentation necessary for the corporation to determine compliance with the program's requirements.*

(d) *Amounts and duration.*

(1) The amount of the award shall be equal to one hundred percent of the recipient's established monthly federal income-driven repayment plan payment.

(2) Disbursements shall be made directly to the servicer, or servicers, of the recipient's federal loans on a monthly basis.

(3) A maximum of twenty-four payments may be awarded, provided the recipient continues to satisfy the eligibility requirements set forth in section 679-g of the education law and the requirements set forth in this section.

(e) Disqualification. A recipient shall be disqualified from receiving further award payments under this program if he or she fails to satisfy any of the eligibility requirements or fails to respond to any request for information by the corporation.

(f) Renewed eligibility. A recipient who has been disqualified pursuant to subdivision (e) may reapply for this program and receive an award if he or she satisfies all of the eligibility requirements set forth in section 679-g of the education law and the requirements set forth in this section.

(g) Repayment. A recipient who is not a resident of New York State at the time any payment is made under this program shall be required to repay such payments to the corporation. In addition, at the corporation's discretion, a recipient may be required to repay any payment made under this program to a recipient that, at the time payment was made, should have been disqualified pursuant to subdivision (e). The corporation shall be entitled to recover such payments as follows:

(1) Interest shall begin to accrue on the day such payment was made on behalf of the recipient. In the event the recipient notifies the corporation of a change in residence within 30 days of such change, interest shall begin to accrue on the day such recipient was no longer a New York State resident.

(2) The interest rate shall be fixed and equal to the rate established in section 18 of the New York State Finance Law.

(3) Repayment must be made within five years.

(4) Where a recipient has demonstrated extreme hardship as a result of a disability, labor market conditions, or other such circumstances, the corporation may, in its discretion, waive or defer payment, extend the repayment period, or take such other appropriate action.

**This notice is intended** to serve only as a notice of emergency adoption. This agency intends to adopt this emergency rule as a permanent rule and will publish a notice of proposed rule making in the *State Register* at some future date. The emergency rule will expire November 3, 2015.

**Text of rule and any required statements and analyses may be obtained from:** Cheryl B. Fisher, NYS Higher Education Services Corporation, 99 Washington Avenue, Room 1325, Albany, New York 12255, (518) 474-5592, email: regcomments@hesc.ny.gov

#### **Regulatory Impact Statement**

##### Statutory authority:

The New York State Higher Education Services Corporation's ("HESC") statutory authority to promulgate regulations and administer the New York State Get on Your Feet Loan Forgiveness Program ("Program") is codified within Article 14 of the Education Law. In particular, Part C of Chapter 56 of the Laws of 2015 created the Program by adding a new section 679-g to the Education Law. Subdivision 4 of section 679-g of the Education Law authorizes HESC to promulgate emergency regulations for the purpose of administering this Program.

Pursuant to Education Law § 652(2), HESC was established for the purpose of improving the post-secondary educational opportunities of eligible students through the centralized administration of New York State financial aid programs and coordinating the State's administrative effort in student financial aid programs with those of other levels of government.

In addition, Education Law § 653(9) empowers HESC's Board of Trustees to perform such other acts as may be necessary or appropriate to carry out the objects and purposes of the corporation including the promulgation of rules and regulations.

HESC's President is authorized, under Education Law § 655(4), to propose rules and regulations, subject to approval by the Board of Trustees, governing, among other things, the application for and the granting and administration of student aid and loan programs, the repayment of loans or the guarantee of loans made by HESC; and administrative functions in support of state student aid programs. Also, consistent with Education Law § 655(9), HESC's President is authorized to receive assistance from any Division, Department or Agency of the State in order to properly carry out his or her powers, duties and functions. Finally, Education Law § 655(12) provides HESC's President with the authority to perform such other acts as may be necessary or appropriate to carry out effectively the general objects and purposes of HESC.

##### Legislative objectives:

The Education Law was amended to add a new section 679-g to create the "New York State Get on Your Feet Loan Forgiveness Program" (Program). The objective of this Program is to ease the burden of federal student loan debt for recent New York State college graduates.

##### Needs and benefits:

More than any other time in history, a college degree provides greater opportunities for graduates than is available to those without a postsecondary degree. However, financing that degree has also become more challenging. According to a June 9, 2014 Presidential Memorandum issued by President Obama, over the past three decades, the average tuition at a public four-year college has more than tripled, while a typical family's income has increased only modestly. More students than ever are relying on loans to pay for college. Today, 71 percent of those earning a bachelor's degree graduate with debt, which averages \$29,400. Many of these students feel burdened by debt, especially as they seek to start a family, buy a home, launch a business, or save for retirement. To ensure that student debt is manageable, the federal government enacted income-driven repayment plans, such as the Pay as You Earn (PAYE) plan, which caps a federal student loan borrower's payments at 10 percent of income.

Although New York's public colleges and universities offer among the lowest tuition in the nation, currently the average New York student graduates from college with a four-year degree saddled with more than \$25,000 in student loans. Mounting student debt makes it difficult for recent graduates to deal with everyday costs of living, which often increases the amount of credit card and other debt they must take on in order to survive. To help mitigate the disparate growth in the cost of financing a postsecondary education, this Program offers financial aid relief to recent college graduates by providing up to twenty-four payments towards an eligible applicant's federal income-based student loan repayment plan commitment. Students who receive their undergraduate degree from a college or university located in New York State in December 2014 and thereafter, who continue to live in New York State upon graduation, earn less than \$50,000 per year, participate in either the federal Pay as You Earn (PAYE) or applicable federal Income Based Repayment (IBR) program, and apply for this Program within two years after graduating from college are eligible for this Program.

##### Costs:

a. It is anticipated that there will be no new costs to the agency for the implementation of, or continuing compliance with this rule.

b. The maximum cost of the program to the State is \$5.2 million in the first year based upon budget estimates.

c. It is anticipated that there will be no costs to local governments for the implementation of, or continuing compliance with, this rule.

d. The source of the cost data in (b) above is derived from the New York State Division of the Budget.

##### Local government mandates:

No program, service, duty or responsibility will be imposed by this rule upon any county, city, town, village, school district, fire district or other special district.

##### Paperwork:

This proposal will require applicants to file an electronic application for eligibility and payment together with supporting documentation.

##### Duplication:

No relevant rules or other relevant requirements duplicating, overlapping, or conflicting with this rule were identified.

##### Alternatives:

The proposed regulation is the result of HESC's outreach efforts to the U.S. Department of Education with regard to this Program. Several alternatives were considered in the drafting of this regulation. For example, several alternatives were considered in defining terms used in the regulation as well as the administration of the Program. Given the statutory language as set forth in section 679-g of the Education Law, a "no action" alternative was not an option.

##### Federal standards:

This proposal does not exceed any minimum standards of the Federal Government. Since this Program is intended to supplement federal repayment programs, efforts were made to align the Program with the federal programs.

##### Compliance schedule:

The agency will be able to comply with the regulation immediately upon its adoption.

#### **Regulatory Flexibility Analysis**

This statement is being submitted pursuant to subdivision (3) of section 202-b of the State Administrative Procedure Act and in support of the New York State Higher Education Services Corporation's ("HESC") Emergency Rule Making, seeking to add a new section 2201.15 to Title 8 of the Official Compilation of Codes, Rules and Regulations of the State of New York.

It is apparent from the nature and purpose of this rule that it will not impose an adverse economic impact on small businesses or local governments. HESC finds that this rule will not impose any compliance requirement or adverse economic impact on small businesses or local governments. Rather, it has potential positive economic impacts inasmuch as it implements a statutory student financial aid program that eases the

burden of federal student loan debt for recent New York State college graduates who continue to live in the State. Providing students with direct financial assistance will encourage students to attend college in New York State and remain in the State following graduation, which will provide an economic benefit to the State's small businesses and local governments as well.

#### **Rural Area Flexibility Analysis**

This statement is being submitted pursuant to subdivision (4) of section 202-bb of the State Administrative Procedure Act and in support of the New York State Higher Education Services Corporation's Emergency Rule Making, seeking to add a new section 2201.15 to Title 8 of the Official Compilation of Codes, Rules and Regulations of the State of New York.

It is apparent from the nature and purpose of this rule that it will not impose an adverse impact on rural areas. Rather, it has potential positive impacts inasmuch as it implements a statutory student financial aid program that eases the burden of federal student loan debt for recent New York State college graduates who continue to live in the State. Providing students with direct financial assistance will encourage students to attend college in New York State and remain in the State following graduation, which benefits rural areas around the State as well.

This agency finds that this rule will not impose any reporting, record keeping or other compliance requirements on public or private entities in rural areas.

#### **Job Impact Statement**

This statement is being submitted pursuant to subdivision (2) of section 201-a of the State Administrative Procedure Act and in support of the New York State Higher Education Services Corporation's Emergency Rule Making seeking to add a new section 2201.15 to Title 8 of the Official Compilation of Codes, Rules and Regulations of the State of New York.

It is apparent from the nature and purpose of this rule that it will not have any negative impact on jobs or employment opportunities. Rather, it has potential positive economic impacts inasmuch as it implements a statutory student financial aid program that eases the burden of federal student loan debt for recent New York State college graduates who continue to live in the State. Providing students with direct financial assistance will encourage students to attend college in New York State and remain in the State following graduation, which benefits the State as well.

## **EMERGENCY RULE MAKING**

### **New York State Achievement and Investment in Merit Scholarship (NY-AIMS)**

**I.D. No.** ESC-34-15-00002-E

**Filing No.** 677

**Filing Date:** 2015-08-06

**Effective Date:** 2015-08-06

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

**Action taken:** Addition of section 2201.16 to Title 8 NYCRR.

**Statutory authority:** Education Law, sections 653, 655 and 669-g

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

**Specific reasons underlying the finding of necessity:** This statement is being submitted pursuant to subdivision (6) of section 202 of the State Administrative Procedure Act and in support of the New York State Higher Education Services Corporation's ("HESC") Emergency Rule Making seeking to add a new section 2201.16 to Title 8 of the Official Compilation of Codes, Rules and Regulations of the State of New York.

This regulation implements a statutory student financial aid program providing for awards to be made to students beginning with the fall 2015 term, which generally starts in August. Emergency adoption is necessary to avoid an adverse impact on the processing of awards to eligible scholarship applicants. The statute provides New York high school graduates who excel academically with merit-based scholarships to support their cost of attendance at any college or university located in New York State. Five thousand awards, of \$500 each, will be granted annually in 2015-16 and 2016-17. Decisions on applications for this Program are made prior to the beginning of the term. Therefore, it is critical that the terms of this program as provided in the regulation be effective immediately so that students can make informed choices and in order for HESC to process scholarship applications in a timely manner. To accomplish this mandate, the statute further provides for HESC to promulgate emergency regulations to implement the program. For these reasons, compliance with sec-

tion 202(1) of the State Administrative Procedure Act would be contrary to the public interest.

**Subject:** New York State Achievement and Investment in Merit Scholarship (NY-AIMS).

**Purpose:** To implement The New York State Achievement and Investment in Merit Scholarship (NY-AIMS).

#### **Text of emergency rule:** TITLE 8. EDUCATION DEPARTMENT PART 2201. GENERAL ELIGIBILITY CRITERIA

New section 2201.16 is added to Title 8 of the New York Code, Rules and Regulations to read as follows:

*Section 2201.16 The New York State Achievement and Investment in Merit Scholarship (NY-AIMS).*

(a) *Definitions. As used in section 669-g of the Education Law and this section, the following terms shall have the following meanings:*

(1) *"Good academic standing" shall have the same meaning as set forth in section 665(6) of the education law.*

(2) *"Grade point average" shall mean the student's numeric grade calculated on the standard 4.0 scale.*

(3) *"Program" shall mean The New York State Achievement and Investment in Merit Scholarship codified in section 669-g of the education law.*

(4) *"Unmet need" for the purpose of determining priority shall mean the cost of attendance, as determined for federal Title IV student financial aid purposes, less all federal, State, and institutional higher education aid and the expected family contribution based on the federal formula.*

(b) *Eligibility. An applicant must:*

(1) *have graduated from a New York State high school in the 2014-15 academic year or thereafter; and*

(2) *enroll in an approved undergraduate program of study in a public or private not-for-profit degree granting post-secondary institution located in New York State beginning in the two thousand fifteen-sixteen academic year or thereafter; and*

(3) *have achieved at least two of the following during high school:*

(i) *Graduated with a grade point average of 3.3 or above;*

(ii) *Graduated with a "with honors" distinction on a New York State regents diploma or receive a score of 3 or higher on two or more advanced placement examinations; or*

(iii) *Graduated within the top fifteen percent of their high school class, provided that actual class rank may be taken into consideration; and*

(4) *satisfy all other requirements pursuant to section 669-g of the education law; and*

(5) *satisfy all general eligibility requirements provided in section 661 of the education law including, but not limited to, full-time attendance, good academic standing, residency and citizenship.*

(c) *Distribution and priorities. In each year, new awards made shall be proportionate to the total new applications received from eligible students enrolled in undergraduate study at public and private not-for-profit degree granting institutions. Distribution of awards shall be made in accordance with the provisions contained in section 669-g(3)(a) of the education law within each sector. In the event that there are more applicants who have the same priority than there are remaining scholarships or available funding, awards shall be made in descending order based on unmet need established at the time of application. In the event of a tie, distribution shall be made by means of a lottery or other form of random selection.*

(d) *Administration.*

(1) *Applicants for an award shall apply for program eligibility at such times, on forms and in a manner prescribed by the corporation. The corporation may require applicants to provide additional documentation evidencing eligibility.*

(2) *Recipients of an award shall:*

(i) *request payment annually at such times, on forms and in a manner specified by the corporation;*

(ii) *receive such awards for not more than four academic years of undergraduate study, or five academic years if the program of study normally requires five years as defined by the commissioner pursuant to Article 13 of the education law; and*

(iii) *provide any information necessary for the corporation to determine compliance with the program's requirements.*

(e) *Awards.*

(1) *The amount of the award shall be determined in accordance with section 669-g of the education law.*

(2) *Disbursements shall be made annually to institutions on behalf of recipients.*

(3) *Awards may be used to offset the recipient's total cost of attendance determined for federal Title IV student financial aid purposes or may be used in addition to such cost of attendance.*

**This notice is intended** to serve only as a notice of emergency adoption. This agency intends to adopt this emergency rule as a permanent rule and

will publish a notice of proposed rule making in the *State Register* at some future date. The emergency rule will expire November 3, 2015.

**Text of rule and any required statements and analyses may be obtained from:** Cheryl B. Fisher, NYS Higher Education Services Corporation, 99 Washington Avenue, Room 1325, Albany, New York 12255, (518) 474-5592, email: regcomments@hesc.ny.gov

#### **Regulatory Impact Statement**

Statutory authority:

The New York State Higher Education Services Corporation's ("HESC") statutory authority to promulgate regulations and administer The New York State Achievement and Investment in Merit Scholarship (NY-AIMS), hereinafter referred to as "Program", is codified within Article 14 of the Education Law. In particular, Part Z of Chapter 56 of the Laws of 2015 created the Program by adding a new section 669-g to the Education Law. Subdivision 6 of section 669-g of the Education Law authorizes HESC to promulgate emergency regulations for the purpose of administering this Program.

Pursuant to Education Law § 652(2), HESC was established for the purpose of improving the post-secondary educational opportunities of eligible students through the centralized administration of New York State financial aid programs and coordinating the State's administrative effort in student financial aid programs with those of other levels of government.

In addition, Education Law § 653(9) empowers HESC's Board of Trustees to perform such other acts as may be necessary or appropriate to carry out the objects and purposes of the corporation including the promulgation of rules and regulations.

HESC's President is authorized, under Education Law § 655(4), to propose rules and regulations, subject to approval by the Board of Trustees, governing, among other things, the application for and the granting and administration of student aid and loan programs, the repayment of loans or the guarantee of loans made by HESC; and administrative functions in support of state student aid programs. Also, consistent with Education Law § 655(9), HESC's President is authorized to receive assistance from any Division, Department or Agency of the State in order to properly carry out his or her powers, duties and functions. Finally, Education Law § 655(12) provides HESC's President with the authority to perform such other acts as may be necessary or appropriate to carry out effectively the general objects and purposes of HESC.

Legislative objectives:

The Education Law was amended to add a new section 669-g to create The New York State Achievement and Investment in Merit Scholarship (NY-AIMS). The objective of this Program is to grant merit-based scholarship awards to New York State high school graduates who achieve academic excellence.

Needs and benefits:

The cost to attain a postsecondary degree has increased significantly over the years; alongside this growth, the financing of that degree has become increasingly challenging. According to a June 9, 2014 Presidential Memorandum issued by President Obama, over the past three decades, the average tuition at a public four-year college has more than tripled, while a typical family's income has increased only modestly. All federal student financial aid and a majority of state student financial aid programs are conditioned on economic need. Despite stagnant growth in household incomes, there continues to be far fewer academically-based financial aid programs, which are awarded to students regardless of assets or income. This has resulted in more limited financial aid options for those who are ineligible for need-based aid. Concurrently, greater numbers of students are relying on loans to pay for college. Today, 71 percent of those earning a bachelor's degree graduate with student loan debt averaging \$29,400. Many of these students feel burdened by their college loan debt, especially as they seek to start a family, buy a home, launch a business, or save for retirement.

This Program cushions the disparate growth in the cost of a postsecondary education by providing New York State high school graduates who excel academically with merit-based scholarships to support their cost of attendance at any college or university located in the State for up to four years of undergraduate study (or five years if enrolled in a five-year program). Five thousand awards, of \$500 each, will be granted annually in 2015-16 and 2016-17.

Costs:

a. It is anticipated that there will be no new costs to the agency for the implementation of, or continuing compliance with this rule.

b. The maximum cost of the program to the State is \$2.5 million in the first year based upon budget estimates.

c. It is anticipated that there will be no costs to local governments for the implementation of, or continuing compliance with, this rule.

d. The source of the cost data in (b) above is derived from the New York State Division of the Budget.

Local government mandates:

No program, service, duty or responsibility will be imposed by this rule upon any county, city, town, village, school district, fire district or other special district.

Paperwork:

This proposal will require applicants to file an electronic application for eligibility and payment together with supporting documentation.

Duplication:

No relevant rules or other relevant requirements duplicating, overlapping, or conflicting with this rule were identified.

Alternatives:

The proposed regulation is the result of HESC's outreach efforts to financial aid professionals with regard to this Program. Several alternatives were considered in the drafting of this regulation. For example, several alternatives were considered in defining terms used in the regulation as well as the administration of the Program. Given the statutory language as set forth in section 669-g of the Education Law, a "no action" alternative was not an option.

Federal standards:

This proposal does not exceed any minimum standards of the Federal Government and efforts were made to align it with similar federal subject areas as evidenced by the adoption of the federal definitions/methodology concerning unmet need, expected family contribution, and cost of attendance.

Compliance schedule:

The agency will be able to comply with the regulation immediately upon its adoption.

#### **Regulatory Flexibility Analysis**

This statement is being submitted pursuant to subdivision (3) of section 202-b of the State Administrative Procedure Act and in support of the New York State Higher Education Services Corporation's ("HESC") Emergency Rule Making, seeking to add a new section 2201.16 to Title 8 of the Official Compilation of Codes, Rules and Regulations of the State of New York.

It is apparent from the nature and purpose of this rule that it will not impose an adverse economic impact on small businesses or local governments. HESC finds that this rule will not impose any compliance requirement or adverse economic impact on small businesses or local governments. Rather, it has potential positive economic impacts inasmuch as it implements a statutory student financial aid program that provides merit-based scholarships to students who pursue their undergraduate degree at any college or university located in New York State. Providing students with direct financial assistance will encourage them to attend college in New York State, which will provide an economic benefit to the State's small businesses and local governments as well.

#### **Rural Area Flexibility Analysis**

This statement is being submitted pursuant to subdivision (4) of section 202-bb of the State Administrative Procedure Act and in support of the New York State Higher Education Services Corporation's Emergency Rule Making, seeking to add a new section 2201.16 to Title 8 of the Official Compilation of Codes, Rules and Regulations of the State of New York.

It is apparent from the nature and purpose of this rule that it will not impose an adverse impact on rural areas. Rather, it has potential positive impacts inasmuch as it implements a statutory student financial aid program that provides merit-based scholarships to students who pursue their undergraduate degree at any college or university located in New York State. Providing students with direct financial assistance will encourage them to attend college in New York State, which benefits rural areas around the State as well.

This agency finds that this rule will not impose any reporting, record keeping or other compliance requirements on public or private entities in rural areas.

#### **Job Impact Statement**

This statement is being submitted pursuant to subdivision (2) of section 201-a of the State Administrative Procedure Act and in support of the New York State Higher Education Services Corporation's Emergency Rule Making seeking to add a new section 2201.16 to Title 8 of the Official Compilation of Codes, Rules and Regulations of the State of New York.

It is apparent from the nature and purpose of this rule that it will not have any negative impact on jobs or employment opportunities. Rather, it has potential positive economic impacts inasmuch as it implements a statutory student financial aid program that provides merit-based scholarships to students who pursue their undergraduate degree at any college or university located in New York State. Providing students with direct financial assistance will encourage them to attend college in New York State and possibly seek employment opportunities in the State as well, which will benefit the State.

## State Liquor Authority

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

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

I.D. No. LQR-34-15-00029-P

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

**Proposed Action:** This is a consensus rule making to amend sections 40.3, 40.4, 46.1, 47.4, 48.4 and 65.2 of Title 9 NYCRR.

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

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

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

**Text of proposed rule:** § 40.3 Date for filing

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

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

§ 40.4 Use of forms

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

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

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

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

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

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

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

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

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

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

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

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

§ 47.4 Applications

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

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

§ 48.4 Physical standards

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

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

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

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

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

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

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

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

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

§ 65.2 Filing of schedules

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

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

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

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

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

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

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

(h) Six copies of each amended schedule of prices to retailers shall be filed no later than the 20th day of the month prior to the effective date of the schedule being amended. When the 20th day of the month falls on a Saturday, Sunday or legal holiday, such amended schedule may be filed on the following business day.

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

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

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

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

#### Consensus Rule Making Determination

This statement is being submitted pursuant to subparagraph (i) of paragraph (b) of subdivision (1) of section 202 of the State Administrative Procedure Act and in support of the New York State Liquor Authority's ("Authority") Notice of Proposed Rulemaking seeking to amend Parts 40.3, 40.4, 46.1, 47.4, 48.4 and 65.2 of Title 9, Subtitle B, of the Official Compilation of Codes, Rules and Regulations of the State of New York (N.Y.C.R.R.)

It is apparent from the nature and purpose of these proposed amendments that no person is likely to object to their adoption as written. Part 40.3 sets forth filing and time period information for Renewal Applications and the proposed change updates the outdated reference therein from 10 to 30 days after expiration of a license for proper filing of a renewal application, thereby codifying current practices. Part 40.4 sets forth information regarding proper utilization of Renewal Applications and the proposed change would specify the use of an Endorsement Application in certain instances as well as provide for online applications, thereby codifying current practices. Part 46.1 sets forth filing information for Corporate Change Applications involving two or more licensed premises and the proposed change would provide for online applications, thereby codifying current practices. Part 47.4 sets forth filing information for Alteration Applications and the proposed change would provide for online applications, thereby codifying current practices. Part 48.4 sets forth physical standards for on-premises liquor and wine licenses and the proposed changes eliminate archaic provisions requiring walls or partitions in bowling alleys as well as minimum lighting requirements such as to enable the reading of nine-point type. Part 65.2 sets forth filing information for price postings of liquor and wine and provides for online price postings, thereby codifying current practices.

Consistent with the definition of "consensus rule" as set forth in section 102(11) of the State Administrative Procedure Act, the Authority has determined that this proposal, which updates multiple incorrect references to application processes, codifies current procedures for online applications, and eliminates some archaic physical standards restrictions for on-premises licenses, is non-controversial in nature and, therefore, no person is likely to object to its adoption as written.

#### Job Impact Statement

This statement is being submitted pursuant to subdivision (2) of section 201-a of the State Administrative Procedure Act and in support of the New York State Liquor Authority's ("Authority") Notice of Proposed Rulemaking seeking to amend Parts 40.3, 40.4, 46.1, 47.4, 48.4 and 65.2 of Title 9, Subtitle B, of the Official Compilation of Codes, Rules and Regulations of the State of New York (N.Y.C.R.R.)

It is apparent from the nature and purpose of these proposed amendments that they have no impact on jobs or employment opportunities in New York. These proposed amendments merely update multiple incorrect references to application processes, codify current procedures for online applications, and eliminate some archaic physical standards restrictions for on-premises licenses. As a result, the Authority has determined that these proposed amendments will have no substantial adverse impact on any private or public sector jobs or employment opportunities and a full Job Impact Statement is not warranted.

## Office of Mental Health

### NOTICE OF ADOPTION

#### Personalized Recovery Oriented Services (PROS)

**I.D. No.** OMH-23-15-00003-A

**Filing No.** 685

**Filing Date:** 2015-08-11

**Effective Date:** 2015-08-26

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

**Action taken:** Amendment of Part 512 of Title 14 NYCRR.

**Statutory authority:** Mental Hygiene Law, sections 7.09(b), 31.04(b), 43.02(b); Social Services Law, sections 364(3) and 364-a(1)

**Subject:** Personalized Recovery Oriented Services (PROS).

**Purpose:** Add language back into regulation that had been erroneously eliminated in a previous rulemaking.

**Text or summary was published** in the June 10, 2015 issue of the Register, I.D. No. OMH-23-15-00003-P.

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

**Text of rule and any required statements and analyses may be obtained from:** Sue Watson, NYS Office of Mental Health, 44 Holland Avenue, Albany, NY 12229, (518) 474-1331, email: regs@omh.ny.gov

#### Assessment of Public Comment

The agency received no public comment.

### NOTICE OF ADOPTION

#### Public Access to Records of the Office of Mental Health

**I.D. No.** OMH-24-15-00001-A

**Filing No.** 686

**Filing Date:** 2015-08-11

**Effective Date:** 2015-08-26

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

**Action taken:** Amendment of section 510.5 of Title 14 NYCRR.

**Statutory authority:** Mental Hygiene Law, section 5.09; and Public Officers Law (Freedom of Information Law), art. 6

**Subject:** Public Access to Records of the Office of Mental Health.

**Purpose:** Make a technical correction regarding the agency's records access officer.

**Text or summary was published** in the June 17, 2015 issue of the Register, I.D. No. OMH-24-15-00001-P.

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

**Text of rule and any required statements and analyses may be obtained from:** Sue Watson, NYS Office of Mental Health, 44 Holland Avenue, Albany, NY 12229, (518) 474-1331, email: regs@omh.ny.gov

#### Assessment of Public Comment

The agency received no public comment.

## Public Service Commission

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

#### Notice of Intent to Submeter Electricity

**I.D. No.** PSC-34-15-00014-P

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

**Proposed Action:** The Public Service Commission is considering whether

to grant, deny or modify, in whole or part, the Notice of Intent to submeter electricity filed by Herkimer Street Residence, L.P., for the building located at 437 Herkimer Street, Brooklyn, New York.

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

**Subject:** Notice of Intent to Submeter electricity.

**Purpose:** To consider the request of Herkimer Street Residence, L.P. to submeter electricity at 437 Herkimer Street, Brooklyn, New York.

**Substance of proposed rule:** The Public Service Commission is considering whether to grant, deny or modify, in whole or part, the Notice of Intent to Submeter Electricity, filed by Herkimer Street Residence, L.P., at 437 Herkimer Street, Brooklyn, New York, located in the Territory of Consolidated Edison Company of New York, Inc., and to take other actions necessary to address the Notice of Intent.

**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.

(15-E-0438SP1)

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

**Proposals for Changes to the Electronic Data Interchange Standards**

**I.D. No.** PSC-34-15-00015-P

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

**Proposed Action:** The Commission is considering a "Report on EDI Standards Development" filed on July 24, 2015 by the New York Electronic Data Exchange Working Group, proposing changes to the Electronic Data Interchange Standards.

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

**Subject:** Proposals for changes to the Electronic Data Interchange Standards.

**Purpose:** To consider proposals for changes to the Electronic Data Interchange Standards.

**Substance of proposed rule:** The Public Service Commission is considering a "Report on EDI Standards Development" filed on July 24, 2015 by the New York Electronic Data Exchange Working Group, proposing changes to the Electronic Data Interchange Standards. The Commission may adopt, reject, or modify, in whole or in part, the proposed modifications, and may resolve related matters.

**Text of proposed rule and any required statements and analyses may be obtained by filing a Document Request Form (F-96) located on our website <http://www.dps.ny.gov/f96dir.htm>. For questions, contact:** 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.

(12-M-0476SP12)

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

**Financing Proposed by Cricket Valley Energy Center, LLC**

**I.D. No.** PSC-34-15-00016-P

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

**Proposed Action:** The Commission is considering whether to grant, deny or modify in whole or in part the petition of Cricket Valley Energy Center, LLC for financing authority.

**Statutory authority:** Public Service Law, section 69

**Subject:** Financing proposed by Cricket Valley Energy Center, LLC.

**Purpose:** To consider the financing proposed by Cricket Valley Energy Center, LLC.

**Substance of proposed rule:** The Public Service Commission is considering a petition filed on July 31, 2015 by Cricket Valley Energy Center, LLC requesting authority, pursuant to Public Service Law (PSL) Section 69, to enter into debt instruments (including, but not limited to, a suite of loans, letters of credit and other debt facilities) in the amount not to exceed \$1.5 billion. The Commission may adopt, reject or modify, in whole or in part, the relief requested and may resolve related matters.

**Text of proposed rule and any required statements and analyses may be obtained by filing a Document Request Form (F-96) located on our website <http://www.dps.ny.gov/f96dir.htm>. For questions, contact:** 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.

(15-E-0454SP1)

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

**Abandonment of the Haverstraw Desalination Plant**

**I.D. No.** PSC-34-15-00017-P

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

**Proposed Action:** The Commission is considering whether or not to authorize United Water New York to abandon its proposed desalination plant in Haverstraw, NY.

**Statutory authority:** Public Service Law, section 89-b

**Subject:** Abandonment of the Haverstraw desalination plant.

**Purpose:** To determine if abandoning the desalination plant is in the public interest.

**Substance of proposed rule:** In 2006, the Public Service Commission (Commission) ordered United Water New York, Inc. (UWNY) to identify and pursue a new long-term water supply source to be in service by 2015, in order to address projected increases in demand. Since that time, demand has not matched expectations and public opposition to UWNY's project, a desalination plant in Haverstraw NY, has grown. The Commission is now considering whether it is in the public interest to authorize UWNY to abandon the Haverstraw desalination project.

**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.  
(13-W-0303SP1)

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

**Tariff Filing by Fillmore Gas Co., Inc. to Modify the SIP Mechanism**

**I.D. No.** PSC-34-15-00018-P

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

**Proposed Action:** The Public Service Commission is considering whether to grant, deny or modify a tariff filing by Fillmore Gas Co., Inc. to modify the System Improvement Plan (SIP) to allow for recovery of costs associated with gas expansion.

**Statutory authority:** Public Service Law, sections 65, 66(1), (2) and (e)

**Subject:** Tariff filing by Fillmore Gas Co., Inc. to modify the SIP Mechanism.

**Purpose:** To consider the tariff filing by Fillmore Gas Co., Inc. to modify the SIP Mechanism.

**Substance of proposed rule:** The Public Service Commission is considering whether to grant, modify or deny, in whole or in part, a tariff amendment filed on July 14, 2015 by Fillmore Gas Company, Inc. (Fillmore or the Company) which would modify the existing System Improvement Plan (SIP) Mechanism, which addresses the costs associated with the replacement of bare steel pipe, back-lot mains and services utilizing a risk-based approach. The SIP was established by Commission Order in Case 13-G-0039, issued November 18, 2013. The Company proposes to modify the SIP Mechanism to address gas expansion by allowing the recovery in the SIP of fixed costs (depreciation and pre-tax return) of distribution system expansion costs, including the costs of all gas mains, services and meters installed for new customers.

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

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

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

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

Statements and analyses are not submitted with this notice because the proposed rule is within the definition contained in section 102(2)(a)(ii) of the State Administrative Procedure Act.  
(15-G-0404SP1)

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

**Petition by NYCOM Requesting Assistance with Obtaining Information on CLECs and ESCOs**

**I.D. No.** PSC-34-15-00021-P

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

**Proposed Action:** The Commission is considering a petition filed by the New York State Conference of Mayors and Municipal Officials (NYCOM) requesting assistance with obtaining information on CLECs and ESCOs.

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

**Subject:** Petition by NYCOM requesting assistance with obtaining information on CLECs and ESCOs.

**Purpose:** To consider the petition by NYCOM requesting assistance with obtaining information on CLECs and ESCOs.

**Substance of proposed rule:** The Commission is considering a petition

filed by the New York State Conference of Mayors and Municipal Officials (NYCOM) requesting assistance with obtaining information on the competitive local exchange telephone companies (CLECs) and energy services companies (ESCOs) that sell electric and/or natural gas supply within individual municipal borders. With respect to CLECs, NYCOM seeks a requirement to notify local municipalities or the Commission (with that information made available to local municipalities) when a CLEC acquires at least one customer in a municipality. With respect to ESCOs, NYCOM is seeking information currently in the possession of the local distribution companies (LDCs) responsible for delivering gas and electric service. The Commission may adopt, reject, or modify, in whole or in part, the relief proposed and may resolve related matters.

**Text of proposed rule and any required statements and analyses may be obtained by filing a Document Request Form (F-96) located on our website <http://www.dps.ny.gov/f96dir.htm>. For questions, contact:** 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.  
(15-M-0457SP1)

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

**Waiver of Rules Regarding Letters of Credit for New Developments**

**I.D. No.** PSC-34-15-00025-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 approve, reject, in whole or in part, or modify a petition filed by The Walking Meadows Development seeking waiver of Commission rules and utility tariffs related to extensions of electric and gas service.

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

**Subject:** Waiver of rules regarding letters of credit for new developments.

**Purpose:** Determine whether to warrant a waiver of rules regarding letters of credit for new developments.

**Substance of proposed rule:** The Public Service Commission is considering whether to adopt, modify or reject a petition filed by the developer of the Walking Meadows residential development in Marcy, NY (Petitioner). Petitioner requests a waiver of 16 NYCRR Section 100.3(b) deposits by applicants for new construction of underground facilities in residential subdivisions, and Niagara Mohawk Power Corporation d/b/a National Grid's (National Grid) related tariffs, PSC 220 Section 16.6.3 and PSC 219 Section 10.4. Those rules provide that a developer may be required to provide a deposit or a letter of credit to have facilities installed for units in that development before service is actually required. Further, the rules state that five years after the facilities have been installed, the utility shall retain any monies related to units for which facilities were installed, but which have not yet begun to take service. Petitioner seeks a five year extension to the five year bond limit to complete selling units in the project. 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

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

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

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

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

(15-M-0435SP1)

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## Department of State

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### EMERGENCY/PROPOSED RULE MAKING HEARING(S) SCHEDULED

#### Fixing the Time for Compliance with an Order to Remedy Violation(s) of the State Uniform Fire Prevention and Building Code

I.D. No. DOS-04-15-00004-ERP

Filing No. 683

Filing Date: 2015-08-07

Effective Date: 2015-08-07

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

**Action Taken:** Amendment of section 1203.1; and addition of section 1203.5 to Title 19 NYCRR.

**Statutory authority:** Executive Law, sections 381(1) and 382(2)

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

**Specific reasons underlying the finding of necessity:** This rule is adopted as an emergency measure for the preservation of the public safety and general welfare.

Executive Law § 381(1) directs the Secretary of State to promulgate rules and regulations for the administration of the State Uniform Fire Prevention and Building Code (Uniform Code).

Executive Law § 382(2) provides, in pertinent part, that “any person, having been served, either personally or by registered or certified mail, with an order to remedy any condition found to exist in, on, or about any building in violation of the [Uniform Code], who shall fail to comply with such order within the time fixed by the regulations promulgated by the Secretary of State pursuant to [Executive Law § 381(1)], such time period stated in the order, shall be punishable by a fine of not more than one thousand dollars per day of violation, or imprisonment not exceeding one year, or both.”

Prior to January 12, 2015, the regulations adopted by the Department of State pursuant to Executive Law § 381(1) have never “fixed” a time within which a person served with an order to remedy must comply with that order. In most cases, the local government that issues an order to remedy determines a “reasonable time” within which compliance with the order would be required.

On September 22, 2014, the New York State Supreme Court, Appellate Term, Second Department, 9th and 10th Judicial Districts, issued a decision in the matter of *People v. Plateau Associates, LLC*. The Court held that in the absence of a Department of State regulation fixing the time within which compliance with an order to remedy is required, a party served with such an order could not be charged under Executive Law § 382(2) for failure to comply with such order within the time fixed by regulation for such compliance. The Court rejected the argument that the local government that issued the order to remedy should be permitted to determine the “reasonable time” within which compliance with the order to remedy would be required.

In the absence of a Department of State regulation fixing the time for compliance with an Order to Remedy, the precedent established in *People v. Plateau Associates, LLC* could cause courts in the State to refuse to impose the penalties contemplated by Executive Law § 382(2). This, in turn, would seriously diminish the effectiveness of orders to remedy, resulting in inadequate enforcement of the Uniform Code, thereby potentially subjecting the people of this State to the real and present dangers to public health and safety posed by fire.<sup>1</sup> The Department of State determined that adopting a rule fixing the time to comply with an Order to Remedy on an emergency basis was necessary to halt such undesirable result at the earliest possible date.

On January 12, 2015, the Department of State adopted an emergency rule that fixed the time within which compliance with an order to remedy any condition found to exist in, on, or about any building in violation of the Uniform Code at thirty (30) days following the date of the order.

The initial emergency rule was also proposed for permanent adoption. The public comment period has closed, and the Department of State has

completed its assessment of the comments received. The Department of State has made a number of changes to the original rule in response to the comments received. The Department of State believes that no single change constitutes a substantial revision of the rule. However, because of the number of clarifying changes that were made, the Department of State has elected to treat the revision of the rule, in its totality, as a substantial revision, requiring a Notice of Revised Rule Making.

The initial emergency rule was re-adopted twice. The second emergency re-adoption will expire on August 3, 2015. Adopting the revised rule on an emergency basis is necessary to assure that a regulation that fixes the time for compliance with an Order to Remedy will remain in effect during the time required for additional comment on the revised version of the rule.

<sup>1</sup> See Executive Law § 371(1)(d): “The legislature hereby finds and declares that: . . . Whether because of the absence of applicable codes, inadequate code provisions or inadequate enforcement of codes, the threat to the public health and safety posed by fire remains a real and present danger for the people of the state;

**Subject:** Fixing the time for compliance with an order to remedy violation(s) of the State Uniform Fire Prevention and Building Code.

**Purpose:** Fix the time for compliance with an order to remedy any condition found to exist in buildings in violation of the Uniform Code.

**Public hearing(s) will be held at:** 10:00 a.m., October 14, 2015 at Department of State, 99 Washington Ave., Rm. 505, Albany, NY.

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

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

**Text of emergency/revised rule:** 1. Section 1203.1 of Part 1203 of Title 19 of the Official Compilation of Codes, Rules and Regulations of the State of New York is amended to read as follows:

1203.1 Introduction.

Section 381 of the Executive Law directs the Secretary of State to promulgate rules and regulations for administration of the Uniform Fire Prevention and Building Code (Uniform Code) and the *State Energy Conservation Construction Code (Energy Code)*. These rules and regulations are to address the nature and quality of enforcement and are the subject of this Part.

2. Part 1203 of Title 19 of the Official Compilation of Codes, Rules and Regulations of the State of New York is amended by adding a new section 1203.5 to read as follows:

1203.5 Compliance with an order to remedy.

(a) *Introduction and purpose.* Section 381 of the Executive Law provides for the administration and enforcement of the Uniform Code and authorizes the promulgation of this Part to establish minimum standards for such administration and enforcement. In addition, subdivision 2 of section 382 of the Executive Law provides, in part, that any person, having been served, either personally or by registered or certified mail, with an order to remedy any condition found to exist in, on, or about any building in violation of the Uniform Code, who shall fail to comply with such order within the time fixed by the regulations promulgated by the Secretary of State pursuant to subdivision 1 of section 381 of the Executive Law, such time period to be stated in the order, shall be punishable by a fine of not more than one thousand dollars per day of violation, or imprisonment not exceeding one year, or both. The purpose of this section 1203.5 is to fix, for the purposes of subdivision 2 of section 382 of the Executive Law, the time within which a person or entity served with an Order to Remedy is required to comply with such Order to Remedy.

(b) *Definitions.* In this section 1203.5, the following terms shall have the following meanings:

(1) The term “Authority Having Jurisdiction” means any city, town, village, county, state agency or other governmental unit or agency responsible for administration and enforcement of the Uniform Code.

(2) The term “Order to Remedy” means an order to remedy any condition found to exist in, on, or about any building in violation of the Uniform Code.

(3) The term “comply with an Order to Remedy” means to remedy completely each violation described in the Order to Remedy.

(c) *Time for compliance with Order to Remedy.* For the purposes of subdivision 2 of section 382 of the Executive Law, the time within which a person or entity served with an Order to Remedy is required to comply with such Order to Remedy is hereby fixed at thirty (30) days following the date of such Order to Remedy.

(d) *Statement to be included in Order to Remedy.* For the purpose of

complying with that part of subdivision 2 of section 382 of the Executive Law that provides "such time period to be stated in the order," an Order to Remedy shall include a statement substantially similar to the following: "The person or entity served with this Order to Remedy must completely remedy each violation described in this Order to Remedy by \_\_\_\_\_ [specify date], which is thirty (30) days after the date of this Order to Remedy."

(e) *Service.* An Order to Remedy shall be served personally or by certified or registered mail within five (5) days of the date of the order. For the purposes of this section 1203.5:

(1) if an Order to Remedy is served personally by any authorized means that requires more than one action by the person effecting service (such as service by "delivery and mail" similar to that authorized by CPLR 308(2)), the Order to Remedy shall be deemed to be served on the date on which the last required action is taken; and

(2) an Order to Remedy served by certified or registered mail shall be deemed to be served on the date it is mailed.

(f) Requiring immediate commencement of corrective action. Nothing in this section 1203.5 shall be construed as prohibiting any Authority Having Jurisdiction that issues an Order to Remedy from including in such Order to Remedy provisions ordering the person or entity served with such Order to Remedy:

(1) to begin to remedy the violations described in the Order to Remedy immediately, or within some other specified period of time which may be less than thirty (30) days; to continue diligently to remedy such violations until each such violation is fully remedied; and, in any event, to complete the remedying of all such violations within thirty (30) days of the date of such Order to Remedy; and/or

(2) to take such other protective actions (such as vacating the building or barricading the area where the violations exist) which are authorized by the code enforcement program of the Authority Having Jurisdiction or by any other applicable statute, regulation, rule, local law or ordinance, and which the Authority Having Jurisdiction may deem appropriate, during the period while such violations are being remedied.

(g) Other means of enforcing the Uniform Code. Nothing in this section 1203.5 shall be construed as requiring an Authority Having Jurisdiction to issue an Order to Remedy in a given situation where violations of the Uniform Code are found to exist if, in the judgment of the Authority Having Jurisdiction, such violations can be addressed adequately by the use of other enforcement tools or by other means. Nothing in this section 1203.5 shall be construed as limiting the authority of an Authority Having Jurisdiction to employ any other means of enforcing the Uniform Code and/or Energy Code, including, but not limited to:

(1) issuing notices of violation;

(2) issuing appearance tickets;

(3) commencing and prosecuting an appropriate action or proceeding pursuant to that part of subdivision 2 of section 382 of the Executive Law that provides that any owner, builder, architect, tenant, contractor, subcontractor, construction superintendent or their agents or any other person taking part or assisting in the "construction" (as defined in subdivision 4 of section 372 of the Executive Law) of any building who shall knowingly violate any of the applicable provisions of the Uniform Code or any lawful order of a city, village, town, county, state agency or the Secretary of State made thereunder regarding standards for construction, maintenance, or fire protection equipment and systems, shall be subject to a fine of not more than one thousand dollars per day of violation, or imprisonment not exceeding one year, or both;

(4) commencing and prosecuting an appropriate action or proceeding pursuant to subdivision 3 of section 382 of the Executive Law which seeks, in a case where the construction or use of a building is in violation of any provision of the Uniform Code or any lawful order obtained thereunder, an order from a Justice of the Supreme Court directing the removal of the building or an abatement of the condition in violation of such provisions;

(5) issuing stop work orders;

(6) revoking or suspending building permits, operating permits and/or certificates of occupancy pursuant to the procedures established in the code enforcement program of the Authority Having Jurisdiction or pursuant to any other applicable statute, regulation, rule, local law or ordinance;

(7) commencing and prosecuting an appropriate action or proceeding to impose such criminal and/or civil sanctions as may be provided in any applicable statute, regulation, rule, local law or ordinance;

(8) condemning and/or placarding a building in accordance with the applicable provisions of the Uniform Code;

(9) taking any action authorized by the procedures for identifying and addressing unsafe structures and equipment as established in the code enforcement program of the Authority Having Jurisdiction or by any other applicable statute, regulation, rule, local law or ordinance; or

(10) issuing orders to remedy violations of the Energy Code pursuant to subdivision (1) of section 11-108 of the Energy Law.

(h) *Office of Fire Prevention and Control.* For the purposes of this section 1203.5, the term "Order to Remedy" shall not include any order issued by the Office of Fire Prevention and Control pursuant to section 156-e of the Executive Law (or pursuant to any regulation promulgated thereunder) requiring the remedying of any condition found to exist in, on or about any building under the jurisdiction of a public college or independent college (as these terms are defined in section 807-b of the Education Law) which violates the Uniform Code. Nothing in this section 1203.5 shall be construed as fixing the time within which a public college or independent college shall have to comply with any such order, or as requiring any such order to include the statement prescribed in subdivision (d) of this section.

**This notice is intended** to serve as both a notice of emergency adoption and a notice of revised rule making. The notice of proposed rule making was published in the *State Register* on January 28, 2015, I.D. DOS-04-15-00004-EP. The emergency rule will expire November 4, 2015.

**Emergency rule compared with proposed rule:** Substantial revisions were made in section 1203.5(a)-(h).

**Text of rule and any required statements and analyses may be obtained from:** Joseph Ball, Department of State, 99 Washington Ave., Suite 1120, Albany, NY 12231-0001, (518) 474-6740, email: joseph.ball@dos.ny.gov

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

**Public comment will be received until:** October 19, 2015.

### Revised Regulatory Impact Statement

#### 1. STATUTORY AUTHORITY

Adoption of this rule is authorized by Executive Law § § 381(1) and 382(2). Executive Law § 381(1) provides that the Secretary of State shall promulgate rules and regulations prescribing minimum standards for administration and enforcement of the Uniform Fire Prevention and Building Code (Uniform Code).

Executive Law § 382(2) provides, in part, that "(a)ny person, having been served, either personally or by registered or certified mail, with an order to remedy any condition found to exist in, on, or about any building in violation of the [Uniform Code], who shall fail to comply with such order within the time fixed by the regulations promulgated by the secretary pursuant to [Executive Law § 381(1)], such time period to be stated in the order. . . shall be punishable by a fine of not more than one thousand dollars per day of violation, or imprisonment not exceeding one year, or both."

#### 2. LEGISLATIVE OBJECTIVES

This rule will add a new section 1203.5 to 19 NYCRR Part 1203. The new section 1203.5 to be added by this rule will effectuate the objectives of Executive Law § § 381(1) and 382(2) by promulgating a regulation that (1) fixes the time within which compliance with an order to remedy will be required at thirty (30) days following the date of the order and (2) requiring each order to remedy to include a notice that clearly states the time within which compliance with the order is required and the consequences of failure to comply with the order within that stated time.<sup>1</sup>

#### 3. NEEDS AND BENEFITS

When current Article 18 of the Executive Law was adopted in 1981, there was no single building code applicable in all parts of the state; local governments were free to adopt their own code, to "accept" the applicability of the State Building Construction Code, or to have no building code at all. When it adopted the current Article 18, the Legislature found and declared that "(w)hether because of the absence of applicable codes, inadequate code provisions or inadequate enforcement of codes, the threat to the public health and safety posed by fire remains a real and present danger for the people of the state" (Executive Law § 371(1)(d), emphasis added). The Legislature addressed the first two concerns (absence of applicable codes or inadequate code provisions) by providing, in Article 18, that the State Uniform Fire Prevention and Building Code (Uniform Code) would be applicable in all parts of the State except New York City. The Legislature addressed the third concern (inadequate enforcement of codes) by requiring local governments to administer and enforce the Uniform Code (Executive Law § 381(2)) and by providing a non-exclusive list of enforcement tools, including "the power to order in writing the remedying of any condition found to exist in, on or about any building in violation of the [Uniform Code]" (Executive Law § 382(1)).

As stated above, Executive Law § 382(2) provides, in part, that a person served with an order to remedy who fails to comply with such order "within the time fixed by the regulations promulgated by the [Secretary of State] pursuant to [Executive Law § 381(1)], such time period to be stated in the order" shall be punishable by a fine of not more than one thousand dollars per day of violation, or imprisonment not exceeding one year, or both.

The regulations adopted by the Department of State (DOS) pursuant to Executive Law § 381(1) currently contain no provision fixing the time for compliance with an order to remedy. DOS understands that a local government issuing an order to remedy will, in most cases, determine a reasonable time within which compliance with the order would be required.

However, the recent case of *People v. Plateau Associates, LLC*, the Appellate Term for the Second Department, 9th and 10th Judicial Districts, held that in the absence of a DOS regulation fixing the time within which compliance with an order to remedy is required, the party served with such an order could not be charged under Executive Law § 382(2). The Court rejected the argument that the local government that issued the order to remedy should be permitted to determine the “reasonable time” within which compliance with the order to remedy would be required.

This rule adopts a regulation that fixes the time within which compliance with an order to remedy is required. This rule is necessary because in the absence of a regulation fixing the time within which full compliance with an order to remedy is required, courts may, under the precedent established by *Plateau Associates*, refuse to impose the penalties contemplated by Executive Law § 382(2) upon persons who are served with an order to remedy who fail to comply with the order to remedy. This, in turn, would seriously diminish the effectiveness of orders to remedy, resulting in inadequate enforcement of the Uniform Code and potentially subject the people of this State to the real and present dangers of to public safety posed by fire, as identified by the State Legislature in Executive Law § 371(1)(d).

#### 4. COSTS

##### Costs to Regulated Parties

Pursuant to Executive Law § 382(2), a person served with an order to remedy who fails to comply with the order within the time fixed by this rule will be subject to the penalties prescribed by Executive Law § 382(2), viz., a fine not to exceed \$1,000 per day of violation, imprisonment for not more than one year, or both.

A person served with an order to remedy is already required by existing law to comply with that order. This rule merely fixes the time within which compliance with the order is required. This rule will impose no additional initial capital costs on any person served with an order to remedy. This rule will impose no additional annual compliance costs on any person served with an order to remedy.

Upon learning of the decision in *People v. Plateau Associates, LLC*, the Department of State’s Division of Building Standards and Codes solicited information from local governments’ code enforcement officials from around the State. These officials were surveyed regarding times within which compliance with an order to remedy is typically required. Among those surveyed, the majority of participants affirmed that they included in orders to remedy, a specific date by which any violations must be corrected. On average, the time allowed before re-inspection or correction of the violations was reported to be twenty (20) days. The time fixed by this rule for compliance with an order to remedy (30 days from the date of the order) is actually slightly longer than this reported average.

This rule will expressly provide (1) that an order to remedy may provide that the person served with the order must begin to remedy the violation(s) immediately and (2) that new section 1203.5 does not limit any other enforcement tool. These provisions will allow a local government to address situations in which immediate action is required to protect health and safety.

Costs to the Department of State, New York State, and Local Governments

In general, local governments are responsible for enforcing the Uniform Code. In certain instances, the Department of State (DOS) is responsible for enforcing the Uniform Code.

This rule will require a local government (or DOS in those instances where it enforces the Uniform Code) to include in each order to remedy a statement substantially similar to the following: “Full compliance with this order to remedy is required by \_\_\_\_\_ [specify date], which is thirty (30) days after the date of this order.”

This rule will also require the local government or other enforcing agency that issues an order to remedy to serve the order (personally or by registered or certified mail) within 5 days of the date of the order.

The initial costs to be incurred by local governments that enforce the Uniform Code (and by DOS in those instances where it enforces the Uniform Code) will include (1) the cost of modifying their order to remedy forms to include the statement required by this rule and (2) the cost of training their code enforcement personnel on the requirements of this rule. However, DOS anticipates that the cost of modifying a local government’s order to remedy form to include the notice required by this rule will be negligible. In addition, 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.

The annual or on-going compliance costs for local governments that enforce the Uniform Code (and by DOS in those instances where it enforces the Uniform Code) will include the costs associated with tracking service of orders to remedy to assure that service is made within the five day time limit established by this rule. However, DOS anticipates that a local government will be able to fulfill these obligations using its existing

code enforcement 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.

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

#### 5. PAPERWORK

As stated above, this rule will require a local government (or DOS, in instances where it enforces the Uniform Code) to include a notice in each order to remedy specifying the date by which compliance with such order will be required and specifying the consequences of failure to comply with the order within that stated time.

#### 6. LOCAL GOVERNMENT MANDATES

A local government that issues an order to remedy will be required to include in that order a notice specifying the date by which compliance with such order will be required and specifying the consequences of failure to comply with the order within that stated time. A local government that issues an order to remedy will also be required to see that the order is served (personally or by registered or certified mail) with 5 days of the date of the order.

Local governments that enforce the Uniform Code will be required to ensure that their code enforcement personnel receive training on the provisions of this rule.

DOS anticipates that any such additional training and enforcement obligations will have little or no impact on the code enforcement expenses incurred by local governments. In addition, local governments are authorized by existing law to charge fees to offset their code enforcement expenses.

#### 7. DUPLICATION

This rule implements the requirements of Executive Law § 382(2). This rule does not duplicate any rule or other legal requirement of the State or Federal government known to DOS.

#### 8. ALTERNATIVES

DOS considered a rule that would allow local governments to determine the time within which compliance with an order to remedy would be required on a case by case basis. However, the court in the *Plateau Associates, LLC* case cited above rejected this approach, and indicated that Executive Law § 382(2) requires DOS to adopt a regulation fixing a time within which compliance with an order to remedy would be required.

DOS considered a rule that would fix a period of time less than, or more than, 30 days as the time within which full compliance with an Order to Remedy would be required. However, as stated above, DOS’s survey of local code enforcement officials indicated that on average, the time allowed before re-inspection or correction of the violations was reported to be twenty (20) days. Taking into account the possibility of an Order being served on the last possible date (5 days after its date), and assuming that an Order served by mail might not be received until 5 days after the mailing, this rule will give the person served at least 20 days to remedy the violations in most cases. In cases where immediate action is required, this rule provides that the order may require the party served to begin to remedy the violations immediately.

#### 9. FEDERAL STANDARDS

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

#### 10. COMPLIANCE SCHEDULE

DOS anticipates that local governments and other code enforcing agencies will be able to comply with this rule immediately.

<sup>1</sup> This rule will also amend section 1203.1 of Title 19 of the NYCRR to include a reference to and definition of the term “Energy Code.”

#### *Revised Regulatory Flexibility Analysis*

##### 1. EFFECT OF RULE.

Executive Law § 382(2) provides, in part, that any person, having been served, either personally or by registered or certified mail, with an order to remedy any condition found to exist in, on, or about any building in violation of the State Uniform Fire Prevention and Building Code (the Uniform Code), who shall fail to comply with such order within the time fixed by the regulations promulgated by the secretary pursuant to Executive Law § 381(1), such time period to be stated in the order, shall be punishable by a fine of not more than one thousand dollars per day of violation, or imprisonment not exceeding one year, or both. This rule amends 19 NYCRR Part 1203 by adding Section 1203.5 (entitled “Compliance with an order to remedy”) which fixes the time within which compliance with an order to remedy is required. Under new Section 1203.5, the time within which compliance with an order to remedy is required is fixed at thirty (30) days following the date of the order.

New section 1203.5 will also require (1) that each order to remedy include a notice indicating the date by which compliance with the order is required and the consequences of failure to comply with the order by that date and (2) that each order to remedy be served (personally or by registered or certified mail) within 5 days of the date of the order.<sup>1</sup>

The Uniform Code is applicable in all areas of the State except New York City. Therefore, this rule will affect any small business which owns or occupies a building or structure anywhere in the State except New York City and which is served with an order to remedy Uniform Code violation(s) found to exist in, on, or about such building or structure. The Department of State is not able to estimate the number of small businesses that will be served with such an order to remedy.

In general, local governments (cities, towns, and villages) are required to enforce the Uniform Code. In some cases, a county may enforce the Uniform Code. Therefore, this rule will affect any local government or county which enforces the Uniform Code and which chooses to issue an order to remedy. The Department of State estimates that approximately 1,600 local governments and counties enforce the Uniform Code, and that most of these local governments and counties issue orders to remedy from time to time.

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

This rule will fix the time for compliance with an order to remedy at thirty (30) days from the date of the order. A person or entity (including a small business) served with an order to remedy is already required by existing law to comply with that order. This rule merely fixes the time within which compliance with the order is required. Failure to comply with an order to remedy within the time fixed by this rule will make the person or entity served with the order subject to the penalties prescribed by Executive Law § 382(2). This rule will impose no new reporting, recordkeeping or other compliance requirements on any person served with an order to remedy.

A person or entity (including a small business) served with an order to remedy may find it necessary or desirable to hire an engineer, architect or other professional who constructs or assists in the construction or maintenance of buildings to assist with compliance with the order; however, this rule will not increase the need for any such professional services.

Local government that enforce the Uniform Code and issue orders to remedy will be required to include in each such order a notice indicating the date by which compliance with the order is required and the consequences of failure to comply with the order by that date. Local governments will be required to modify their order to remedy forms to include this notice.

Local government that enforce the Uniform Code and issue orders to remedy will be required to serve each such order to remedy (personally or by registered or certified mail) within 5 days of the date of the order. Local governments will be required to track service of their orders to remedy to assure that they are served within the applicable five day period.

The Department of State anticipates that local governments will be able to comply with the new requirements added by section 1203.5 with their current code enforcement personnel, and will not require any significant additional professional services.

#### 3. COMPLIANCE COSTS.

Pursuant to Executive Law § 382(2), a person served with an order to remedy who fails to comply with the order within the time fixed by this rule will be subject to the penalties prescribed by Executive Law § 382(2), viz., a fine not to exceed \$1,000 per day of violation, imprisonment for not more than one year, or both. However, a person or entity (including a small business) served with an order to remedy is already required by existing law to comply with that order. This rule merely fixes the time within which compliance with the order is required. This rule will impose no additional initial capital costs on any person or entity (including any small business) served with an order to remedy.

This rule will impose no additional annual compliance costs on any person or entity (including any small business) served with an order to remedy.

The initial costs to be incurred by local governments that enforce the Uniform Code will include (1) the cost of modifying their order to remedy forms to include the statement required by this rule and (2) the cost of training their code enforcement personnel on the requirements of this rule. However, the Department of State anticipates that the cost of modifying a local government's order to remedy form to include the notice required by this rule will be negligible. In addition, 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 local governments that enforce the Uniform Code will include the costs associated with tracking service of orders to remedy to assure that service is made within the five day time limit established by this rule. However, the Department of State anticipates that a local government will be able to fulfill these obligations using its existing code enforcement 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. 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 comply with this rule using their existing code enforcement personnel.

#### 5. MINIMIZING ADVERSE IMPACT.

This rule was designed to minimize any adverse impact on all affected parties, including small businesses and local governments, by: (1) fixing the time within which compliance with an order to remedy is required at 30 days from the date of the order, thereby enabling local governments easily to compute the date by which compliance is required and to state that date in the order to remedy, as required by Executive Law § 382(2); (2) specifying the form of the statement to be included in the order to remedy that will enable local governments to state the time within which compliance is required, which will facilitate local governments' ability to comply with the requirements of Executive Law § 382(2); (3) providing that local governments can include in an order to remedy provisions requiring that the person or entity served with the order must begin to remedy the violation(s) immediately, and must diligently continue to remedy the violation(s), thereby allowing local governments to include appropriate provisions in an order to remedy to address a situation where immediate action is required to address life/safety concerns; and (4) providing a time within which compliance is required (30 days) which is longer than the average time currently specified by local governments that responded to the Department of State's survey (20 days), thereby assuring that a person or entity served with an order to remedy will have a reasonable time to comply before being subject to the penalties prescribed by Executive Law § 382(2).

Approaches such as establishing different 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 any part thereof, for small businesses and local governments were not considered because doing so is not authorized by the statute and would endanger the public safety and general welfare.

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

The Department of State gave small businesses 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 that is prepared by the Department of State and is currently distributed to approximately 10,000 subscribers, including local governments, design professionals and others involved in all aspects of the construction industry.

This is a revised rule making. Interested parties throughout the State, including small businesses and local governments, were given an opportunity to submit comments regarding the original version of this rule during the public comment period established by the Notice of Emergency Adoption and Proposed Rule Making filed for the original version of this rule, and will be given an opportunity to submit comments regarding the revised rule during the public comment period to be established by the Notice of Emergency Adoption and Revised Rule Making submitted with this Revised Regulatory Flexibility Analysis for Small Businesses and Local Governments.

#### 7. VIOLATIONS AND PENALTIES ASSOCIATED WITH VIOLATIONS.

The applicable statute (Executive Law § 382(2)) establishes a violation (viz., failure to comply with an order to remedy) and establishes penalties associated with such violation (viz., a fine of not more than one thousand dollars per day of violation, or imprisonment not exceeding one year, or both). While this rule will relate to the violation and penalty established by Executive Law § 382(2) in the sense that this rule will fix the time within which compliance with an order to remedy is required, this rule will not directly establish or modify a violation and this rule will not directly 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. It should be noted, however, that this rule will, in effect, include a cure period or other opportunity for ameliorative action in the sense that this rule will provide that a person served with an order to remedy will have at least 30 days to comply with the order before the statutory penalties can be imposed.

<sup>1</sup> This rule will also amend section 1203.1 of Title 19 of the NYCRR to include a reference to and definition of the term "energy code."

**Revised Rural Area Flexibility Analysis****1. TYPES AND ESTIMATED NUMBERS OF RURAL AREAS.**

This rule adds a new section 1203.5 to Title 19 of the NYCRR. New section 1203.5 fixes the time within which compliance with an order to remedy violations of the State Uniform Fire Prevention and Building Code (the Uniform Code) is required.<sup>1</sup>

The Uniform Code applies in all parts of the State except New York City. Therefore, this rule will apply in all rural areas of the State.

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

Executive Law § 382(2) provides, in part, that any person, having been served, either personally or by registered or certified mail, with an order to remedy any condition found to exist in, on, or about any building in violation of the State Uniform Fire Prevention and Building Code (the Uniform Code), who shall fail to comply with such order within the time fixed by the regulations promulgated by the secretary pursuant to subdivision one of section three hundred eighty-one of this article, such time period to be stated in the order, shall be punishable by a fine of not more than one thousand dollars per day of violation, or imprisonment not exceeding one year, or both. This rule will add a new section 1203.5 to Title 19 of the NYCRR. New section 1203.5 fixes the time for compliance with an order to remedy at thirty (30) days from the date of the order.

A person served with an order to remedy in any part of the State, including any rural area, is already required by existing law to comply with that order. This rule merely fixes the time within which compliance with the order is required. Failure to comply with an order to remedy within the time fixed by this rule will make the person served with the order subject to the penalties prescribed by Executive Law § 382(2).

This rule will impose no new reporting, recordkeeping or other compliance requirements on any person served with an order to remedy.

A person served with an order to remedy may find it necessary or desirable to hire an engineer, architect or other professional who constructs or assists in the construction or maintenance of buildings to assist with compliance with the order; however, this rule will not increase the need for any such professional services.

New section 1203.5 will require a local government that issues an order to remedy to include in the order a statement indicating that full compliance with the order within thirty (30) days of the date of the order is required. Local governments (including local governments in rural areas) will be required to modify their order to remedy forms to include this notice.

New section 1203.5 will provide that an order to remedy must be served within five days of the date of the order. Local governments (including local governments in rural areas) will be required to track service of their orders to remedy to assure that they are served within the applicable five day period.

The Department of State anticipates that local governments will be able to enforce the new requirement added by section 1203.5 with their current code enforcement personnel, and will not require any significant additional professional services.

**3. COMPLIANCE COSTS.**

Pursuant to Executive Law § 382(2), a person served with an order to remedy who fails to comply with the order within the time fixed by this rule will be subject to the penalties prescribed by Executive Law § 382(2), viz., a fine not to exceed \$1,000 per day of violation, imprisonment for not more than one year, or both. However, a person served with an order to remedy in any part of the State, including any rural area, is already required by existing law to comply with that order. This rule merely fixes the time within which compliance with the order is required. This rule will impose no additional initial capital costs on any person served with an order to remedy. This rule will impose no additional annual compliance costs on any person served with an order to remedy.

The initial costs to be incurred by local governments (including local governments in rural areas) will include (1) the cost of modifying their order to remedy forms to include the statement required by this rule and (2) the cost of training their code enforcement personnel on the requirements of this rule. However, the Department of State anticipates that the cost of modifying a local government's order to remedy form to include the notice required by this rule will be negligible. In addition, 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 local governments (including local governments in rural areas) will include the costs associated with tracking service of orders to remedy to assure that service is made within the five day time limit established by this rule. However, the Department of State anticipates that a local government will be able to fulfill these obligations using its existing code enforcement personnel, at little or no additional cost to the local government. Further, local governments are au-

thorized 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) fixing the time within which compliance with an order to remedy is required at 30 days from the date of the order, thereby enabling local governments easily to compute the date by which compliance is required and to state that date in the order to remedy, as required by Executive Law § 382(2); (2) specifying the form of the statement to be included in the order to remedy that will enable local governments to state the time within which compliance is required, which will facilitate local governments' ability to comply with the requirements of Executive Law § 382(2); (3) providing that local governments can include in an order to remedy provisions requiring that the person or entity served with the order must begin to remedy the violation(s) immediately, and must diligently continue to remedy the violation(s), thereby allowing local governments to include appropriate provisions in an order to remedy to address a situation where immediate action is required to address life /safety concerns; and (4) providing a time within which compliance is required (30 days) which is longer than the average time currently specified by local governments that responded to the Department of State's survey (20 days), thereby assuring that a person or entity served with an order to remedy will have a reasonable time to comply before being subject to the penalties prescribed by Executive Law § 382(2).

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 is not authorized by the statute and 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/Energy 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.

This is a revised rule making. Interested parties throughout the State, including interested parties in rural areas, were given an opportunity to submit comments regarding the original version of this rule during the public comment period established by the Notice of Emergency Adoption and Proposed Rule Making filed for the original version of this rule, and will be given an opportunity to submit comments regarding the revised rule during the public comment period to be established by the Notice of Emergency Adoption and Revised Rule Making submitted with this Revised Rural Area Flexibility Analysis.

<sup>1</sup> This rule will also amend section 1203.1 of Title 19 of the NYCRR to include a reference to and definition of the term "energy code."

**Revised 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 in New York.

Executive Law § 382(2) provides, in part, that any person, having been served, either personally or by registered or certified mail, with an order to remedy any condition found to exist in, on, or about any building in violation of the State Uniform Fire Prevention and Building Code (the Uniform Code), who shall fail to comply with such order within the time fixed by the regulations promulgated by the secretary pursuant to Executive Law § 381(1), such time period to be stated in the order, shall be punishable by a fine of not more than one thousand dollars per day of violation, or imprisonment not exceeding one year, or both. This rule will add a new section 1203.5 to Title 19 of the Official Compilation of Codes, Rules and Regulations of the State of New York. New section 1203.5 fixes the time for compliance with an order to remedy at thirty (30) days from the date of the order.

A person served with an order to remedy is required by existing law to comply with that order. This rule merely fixes the time within which compliance with the order is required. Failure to comply with an order to remedy within the time fixed by this rule will make the person served with the order subject to the penalties prescribed by Executive Law § 382(2).

Therefore, the Department of State concludes that it is apparent from the nature and purpose of this rule that it will have no substantial adverse impact on jobs and employment opportunities.

**Assessment of Public Comment**

COMMENTS REGARDING TIME TO REMEDY  
Summary and analysis

Several comments raised concerns about fixing the time within which a party must comply with an Order to Remedy (OTR) at 30 days. Comments argued (1) that the 30 day time to remedy is too long for certain code violations; (2) that the 30 day time to remedy is too short for certain violations; (3) that the rule should establish a range of time to remedy periods; or (4) that the time to remedy should be left to the discretion of the authority having jurisdiction (AHJ).

#### DOS Response

This rule was developed in response to *People v. Plateau Associates, LLC*, which held that in the absence of a Department of State (DOS) regulation specifically fixing a time for compliance with an OTR, a municipality issuing an OTR could not charge the person served with the Order under the part of Executive Law § 382(2) which provides that “any person, having been served. . . with an order to remedy any condition found to exist in, on, or about any building in violation of the [Uniform Code], who shall fail to comply with such order within the time fixed by the regulations promulgated by the secretary pursuant to [Executive Law § 381(1)], such time period to be stated in the order. . . shall be punishable by a fine of not more than one thousand dollars per day of violation, or imprisonment not exceeding one year, or both.”

The Plateau Associates decision rejected the argument that allowing an AHJ to determine, on a case-by-case basis, a “reasonable” time for compliance with an OTR satisfied the requirements of the above-quoted provision of Executive Law § 382(2). Hence, it is necessary to adopt a regulation fixing a specific time.

Upon learning of the Plateau Associates holding, DOS surveyed local government officials regarding the times within which compliance with an OTR is typically required. The average of the reported times was 20 days.

DOS set the time for compliance at 30 days after the date of the OTR because (1) an OTR can be served by registered or certified mail, (2) an OTR can be served as late as 5 days after the date of the OTR, and (3) DOS presumes that in most cases, an OTR served by mail will be received within 5 days of the mailing (see CPLR 2103(b)(2)). Therefore, even if an OTR is served by registered or certified mail on the fifth day after the date of the OTR, the OTR should be received by the addressee no later than 20 days before the date fixed by the OTR for full compliance.

To address concerns that certain code violations must be addressed in less than 30 days, section 1203.5 provides that (1) an OTR may include a provision requiring the immediate commencement of remedial actions and (2) nothing in the section 1203.5 limits the authority of the AHJ to use any other means of enforcing the Uniform Code.

In a situation where the AHJ believes a condition may take longer than 30 days to remedy, nothing in this rule would prohibit the AHJ from sending a “caution” letter to the owner notifying the owner of the existence of the violation(s) and advising the owner of the AHJ’s intention to serve an OTR on or about some specified future date.

#### COMMENTS REGARDING MANNER OF SERVICE

##### Summary and analysis

Comments (1) argued that the rule should expand the permissible methods of service of an OTR; (2) expressed concern over the cost of serving “over 2,000 violation notices a year” by registered or certified mail; (3) expressed concern that the failure of the addressee to sign for an OTR served by registered or certified mail within 5 days of the mailing would invalidate the service; and (4) noted that documentation indicating that the addressee refused to accept delivery of a registered or certified mailing, or that the mailing was otherwise undeliverable, is typically received several weeks after the mailing.

##### DOS Response

Executive Law § 382(2) provides that an OTR must be served “either personally or by registered or certified mail.” DOS cannot adopt a rule authorizing service of an OTR by any means other than those specified in the statute.

Concerns regarding the cost of service by registered or certified mail cannot be addressed by a rule adopted by DOS.

The rule addresses only OTRs. This rule does not require service of Notices of Violation by registered or certified mail.

DOS added provisions to the rule to clarify that an OTR served by registered or certified mail is “served” on the date of mailing. Failure of the addressee to sign for the mailing within 5 days of the mailing will not invalidate service.

Regarding concerns that OTR served by registered or certified mail may be refused by the addressee, or may otherwise be undeliverable, DOS notes that service of legal process of any type is subject to Constitutional due process concerns. If an AHJ learns that an OTR it served by certified or registered mail was not actually received by the addressee, the AHJ may be required to issue and serve a new OTR. However, these concerns exist as a matter of Constitutional law, and are not created or expanded by this rule.

#### COMMENTS REGARDING ALTERNATIVE PENALTIES

##### Summary and analysis

Comments recommended (1) providing for a fine of a flat \$1,000 per day of violation, rather than a fine of “not more than” \$1,000 per day of violation; (2) treating all violations as “strict liability offenses regardless of the intent,” and (3) providing for suspension or revocation of operating permits, building permits, and certificates of occupancy for those who fail to comply with an OTR.

##### DOS Response

The purpose of the rule is to fix the time for compliance with an OTR. This rule does not purport to establish the penalties for failure to comply.

Executive Law § 382(2) provides that the penalty for failure to comply with an OTR is a fine of “not more than” one thousand dollars per day of violation, or imprisonment “not exceeding” one year, or both. DOS has no authority to adopt a rule limiting the discretion of a judge to determine the amount of the fine, or length of imprisonment, to impose in a given case.

With regard to revocation or suspension of permits and certificates of occupancy, each local government that enforces the Uniform Code is required to establish its code enforcement program, and to include the features described in 19 NYCRR Part 1203 in that program. Those features include provisions for issuing operating permits, building permits, and certificates of occupancy, and provisions for revoking or suspending those instruments. Nothing in section 1203.5 will limit the authority of an AHJ to revoke or suspend a permit or certificate pursuant to the provisions of its code enforcement program.

#### COMMENTS REGARDING THE APPLICABILITY OF THIS RULE TO STATE AGENCIES

##### Summary and analysis

A comment raised questions about the applicability of section 1203.5 to enforcement of the Uniform Code by State agencies. The comment suggested that the provisions of 19 NYCRR 1204.12(c)-(d) may conflict with section 1203.5.

##### DOS Response

In general, each State agency that has custody of one or more buildings is required to enforce the Uniform Code with respect to such building(s). DOS believes that it is highly unlikely that a State agency will ever issue an OTR to itself.

In some cases, one State agency serves as the construction-permitting agency for a building constructed by another State agency. In those rare occasions when an enforcing State agency finds it necessary to issue an OTR to another State agency, having a DOS regulation that fixes the time for compliance with such OTR is necessary to make such Order enforceable.

19 NYCRR section 1204.12 (c) provides that State agencies shall correct all code violations within a reasonable amount of time after their discovery. When a State agency is served with an OTR, that “reasonable time” will necessarily be no later than 30 days after the date of the OTR.

19 NYCRR section 1204.12 (d) provides that each State agency shall prepare and maintain a correction plan for all code violations which remain uncorrected 60 days after their discovery. That plan must provide for an accelerated correction schedule for any violation specified in an OTR.

#### MISCELLANEOUS COMMENTS

One comment expressed concern regarding the ability of the public to submit comments between the date when DOS posted a notice that it was developing this rule and the date of the initial emergency adoption of this rule. DOS Response: This comment appears to be based on the incorrect assumption that the initial emergency adoption of this rule was the “final” adoption of this rule.

One comment expressed concern about the impact of this rule on the portion of Executive Law § 382(2) which provides that “any owner, builder, architect, tenant, contractor, subcontractor, construction superintendent or their agents or any other person taking part or assisting in the construction of any building who shall knowingly violate any of the applicable provisions of the [Uniform Code]. . . shall be punishable by a fine of not more than one thousand dollars per day of violation, or imprisonment not exceeding one year, or both.” DOS Response: This rule provides that nothing in this rule shall be construed as limiting the availability of any other code enforcement tool, and includes the above quoted provision of Executive Law § 382(2) on the non-exclusive list of other available code enforcement tools.

One comment noted that a code enforcement officer “assists” in the construction of a building by reviewing the plans and issuing a building permit, and suggested that code enforcement officials could be charged under the above-quoted portion of Executive Law § 382(2). DOS Response: DOS doubts that any court would hold that a CEO is liable under Executive Law § 382(2) because he or she “assisted” in the construction of a building by reviewing plans and issuing a permit. In any event, DOS does not have the authority to adopt a rule purporting to amend Executive Law § 382(2).

One comment requested additional training for code enforcement officials. DOS Response: This rule does not address the amount of training code enforcement officials are required to have or the content of

courses code enforcement officials are required to take. However, DOS will consider this request in connection with its preparation of code enforcement official training courses.

One comment expressed concerns regarding the ability of an AHJ to enforce the Uniform Code effectively in cases where the local judge fails to impose significant fines because he or she is "elected" and/or because he or she "knows everyone" in town. The comment asked if a judge could be held liable if "someone gets injured." DOS Response: DOS has no authority to adopt a rule limiting the discretion of a judge to determine the amount of a fine to impose in a given case, or making a judge liable if a person is injured because a code violation is not corrected. Allegations of judicial misconduct should be reported to the Office for Court Administration.

One comment asked if the 30-day time to remedy provision of this rule would apply to a person charged with violation of a town's local law that makes any violation of the Uniform Code or the Energy Code a "violation" as defined in the Penal Law. DOS Response: Section 1203.5 provides that nothing in section 1203.5 shall be construed as limiting the authority of any AHJ to use any other available means of enforcing the Uniform Code. Section 1203.5 would not apply in any situation where the AHJ has not issued an OTR.

**DESCRIPTION OF CHANGES MADE IN THE RULE AS A RESULT OF COMMENTS**

Captions: Subdivision captions were added.

Subdivision (a): A new sentence that expressly states the purpose of section 1203.5 to clarify that section 1203.5 applies only to OTRs was added.

Subdivision (b): A new subdivision (b), defining the terms, was added.

Subdivision (c): The provision fixing the time for compliance with OTRs was moved into a new, separate subdivision (c).

Subdivision (d): Former subdivision (b) was renumbered as new subdivision (d). The statement intended to satisfy the statutory requirement that an OTR "state" the time for compliance was revised.

Subdivision (e): Former subdivision (c) was revised as new subdivision (e). New paragraphs were added to clarify the date on which an OTR is deemed to be "served."

Subdivision (f): Former subdivision (d) was renumbered as new subdivision (f). The subdivision was revised to clarify its meaning. A new paragraph providing that an OTR can direct the person or entity served to take other protective actions was added.

Subdivision (g): Former subdivision (e) was renumbered as new subdivision (g). Paragraphs (6) and (7) were revised and new paragraphs (8) and (9) were added to clarify and expand the non-exclusive list of the other code-enforcement tools that remained unaffected by this rule. A sentence stating that nothing in section 1203.5 shall be construed as requiring an AHJ to issue an OTR in all cases was added.

Subdivision (h): This new subdivision provides that orders issued by the Office of Fire Prevention and Control (OFPC) pursuant to Executive Law § 156-e are not covered by this rule.

<sup>1</sup> DOS notes that "personal service" of a legal document is not necessarily limited to personal delivery of the document to the person named in the document. See, for example, CPLR 308, which authorizes "personal" service of a summons by personal delivery or by any one of several other means.

**Department of Taxation and Finance**

**NOTICE OF ADOPTION**

**Fuel Use Tax on Motor Fuel and Diesel Motor Fuel and the Art. 13-A Carrier Tax Jointly Administered Therewith**

**I.D. No.** TAF-21-15-00001-A

**Filing No.** 678

**Filing Date:** 2015-08-06

**Effective Date:** 2015-08-06

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

**Action taken:** Amendment of section 492.1(b)(1) of Title 20 NYCRR.

**Statutory authority:** Tax Law, sections 171, subd. First, 301-h(c), 509(7), 523(b) and 528(a)

**Subject:** Fuel use tax on motor fuel and diesel motor fuel and the art. 13-A carrier tax jointly administered therewith.

**Purpose:** To set the sales tax component and the composite rate per gallon for the period July 1, 2015 through September 30, 2015.

**Text or summary was published** in the May 27, 2015 issue of the Register, I.D. No. TAF-21-15-00001-P.

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

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

**Assessment of Public Comment**

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

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

**Fuel Use Tax on Motor Fuel and Diesel Motor Fuel and the Art. 13-A Carrier Tax Jointly Administered Therewith**

**I.D. No.** TAF-34-15-00004-P

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

**Proposed Action:** Amendment of section 492.1(b)(1) of Title 20 NYCRR.

**Statutory authority:** Tax Law, sections 171, subd. First, 301-h(c), 509(7), 523(b) and 528(a)

**Subject:** Fuel use tax on motor fuel and diesel motor fuel and the art. 13-A carrier tax jointly administered therewith.

**Purpose:** To set the sales tax component and the composite rate per gallon for the period October 1, 2015 through December 31, 2015.

**Text of proposed rule:** Section 1. Paragraph (1) of subdivision (b) of section 492.1 of such regulations is amended by adding a new subparagraph (lxxx) to read as follows:

Motor Fuel			Diesel Motor Fuel		
Sales Tax Component	Composite Rate	Aggregate Rate	Sales Tax Component	Composite Rate	Aggregate Rate
(lxxix) July - September 2015					
14.7	22.7	40.5	16.0	24.0	40.05
(lxxx) October - December 2015					
15.7	23.7	41.5	16.0	24.0	40.05

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

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## Office of Temporary and Disability Assistance

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### NOTICE OF ADOPTION

#### Emergency Shelter Allowances

**I.D. No.** TDA-23-15-00004-A

**Filing No.** 684

**Filing Date:** 2015-08-11

**Effective Date:** 2015-08-26

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

**Action taken:** Amendment of section 352.3(k) of Title 18 NYCRR.

**Statutory authority:** Social Services Law, sections 20(3)(d), 34(3)(f), 131(1); L. 2008, ch. 53; L. 2009, ch. 53; L. 2010, chs. 58, 110; L. 2011, ch. 53; L. 2012, ch. 53; L. 2013, ch. 53; L. 2014, ch. 53; L. 2015, ch. 53

**Subject:** Emergency Shelter Allowances.

**Purpose:** Update provisions for Emergency Shelter Allowances for persons with AIDS or HIV-related illness to reflect statutory authority.

**Text or summary was published** in the June 10, 2015 issue of the Register, I.D. No. TDA-23-15-00004-P.

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

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

#### **Initial Review of Rule**

As a rule that requires a RFA, RAFA or JIS, this rule will be initially reviewed in the calendar year 2018, which is no later than the 3rd year after the year in which this rule is being adopted.

#### **Assessment of Public Comment**

The agency received no public comment.