

RULE MAKING ACTIVITIES

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

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

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

Department of Agriculture and Markets

NOTICE OF ADOPTION

Species of Ash Tree, Parts Thereof and Products and Debris Therefrom, Which Are at Risk for Infestation by the Emerald Ash Borer

I.D. No. AAM-21-15-00004-A

Filing No. 632

Filing Date: 2015-07-22

Effective Date: 2015-08-05

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

Action taken: Repeal of Part 141; and addition of new Part 141 to Title 1 NYCRR.

Statutory authority: Agriculture and Markets Law, sections 18, 164 and 167

Subject: Species of ash tree, parts thereof and products and debris therefrom, which are at risk for infestation by the emerald ash borer.

Purpose: To limit the emerald ash borer quarantine to 14 restricted zones where infestation exists.

Text of final rule: 1 NYCRR Part 141 is repealed and a new Part 141 is added to read as follows:

PART 141

CONTROL OF THE EMERALD ASH BORER

§ 141.1 Definitions.

For the purpose of this Part, the following words, names and terms shall be construed respectively, to mean:

(a) *AML.* The Agriculture and Markets Law.

(b) *Authorized Handler.* Any person who is granted a limited permit or certificate issued by the Department or enters into a compliance agreement with the Department.

(c) *Ash.* All *Fraxinus* species including green ash (*Fraxinus pennsylvanica*), white ash (*Fraxinus americana*), black ash (*Fraxinus nigra*), blue ash (*Fraxinus quadrangulata*) and any horticultural cultivar of these species.

(d) *Buffer Area.* The zone surrounding the core area of EAB infestation, which begins at the outside boundary of the restricted movement, processing, handling or utilization of regulated articles not eligible for certification for intrastate movement, which, if followed, permits the persons or firm executing the document to issue an inspection certificate or a limited permit pursuant to the terms of the document and this Part without a Department inspection prior to each movement.

(e) *Certificate of inspection.* A document issued by the Department certifying the eligibility of products for intrastate movement under this Part.

(f) *Commissioner.* The Commissioner of the Department of Agriculture and Markets or the Commissioner's duly authorized representative.

(g) *Compliance agreement.* A document issued by the Department setting forth the requirements covering the restricted movement, processing, handling or utilization of regulated articles not eligible for certification for intrastate movement, which, if followed, permits the persons or firm executing the document to issue an inspection certificate or a limited permit pursuant to the terms of the document and this Part without a Department inspection prior to each movement.

(h) *"Core Area."* The location of an EAB infestation, as determined by the DEC and confirmed by the Department, based upon the detection of the emerald ash borer and/or evidence of its activity in one or more of its life stages at that location.

(i) *DEC.* The Department of Environmental Conservation.

(j) *Department.* The Department of Agriculture and Markets.

(k) *Emerald ash borer or EAB.* The insect known as the emerald ash borer, *Agrilus planipennis*, in any stage of development.

(l) *Firewood.* With respect to this Part, ash wood, cut or not cut, split or not split, regardless of length, which is either in a form and size appropriate for use as fuel, or intended for use as fuel. Firewood does not include: (1) kiln dried dimensional lumber; (2) wood that has been chipped; and (3) logs or wood being transported to or possessed by the following operations and facilities for use in their primary manufacturing process:

(1) sawmills for dimensional lumber;

(2) pulp and/or paper mills;

(3) wood pellet manufacturing facilities;

(4) plywood manufacturing facilities;

(5) wood biomass-using refineries or power plants;

(6) re-constituted wood or wood composite product manufacturing plants; and

(7) facilities treating firewood in accordance with department regulations.

(m) *Infestation.* This term refers to the presence of the emerald ash borer in any life stage or as determined by evidence of activity of one or more of the life stages.

(n) *Inspector.* An inspector of the Department, or cooperator from DEC or the United States Department of Agriculture (USDA), when authorized by the Department to act in that capacity.

(o) *Limited permit.* A document issued under the authority of the Department permitting the one-time restricted movement of regulated articles from a quarantined area to a specified destination for specified processing, handling or utilization.

(p) *Local government.* A village, town, city or county.

(q) *Moved; movement.* Shipped, offered or received for shipment, carried, transported, or relocated into or through any area of the State.

(r) *Nursery stock.* All trees, shrubs, plants and vines and parts thereof.

(s) *Person.* An individual, organization, corporation or partnership,

public authority, county, town, village, city, municipal agency or public corporation, or any other legal entity other than the Department or its respective authorized agents including DEC.

(t) *Quarantine Area.* The geographic area delineated on the EAB quarantine map in section 141.2 of this Part, establishing the boundaries of the restricted zones within the state which are subject to the requirements set forth of this Part.

(u) *Regulated article.* Any ash material, living, dead, cut or fallen, inclusive of nursery stock, logs, firewood, green lumber, stumps, roots, branches and debris, and any wood material that is commingled and otherwise indistinguishable from the above. Notwithstanding the above, (1) ash bark and mulch are not regulated articles; and (2) ash chips or chips indistinguishable from ash chips, regardless of size, are regulated articles only during the period commencing on April fifteenth and continuing up to and including May fifteenth.

(v) *Restricted zone.* A geographic area of the state delineated on the EAB quarantine map, which includes a core area of infestation, the buffer area and the entire area of any town or city which has thirty (30) percent or more of its total area falling within the respective core area and/or the buffer area.

§ 141.2 Establishment and amendment of quarantine maps.

(a) *Establishment of quarantine area.* The initial quarantine area is set forth on the quarantine map set forth below. See Appendix in the back of this issue.

(b) A copy of the map delineating the quarantine area is maintained in the office of the clerk of each local government in which a restricted zone or a portion thereof is located.

(c) Any amendment of or addition to the map delineating the quarantine area shall be made by regulation.

§ 141.3 Movement of regulated articles within restricted zones.

Regulated articles, including emerald ash borer infested material, may be moved, by any person, at any time, within a restricted zone, for processing, treatment, use or disposal at any other location within that same restricted zone provided the regulated article is eligible for unrestricted movement under all other state plant quarantines and regulations applicable to the regulated article.

§ 141.4 Restrictions on intrastate movement of regulated articles originating within or traveling through restricted zones.

(a) No person shall move:

(1) Ash nursery stock from any restricted zone;

(2) Chips larger than one inch in two dimensions from the restricted zone during the period commencing on April fifteenth and continuing up to and including May fifteenth of each year; and

(3) Regulated articles (other than ash nursery stock) from any restricted zone to or through any point outside the restricted zone, unless: (i) accompanied by a valid certificate of inspection; limited permit authorizing such movement; or administrative instructions of the Commissioner; or (ii) for experimental or scientific purposes, on such conditions and under such safeguards as may be prescribed in writing by the Department.

(b) Notwithstanding the above, regulated articles originating from within New York but outside any restricted zone in New York State may be moved through any restricted zone in the state, provided that:

(1) The points of origin and destination of the regulated articles are indicated on a waybill accompanying the regulated article; and

(2) Regulated articles are moved directly through the restricted zone without stopping, except for refueling and traffic conditions.

§ 141.5 Conditions governing compliance agreements for movement of regulated articles out of a restricted zones.

(a) Persons engaged in growing, handling, or moving regulated articles intrastate may apply for a compliance agreement with the Department, which agreement will authorize the person executing the agreement to issue certificates of inspection and limited permits without a Department inspection prior to each movement.

(b) Any person who enters into a compliance agreement with the Department must agree to comply with the provisions of this Part and any conditions imposed under the compliance agreement.

(c) A compliance agreement shall be subject to the Department's acceptance in its sole discretion.

(d) Any compliance agreement may be cancelled by the Department either orally or in writing, whenever an inspector determines, in his or her sole discretion, that the person who has entered into the compliance agreement has not complied with this Part or the conditions imposed under the compliance agreement. The cancellation shall take effect upon the giving of the oral notice or the delivery of the written notice. If the cancellation is oral, the cancellation and the reasons for the cancellation shall be confirmed in writing.

§ 141.6 Conditions governing certificates of inspection and limited permits for the movement of regulated articles out of restricted zones.

(a) An inspector or an authorized holder of a compliance agreement may issue a certificate of inspection for the movement of a regulated article out of a restricted zone, provided that the regulated article:

(1)(i) is apparently free of emerald ash borer, based on inspection by an inspector; or (ii) has been grown, produced, manufactured, treated, stored, or handled in a manner that, in the judgment of the inspector, prevents the regulated article from presenting a risk of spreading emerald ash borer; and

(2) is eligible for unrestricted movement under all other state plant quarantines and regulations applicable to the regulated articles.

(b) If the regulated article is not eligible for a certificate of inspection, an inspector or authorized holder of a compliance agreement can issue a limited permit for the movement of the regulated article out of a restricted zone upon the following conditions:

(1) the inspector or authorized holder of a compliance agreement determines that the regulated article: (i) is to be moved intrastate to a specified destination; (ii) for specific processing, handling, or utilization; and (iii) this intrastate movement will not result in the spread of emerald ash borer because emerald ash borer will be destroyed by the specific processing, handling, or utilization;

(2) the regulated article is eligible for unrestricted movement under all other state plant quarantines and regulations applicable to the regulated article; and

(3) the destination of the regulated articles and other conditions determined by the inspector are stated in the limited permit.

(c) An inspector or authorized holder of a compliance agreement may provide additional certificates of inspection or limited permits pursuant to the terms of a compliance agreement or authorize, in writing, reproduction of the certificates of inspection on shipping containers, or both, as requested by the person operating under the compliance agreement. These certificates of inspection and limited permits may then be completed and used, as needed, for the movement out of a restricted zone of regulated articles that have met all of the requirements of this Part.

(d) Any certificate of inspection or limited permit may be cancelled orally or in writing by an inspector whenever the inspector determines that the holder of the certificate of inspection or limited permit has not complied with this Part. The cancellation shall take effect upon the giving of the oral notice or the delivery of written notice. If the cancellation is oral, the cancellation and the reasons for the cancellation shall be confirmed in writing.

§ 141.7 Shipments for experimental and scientific purposes.

Regulated articles may be moved intrastate for experimental or scientific purposes, on such conditions and under such safeguards as may be prescribed in writing by the Department. The container of articles so moved shall bear, securely attached to the outside thereof, an identifying tag issued by the Department showing compliance with such conditions.

§ 141.8 Marking requirements.

Every container of regulated articles intended for intrastate movement shall be plainly marked with the name and address of the consignor and the name and address of the consignee, when offered for shipment, and shall have securely attached to the outside thereof a valid certificate (or limited permit) issued in compliance with this Part, provided, that:

(a) For lot freight shipments, other than by road vehicle, one certificate may be attached to one of the containers and another to the waybill; and for carlot freight or express shipment, either in containers or in bulk, a certificate may be attached to the waybill only and a placard to the outside of the car, showing the number of the certificate accompanying the waybill; and

(b) For movement by road vehicle, the certificate shall accompany the vehicle and be surrendered to consignee upon delivery of the shipment.

§ 141.9 Assembly of regulated articles for inspection.

(a) Persons intending to move intrastate any regulated articles shall make application for certification as far in advance as possible, and will be required to prepare and assemble materials at such points and in such manner as the inspector shall designate, so that thorough inspection may be made or approved treatments applied. Articles to be inspected as a basis for certification must be free from matter which makes inspection impracticable.

(b) The Department will not be responsible for any cost incident to inspection, treatment, or certification other than the services of the inspector.

§ 141.10 Inspection and disposition of shipments.

Any vehicle or other conveyance, any package or other container, and any item to be moved, which is moving, or which has been moved intra-

state from the restricted zone, which may contain regulated articles or which may contain, infestations of the emerald ash borer, may be examined by an inspector at any time or place. When items are found to be moving or to have been moved intrastate in violation of these regulations, the inspector may take such action as deemed necessary to eliminate the danger of dissemination of the emerald ash borer. If found to be infested, such items must be rendered free of infestation without cost to the state other than services of the inspector.

§ 141.11 *Other laws and regulations; interstate movement of regulated articles.*

No provision of this Part relieves any person from the obligation to comply with any other applicable Federal, state, county, regional or local law or regulation. This Part only applies to the intrastate movement of regulated articles. The interstate movement of regulated articles must comply with applicable federal laws and regulations.

§ 141.12 *Effective date.*

This part shall become effective in a particular county on and after the tenth day from the filing of a certified copy in the office of the clerk of that county.

Final rule as compared with last published rule: Nonsubstantive changes were made in section 141.4(a)(2).

Text of rule and any required statements and analyses may be obtained from: Christopher A. Logue, New York State Department of Agriculture and Markets, 10B Airline Drive, Albany, New York 12235, (518) 457-2087

Revised Regulatory Impact Statement

Since the change in the rule is nonsubstantive, the change does not necessitate the revision of the previously published Regulatory Impact Statement. The change does not materially alter the purpose, meaning or effect of the text, and actually lessens a regulatory burden by allowing movement during flight season of chips one inch or smaller in two dimensions.

Revised Regulatory Flexibility Analysis

Since the change in the rule is nonsubstantive, the change will not impose any adverse economic impact or reporting, recordkeeping or other compliance requirements on small businesses or local governments. The change does not materially alter the purpose, meaning or effect of the text, and actually lessens a regulatory burden by allowing movement during flight season of chips one inch or smaller in two dimensions.

Revised Rural Area Flexibility Analysis

Since the change in the rule is nonsubstantive, the change will not impose any adverse impact on reporting, recordkeeping or other compliance requirements on public or private entities in rural areas. The change does not materially alter the purpose, meaning or effect of the text, and actually lessens a regulatory burden by allowing movement during flight season of chips one inch or smaller in two dimensions.

Revised Job Impact Statement

Since the change in the rule is nonsubstantive, the change will not impose a substantial impact on jobs or employment opportunities. The change does not materially alter the purpose, meaning or effect of the text, and actually lessens a regulatory burden by allowing movement during flight season of chips one inch or smaller in two dimensions.

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 Department received comments on the repeal of Part 141 of 1 NYCRR and the addition of a new Part 141 of 1 NYCRR, which would help control the spread of the emerald ash borer (EAB) in New York State. The Department received two comments during the public comment period.

First Comment:

The first comment was submitted by Eric Carlson, President and CEO of the Empire State Forest Products Association. Mr. Carlson raises four issues and concerns in his comments, as follows:

Issue/Concern: Mr. Carlson expresses the view that the past regulatory framework has done very little to slow the spread of EAB and that except for the Adirondacks, EAB is in every region of the State.

Response: The Department disagrees. Surveys reveal that EAB is not in every region of the State and in fact, only approximately 7.3 percent of New York State has been found to be infested with the pest. The Department believes that its EAB quarantines, coupled with the New York State Department of Environmental Conservation's (DEC's) regulations restricting movement of untreated firewood, have significantly slowed the spread of EAB in New York State.

Issue/Concern: Mr. Carlson expresses the view that EAB infestations have spread due to local concentrations of ash trees, and expects the pattern to continue under the new regulations. He also indicates that the regulations would impact local wood harvesting entities and consumers, since extra handling to separate ash from other wood species would be necessary and would limit sales of untreated ash firewood. Mr. Carlson says that although the restrictions in the regulations would not be a large factor in firewood availability, the restrictions would contribute to local shortages of firewood in certain regions of New York State. Finally, Mr. Carlson indicates that firewood producers in any of the restricted zones set forth in the regulations would be placed at a competitive disadvantage in supplying local markets.

Response: Notwithstanding local concentrations of ash trees, evidence suggests that the quarantines have slowed the spread of EAB, particularly in the case of human-assisted movement which allows the pest to infest areas far beyond its point of origin. The Department agrees (as Mr. Carlson notes) that market factors other than the restrictions in the regulations have contributed to firewood shortages in some areas. The Department believes that the economic and environmental benefits of the regulation in protecting New York State's natural resources from the spread of EAB outweighs the costs to regulated parties. In any event, these costs to firewood producers are mitigated by the fact that the regulations allow for the sale of ash firewood within a restricted zone; allow for the sale and movement of firewood other than ash outside a restricted zone; and allow any heat-treated firewood to be sold and moved throughout New York State.

Issue/Concern: Mr. Carlson questions the overall benefit of separating logs by species and restricting movement of infested ash wood in more populated areas where expensive trees being used along public roads and in public parks are being impacted. He recommends that the Department reconsider the regulations and possibly eliminate them, while continuing outreach to populated regions to assist communities in understanding measures to consider in implementing practical, cost-effective strategies.

Response: The regulations are but one component of the State's overall response to EAB. Other aspects include ongoing outreach and educational efforts aimed at reducing the human-assisted spread of EAB; technical and financial assistance to communities in preparing for and responding to EAB; and participation in biocontrol research. Outreach efforts with communities and regulated parties are ongoing. The Department and DEC are monitoring the status of the EAB infestations as well as new detections. Amendments to the regulations are possible if circumstances so warrant.

Issue/Concern: Mr. Carlson argues that the likelihood of EAB surviving the chipping operations at a mill is very low and urges that the restriction concerning the transport of ash wood chips during EAB flight season be removed. He says that the restriction "imposes serious material handling problems while creating new worker safety concerns." He also says that the restriction diminishes the value of the chips for other wood products.

Response: Section 141.4(a)(2) of the regulations provides that no person shall move "Chips of any size from the restricted zone during the period commencing on April fifteenth and continuing up to and including May fifteenth of each year ..." The Department has considered Mr. Carlson's comment as well as applicable federal protocols. In an effort to clarify the regulations, the Department is making a nonsubstantial change to section 141.4(a)(2) to read that no person shall move "Chips larger than one inch in two dimensions from the restricted zone during the period commencing on April fifteenth and continuing up to and including May fifteenth of each year ..."

This change eases a regulatory burden and addresses Mr. Carlson's concern at least in part, by allowing movement of very small chips (one inch or less in two dimensions) during flight season.

Second Comment:

The second comment was submitted by Thomas Gerow of the Wagner Companies in Owego, New York. He raises the following issue/concern:

Issue/Concern: Like Mr. Carlson, Mr. Gerow questions the need for the prohibition against the movement of wood chips during the EAB flight season (April 15th – May 15th). He believes it is "not impossible, just extremely unlikely" that EAB could survive the chipping process.

Response: As noted above, the Department has changed Section 141.4(a)(2) to allow the movement during flight season of chips which are one inch or less in two dimensions.

Education Department

EMERGENCY RULE MAKING

Opioid Overdose Prevention Program

I.D. No. EDU-27-15-00009-E

Filing No. 628

Filing Date: 2015-07-21

Effective Date: 2015-08-11

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

Action taken: Addition of section 136.8 to Title 8 NYCRR.

Statutory authority: Education Law, sections 207(not subdivided), 305(1), (2), 922(1) and (2); L. 2015, ch. 57, part V

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

Specific reasons underlying the finding of necessity: The proposed rule is necessary to implement certain provisions of Part V of Chapter 57 of the Laws of 2015, which adds a new section 922 of the Education Law, effective August 11, 2015, to authorize, but not obligate, school districts, boards of cooperative educational services (BOCES), county vocational education and extension boards, charter schools, and non-public elementary and secondary schools to participate in the opioid overdose prevention program as an opioid antagonist recipient pursuant to the provisions of Public Health Law section 3309. For school districts who choose to participate as an opioid antagonist recipient pursuant to the provisions of Public Health Law section 3309, any person employed by such entity who has been trained by a program approved under that section may administer an opioid antagonist to any student or staff having symptoms of an opioid overdose in an instructional school facility, in the event of an emergency pursuant to the requirements of Public Health Law section 3309.

Since the Board of Regents meets at fixed intervals, the earliest the proposed rule can be presented for regular (non-emergency) adoption, after expiration of the required 45-day public comment period provided for in the State Administrative Procedure Act (SAPA) sections 201(1) and (5), would be the September 16-17, 2015 Regents meeting. Furthermore, pursuant to SAPA section 203(1), the earliest effective date of the proposed rule, if adopted at the September meeting, would be October 7, 2015, the date a Notice of Adoption would be published in the State Register. However, the provisions of Part V of Chapter 57 of the Laws of 2015 become effective on August 11, 2015 and section 7 of the statute directs the Commissioner to promulgate necessary regulations for the timely implementation of the statute on its effective date.

Therefore, emergency action is necessary at the June 2015 Regents meeting for the preservation of the general welfare in order to immediately establish standards for the provision, maintenance and administration of an opioid antagonist in the event of an emergency pursuant to Education Law section 922, as added by Part V of Chapter 57 of the Laws of 2015, and thus ensure the timely implementation of the statute on its effective date.

It is anticipated that the proposed rule will be presented for adoption as a permanent rule at the September 16-17, 2015 Regents meeting, which is the first scheduled meeting after expiration of the 45-day public comment period prescribed in the State Administrative Procedure Act for State agency rule makings.

Subject: Opioid Overdose Prevention Program.

Purpose: To establish standards for the elective participation by school districts, boards of cooperative educational services, county vocational education and extension boards, charter schools, and non-public elementary and secondary schools in an opioid overdose prevention program pursuant to the provisions of Public Health Law section 3309.

Text of emergency rule: Section 136.8 of the Regulations of the Commissioner of Education is added, effective August 11, 2015, as follows:

§ 136.8 Opioid Overdose Prevention

(a) Definitions. As used in this section:

(1) Opioid antagonist means a drug approved by the Food and Drug Administration that, when administered, negates or neutralizes in whole or in part the pharmacological effects of an opioid, such as heroin, in the body. For use under this section, opioid antagonist shall be limited to naloxone and other medications approved by the Department of Health for such purpose.

(2) Opioid antagonist recipient (or "recipient"), for purposes of this section, means a school district, board of cooperative educational services (BOCES), county vocational education and extension board, charter school, non-public elementary and/or secondary school, or any person employed by such district, board or school who has been authorized by such district, board or school to participate in an opioid prevention program and has received training by a program approved pursuant to Public Health Law section 3309.

(3) Instructional school facility means a building or other facility maintained by a school district, board of cooperative educational services (BOCES), a county vocational education and extension board, charter school, or non-public elementary and secondary school where instruction is provided to students pursuant to its curriculum.

(b) School districts, boards of cooperative educational services, county vocational education and extension boards, charter schools, and non-public elementary and secondary schools may elect to participate as an opioid antagonist recipient pursuant to the provisions of Public Health Law section 3309. For school districts that choose to participate as an opioid antagonist recipient pursuant to the provisions of Public Health Law section 3309, any person employed by such entity who has been trained by a program approved under that section may administer an opioid antagonist in the event of an emergency pursuant to the requirements of Public Health Law section 3309.

(c) School districts, boards of cooperative educational services, county vocational education and extension boards, charter schools, and non-public elementary and secondary schools choosing to participate in the opioid overdose prevention program shall comply with the requirements of Public Health Law section 3309 including, but not limited to, appropriate clinical oversight, record keeping and reporting.

(d) School districts, boards of cooperative educational services, county vocational education and extension boards, charter schools, and non-public elementary and secondary schools who choose to participate in the opioid overdose prevention program pursuant to Public Health Law section 3309 shall provide and maintain on-site in each instructional school facility opioid antagonists. Each such facility shall have sufficient opioid antagonists available to ensure ready and appropriate access for use during emergencies to any student or staff having symptoms of an opioid overdose, whether or not there is a known previous history of opioid abuse in accordance with the provisions of Public Health Law section 3309. In determining the quantities and placement of opioid antagonists to be maintained on-site in an instructional school facility, consideration shall be given to:

(1) the number of students, staff and other individuals that are customarily or reasonably anticipated to be within such facility; and

(2) the physical layout of the facility, including but not limited to:

(i) location of stairways and elevators;

(ii) number of floors in the facility;

(iii) location of classrooms and other areas of the facility where large congregations of individuals may occur; and

(iv) any other unique design features of the facility.

(e) Nothing in this section shall require school districts, boards of cooperative educational services, county vocational education and extension boards, charter schools, and non-public elementary and secondary schools to participate in an opioid overdose prevention program, and any participation by an individual employee shall be voluntary.

(f) Use of an opioid antagonist pursuant to this section and the provisions of Public Health Law section 3309 shall be considered first aid or emergency treatment for the purpose of any statute relating to liability; provided that a school district, board of cooperative educational services (BOCES), county vocational education and extension board, charter school, non-public elementary and/or secondary school, or any person employed by such district, board or school, acting reasonably and in good faith in compliance with the provisions of Public Health Law section 3309, shall not be subject to criminal, civil or administrative liability solely by reason of such action.

This notice is intended to serve only as a notice of emergency adoption. This agency intends to adopt the provisions of this emergency rule as a permanent rule, having previously submitted to the Department of State a notice of proposed rule making, I.D. No. EDU-27-15-00009-P, Issue of July 8, 2015. The emergency rule will expire October 18, 2015.

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

Regulatory Impact Statement

1. STATUTORY AUTHORITY:

Education Law section 207 empowers the Board of Regents and the Commissioner of Education to adopt rules and regulations to carry out the laws of the State regarding education and the functions and duties conferred on the State Education Department by law.

Education Law section 305(1) and (2) provide the Commissioner, as chief executive officer of the State's education system, with general supervision over all schools and institutions subject to the Education Law, or any statute relating to education, and responsibility for executing all educational policies of the Regents.

Part V of Chapter 57 of the Laws of 2015 added a new section 922 of the Education Law, effective August 11, 2015, to authorize, but not obligate, school districts, boards of cooperative educational services (BOCES), county vocational education and extension boards, charter schools, and non-public elementary and secondary schools to participate in the opioid overdose prevention program as an opioid antagonist recipient pursuant to the provisions of Public Health Law section 3309. For school districts who choose to participate as an opioid antagonist recipient pursuant to the provisions of Public Health Law section 3309, any person employed by such entity who has been trained by a program approved under that section may administer an opioid antagonist to any student or staff having symptoms of an opioid overdose in an instructional school facility, in the event of an emergency pursuant to the requirements of Public Health Law section 3309.

2. LEGISLATIVE OBJECTIVES:

The proposed rule is consistent with the above statutory authority and is necessary to implement Education Law section 922, as added by Chapter 57 of the Laws of 2014.

3. NEEDS AND BENEFITS:

The proposed rule is necessary to set forth standards for the elective participation by school districts, boards of cooperative educational services, county vocational education and extension boards, charter schools, and non-public elementary and secondary schools in an opioid overdose prevention program pursuant to the provisions of Public Health Law section 3309. The proposed rule is also necessary to establish standards for the training of persons employed by school districts who choose to participate as an opioid antagonist recipient pursuant to the provisions of Public Health Law section 3309, and to provide that any person employed by such entity who has been trained by a program approved under that section may administer an opioid antagonist in the event of an emergency pursuant to the requirements of Public Health Law section 3309.

4. COSTS:

(a) Costs to State: none.

(b) Costs to local governments: in general, the proposed rule does not impose any costs beyond those inherent in Chapter 57 of the Laws of 2015. Consistent with the statute, school districts, BOCES, county vocational education extension boards, charter schools, and non-public schools may, but are not required to, participate in the opioid overdose prevention program pursuant to Public Health Law section 3309. Any cost to the schools that elect to participate in the opioid overdose prevention program may be borne by either the participating school or through funds made available through an appropriation made to the Department of Health for the purposes of administering the opioid overdose prevention program.

(c) Costs to private regulated parties: none.

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

5. LOCAL GOVERNMENT MANDATES:

The proposed rule does not impose any mandatory program, service, duty, or responsibility upon local government, including school districts or BOCES. Consistent with the statute, school districts, BOCES, county vocational education and extension board, charter schools and non-public schools may, but are not required to, participate in the opioid overdose prevention program pursuant to Public Health Law section 3309.

6. PAPERWORK:

School districts, boards of cooperative educational services, county vocational education and extension boards, charter schools, and non-public elementary and secondary schools who choose to participate in the opioid overdose prevention program are required to comply with any and all record keeping requirements pursuant to Public Health Law section 3309.

7. DUPLICATION:

The proposed rule does not duplicate any existing State or Federal requirements, and is necessary to implement Education Law section 922, as added by Chapter 57 of the Laws of 2014.

8. ALTERNATIVES:

The proposed rule is necessary to implement Education Law section 922, as added by Chapter 57 of the Laws of 2014. The proposed rule also merely provides definitions and otherwise clarifies the circumstances regarding the emergency administration of an opioid overdose antagonist to any student or staff having symptoms of an opioid overdose in an instructional school facility. There were no significant alternatives and none were considered.

9. FEDERAL STANDARDS:

There are no applicable Federal standards.

10. COMPLIANCE SCHEDULE:

It is anticipated that regulated parties can achieve compliance with the

proposed rule by its effective date. Consistent with the statute, school districts, boards of cooperative educational services, BOCES, county vocational education and extension boards, charter schools, and non-public elementary and secondary schools may, but are not required to, participate in the opioid overdose prevention program. The proposed rule also merely provides definitions and otherwise clarifies the circumstances regarding the emergency administration of an opioid overdose antagonist to any student or staff having symptoms of an opioid overdose in an instructional school facility.

Regulatory Flexibility Analysis

(a) Small businesses:

The purpose of the proposed rule is to establish standards for the elective participation by school districts, boards of cooperative educational services (BOCES), county vocational education and extension boards, charter schools, and non-public elementary and secondary schools in an opioid overdose prevention program pursuant to the provisions of Public Health Law section 3309. Because it is evident from the nature of the proposed rule that it does not affect small businesses, no further measures were needed to ascertain that fact and none were taken. Accordingly, a regulatory flexibility analysis for small businesses is not required and one has not been prepared.

(b) Local governments:

1. EFFECT OF RULE:

The rule applies to those school district, BOCES, county vocational education and extension board, charter schools and non-public elementary and secondary schools in the State, that choose to participate in opioid overdose prevention program pursuant to the provisions of Public Health Law 3309.

2. COMPLIANCE REQUIREMENTS:

The proposed rule generally does not impose any compliance requirements upon local governments. Consistent with the statute, school districts, boards of cooperative educational services, county vocational education and extension boards, charter schools, and non-public elementary and secondary schools school districts, BOCES and non-public schools may, but are not required to, participate in the opioid overdose prevention program pursuant to the provisions of Public Health Law 3309. The proposed rule also merely provides definitions and otherwise clarifies the circumstances regarding the emergency administration of an opioid overdose antagonist to any student or staff having symptoms of an opioid overdose in an instructional school facility.

3. PROFESSIONAL SERVICES:

The proposed rule does not impose any additional professional services requirements on local governments.

4. COMPLIANCE COSTS:

In general, the proposed rule does not impose any costs beyond those inherent in Chapter 57 of the Laws of 2015. Consistent with the statute, school districts, boards of cooperative educational services, county vocational education and extension boards, charter schools, and non-public elementary and secondary schools may, but are not required to, participate in the opioid overdose prevention program. The proposed rule also merely provides definitions and otherwise clarifies the circumstances regarding the emergency administration of an opioid overdose antagonist to any student or staff having symptoms of an opioid overdose in an instructional school facility. Any cost to the schools that elect to participate in the opioid overdose prevention program may be borne by either the participating school or through funds made available through an appropriation made to the Department of Health for the purposes of administering the opioid overdose prevention program.

5. ECONOMIC AND TECHNOLOGICAL FEASIBILITY:

The proposed rule does not impose any additional costs or technological requirements on local governments.

6. MINIMIZING ADVERSE IMPACT:

Consistent with the statute, school districts, boards of cooperative educational services, county vocational education and extension boards, charter schools, and non-public elementary and secondary schools school districts, BOCES and non-public schools may, but are not required to, participate in the opioid overdose prevention program. The proposed rule also merely provides definitions and otherwise clarifies the circumstances regarding the emergency administration of an opioid overdose antagonist to any student or staff having symptoms of an opioid overdose in an instructional school facility. Any cost to the schools that elect to participate in the opioid overdose prevention program may be borne by either the participating school or through funds made available through an appropriation made to the Department of Health for the purposes of administering the opioid overdose prevention program.

7. LOCAL GOVERNMENT PARTICIPATION:

Comments on the proposed rule were solicited from school districts through the offices of the district superintendents of each supervisory district in the State, from the chief school officers of the five big city school districts and from charter schools.

8. INITIAL REVIEW OF RULE (SAPA § 207):

Pursuant to State Administrative Procedure Act section 207(1)(b), the State Education Department proposes that the initial review of this rule shall occur in the fifth calendar year after the year in which the rule is adopted, instead of in the third calendar year. The justification for a five year review period is that the proposed rule is necessary to implement the statutory requirements of Part V of Chapter 57 of the Laws of 2015, and, therefore, the substantive provisions of the proposed rule cannot be repealed or modified unless there is a further statutory change. Accordingly, there is no need for a shorter review period. The Department invites public comment on the proposed five year review period for this rule. Comments should be sent to the agency contact listed in item 10 of the Notice of Proposed Rule Making published herewith, and must be received within 45 days of the State Register publication date of the Notice.

Rural Area Flexibility Analysis

1. TYPES AND ESTIMATED NUMBER OF RURAL AREAS:

The proposed rule applies to school districts, boards of cooperative educational services (BOCES), county vocational education and extension board, charter schools, and nonpublic elementary and secondary schools, including those located in the 44 rural counties with fewer than 200,000 inhabitants and the 71 towns and urban counties with a population density of 150 square miles or less.

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

The proposed rule generally does not impose any compliance requirements upon local governments. Consistent with the statute, school districts, boards of cooperative educational services, county vocational education and extension boards, charter schools, and non-public elementary and secondary schools school districts, BOCES and non-public schools may, but are not required to, participate in the opioid overdose prevention program. The proposed rule also merely provides definitions and otherwise clarifies the circumstances regarding the emergency administration of an opioid overdose antagonist to any student or staff having symptoms of an opioid overdose in an instructional school facility.

The proposed rule does not impose any additional professional services requirements on entities in rural areas.

3. COMPLIANCE COSTS:

In general, the proposed rule does not impose any costs beyond those inherent in Chapter 57 of the Laws of 2015. Consistent with the statute, school districts, boards of cooperative educational services, county vocational education and extension boards, charter schools, and non-public elementary and secondary schools may, but are not required to, participate in the opioid overdose prevention program. The proposed rule also merely provides definitions and otherwise clarifies the circumstances regarding the emergency administration of an opioid overdose antagonist to any student or staff having symptoms of an opioid overdose in an instructional school facility. Any cost to the schools that elect to participate in the opioid overdose prevention program may be borne by either the participating school or through funds made available through an appropriation made to the Department of Health for the purposes of administering the opioid overdose prevention program.

4. MINIMIZING ADVERSE IMPACT:

Consistent with the statute, school districts, boards of cooperative educational services (BOCES), county vocational education and extension boards, charter schools, and non-public elementary and secondary schools may, but are not required to, participate in the opioid overdose prevention program. The proposed rule also merely provides definitions and otherwise clarifies the circumstances regarding the emergency administration of an opioid overdose antagonist to any student or staff having symptoms of an opioid overdose in an instructional school facility. Any cost to the schools that elect to participate in the opioid overdose prevention program may be borne by either the participating school or through funds made available through an appropriation made to the Department of Health for the purposes of administering the opioid overdose prevention program. Because the Regents policy and statute upon which the proposed amendment is based applies to all school districts and BOCES in the State, it is not possible to establish differing compliance or reporting requirements or timetables or to exempt schools in rural areas from coverage by the proposed amendment.

5. RURAL AREA PARTICIPATION:

The proposed rule was submitted for review and comment to the Department's Rural Education Advisory Committee, which includes representatives of school districts in rural areas.

6. INITIAL REVIEW OF RULE (SAPA § 207):

Pursuant to State Administrative Procedure Act section 207(1)(b), the State Education Department proposes that the initial review of this rule shall occur in the fifth calendar year after the year in which the rule is adopted, instead of in the third calendar year. The justification for a five year review period is that the proposed rule is necessary to implement the statutory requirements of Part V of Chapter 57 of the Laws of 2015, and,

therefore, the substantive provisions of the proposed rule cannot be repealed or modified unless there is a further statutory change. Accordingly, there is no need for a shorter review period. The Department invites public comment on the proposed five year review period for this rule. Comments should be sent to the agency contact listed in item 10 of the Notice of Proposed Rule Making published herewith, and must be received within 45 days of the State Register publication date of the Notice.

Job Impact Statement

The purpose of the proposed rule is to establish standards for the elective participation by school districts, boards of cooperative educational services, county vocational education and extension boards, charter schools, and non-public elementary and secondary schools in an opioid overdose prevention program pursuant to the provisions of Public Health Law section 3309. Because it is evident from the nature of the proposed rule that it will have no impact on the number of jobs or employment opportunities in New York State, no further steps were needed to ascertain that fact and none were taken. Accordingly, a job impact statement is not required and one has not been prepared.

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

Elementary and Secondary Education Act (ESEA) Flexibility and School and School District Accountability

I.D. No. EDU-31-15-00002-EP

Filing No. 627

Filing Date: 2015-07-21

Effective Date: 2015-07-21

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

Proposed Action: Amendment of section 100.18 of Title 8 NYCRR.

Statutory authority: Education Law, sections 101(not subdivided), 207(not subdivided), 210(not subdivided), 211-e(1-5), 211-f(15), 215(not subdivided), 305(1), (2), 309(not subdivided), 3713(1) and (2)

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

Specific reasons underlying the finding of necessity: The purpose of the proposed amendment is to implement New York State's approved Elementary and Secondary Education Act (ESEA) Flexibility Waiver Renewal Request.

On March 31, 2015, the New York State Education Department submitted to the United States Education Department (USDE) an ESEA Flexibility Waiver Renewal Request. On June 23, 2015, the USDE Secretary, based upon his authority to issue waivers pursuant to section 9401 of the ESEA, approved the Waiver Request. The proposed rulemaking and amends Commissioner's Regulations sections 100.18 to align the Commissioner's Regulations with the approved ESEA Flexibility Renewal Waiver, and align the regulations with Commissioner's Regulation 100.19 related to receivership. Adoption of the proposed amendment is necessary to ensure a seamless transition to the revised school and school district accountability plan under the Waiver and will allow school districts the option to demonstrate improvements, using options that closely align with the federal school turnaround principles described in Race to the Top and School Improvement Grant requirements.

Because the Board of Regents meets at scheduled intervals, the October 26-27, 2015 meeting is the earliest the proposed rule could be presented for regular (non-emergency) adoption, after publication of a Notice of Proposed Rule Making in the State Register and expiration of the 45-day public comment period required under the State Administrative Procedure Act. Furthermore, pursuant to SAPA section 203(a), the earliest effective date of the proposed rule, if adopted at the October meeting, would be November 11, 2015, the date the Notice of Adoption would be published in the State Register. However, emergency adoption of these regulations is necessary now for the preservation of the general welfare to immediately conform the Commissioner's Regulations to timely implement New York State's approved ESEA Flexibility Renewal Waiver, so that school districts may timely meet school/school district accountability requirements for the 2015-2016 school year and beyond, consistent with the approved ESEA Flexibility Waiver and pursuant to statutory requirements.

It is anticipated that the proposed rule will be presented to the Board of Regents for permanent adoption at its October 26-27, 2015 meeting, which is the first scheduled meeting after expiration of the 45-day public comment period mandated by the State Administrative Procedure Act.

Subject: Elementary and Secondary Education Act (ESEA) Flexibility and school and school district accountability.

Purpose: To implement New York State’s approved ESEA Flexibility Waiver Renewal.

Substance of emergency/proposed rule (Full text is posted at the following State website: <http://www.regents.nysed.gov/common/regents/files/meetings/Jul%202015/713p12a2.pdf>): The Commissioner of Education proposes to amend section 100.18 of the Commissioner’s Regulations to implement and otherwise conform the Commissioner’s Regulations to New York State’s approved Elementary and Secondary Education Act (ESEA) Flexibility Waiver Renewal Request, and to align section 100.18 with new section 100.19 regarding receivership (July 8, 2015 State Register; EDU-27-15-00008-EP). The proposed rule has been adopted as an emergency action at the July 2015 Regents meeting, effective July 21, 2015. The following is a summary of the substantive provisions of the proposed rule.

Section 100.18(a), Definitions, is amended to revise the definitions of “performance levels”, “performance index” and “whole school reform model”; to add definitions of “re-identified focus school”, “re-identified priority school”, “Innovation framework model”, “evidence-based model”, and “early learning intervention model”; and to provide that “struggling school”, “persistently struggling school”, “school district receiver”, “school intervention plan”, “school receiver” and “consultation and collaboration” shall be as defined in 8 NYCRR section 100.19(a).

Section 100.18(f), Adequate Yearly Progress, is amended to provide that:

- commencing with 2014-15 school year results, a public school, charter school or school district will not be held accountable for an accountability group that consists of fewer than 30 students on performance criterion set forth in 100.18(j) if the “all students” accountability group for that performance criterion includes at least 30 students for that school year and the accountability group with fewer than 30 students did not fail to meet participation rate requirements pursuant to 100.18(f)(4)(ii);

- effective with 2014-2015 school year results and continuing with the results for each school year thereafter, the “all students” accountability group for a public school, charter school or school district shall be deemed to have made adequate yearly progress on a performance criterion specified in 100.18(j)(3) if all the accountability groups, except the “all students” group, for which a public school, charter school or school district is accountable on that performance criterion made adequate yearly progress.

Section 100.18(g), Differentiated Accountability for Schools and Districts, is amended to set forth criteria for:

- (1) preliminary identification of priority schools, focus districts and schools based upon 2014-2015 school year results;

- (2) identification of focus schools with the 2014-2015 school year results;

- (3) identification of local assistance plan schools as focus schools;

- (4) designation of schools requiring a local assistance plan, based on 2013-14 school year results;

and to provide that in the event a priority school has been identified as a struggling school or a persistently struggling school pursuant to 100.19, the annual public notification requirements of 100.19(c) shall apply.

Section 100.18(h), Interventions, is amended to provide that:

- commencing with the 2015-16 school year, re-identified focus schools must revise their school comprehensive education plan to focus on the needs identified through their most recent Integrated Intervention Team (IIT), district-led, or School-led with district oversight Diagnostic Tool for School and District Effectiveness reviews, and to require the plan include a review of the re-identified focus school leader, and a description of how the school will implement at least one ESEA turnaround principle starting no later than the 2016-17 school year;

- for schools that are identified as Persistently Struggling or Struggling Schools and that are under a School District Receiver, the comprehensive education plan must also include the requirements specified in 8 NYCRR section 100.19(d)(1), related to development of a community engagement plan and inclusion of rigorous performance metrics and goals;

- for schools designated as struggling or persistently struggling, in creating the school intervention plan or in revising the Department-approved school comprehensive education plan or intervention model plan, the school receiver shall ensure that the plan addresses the tenets of the Diagnostic Tool For School and District Effectiveness and include student outcome data pursuant to section 100.19(f)(4); and

- No later than September 30, 2012 for schools identified during the 2011-12 school year, and no later than July 31, 2016 for schools identified during the 2016-17 school year, except that the commissioner may waive this timeline for good cause, each focus district with one or more priority schools shall submit in such format as prescribed by the commissioner the schedule by which each of the school district’s priority schools shall implement, as part of the school’s comprehensive improvement plan, a whole school reform model. A school implementing a transformation, turnaround, innovative framework model, early learning intervention model or

evidence based model, or restart model pursuant to a school improvement grant or a school innovation fund grant, shall be deemed to be implementing a whole school reform model. Upon approval of the schedule by the commissioner, each priority school shall implement the whole school reform model according to the timeline specified in the schedule, which shall require that implementation begin no later than the 2014-2015 school year for schools identified during the 2012-13 school year, and no later than the 2018-19 school year for schools identified during the 2015-16 school year. The schedule for implementation of the whole school reform model may not be modified without prior approval of the commissioner.

Section 100.18(i), Removal from accountability designation, is amended to provide that:

- for a focus school that is identified pursuant to 100.18(g)(8), a district may petition for removal if the school meets the criteria specified in 100.18(g)(8)(vi); and

- commencing with 2015-16 school year results, if the school district does not meet the criteria for removal but each priority and focus school within the school district meets the criteria for removal, the district will remain a focus district but each school within the district shall be removed from priority or focus school designation.

Section 100.18(k), Identification of Schools for Public School Registration Review, is amended to:

- add the following additional grounds as among the factors the Commissioner may consider in determining whether a school is to be identified as a poor learning environment: (1) evidence the school does not maintain required programs and services; (2) evidence of failure to appropriately refer for identification and/or provide required programs and services to students with disabilities pursuant to 8 NYCRR Part 200; and (3) evidence of failure to appropriately identify and/or provide required programs and services to English language learners pursuant to 8 NYCRR Part 154.

- provide that, notwithstanding the provisions of 100.18(g), any school identified as a School Under Registration Review pursuant to 100.18(k) shall also be identified as a priority school and shall be subject to all of the requirements of this section;

Subdivision (l) of section 100.18 is amended to provide:

- in the event that the Commissioner places a struggling school or a persistently struggling school pursuant to section 100.19 under registration review, the district may use a single notification to fulfill the annual public notification requirements of subdivisions 100.18(g)(7)(ii) and (l)(1)(ii) and section 100.19(c)(1)(ii);

- a school district may fulfill the requirements for implementation of a revised or new improvement plan by: (a) entering into a contract with an Educational Partnership Organization; (b) converting a school to a charter school; (c) entering into a contract with the state university trustees, subject to the approval of the commissioner of education, for the education of the children of the school; (d) for the city school district of New York, entering into a contract with the City University of New York (CUNY) to administer a New York City public high school; (e) implementing a plan to provide enhanced support and oversight of the school through an alternative governance structure, pursuant to prescribed criteria.

- A school that is identified for registration review that has also been identified as a struggling school or persistently struggling school pursuant to section 100.19 of this Part shall implement the school receivership provisions of that section, except that if the school fails to make demonstrable improvement pursuant to section 100.19 of this Part for two consecutive years, the Commissioner may direct that the school receivership be terminated and provide the district the opportunity to take one of the following actions: (a) convert the school to a charter school; (b) enter into a contract with SUNY trustees, subject to the approval of the commissioner of education, for the education of the children of the school; or (c) for the city school district of New York, entering into a contract with the city board and CUNY to administer a New York City public high school. In the event that the school district does not submit an acceptable plan in such format and in such timeline as the commissioner may establish, the commissioner may direct that the school district close or phase out the school pursuant to a plan approved by the commissioner.

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 October 18, 2015.

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

Data, views or arguments may be submitted to: Charles Szuberla, Acting Deputy Commissioner, State Education Department, Office of P-12 Education, State Education Building 2M West, 89 Washington Ave., Albany, NY 12234, (518) 474-5520, email: NYSEDP12@nysed.gov

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

Regulatory Impact Statement**1. STATUTORY AUTHORITY:**

Education Law section 101 continues existence of Education Department, with Board of Regents as its head, and authorizes Regents to appoint Commissioner of Education as Department's Chief Administrative Officer, which is charged with general management and supervision of all public schools and educational work of State.

Education Law section 207 empowers Regents and Commissioner to adopt rules and regulations to carry out State education laws and functions and duties conferred on Department.

Education Law section 210 authorizes Regents to register domestic and foreign institutions in terms of State standards, and fix the value of degrees, diplomas and certificates issued by institutions of other states or countries and presented for entrance to schools, colleges and professions in the State.

Education Law § 211-e sets forth provisions relating to contracts between a board of education (in New York City, the Chancellor of the city school district of the City of New York) and educational partnership organizations to intervene in a school designated by the Commissioner as a persistently lowest-achieving school, consistent with federal requirements, or a school under registration review.

Education Law § 211-f provides for appointment of receivers to assist low-performing schools to make demonstrable improvement in student performance.

Education Law section 215 authorizes Commissioner to require schools and school districts to submit reports containing such information as Commissioner shall prescribe.

Education Law section 305(1) and (2) provide Commissioner, as chief executive officer of the State's education system, with general supervision over all schools and institutions subject to the Education Law, or any statute relating to education, and responsibility for executing all educational policies of the Regents. Section 305(20) provides Commissioner shall have such further powers and duties as charged by Regents.

Education Law section 309 charges Commissioner with general supervision of boards of education and their management and conduct of all departments of instruction.

Education Law section 3713(1) and (2) authorize State and school districts to accept federal law making appropriations for educational purposes and authorize Commissioner to cooperate with federal agencies to implement such law.

2. LEGISLATIVE OBJECTIVES:

The proposed amendment relates to public school and school district accountability, is consistent with the above authority, and is necessary to implement and otherwise conform the Commissioner's Regulations to New York State's approved Elementary and Secondary Education Act (ESEA) Flexibility Waiver Renewal Request and to align section 100.18 with new section 100.19 relating to Receivership (July 8, 2015 State Register; EDU-27-15-00008-EP). The State and local educational agencies (LEAs) are required to comply with the ESEA as a condition to their receipt of federal funds under Title I of the ESEA Act of 1965, as amended.

3. NEEDS AND BENEFITS:

In September 2011, President Obama announced an ESEA regulatory flexibility initiative, based upon the Secretary of Education's authority to issue waivers. In October 2011, the Board of Regents directed the Commissioner to submit an ESEA Flexibility Request to the United States Department of Education (USDE). On May 29, 2012, the USDE approved New York State's ESEA Flexibility Waiver Request. In September 2013, the USDE offered states with approved ESEA Flexibility Waivers the opportunity to renew those waivers for the 2014-15 school year. At its February 2014 meeting, the Board of Regents directed the Department to submit its ESEA Renewal Application. On July 31, 2014, USDE approved New York State's ESEA Waiver Renewal Request for the 2014-15 school year. On November 13, 2014, the USDE issued new guidance for states with approved ESEA Flexibility Waivers describing how states could apply for a three- or four-year renewal of their approved Flexibility Waivers. At its March 2015 meeting, the Board of Regents directed the Department to submit its ESEA Renewal application for the 2015-16, 2016-17, 2017-18, and 2018-19 school years. On June 15, 2015, the Board of Regents added section 100.19 to the Regulations of the Commissioner, in order to implement Education Law 211-f related to school receivership. On June 23, 2015, the USDE approved New York's 2015-19 ESEA Renewal Request.

The approved request grants New York flexibility, among other things, to:

- establish alternative Annual Measurable Objectives (AMOs) that do not require that all students by no later than the 2013-14 school year be proficient in language/arts and mathematics.
- replace the identification of schools and districts for improvement, corrective action, and restructuring based on failure to make Annual Yearly Progress (AYP) with the identification of Priority Schools and Focus Schools and Districts.

- revise the consequences for identified schools and districts, providing districts with greater flexibility to implement their plans for improvement without having to set aside significant percentages of funding to support activities such as supplementary educational services.

- waive the requirement that a school have a poverty percentage of 40 percent or more to become a school wide program.

- allow the use of 1003(a) school improvement funds to provide grants to Title I Reward Schools and Local Assistance Plan Schools.

- allow districts to forego testing students who take Regents math examinations in grade 7 or 8 on the mathematics assessments for those grade levels.

- allow 21st Century Community Learning Center funds to support expanded learning time both during the school day and when school is not in session.

- waive the requirement that districts develop improvement plans regarding highly qualified teachers; and

- allow districts to transfer up to 100 percent of funds from certain programs into Title I.

4. COSTS:

Cost to the State: None.

Costs to local government: None. The proposed rule does not impose any new or additional program, service or duty or responsibility upon local government.

Cost to private regulated parties: None.

Cost to regulating agency for implementation and continued administration of this rule: None.

The proposed amendment does not impose any direct costs on the State, school districts, BOCES or charter schools, or on the State Education Department. It is anticipated that any indirect costs associated with the proposed amendment will be minimal and capable of being absorbed using existing staff and resources.

5. LOCAL GOVERNMENT MANDATES:

The proposed amendment relates to public school and school district accountability and New York State's approved Elementary and Secondary Education Act (ESEA) Flexibility Waiver Renewal, and aligns section 100.18 with new section 100.19 relating to Receivership. The proposed rule does not impose any new or additional program, service, duty, or responsibility upon local governments, including school districts or BOCES. The proposed amendment will:

- accelerate the ability of the Department to inform schools and districts of their accountability status without having any material effect on accountability determinations;

- allow affected districts to use one of the three new School Improvement Grant (SIG) intervention models (early learning model, evidence-based model, and innovative framework model) to meet the requirements to implement a whole school reform model in a Priority School;

- allow the Department to make modest revisions to the methodologies used to identify/remove schools from Priority School, Focus School and Local Assistance Plan (LAP) status and districts from Focus status and use these revised methodologies to create new lists in February 2016 of Priority Schools, Focus Schools, LAP Schools and Focus Districts based on 2014-15 school year data;

- extend through the 2018-19 school year the provision that allows districts to forego testing students on the Grade 7 and 8 Mathematics assessments, if these students have taken a Regents examination in mathematics;

- require more rigorous interventions and supports for Re-identified Focus Schools.

- revise the Schools under Registration Review (SURR) process to align to the receivership requirements in section 100.19 pertaining to Persistently Struggling and Struggling Schools, including provisions pertaining to parent and public notification. A SURR that has also been identified as a Struggling School or Persistently Struggling School pursuant to Section 100.19 will be required to implement school receivership.

- require that any school identified as a SURR automatically also be identified as a Priority School, subject to the requirements pertaining to such schools and restrict the identification of Focus and LAPs as SURRs to those schools that have been determined by the Commissioner to be a poor learning environment in which the health, safety or educational welfare of children is at risk and/or a school that has been the subject of persistent parent complaints.

- revise the conditions for which a school could be identified as a poor learning environment and therefore be identified as a SURR by the Commissioner.

6. PAPERWORK:

Commencing with the 2015-16 school year, Re-identified Focus Schools must revise their school comprehensive education plan (SCEP) to focus on the needs identified through their most recent Integrated Intervention Team (IIT), district-led, or School-led with district oversight Diagnostic Tool for School and District Effectiveness reviews and de-

scribe how the school will implement at least one ESEA turnaround principle (e.g., redesign the school day, week, or year; modify the instructional program to ensure it is research-based, rigorous, and aligned with State academic content standards; provide time for collaboration on the use of data) starting no later than the 2016-17 school year. The plan must also include a review of the Re-identified Focus School leader, if the principal has been leader of the school for more than two full academic years. The purpose of the review is to determine whether the school leader should be provided additional professional development and/or mentoring or replaced.

7. DUPLICATION:

The rule does not duplicate existing State or federal regulations.

8. ALTERNATIVES:

There were no significant alternatives and none were considered.

9. FEDERAL STANDARDS:

The rule is necessary to conform the Commissioner's Regulations to New York's approved ESEA Flexibility Waiver Renewal.

10. COMPLIANCE SCHEDULE:

It is anticipated parties will be able to achieve compliance with the rule by its effective date.

Regulatory Flexibility Analysis

Small Businesses:

The proposed amendment relates to public school and school district accountability and is necessary to conform the Commissioner's Regulations to New York State's approved Elementary and Secondary Education Act (ESEA) Flexibility Waiver Renewal Request. The State and local educational agencies (LEAs) are required to comply with the ESEA as a condition to their receipt of federal funds under Title I of the ESEA Act of 1965, as amended.

The amendment applies to public schools, school districts and charter schools that receive funding as LEAs pursuant to the ESEA, and does not impose any adverse economic impact, reporting, record keeping or any other compliance requirements on small businesses. Because it is evident from the nature of the proposed amendment that it does not affect small businesses, no further measures were needed to ascertain that fact and none were taken. Accordingly, a regulatory flexibility analysis for small businesses is not required and one has not been prepared.

Local Governments:

1. EFFECT OF RULE:

The amendment applies to public schools, school districts and charter schools that receive funding as LEAs pursuant to the Elementary and Secondary Education Act of 1965, as amended.

2. COMPLIANCE REQUIREMENTS:

The amendment relates to public school and school district accountability and New York State's approved Elementary and Secondary Education Act (ESEA) Flexibility Waiver Renewal, and aligns section 100.18 with new section 100.19 relating to Receivership (July 8, 2015 State Register; EDU-27-15-00008-EP). The State and local educational agencies (LEAs) are required to comply with the ESEA as a condition to their receipt of federal funds under Title I of the ESEA Act of 1965, as amended. The amendment has been carefully drafted to meet specific federal and State requirements and does not impose any additional compliance requirements or costs on school districts and BOCES beyond those inherent in such federal and State requirements. The amendment will:

- accelerate the ability of the Department to inform schools and districts of their accountability status without having any material effect on accountability determinations;
- allow affected districts to use one of the three new School Improvement Grant (SIG) intervention models (early learning model, evidence-based model, and innovative framework model) to meet the requirements to implement a whole school reform model in a Priority School;
- allow the Department to make modest revisions to the methodologies used to identify/remove schools from Priority School, Focus School and Local Assistance Plan (LAP) status and districts from Focus status and use these revised methodologies to create new lists in February 2016 of Priority Schools, Focus Schools, LAP Schools and Focus Districts based on 2014-15 school year data;
- extend through the 2018-19 school year the provision that allows districts to forego testing students on the Grade 7 and 8 Mathematics assessments, if these students have taken a Regents examination in mathematics;
- require more rigorous interventions and supports for Re-identified Focus Schools.
- revise the Schools under Registration Review (SURR) process to align to the receivership requirements in section 100.19 pertaining to Persistently Struggling and Struggling Schools, including provisions pertaining to parent and public notification. A SURR that has also been identified as a Struggling School or Persistently Struggling School pursuant to Section 100.19 will be required to implement school receivership.
- require that any school identified as a SURR automatically also be

identified as a Priority School, subject to the requirements pertaining to such schools and restrict the identification of Focus and LAPs as SURRs to those schools that have been determined by the Commissioner to be a poor learning environment in which the health, safety or educational welfare of children is at risk and/or a school that has been the subject of persistent parent complaints.

- revise the conditions for which a school could be identified as a poor learning environment and therefore be identified as a SURR by the Commissioner.

- Commencing with the 2015-16 school year, Re-identified Focus Schools must revise their school comprehensive education plan (SCEP) to focus on the needs identified through their most recent Integrated Intervention Team (IIT), district-led, or School-led with district oversight Diagnostic Tool for School and District Effectiveness reviews and describe how the school will implement at least one ESEA turnaround principle (e.g., redesign the school day, week, or year; modify the instructional program to ensure it is research-based, rigorous, and aligned with State academic content standards; provide time for collaboration on the use of data) starting no later than the 2016-17 school year. The plan must also include a review of the Re-identified Focus School leader, if the principal has been leader of the school for more than two full academic years. The purpose of the review is to determine whether the school leader should be provided additional professional development and/or mentoring or replaced.

3. PROFESSIONAL SERVICES:

The amendment imposes no additional professional service requirements.

4. COMPLIANCE COSTS:

The proposed amendment does not impose any direct costs on school districts or BOCES. It is anticipated that any indirect costs associated with the proposed amendment will be minimal and capable of being absorbed using existing staff and resources.

5. ECONOMIC AND TECHNOLOGICAL FEASIBILITY:

The amendment imposes no technological requirements on local governments. Costs are discussed under the Compliance Costs section above.

6. MINIMIZING ADVERSE IMPACT:

The amendment is necessary to implement and otherwise conform the Commissioner's Regulations to New York State's approved Elementary and Secondary Education Act (ESEA) Flexibility Waiver Renewal Request, and to align section 100.18 with new section 100.19 relating to Receivership. The State and local educational agencies (LEAs) are required to comply with the ESEA as a condition to their receipt of federal funds under Title I of the ESEA Act of 1965, as amended. The amendment has been carefully drafted to meet specific federal and State requirements and does not impose any additional compliance requirements or costs on school districts or BOCES beyond those inherent in such federal and State requirements. The amendment will:

- accelerate the ability of the Department to inform schools and districts of their accountability status without having any material effect on accountability determinations;
- allow affected districts to use one of the three new School Improvement Grant (SIG) intervention models (early learning model, evidence-based model, and innovative framework model) to meet the requirements to implement a whole school reform model in a Priority School;
- allow the Department to make modest revisions to the methodologies used to identify/remove schools from Priority School, Focus School and Local Assistance Plan (LAP) status and districts from Focus status and use these revised methodologies to create new lists in February 2016 of Priority Schools, Focus Schools, LAP Schools and Focus Districts based on 2014-15 school year data;
- extend through the 2018-19 school year the provision that allows districts to forego testing students on the Grade 7 and 8 Mathematics assessments, if these students have taken a Regents examination in mathematics;
- require more rigorous interventions and supports for Re-identified Focus Schools.
- revise the Schools under Registration Review (SURR) process to align to the receivership requirements in section 100.19 pertaining to Persistently Struggling and Struggling Schools, including provisions pertaining to parent and public notification. A SURR that has also been identified as a Struggling School or Persistently Struggling School pursuant to Section 100.19 will be required to implement school receivership.
- require that any school identified as a SURR automatically also be identified as a Priority School, subject to the requirements pertaining to such schools and restrict the identification of Focus and LAPs as SURRs to those schools that have been determined by the Commissioner to be a poor learning environment in which the health, safety or educational welfare of children is at risk and/or a school that has been the subject of persistent parent complaints.

- revise the conditions for which a school could be identified as a poor learning environment and therefore be identified as a SURR by the Commissioner.

- Commencing with the 2015-16 school year, Re-identified Focus Schools must revise their school comprehensive education plan (SCEP) to focus on the needs identified through their most recent Integrated Intervention Team (IIT), district-led, or School-led with district oversight Diagnostic Tool for School and District Effectiveness reviews and describe how the school will implement at least one ESEA turnaround principle (e.g., redesign the school day, week, or year; modify the instructional program to ensure it is research-based, rigorous, and aligned with State academic content standards; provide time for collaboration on the use of data) starting no later than the 2016-17 school year. The plan must also include a review of the Re-identified Focus School leader, if the principal has been leader of the school for more than two full academic years. The purpose of the review is to determine whether the school leader should be provided additional professional development and/or mentoring or replaced.

The proposed amendment has been carefully drafted to meet specific federal and State requirements and does not impose any additional compliance requirements or costs beyond those inherent in such federal and State requirements. Since these requirements apply to all local educational agencies in the State that receive ESEA funds, it is not possible to adopt different standards for school districts and BOCES.

7. LOCAL GOVERNMENT PARTICIPATION:

Copies of the amendment have been provided to District Superintendents with the request that they distribute it to school districts within their supervisory districts for review and comment. Copies were also provided for review and comment to the chief school officers of the five big city school districts and to charter schools.

8. INITIAL REVIEW OF RULE (SAPA § 207):

Pursuant to State Administrative Procedure Act section 207(1)(b), the State Education Department proposes that the initial review of this rule shall occur in the fifth calendar year after the year in which the rule is adopted, instead of in the third calendar year. The justification for a five year review period is that the proposed rule is necessary to implement and otherwise conform the Commissioner's Regulations to New York State's approved Elementary and Secondary Education Act (ESEA) Flexibility Waiver Request. The State and local educational agencies (LEAs) are required to comply with the ESEA as a condition to their receipt of federal funds under Title I of the ESEA Act of 1965, as amended. Consequently, the major, substantive provisions of the proposed rule are subject to the approved Waiver Request and generally cannot be changed without approval by the U.S. Department of Education.

The Department invites public comment on the proposed five year review period for this rule. Comments should be sent to the agency contact listed in item number 16. of the Notice of Emergency Adoption and Proposed Rule Making published herewith, and must be received within 45 days of the date the Notice is published in the State Register.

Rural Area Flexibility Analysis

1. TYPES AND ESTIMATED NUMBER OF RURAL AREAS:

The proposed amendment applies to public schools, school districts and charter schools that receive funding as LEAs pursuant to the Elementary and Secondary Education Act (ESEA) of 1965, as amended, including those located in the 44 rural counties with less than 200,000 inhabitants and the 71 towns in urban counties with a population density of 150 per square mile or less.

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

The amendment relates to public school and school district accountability and New York State's approved Elementary and Secondary Education Act (ESEA) Flexibility Waiver Renewal, and aligns section 100.18 with new section 100.19 relating to Receivership. The proposed amendment has been carefully drafted to meet specific federal and State requirements and does not impose any additional compliance requirements or costs on school districts, BOCES and charter schools in rural areas beyond those inherent in such federal and State requirements. The amendment will:

- accelerate the ability of the Department to inform schools and districts of their accountability status without having any material effect on accountability determinations;
- allow affected districts to use one of the three new School Improvement Grant (SIG) intervention models (early learning model, evidence-based model, and innovative framework model) to meet the requirements to implement a whole school reform model in a Priority School;
- allow the Department to make modest revisions to the methodologies used to identify/remove schools from Priority School, Focus School and Local Assistance Plan (LAP) status and districts from Focus status and use these revised methodologies to create new lists in February 2016 of Priority Schools, Focus Schools, LAP Schools and Focus Districts based on 2014-15 school year data;

- extend through the 2018-19 school year the provision that allows districts to forego testing students on the Grade 7 and 8 Mathematics assessments, if these students have taken a Regents examination in mathematics;

- require more rigorous interventions and supports for Re-identified Focus Schools.

- revise the Schools under Registration Review (SURR) process to align to the receivership requirements in section 100.19 pertaining to Persistently Struggling and Struggling Schools, including provisions pertaining to parent and public notification. A SURR that has also been identified as a Struggling School or Persistently Struggling School pursuant to Section 100.19 will be required to implement school receivership.

- require that any school identified as a SURR automatically also be identified as a Priority School, subject to the requirements pertaining to such schools and restrict the identification of Focus and LAPs as SURRs to those schools that have been determined by the Commissioner to be a poor learning environment in which the health, safety or educational welfare of children is at risk and/or a school that has been the subject of persistent parent complaints.

- revise the conditions for which a school could be identified as a poor learning environment and therefore be identified as a SURR by the Commissioner.

- Commencing with the 2015-16 school year, Re-identified Focus Schools must revise their school comprehensive education plan (SCEP) to focus on the needs identified through their most recent Integrated Intervention Team (IIT), district-led, or School-led with district oversight Diagnostic Tool for School and District Effectiveness reviews and describe how the school will implement at least one ESEA turnaround principle (e.g., redesign the school day, week, or year; modify the instructional program to ensure it is research-based, rigorous, and aligned with State academic content standards; provide time for collaboration on the use of data) starting no later than the 2016-17 school year. The plan must also include a review of the Re-identified Focus School leader, if the principal has been leader of the school for more than two full academic years. The purpose of the review is to determine whether the school leader should be provided additional professional development and/or mentoring or replaced.

The amendment imposes no additional professional service requirements on school districts and BOCES in rural areas.

3. COMPLIANCE COSTS:

The proposed amendment does not impose any direct costs on school districts, BOCES or charter schools located in rural areas. It is anticipated that any indirect costs associated with the proposed amendment will be minimal and capable of being absorbed using existing staff and resources.

4. MINIMIZING ADVERSE IMPACT:

The amendment is necessary to implement and otherwise conform the Commissioner's Regulations to New York State's approved Elementary and Secondary Education Act (ESEA) Flexibility Renewal Waiver Request, and to align section 100.18 with new section 100.19 relating to Receivership (July 8, 2015 State Register; EDU-27-15-00008-EP). The State and local educational agencies (LEAs) are required to comply with the ESEA as a condition to their receipt of federal funds under Title I of the ESEA Act of 1965, as amended. The amendment has been carefully drafted to meet specific federal and State requirements and does not impose any additional compliance requirements or costs on school districts, BOCES and charter schools in rural areas beyond those inherent in such federal and State requirements. The amendment will:

- accelerate the ability of the Department to inform schools and districts of their accountability status without having any material effect on accountability determinations;
- allow affected districts to use one of the three new School Improvement Grant (SIG) intervention models (early learning model, evidence-based model, and innovative framework model) to meet the requirements to implement a whole school reform model in a Priority School;
- allow the Department to make modest revisions to the methodologies used to identify/remove schools from Priority School, Focus School and Local Assistance Plan (LAP) status and districts from Focus status and use these revised methodologies to create new lists in February 2016 of Priority Schools, Focus Schools, LAP Schools and Focus Districts based on 2014-15 school year data;
- extend through the 2018-19 school year the provision that allows districts to forego testing students on the Grade 7 and 8 Mathematics assessments, if these students have taken a Regents examination in mathematics;
- require more rigorous interventions and supports for Re-identified Focus Schools.
- revise the Schools under Registration Review (SURR) process to align to the receivership requirements in section 100.19 pertaining to Persistently Struggling and Struggling Schools, including provisions pertaining to parent and public notification. A SURR that has also been

identified as a Struggling School or Persistently Struggling School pursuant to Section 100.19 will be required to implement school receivership.

- require that any school identified as a SURR automatically also be identified as a Priority School, subject to the requirements pertaining to such schools and restrict the identification of Focus and LAPs as SURRs to those schools that have been determined by the Commissioner to be a poor learning environment in which the health, safety or educational welfare of children is at risk and/or a school that has been the subject of persistent parent complaints.

- revise the conditions for which a school could be identified as a poor learning environment and therefore be identified as a SURR by the Commissioner.

- Commencing with the 2015-16 school year, Re-identified Focus Schools must revise their school comprehensive education plan (SCEP) to focus on the needs identified through their most recent Integrated Intervention Team (IIT), district-led, or School-led with district oversight Diagnostic Tool for School and District Effectiveness reviews and describe how the school will implement at least one ESEA turnaround principle (e.g., redesign the school day, week, or year; modify the instructional program to ensure it is research-based, rigorous, and aligned with State academic content standards; provide time for collaboration on the use of data) starting no later than the 2016-17 school year. The plan must also include a review of the Re-identified Focus School leader, if the principal has been leader of the school for more than two full academic years. The purpose of the review is to determine whether the school leader should be provided additional professional development and/or mentoring or replaced.

The amendment relates to public school and school district accountability and New York State’s approved Elementary and Secondary Education Act (ESEA) Flexibility Waiver Renewal, and aligns section 100.18 with new section 100.19 relating to Receivership. Since these requirements apply to all local educational agencies in the State that receive ESEA funds, it is not possible to adopt different standards for school districts, BOCES and charter schools in rural areas.

5. RURAL AREA PARTICIPATION:

The amendment was submitted for review and comment to the Department’s Rural Education Advisory Committee, which includes representatives of school districts in rural areas.

6. INITIAL REVIEW OF RULE (SAPA § 207):

Pursuant to State Administrative Procedure Act section 207(1)(b), the State Education Department proposes that the initial review of this rule shall occur in the fifth calendar year after the year in which the rule is adopted, instead of in the third calendar year. The justification for a five year review period is that the proposed rule is necessary to implement and otherwise conform the Commissioner’s Regulations to New York State’s approved Elementary and Secondary Education Act (ESEA) Flexibility Waiver Request. The State and local educational agencies (LEAs) are required to comply with the ESEA as a condition to their receipt of federal funds under Title I of the ESEA Act of 1965, as amended. Consequently, the major, substantive provisions of the proposed rule are subject to the approved Waiver Request and generally cannot be changed without approval by the U.S. Department of Education.

The Department invites public comment on the proposed five year review period for this rule. Comments should be sent to the agency contact listed in item number 16. of the Notice of Emergency Adoption and Proposed Rule Making published herewith, and must be received within 45 days of the date the Notice is published in the State Register.

Job Impact Statement

The proposed amendment relates to public school and school district accountability and is necessary to implement and otherwise conform the Commissioner’s Regulations to New York State’s approved Elementary and Secondary Education Act (ESEA) Flexibility Waiver Renewal Request and to align section 100.18 with new section 100.19 relating to Receivership (July 8, 2015 State Register; EDU-27-15-00008-EP). The State and local educational agencies (LEAs) are required to comply with the ESEA as a condition to their receipt of federal funds under Title I of the ESEA Act of 1965, as amended.

The proposed amendment applies to public schools, school districts and charter schools that receive funding as LEAs pursuant to the ESEA, and will not have an adverse impact on jobs or employment opportunities. Because it is evident from the nature of the amendment that it will have no impact, on jobs or employment opportunities, no further steps were needed to ascertain those facts and none were taken. Accordingly, a job impact statement is not required and one has not been prepared.

NOTICE OF ADOPTION

Licensure of Physician Assistants and Registration of Specialist Assistants

I.D. No. EDU-17-15-00002-A

Filing No. 629

Filing Date: 2015-07-21

Effective Date: 2015-08-05

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

Action taken: Amendment of sections 60.8 and 60.11 of Title 8 NYCRR.

Statutory authority: Education Law, sections 207(not subdivided), 6501(not subdivided), 6504(not subdivided), 6507(2)(a), 6540, 6541, 6544(not subdivided), 6546, 6547, 6548 and 6549-b(not subdivided); L. 2012, ch. 48

Subject: Licensure of Physician Assistants and Registration of Specialist Assistants.

Purpose: To conform Commissioner’s Regulations to chapter 48 of the laws of 2012 and remove obsolete provisions relating to physician assistants.

Text or summary was published in the April 29, 2015 issue of the Register, I.D. No. EDU-17-15-00002-P.

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

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

Initial Review of Rule

As a rule that does not require a RFA, RAFA or JIS, this rule will be initially reviewed in the calendar year 2020, which is no later than the 5th year after the year in which this rule is being adopted.

Assessment of Public Comment

The agency received no public comment.

NOTICE OF ADOPTION

Elementary and Secondary Education Act (ESEA) Flexibility and School and School District Accountability

I.D. No. EDU-17-15-00003-A

Filing No. 626

Filing Date: 2015-07-21

Effective Date: 2015-08-05

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

Action taken: Amendment of section 100.18(f) and (g) of Title 8 NYCRR.

Statutory authority: Education Law, sections 101(not subdivided), 207(not subdivided), 208(not subdivided), 210(not subdivided), 215(not subdivided) 305(1), (2), (20), 308(not subdivided), 309(not subdivided), 3204(3), 3713(1) and (2)

Subject: Elementary and Secondary Education Act (ESEA) Flexibility and school and school district accountability.

Purpose: To conform the Commissioner’s Regulations to New York State’s ESEA Flexibility Waiver Renewal application with respect to the methodology for determining Adequate Yearly Progress (AYP) and identification of Local Assistance Plan (LAP) schools.

Text or summary was published in the April 29, 2015 issue of the Register, I.D. No. EDU-17-15-00003-EP.

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

Text of rule and any required statements and analyses may be obtained from: Kirti Goswami, State Education Department, Office of Counsel, State Education Building Room 148, 89 Washington Ave., Albany, NY 12234, (518) 474-6400, email: legal@nysed.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 2020, which is the 4th or 5th year after the year in which this rule is being adopted. This review period, justification for proposing same, and invitation for public comment thereon, were contained in a RFA, RAFA or JIS:

An assessment of public comment on the 4 or 5-year initial review period is not attached because no comments were received on the issue.

Assessment of Public Comment

The agency received no public comment.

Department of Environmental Conservation

**EMERGENCY
RULE MAKING**

Recreational Harvest Regulations for Black Sea Bass

I.D. No. ENV-19-15-00016-E

Filing No. 624

Filing Date: 2015-07-16

Effective Date: 2015-07-16

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

Action taken: Amendment of Part 40 of Title 6 NYCRR.

Statutory authority: Environmental Conservation Law, sections 11-0303, 13-0105 and 13-0340-f

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

Specific reasons underlying the finding of necessity: These regulations are necessary to ensure New York State adopts regulations that reduce the recreational harvest for black sea bass by July 15, the day the recreational black sea bass season opens. On April 28, 2015, DEC filed a Notice of Proposed Rule Making to amend 6 NYCRR Part 40 and revise regulations governing the recreational harvest of black sea bass. The proposed rule was published on May 13, 2015 and the public comment period ends on June 29, 2015. This proposed rule must be in effect by July 15, the day the recreational black sea bass season opens. However, there is not enough time between the ending of the public comment period and July 15 for the rule to be adopted. This Notice of Emergency Adoption is needed to ensure the proposed rule is in effect when the recreational black sea bass season opens.

The proposed regulations will increase the minimum size for black sea bass by 1 inch, from 13 inches to 14 inches. In addition, the possession limit will increase by 2 fish, from 8 fish to 10 fish, during the months of November and December. The open fishing season will remain unchanged from July 15 to December 31.

The promulgation of this regulation on an emergency basis is necessary because the normal rule making process would not promulgate these regulations in the time frame necessary to prevent the 2015 recreational black sea bass season from opening at a minimum size limit too small to sufficiently constrain harvest. The recreational black sea bass fishing season begins on July 15 and the public comment period for the proposed rule ends on June 29, 2015. There is not sufficient time between these two dates to address public comment and file a Notice of Adoption.

If this rule making were to be promulgated by the normal rule making process, it may not be in effect until after the July 15, allowing fishing to occur under the previous year's more relaxed minimum size. This could result in recreational black sea bass harvest in excess of the limit and a finding of out-of-compliance by ASMFC. It is in the best interests of the general welfare of New York State's marine recreational fishing interests not to delay the implementation of these regulations.

Subject: Recreational harvest regulations for black sea bass.

Purpose: To reduce recreational harvest of black sea bass to remain in compliance with ASMFC.

Text of emergency rule: Species Striped bass through Scup remain the same. Species Black sea bass is amended to read as follows:

40.1(f) Table A – Recreational Fishing.

Species	Open Season	Minimum Length	Possession Limit
Black sea bass	July 15-[Dec. 31]Oct. 31 Nov. 1-Dec. 31	[13]14" TL 14" TL	8 10

Species Anadromous river herring through Oyster toadfish remain the same.

This notice is intended to serve only as a notice of emergency adoption. This agency intends to adopt the provisions of this emergency rule as a

permanent rule, having previously submitted to the Department of State a notice of proposed rule making, I.D. No. ENV-19-15-00016-P, Issue of May 13, 2015. The emergency rule will expire October 13, 2015.

Text of rule and any required statements and analyses may be obtained from: Stephen W. Heins, New York State Department of Environmental Conservation, 205 North Belle Mead Road, Suite 1, East Setuaket, NY 11733, (631) 444-0435, email: steve.heins@dec.ny.gov

Additional matter required by statute: Pursuant to the State Environmental Quality Review Act, a negative declaration is on file with the department.

Regulatory Impact Statement

1. Statutory authority:

Environmental Conservation Law (ECL) sections 11-0303, 13-0105, and 13-0340-f authorize the Department of Environmental Conservation (DEC or the department) to establish by regulation the open season, size, catch limits, possession and sale restrictions and manner of taking for black sea bass.

2. Legislative objectives:

It is the objective of the above-cited legislation that DEC manages marine fisheries to optimize resource use for commercial and recreational harvesters consistent with marine fisheries conservation and management policies, and interstate fishery management plans.

3. Needs and benefits:

These regulations are necessary for New York to maintain compliance with the Interstate Fishery Management Plan (FMP) for Black Sea Bass adopted by the Atlantic States Marine Fisheries Commission (ASMFC). New York, as a member state of ASMFC, must comply with the provisions of the Interstate Fishery Management Plans adopted by ASMFC. These FMPs are designed to promote the long-term sustainability of marine species, preserve the States' marine resources, and protect the interests of both commercial and recreational fishermen. To remain in compliance with the FMPs, all member states must promulgate the necessary regulations that implement the provisions of the FMPs. If ASMFC determines a state to be in non-compliance with a specific FMP, the state may be subject to a complete prohibition on all fishing for the associated species in the waters of the non-compliant state until the state comes into compliance with the FMP.

ASMFC requires all states from Massachusetts through New Jersey to reduce recreational harvest of black sea bass by 33 percent to prevent recreational anglers from exceeding the coast-wide recreational harvest limit (RHL) set by the National Marine Fisheries Service (NMFS) for 2015. As a result, black sea bass rules will be more restrictive and may have negative impacts upon businesses dependent on recreational fishing. However, the emergency rule must be adopted so that New York reduces recreational black sea bass harvest and remains in compliance with the ASMFC FMP.

4. Costs:

There are no new costs to state and local governments from this action. The department will incur limited costs associated with both the implementation and administration of these rules, including the costs relating to notifying recreational harvesters, party and charter boat operators and other recreational support industries of the new rules. There may be negative impacts to private regulated parties due to the more restrictive black sea bass recreational harvest rules.

5. Local government mandates:

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

6. Paperwork:

None.

7. Duplication:

The emergency amendment does not duplicate any state or federal requirement.

8. Alternatives:

1. No action alternative: If New York does not adopt the regulations reducing the black sea bass recreational harvest, the State may be found to be noncompliant with the ASMFC black sea bass interstate fisheries management plan. The Secretary of Commerce may then institute a complete prohibition on all black sea bass fishing in New York. These regulations are intended to avoid the adverse economic and social impacts that would be associated with a closure of the fishery and to allow the black sea bass stock to recover.

2. Modification of the emergency adopted rule: The management measures proposed in the Notice of Proposed Rule Making were chosen from an array of measures reviewed by a group of anglers and recreational fishing industry members. These options included the manipulation of minimum sizes, possession limits, and fishing seasons to achieve the required reduction. An alternate option included the same 1 inch increase in minimum size combined with 3 different possession limits. This option was intended to allow the fishing season to open earlier in June. The possession limit would be 2 fish from June 12 through August 31, increasing to 5 fish from September through October, and increasing to 10 fish from

November through December. The initial 2 fish possession limit would effectively reduce this offshore/structure-oriented fishery to an incidental bycatch during the time of peak black sea bass fishing. The three different possession limits may lead to angler confusion, non-compliance with the rule, and potential law enforcement issues. DEC determined that 8 fish at 14 inches from July 15 through October 31 and 10 fish at 14 inches from November 1 through December 31 to be the best option for New York. Any modifications to the rule as proposed were rejected.

9. Federal standards:

The amendments to Part 40 are in compliance with the ASMFC and Regional Fishery Management Council FMP.

10. Compliance schedule:

Regulated parties will be notified by mail, through appropriate news releases and via DEC's website of the changes to the regulations. The rule must be in effect by July 15, 2015, the date the recreational black sea bass seasons opens, to ensure a reduction in the recreational black sea bass harvest and prevent New York from being out of compliance with the ASMFC FMP.

Regulatory Flexibility Analysis

1. Effect of rule:

The Atlantic State Marine Fisheries Commission (ASMFC) facilitates cooperative management of marine and anadromous fish species among the fifteen Atlantic Coast member states. The principal mechanism for implementation of cooperative management of migratory fish is the ASMFC's Interstate Fishery Management Plans (FMPs) for individual species or groups of fish. The FMPs are designed to promote the long-term health of these species, preserve resources, and protect the interests of both commercial and recreational fishers.

The ASMFC mandated a 33 percent reduction in recreational black sea bass harvest by coastal states from Massachusetts through New Jersey in 2015. The Department of Environmental Conservation (DEC or the department) now seeks to amend its regulations to comply with the requirements of the FMP. There are severe consequences for failure to comply with FMPs. If ASMFC determines a state to be in non-compliance with a specific FMP, the state may be subject to a complete prohibition on all fishing for the associated species in the waters of the non-compliant state until the state comes into compliance with the FMP. Furthermore, failure to take required actions to protect our marine and anadromous resources may lead to the collapse of the targeted species' populations. Either situation could have a significant adverse impact on the commercial and recreational fisheries for that species, as well as the supporting industries for those fisheries.

Those most affected by the emergency rule are recreational anglers, licensed party and charter businesses, and retail and wholesale marine bait and tackle shops operating in New York State. The department consulted with the Marine Resources Advisory Council (MRAC) and other individuals who chose to share their views on marine recreational fishing management measures. The new regulations will increase the minimum size by 1 inch, from 13 to 14 inches; maintains the 8 fish possession limit from July 15 through October 31, and increases the possession limit by 2 fish during the months of November and December, from 8 fish to 10 fish.

The emergency regulations are more restrictive and designed to reduce New York's black sea bass harvest. Larger black sea bass are less available to anglers fishing from some parts of the Marine and Coastal District, so this rule's impact will differ geographically. In addition, the larger size limit will increase the number of fish discarded by recreational anglers, including dead discards. Finally, some anglers may view the increase in the possession limit in November and December as favoring party and charter vessels. It should be noted that this increase in the possession limit had no impact on the season, size limit, or possession limit established for recreational black sea bass during other times of the year.

There are no local governments involved in the recreational fish harvesting business, nor do any participate in the sale of marine bait fish or tackle. Therefore, no local governments are affected by these regulations.

2. Compliance requirements:

None.

3. Professional services:

None.

4. Compliance costs:

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

5. Economic and technological feasibility:

The emergency regulations do not require any expenditure on the part of affected businesses in order to comply with the changes. The emergency regulations may decrease the income of party and charter businesses, marinas and marine bait and tackle shops that depend heavily upon the recreational black sea bass fishery, especially in areas where larger fish are less available.

6. Minimizing adverse impact:

The promulgation of this regulation is necessary for DEC to maintain compliance with the FMP for black sea bass while optimizing opportunities for its recreational fishing industry and recreational anglers. Since these regulatory amendments are consistent with the Interstate FMPs, DEC anticipates that New York State will remain in compliance with the FMPs.

Ultimately, the maintenance of long-term sustainable fisheries will have a positive effect on employment for the fisheries in question, including party and charter boat fisheries as well as wholesale and retail bait and tackle shops and other support industries for recreational fisheries. Failure to comply with FMPs and take required actions to protect our natural resources could cause the collapse of a stock and have a severe adverse impact on the commercial and recreational fisheries for that species, as well as the supporting industries for those fisheries. These regulations are being proposed in order to provide the appropriate level of protection and allow for harvest consistent with the capacity of the resource to sustain such effort.

7. Small business and local government participation:

The department received recommendations from the Marine Resources Advisory Council, which is comprised of representatives from recreational and commercial fishing interests. The emergency regulations are also based upon comments received from recreational fishing organizations, party and charter boat owners and operators, retail and wholesale bait and tackle shop owners, recreational anglers and state law enforcement personnel. There was no special effort to contact local governments because the proposed rule does not affect them.

8. Cure period or other opportunity for ameliorative action:

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

9. Initial review of rule:

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

Rural Area Flexibility Analysis

The Department of Environmental Conservation has determined that this rule will not impose an adverse impact on rural areas. There are no rural areas within the marine and coastal district. The black sea bass fishery directly affected by the proposed rule is entirely located within the marine and coastal district, and are not located adjacent to any rural areas of the state. Further, the proposed rule does not impose any reporting, record-keeping, or other compliance requirements on public or private entities in rural areas. Since no rural areas will be affected by the proposed amendments of 6 NYCRR Part 40, a Rural Area Flexibility Analysis is not required.

Job Impact Statement

1. Nature of impact:

New York is part of a management region that includes the states of Massachusetts, Rhode Island, Connecticut and New Jersey. All member states of the region are required by the Atlantic States Marine Fisheries Commission to independently reduce recreational black sea bass harvest by thirty-three percent using changes to minimum size limit, possession limit, and season length.

The promulgation of this regulation is necessary for the Department of Environmental Conservation (DEC) to maintain compliance with the Fishery Management for Plan Black Sea Bass, and to optimize recreational fishing opportunities available to New Yorkers. The proposed rule reduces the recreational black sea bass harvest by increasing the minimum size by 1 inch, from 13 to 14 inches; maintains the 8 fish possession limit from July 15 through December 31, and increases the possession limit by 2 fish during the months of November and December, from 8 fish to 10 fish.

Many currently licensed party and charter boat owners and operators, as well as bait and tackle businesses, will be affected by these regulations. These restrictions may reduce the amount of money spent in pursuit of this species.

2. Categories and numbers affected:

In 2014, there were 490 licensed party and charter businesses in New York State. There were also a number of retail and wholesale marine bait and tackle shop businesses operating in New York; however, DEC does not have a record of the actual number. According to the American Sportfishing Association, in 2011 New York had an estimated 800,811 marine recreational anglers that spent \$1,194,493,042 on saltwater fishing, generating \$144,539,079 in state and local tax revenue. In 2014 New York anglers took an estimated 173,511 fishing trips targeting black sea bass, significantly more than any other year in the last 5 years.

3. Regions of adverse impact:

The more restrictive black sea bass regulations will decrease the number

of trips anglers take in pursuit of this species, decreasing the amount of money they spend on bait, tackle, fares and gas. This will have a negative impact upon those businesses (bait and tackle retail, party and charter operations, gas docks, marinas, etc.) that cater to these anglers. The change in minimum size will not impact all anglers in the same manner. Anglers fishing from the western south shore or in western and central Long Island Sound have less access to large fish. In addition, large fish are more available further offshore, especially later in the season. This emergency rule will have greater impacts on small boat owners, inshore fishermen and anglers who fish the western shores of Long Island.

4. Minimizing adverse impact:

A thirty-three percent reduction in New York's recreational black sea bass harvest will have a significant negative impact on fishery participants and associated businesses. Thirty regulatory options were developed by working with a group of anglers and recreational fishing industry members. These options included the manipulation of minimum sizes, possession limits, and fishing seasons to achieve the required reduction. These options were narrowed down to 8 by the working group and presented to New York's Marine Resource Advisory Council (MRAC). MRAC members provided input during a regularly scheduled meeting on March 10, 2015. A voting quorum was not present, nonetheless, MRAC members did indicate a preference for 2 out of the 8 options. The Division has chosen to adopt the option that increases the minimum size limit by one inch to achieve the required reduction. This option represents the least disruption to last year's regulations and preserves the targeted nature of the fishery for the period when most anglers have access.

5. Self-employment opportunities:

The party and charter boat businesses, the bait and tackle shops, and marinas are, for the most part, small businesses, owned and often operated by the owner. The recreational fishing industry is mostly self-employed. This rule will likely have a negative effect upon opportunities for businesses related to the recreational harvest of black sea bass.

6. Initial review of the rule, pursuant to SAPA § 207 as amended by L. 2012, ch. 462:

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

NOTICE OF ADOPTION

To Amend 6 NYCRR Parts 10 and 40 Pertaining to Commercial and Recreational Regulations for Striped Bass

I.D. No. ENV-13-15-00031-A

Filing No. 630

Filing Date: 2015-07-21

Effective Date: 2015-08-05

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

Action taken: Amendment of Parts 10 and 40 of Title 6 NYCRR.

Statutory authority: Environmental Conservation Law, sections 11-0303, 11-1521, 13-0339, 13-0347 and 13-0105

Subject: To amend 6 NYCRR Parts 10 and 40 pertaining to commercial and recreational regulations for striped bass.

Purpose: Reduce fishing mortality of striped bass to promote stable fish populations, and to remain in compliance with the ASMFC FMP.

Text or summary was published in the April 1, 2015 issue of the Register, I.D. No. ENV-13-15-00031-EP.

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

Text of rule and any required statements and analyses may be obtained from: Carol Hoffman, NYSDEC, Bureau of Marine Resources, 205 N Belle Mead Road - Suite 1, East Setauket, NY 11733, (631) 444-0476, email: carol.hoffman@dec.ny.gov

Additional matter required by statute: The action is subject to SEQRA as an Unlisted Action and a Short EAF was completed. The Department has determined that an EIS need not be prepared and has issued a negative declaration. The EAF and negative declaration are available upon request.

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.

NOTICE OF ADOPTION

Deer Hunting Seasons and the Deer Management Assistance Program (DMAP)

I.D. No. ENV-19-15-00009-A

Filing No. 631

Filing Date: 2015-07-21

Effective Date: 2015-08-05

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

Action taken: Amendment of sections 1.11 and 1.30 of Title 6 NYCRR.

Statutory authority: Environmental Conservation Law, sections 11-0303, 11-0903 and 11-0907

Subject: Deer Hunting Seasons and the Deer Management Assistance Program (DMAP).

Purpose: To modify deer hunting rules to increase and decrease antlerless harvest where needed and to improve efficiency of DMAP.

Text or summary was published in the May 13, 2015 issue of the Register, I.D. No. ENV-19-15-00009-P.

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

Text of rule and any required statements and analyses may be obtained from: Bryan Swift, Department of Environmental Conservation, 625 Broadway, Albany, NY 12233-4754, (518) 402-8922, email: bryan.swift@dec.ny.gov

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

Assessment of Public Comment

The Department received approximately 200 comments and about 215 copies of a form letter on the proposed amendments. We reviewed the substance of each comment and organized them in relation to each of our three specific regulatory proposals. Comments related to other aspects of deer management not associated with this rule making are not addressed here.

1. Deer Management Assistance Program (DMAP).

Comment:

Several comments stated support for the proposed changes to DMAP, noting the benefit of reduced paperwork, extended duration of the permit and later reporting date. One comment suggested the minimum acreage for the forest regeneration DMAP category be reduced from 100 acres to 25 acres.

Response:

The Department appreciates this support. Forest landowners of smaller acreages may still participate in DMAP by cooperating with adjoining landowners or participating in the Real Property Tax Law Section 480a program.

2. Antlered-only early muzzleloader season in Wildlife Management Unit (WMU) 6A.

Comment:

Several writers expressed support for the proposed action to restrict harvest to antlered deer only during the early muzzleloader season in WMU 6A. Additional suggestions to reduce antlerless harvest, included elimination of antlerless harvest across all seasons, elimination of the late muzzleloader season, or reduction of Deer Damage Permits and DMAP permits to landowners.

Response:

Currently, about half of the adult female deer harvest in WMU 6A occurs during the early muzzleloader season. By allowing only take of antlered deer during this season, the Department expects the overall adult female harvest to be reduced sufficiently to stimulate desired population growth without completely eliminating antlerless harvest or restricting landowners that experience deer-related damage.

Comment:

Several writers disagreed that the deer population is lower than desired or that the deer population should be allowed to increase. One commenter requested that DEC delay implementation of the change for WMU 6A until it can show that a larger deer population will not have adverse impacts on forest regeneration or species of greatest conservation need.

Response:

The target deer population for WMU 6A, established in 2009, was based on the impacts experienced by and recommendations of local stakeholders. Trends in harvest data suggest the deer population has been below the target level since then. USDA Forest Inventory Analysis data indicates that regeneration in the St. Lawrence / Champlain Valley ecoregion, which

encompasses WMU 6A, is good or very good in over 70% of sample plots. Ecological and human impacts will be considered when new objectives are established, and the Department does not anticipate substantial changes in impacts due to the modest deer population increase intended with this rule.

3. Antlerless-only portion of the bow and muzzleloader seasons in several WMUs.

Comment:

One writer claimed that hunters or hunting groups had not been surveyed on this issue prior to the rule being proposed.

Response:

The option to make part of the bow and muzzleloader season valid for antlerless deer only in areas where additional antlerless harvest is necessary, originated from hunters during the scoping process for the Department's Management Plan for White-tailed Deer in New York State, 2012-2016. Then, in the 2010 Deer Hunter Survey, 55% of hunters identified that, where needed, an antlerless-only portion of the bow and muzzleloader seasons was a good idea, while only 28% believed it was a bad idea. The survey found similar support for the concept among bowhunters and gun hunters.

Comment:

Several writers disagreed that deer populations are higher than desirable, suggesting that situations of deer abundance are localized in suburban areas or on private land and that the 2014-15 winter may have further reduced the deer population.

Response:

The Department compiles data from entire WMUs, including public and private lands, and these data reflect deer populations that have remained above desired levels for the past decade despite efforts to reduce populations through increased allocation of antlerless deer tags. While the 2014-15 winter was more severe than average and may contribute to population reduction in the WMUs associated with this rule, strong deer productivity and recent harvest trends support the need for additional antlerless harvest during hunting seasons.

Comment:

Several comments supported the proposal, agreeing that more antlerless deer need to be harvested and that refocusing hunter effort on antlerless deer will help limit population growth. Several writers suggested that the rule be extended into other parts of New York.

Response:

The Department appreciates the support. While there are other WMUs in New York with deer populations above desired levels, the Department contends that reduction in these units may still be achieved by increasing the availability of Deer Management Permits (DMPs, antlerless deer tags). If increased allocation of DMPs is unable to reduce the population as needed, the Department would expand the area with an antlerless-only portion of bow and muzzleloader season to include these WMUs.

Comment:

Many writers objected to the proposed prohibition on taking a buck during the first 15 days of the early bow season; a few also objected to the antlerless-only requirement during the late bow and muzzleloader season. Many comments suggested that without legal opportunity to take a buck, hunters will forego hunting during the antlerless-only portions of the season or hunt in other WMUs, so antlerless harvest will not increase. Others expressed concern that some hunters will not comply with the rule if the opportunity to take a "trophy" buck arises during the antlerless-only portion of the season. Some hunters also expressed that their preferred time to hunt for bucks was during the first two weeks of the early bow season or during the late seasons. Others felt that they are entitled to take a buck because the purchase of a bow or muzzleloading privilege includes an either-sex tag. Many hunters suggested the Department consider an earn-a-buck system as an alternative.

Response:

The Department recognizes that many hunters value the opportunity to take antlered bucks during any season and that is a motivating factor for hunting. However, there is a critical need to increase harvest of antlerless deer in these WMUs. The proposed rule does not eliminate buck harvest opportunities but simply changes when it can occur to emphasize the necessity of antlerless harvest. We hope that hunters in these WMUs will help meet this management need. Reported harvests during the early bowhunting season in these WMUs are disproportionately skewed toward antlered bucks compared to other hunting seasons. Greater cooperation by bowhunters in removing antlerless deer in similar ratios as during other seasons will help achieve management objectives and meet the needs of the broader public who are affected by negative deer-related impacts. Opportunities to take an antlered buck will remain during the latter two-thirds of the early bow season and all of the regular firearm season.

The Department did consider an earn-a-buck system which would require that hunters take one or more antlerless deer before they are eligible to harvest a buck or before they are eligible to take a second buck.

This approach has been effective in other jurisdictions. However, earn-a-buck strategies are generally unpopular with hunters and entail high logistical costs to implement and enforce. An earn-a-buck system may be necessary at some point in the future, but we believe the Phase-2 and Phase-3 strategies are reasonable preliminary options.

Any concern about hunters having to pass up a shot at a buck during the antlerless-only portion of the season would apply to earn-a-buck systems as well, at least until the hunter is successful in harvesting an antlerless deer, which could be more than 15 days into the season.

Comment:

Many writers expressed belief that 15 days of antlerless-only hunting during the early bowhunting season will be ineffective because harvest by bowhunters typically constitutes a relatively small portion of the overall deer harvest, suggesting that greater impact could be achieved by moving the antlerless-only period into a portion of the firearms season. Additional suggestions to potentially increase antlerless harvest included: establishing an early or late muzzleloader season for antlerless deer, allowing only 1 buck per hunter per year, longer bow or muzzleloading seasons, eliminate the \$10 application fee for DMPs, allow hunters to use bait, establish an open season (all year) for antlerless deer, and making the DMPs valid for female deer only rather than antlerless deer which includes male fawns.

Response:

Establishing an antlerless-only period during bow and muzzleloader seasons was identified in the Department's Management Plan for White-tailed Deer in New York State, 2012-2016, as phase-2 of a 3-phase process to progressively increase harvest pressure on antlerless deer where needed. The Department agrees that greater harvest of antlerless deer might be achieved through an antlerless-only portion of the regular firearms season rather than or in addition to portions of the bow and muzzleloader season. Likewise, the Department anticipates that greater harvest of antlerless deer would occur with a new antlerless-only muzzleloader season, identified as the phase-3 action. However, the 3-phase approach was developed using hunter feedback, evaluated in the 2010 deer hunter survey, and incorporated into the Department's deer management plan after a public review process. The Department does not consider this an appropriate time to deviate from the adopted plan.

The Department appreciates the other suggestions. However, some would require changes in law by the New York State Legislature (e.g., changing DMP application fees or allow use of bait), and others (e.g., one buck per hunter) are being evaluated in relation to buck management strategies. The Department welcomes additional public input on this topic whenever the plan is updated or revised.

Comment:

DEC should use incentives, such as new or longer seasons, to increase antlerless harvest rather than disincentives.

Response:

In 2012, the Department extended the Southern Zone bow season an average of 15 days by beginning the season on October 1 of each year. This gave bowhunters additional time to hunt, and some bowhunters have used this time to take antlerless deer. A principal incentive would be for hunters to help achieve the desired deer population level in the identified WMUs. Additionally, phase-3, if needed, would provide new opportunity.

Comment:

Several writers disagreed with the Department's statement that increasing the number of DMPs available is no longer a productive way to increase antlerless harvest. They suggested that unlimited DMP tags should be available in the WMUs with overabundant deer.

Response:

In these units, hunters may acquire up to four DMPs through the initial draw and first-come-first-serve issuance periods, have an two DMPs transferred to them, and receive an either-sex and antlerless-only tag with their purchase of bow and muzzleloader hunting privileges. Additionally, during the late seasons, the regular big game tag is valid for deer of either-sex. Hunters have opportunity for up to nine tags that are valid for antlerless deer. However, harvest report data from 2014-15 reveal that only 1.2% of successful hunters reported taking 4 or more deer, and no hunter reported taking a total of more than 7 deer. Hunters do not appear to be limited by tag availability.

Comment:

Several people suggested that limited access to private property for hunting is the primary problem affecting deer population management in these areas.

Response:

Restricted hunting access can limit the ability of hunters to reduce local deer populations, particularly when large blocks of land are not hunted. However, several surveys of landowners in New York have found that upwards of 80% of private lands are hunted. The problem is that many of these lands are hunted insufficiently with inadequate removal of antlerless deer. The current rule intends to refocus hunter effort toward antlerless deer during a portion of the hunting season.

Comment:

There was no mention if the early bowhunting season will revert to either-sex when the desired deer population is reached.

Response:

The Department will adapt hunting rules as needed and may revert to previous rules if appropriate.

Conclusion

After considering all comments received on the proposed changes to deer hunting seasons and DMAP, the Department has concluded that the proposal as published remains an appropriate step to adjust antlerless harvest and improve DMAP. The regulation is being adopted as originally proposed.

New York State Gaming Commission

NOTICE OF EXPIRATION

The following notice has expired and cannot be reconsidered unless the State Gaming Commission publishes a new notice of proposed rule making in the *NYS Register*.

Implementation of Rules Pertaining to Gaming Facility Request for Application and Gaming Facility License Application

I.D. No.	Proposed	Expiration Date
SGC-28-14-00006-EP	July 16, 2014	July 16, 2015

Department of Health

REVISED RULE MAKING NO HEARING(S) SCHEDULED

Immediate Needs for Personal Care Services

I.D. No. HLT-28-14-00008-RP

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

Proposed Action: Amendment of section 505.14 of Title 18 NYCRR.

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

Subject: Immediate Needs for Personal Care Services.

Purpose: To provide for meeting the immediate needs of Medicaid applicants and recipients for personal care services.

Text of revised rule: Pursuant to the authority vested in the Commissioner of Health by Social Services Law Sections 363-a(2) and 365-a(2)(e) and Public Health Law Section 201(1)(v), subparagraph (b)(5)(iv) of Section 505.14 is repealed, and a new subparagraph (b)(5)(iv) of Section 505.14 is added to Title 18 (Social Services) of the Official Compilation of Codes, Rules and Regulations of the State of New York (NYCRR), to read as follows, effective upon publication of a Notice of Adoption in the State Register:

Subparagraph (b)(5)(iv) of Section 505.14 is repealed and a new subparagraph (b)(5)(iv) is added to read as follows:

(iv) A Medicaid recipient will be presumed eligible for immediate temporary personal care services as provided in this subparagraph.

(a) For purposes of this subparagraph, "immediate temporary personal care services" means the number of hours of personal care services that the recipient's physician has recommended in the physician's order required by clause (b) of this subparagraph.

(b) A Medicaid recipient who seeks immediate temporary personal care services must submit to the social services district a physician's order for personal care services that:

(1) meets the requirements of subparagraph (b)(3)(i) of this Section except that the physician's order must recommend the number of hours of personal care services to be authorized as immediate temporary personal care services;

(2) documents whether the recipient needs assistance in the home with toileting, transferring from bed to chair or wheelchair, turning or positioning in bed, walking, or feeding; and

(3) documents whether the recipient has a stable medical condition and can be cared for safely at home.

(c) A Medicaid recipient is presumptively eligible for immediate temporary personal care services when:

(1) The social services district determines that the physician's order documents that the recipient needs assistance in the home with toileting, transferring from bed to chair or wheelchair, turning or positioning in bed, walking, or feeding, and that the recipient has a stable medical condition and can be cared for safely at home;

(2) The physician's order recommends the number of hours of personal care services to be authorized as immediate temporary personal care services; and

(3) The recipient is in receipt of Protective Services for Adults ("PSA") or has been referred to PSA and the social services district's PSA staff have determined that a PSA investigation and assessment are necessary.

(d) As expeditiously as possible, but no later than three business days after receipt of the physician's order referenced in clause (b) of this subparagraph, the social services district must determine whether the Medicaid recipient is presumptively eligible for immediate temporary personal care services and notify the recipient of the district's determination.

(e) The social services district must arrange for the provision of immediate temporary personal care services as expeditiously as possible to those Medicaid recipients who the district has determined to be presumptively eligible for such services.

(f) As expeditiously as possible, but generally no later than thirty days after determining that a Medicaid recipient is presumptively eligible for immediate temporary personal care services, the social services district must determine, pursuant to the personal care services assessment process required by paragraph (2) of this subdivision, whether the presumptively eligible recipient is eligible for personal care services and, if so, the level and amount of services to be authorized, and notify the recipient of that determination. For purposes of the personal care services assessment determination, the district may use the physician's order required by clause (b) of this subparagraph but shall disregard the number of hours of personal care services that the physician recommended.

(g) A Medicaid recipient who the social services district has determined to be presumptively eligible for immediate temporary personal care services is eligible to receive such services only for the duration of the recipient's presumptive eligibility period.

(1) A Medicaid recipient's presumptive eligibility period begins when the social services district determines that the recipient is presumptively eligible for immediate temporary personal care services and notifies the recipient of that determination.

(2) A Medicaid recipient's presumptive eligibility period ends when the social services district determines, pursuant to the personal care services assessment process required by paragraph (2) of this subdivision, whether the recipient is eligible for personal care services and, if so, the level and amount of personal care services to be authorized, and notifies the recipient of that determination.

(h) A Medicaid recipient who the social services district has determined to be presumptively eligible for immediate temporary personal care services may request a fair hearing to appeal the social services district's determination whether the recipient is eligible for personal care services and, if so, the level and amount of services to be authorized; however, the recipient's presumptive eligibility period is not extended by the fair hearing request, and the recipient is not entitled, after the end of the recipient's presumptive eligibility period, to aid-continuing of immediate temporary personal care services.

Revised rule making(s) were previously published in the State Register on February 25, 2015.

Revised rule compared with proposed rule: Substantial revisions were made in section 360-3.7(f).

Text of revised proposed 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

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

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

Revised Regulatory Impact Statement

Statutory Authority:

Social Services Law ("SSL") § 363-a(2) and Public Health Law § 201(1)(v) empower the Department to adopt regulations implementing the State's Medical Assistance ("Medicaid") program. Under SSL § 365-a(2)(e), the Medicaid program includes personal care services.

Legislative Objectives:

In 1940, the Legislature adopted SSL § 133, which provided for

“temporary pre-investigation grants” for persons who appear in “immediate need.” These “temporary pre-investigation grants” were to be provided to persons in “immediate need” until social services districts complete the investigation into their eligibility for assistance. It has been the Department’s position that this statute, which predates the existence of the Medicaid program, does not apply to benefits under the Medicaid program or even to medical care generally, but rather to cash public assistance grants to indigent individuals.

In *Konstantinov v. Daines*, Justice Joan Madden, State Supreme Court, New York County, held that SSL § 133 applies to personal care services and that “applicants for Medicaid, and Medicaid recipients are entitled to request immediate, temporary personal care attendant services” pending the completion of an investigation into their eligibility. By order dated July 20, 2010 (“July 2010 Order”), Justice Madden directed the Department:

to draft and implement regulations that will outline the steps a Medicaid applicant must take to request immediate temporary personal care services and which will provide for performance of an expedited assessments [sic], including a physicians [sic], social assessment and/or nursing assessment and thereafter, will provide for expedited review of the application for such services. . .

In 2012, the Appellate Division, First Department, affirmed Justice Madden’s July 2010 Order.

In response to the *Konstantinov* decision, the Department proposed and the Legislature adopted SSL § 364-i(7), effective April 1, 2013, to clarify that, notwithstanding the expansive judicial interpretations of SSL § 133, the only circumstances in which the Medicaid program would reimburse for care and services individuals obtain before the date they are determined eligible for Medicaid are when: (a) the care or services are received during the three months preceding the month of Medicaid application, and the individual is determined to have been eligible for Medicaid in the month the services were received; or (b) as otherwise provided in SSL § 364-i, which sets forth the groups, such as pregnant women and children, to whom the Legislature has granted presumptive eligibility for Medicaid, or in the Department’s regulations.

In April 2013, the Department moved to vacate Justice Madden’s July 2010 Order based on new SSL § 364-i(7).

By decision and order dated March 12, 2014 (“March 2014 Order”), Justice Madden denied the Department’s motion to vacate her July 2010 Order. In her view, SSL § 364-i(7) merely apportions responsibility for the cost of “immediate temporary personal care services” provided to Medicaid applicants who are ultimately determined ineligible for Medicaid.

Specifically, Justice Madden rejected the Department’s explanation of the legislative intent behind SSL § 364-i(7), and instead interpreted the new language to mean only that:

to the extent that a person who received temporary personal care services is later found to be ineligible for medical assistance during the time period the local social service [sic] district provided or paid for the temporary assistance, no reimbursement will be paid from the state Medical Assistance program. In other words, the local social services district is obligated to pay for such temporary services, whether or not the local social services district receives reimbursement from the state. *Konstantinov v. Daines*, 2014 N.Y. Misc. LEXIS 1137; 2014 NY Slip Op 30657(U), emphasis added.

The Office of the New York State Attorney General appealed Justice Madden’s March 2014 Order. On June 2, 2015, the Appellate Division, First Department, dismissed the Department’s appeal as “academic” and without prejudice to further proceedings before Justice Madden.

On June 18, 2015, the Department moved to stay Justice Madden’s prior orders, to vacate such prior orders and to dismiss the proceeding. The Department’s motion was based on the Legislature’s 2015 amendments to SSL §§ 133 and 364-i(7). These amendments clarified that no Medicaid reimbursement, regardless of funding source, can be made for care that a Medicaid applicant receives before being found eligible for Medicaid except when the care is obtained during a Medicaid recipient’s three month retroactive eligibility period or if the Medicaid applicant is presumptively eligible for Medicaid pursuant to another provision of SSL § 364-i(7).

On July 13, 2015 (“July 2015 Order”), Justice Madden stayed that portion of her prior orders that required the Department to promulgate regulations providing for immediate temporary personal care services for Medicaid applicants. However, Justice Madden further ordered that the

Department must proceed with that portion of the revised proposed regulations that the Department published on February 25, 2015, that provide for “immediate temporary personal care services” to Medicaid recipients, rather than Medicaid applicants. To do so, the Department must file a Notice of Revised Rule Making no later than July 16, 2015 to avoid expiration of the Notice of Proposed Rule Making that was published July 16, 2014 pursuant to Justice Madden’s prior orders.

Justice Madden’s July 2015 Order necessitates revisions to the Regulatory Impact Statement that was published on February 25, 2015. These revisions delete all provisions relating to immediate temporary personal care services for Medicaid applicants.

The revised proposed regulations set forth procedures by which Medicaid recipients may obtain “immediate temporary personal care services,” in order to comply with Justice Madden’s July 2015 Order.

Needs and Benefits:

The revised proposed regulations are necessary to comply with Justice Madden’s July 2015 Order that directed the Department to proceed with its February 25, 2015, Notice of Revised Rule Making by promulgating regulations providing for immediate temporary personal care services to Medicaid recipients.

The revised proposed regulations would:

- Repeal 18 NYCRR § 505.14(b)(5)(iv), which has long provided for an expedited assessment process for Medicaid recipients (i.e. persons who have been found financially and otherwise eligible for Medicaid) who have an immediate need for personal care services; and
- Add a new Section 505.14(b)(5)(iv) to provide for an expedited assessment process for Medicaid recipients who seek “immediate temporary personal care services.”

Costs:

Costs to State Government:

The revised proposed regulations do not impose costs on State government.

Costs to Local Government:

The revised proposed regulations may impose administrative costs upon social services districts. Districts would be required to perform expedited determinations whether Medicaid recipients are presumptively eligible for immediate temporary personal care services.

Costs to the Department of Health:

There will be no additional costs to the Department.

Local Government Mandates:

Consistent with Justice Madden’s July 13, 2015 Order, the revised proposed regulations would impose new mandates on social services districts. The revised proposed regulations would require districts to perform expedited determinations whether Medicaid recipients are presumptively eligible for immediate temporary personal care services.

Paperwork:

The revised proposed regulations require districts to notify Medicaid recipients whether they have been determined to be presumptively eligible for immediate temporary personal care services.

Duplication:

The revised proposed regulations do not duplicate any existing federal, state or local regulations.

Alternatives:

There are no alternatives to the revised proposed regulations. Justice Madden’s July 2015 Order directed the Department to proceed with that portion of the proposed regulations published on February 25, 2015, that addressed Medicaid recipients’ immediate needs for personal care services. To avoid expiration of the Notice of Proposed Rule Making that was published on July 16, 2014, as revised by the February 25, 2015, Notice of Revised Rule Making, the Department has no alternative but to file a second Notice of Revised Rule Making no later than July 16, 2015.

Federal Standards:

The revised proposed regulations do not exceed any minimum federal standards.

Compliance Schedule:

Social services districts should be able to comply with the revised proposed regulations when they become effective.

Revised Regulatory Flexibility Analysis

Effect of Rule:

The revised proposed regulations would affect 57 county social services districts and one city social services district, the City of New York.

Compliance Requirements:

The revised proposed regulations would impose compliance requirements on social services districts. These compliance requirements are consistent with the order issued on July 13, 2015, by Justice Joan Madden, State Supreme Court, New York County, in *Konstantinov v. Daines*.

The revised proposed regulations would amend the Department’s personal care services regulations to provide for presumptive eligibility for immediate temporary personal care services for Medicaid recipients. They would repeal 18 NYCRR § 505.14(b)(5)(iv) and add a new Section 505.14(b)(5)(iv).

For purposes of this new subdivision, “immediate temporary personal care services” means the number of hours of services that the Medicaid recipient’s physician has recommended in the physician’s order.

Medicaid recipients would be presumptively eligible for immediate temporary personal care services when:

- The social services district determines that the physician’s order documents that the recipient needs assistance in the home with certain personal care functions, has a stable medical condition, and can be cared for safely at home;
- The physician’s order recommends the number of hours of immediate temporary personal care services to be authorized; and
- The recipient is in receipt of Protective Services for Adults (“PSA”) or has been referred to PSA and the district’s PSA staff have determined that a PSA investigation and assessment are necessary.

As expeditiously as possible, but no later than three business days after receipt of the physician’s order, social services districts would be required to determine whether Medicaid recipients are presumptively eligible for immediate temporary personal care services and notify the recipients of the determination.

Social services districts would be required to arrange for the provision, as expeditiously as possible, of immediate temporary personal care services to presumptively eligible Medicaid recipients.

Social services districts would also be required to determine, pursuant to the regular personal care services assessment process, whether Medicaid recipients who districts determined to be presumptively eligible for immediate temporary personal care services are eligible for continued personal care services. For purposes of that assessment process, the district must disregard the number of hours of services that the physician had recommended. This assessment must be performed as expeditiously as possible but generally no later than thirty days after determining that the Medicaid recipient was presumptively eligible for immediate temporary personal care services.

Professional Services:

Social services districts may need to secure additional professional services to comply with the revised proposed regulations. Social services districts may have neither sufficient caseworker staff nor contracts with sufficient personal care services vendors to comply with the revised proposed regulations. Since 2011, there has been a gradual transition of the personal care services benefit to managed long term care plans and mainstream managed care plans. These managed care entities have gradually assumed responsibility from districts for authorizing personal care services, other than Level I housekeeping tasks, for most Medicaid recipients.

Compliance Costs:

No capital costs would be imposed as a result of the revised proposed regulations. Social services districts may incur administrative costs to comply with the revised proposed regulations.

Economic and Technological Feasibility:

With regard to the economic feasibility of compliance with the revised proposed regulations, they are consistent with the July 13, 2015, Order of Justice Madden.

There are no technological requirements associated with the revised proposed regulations.

Minimizing Adverse Impact:

The revised proposed regulations were designed to minimize adverse effects on social services districts. As revised, they delete a prior proposed requirement that social services districts must determine whether Medicaid applicants are presumptively eligible for immediate temporary personal care services. The revised proposed regulations also delete a prior proposed requirement that would have rendered social services districts fiscally responsible for the cost of immediate temporary personal care services provided to Medicaid applicants who are ultimately found ineligible for Medicaid. Deletion of these prior proposed requirements is consistent with that part of Justice Madden’s July 13, 2015, Order that stayed her prior orders with respect to Medicaid applicants.

Small Business and Local Government Participation:

The Department shared prior versions of the revised proposed regulations with social services district representatives who represent districts’ interests through their positions with the New York Public Welfare Association and similar associations.

Revised Rural Area Flexibility Analysis

Types and Estimated Numbers of Rural Areas:

Rural areas are defined as counties with populations less than 200,000

and, for counties with populations greater than 200,000, include towns with population densities of 150 or fewer persons per square mile.

The following 43 counties have populations of less than 200,000:

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

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

Albany	Erie	Oneida
Broome	Monroe	Onondaga
Dutchess	Niagara	Orange

Reporting, Recordkeeping and Other Compliance Requirements; and Professional Services:

The revised proposed regulations would impose compliance requirements on rural social services districts. These compliance requirements are consistent with an order issued on July 13, 2015, by Justice Joan Madden, State Supreme Court, New York County, in *Konstantinov v. Daines*.

The revised proposed regulations would amend the Department’s personal care services regulations to provide for presumptive eligibility for immediate temporary personal care services for Medicaid recipients. They would repeal 18 NYCRR § 505.14(b)(5)(iv) and add a new Section 505.14(b)(5)(iv).

For purposes of this new subdivision, “immediate temporary personal care services” means the number of hours of services that the Medicaid recipient’s physician has recommended in the physician’s order.

Medicaid recipients would be presumptively eligible for immediate temporary personal care services when:

- The social services district determines that the physician’s order documents that the recipient needs assistance in the home with certain personal care functions, has a stable medical condition, and can be cared for safely at home;
- The physician’s order recommends the number of hours of immediate temporary personal care services to be authorized; and
- The recipient is in receipt of Protective Services for Adults (“PSA”) or has been referred to PSA and the district’s PSA staff have determined that a PSA investigation and assessment are necessary.

As expeditiously as possible, but no later than three business days after receipt of the physician’s order, rural social services districts would be required to determine whether Medicaid recipients are presumptively eligible for immediate temporary personal care services and notify the recipients of the determination.

Rural social services districts would be required to arrange for the provision, as expeditiously as possible, of immediate temporary personal care services to presumptively eligible Medicaid recipients.

Rural social services districts would also be required to determine, pursuant to the regular personal care services assessment process, whether Medicaid recipients who districts determined to be presumptively eligible for immediate temporary personal care services are eligible for continued personal care services. For purposes of that assessment process, the district must disregard the number of hours of services that the physician had recommended. This assessment must be performed as expeditiously as possible but generally no later than thirty days after determining that the Medicaid recipient was presumptively eligible for immediate temporary personal care services.

Rural social services districts may need to secure additional professional services to comply with the revised proposed regulations. Social services districts may have neither sufficient caseworker staff nor contracts

with sufficient personal care services vendors to comply with the revised proposed regulations. Since 2011, there has been a gradual transition of the personal care services benefit to managed long term care plans and mainstream managed care plans. These managed care entities have gradually assumed responsibility from districts for authorizing personal care services, other than Level I housekeeping tasks, for most Medicaid recipients.

Costs:

There are no new capital costs associated with the revised proposed regulations. They could impose administrative costs upon rural social services districts.

Minimizing Adverse Impact:

The revised proposed regulations were designed to minimize adverse effects on rural social services districts. As revised, the proposed regulations delete a prior proposed requirement that social services districts must determine whether Medicaid applicants are presumptively eligible for immediate temporary personal care services. The proposed regulations also delete a prior proposed requirement that would have rendered social services districts fiscally responsible for the cost of immediate temporary personal care services provided to Medicaid applicants who are ultimately found ineligible for Medicaid. Deletion of these prior proposed requirements is consistent with that part of Justice Madden's July 13, 2015, Order that stayed her prior orders with respect to Medicaid applicants.

Rural Area Participation:

The Department shared prior versions of the proposed regulations with social services district representatives who represent districts' interests through their positions with the New York Public Welfare Association and similar associations.

Revised Job Impact Statement

No Job Impact Statement is required pursuant to section 201-a(2)(a) of the State Administrative Procedure Act. It is apparent, from the nature of the revised proposed regulations, that they would not have a substantial adverse impact on jobs and employment opportunities.

Assessment of Public Comment

The Department received comments from Monroe County, Onondaga County, the New York City Human Resources Administration, The Legal Aid Society, the New York Legal Assistance Group, the Empire Justice Center, the New York State Bar Association, and Aytan Bellin, Esq.

1. Comment: Social services districts commented that the proposed regulations created an unfunded mandate for social services districts.

Response: Justice Madden's July 13, 2015 Order stays those portions of her prior orders that provide that social services districts are fiscally responsible for the cost of immediate temporary personal care services provided to Medicaid applicants who are subsequently found ineligible for Medicaid. The Department has revised the proposed regulations accordingly. In accordance with Justice Madden's July 13, 2015 Order, the revised proposed regulations address the provision of immediate temporary personal care services only to Medicaid recipients. All provisions relating to the provision of immediate temporary personal care services to Medicaid applicants that appeared in the February 25, 2015 published version of the proposed regulations have been removed.

2. Comment: Several commentators objected to the proposed requirements that, to be eligible for immediate temporary personal care services, a Medicaid applicant or recipient must be in receipt of Protective Services for Adults ("PSA") or have been referred to PSA for an investigation and assessment, and that the physician's order must recommend the number of hours of personal care services to be authorized.

Response: As noted, the Department has deleted all provisions of the proposed regulations, as published on February 25, 2015, that had provided for the provision of immediate temporary personal care services to Medicaid applicants. This is consistent with the Legislature's 2015 amendments to the SSL and with Justice Madden's July 13, 2015 Order.

The Department has not revised either of these provisions of the proposed regulations with respect to Medicaid recipients. To comply with Justice Madden's July 13, 2015 Order, the Department must file a second Notice of Revised Rule Making no later than July 16, 2015. It was not possible for the Department to address the commentators' concerns, or to conform the revised proposed regulations to the Legislature's 2015 amendments to the SSL, and still meet this Court-ordered deadline. The Department will be taking appropriate regulatory action to implement the Legislature's 2015 statutory changes regarding Medicaid applicants and recipients with immediate needs for personal care services or consumer directed personal assistance.

3. Comment: One commentator stated that the proposed regulations that were published on February 25, 2015, concerned themselves only with Medicaid applicants' immediate needs for personal care services and failed also to address Medicaid recipients' immediate needs for personal care services.

Response: The commentator is mistaken. The most recently published

version of the proposed regulations contain provisions that address Medicaid recipients' immediate needs for personal care services. These provisions are set forth at new subparagraph 505.14(b)(5)(iv). To comply with Justice Madden's July 13, 2015 Order, the Department has severed all provisions of the February 25, 2015 published version of the proposed regulations that address Medicaid applicants' immediate needs for personal care services and retained all provisions that address Medicaid recipients' immediate needs for personal care services.

Department of Motor Vehicles

NOTICE OF ADOPTION

Off Premise Sales of Motor Vehicles

I.D. No. MTV-13-15-00012-A

Filing No. 625

Filing Date: 2015-07-20

Effective Date: 2015-08-05

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

Action taken: Amendment of section 78.8 of Title 15 NYCRR.

Statutory authority: Vehicle and Traffic Law, sections 215(a) and 415

Subject: Off premise sales of motor vehicles.

Purpose: Provides guidance of off premise sales of motor vehicles by registered dealers.

Text or summary was published in the April 1, 2015 issue of the Register, I.D. No. MTV-13-15-00012-P.

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

Text of rule and any required statements and analyses may be obtained from: Heidi Bazicki, Department of Motor Vehicles, 6 Empire State Plaza, Rm. 526, Albany, NY 12228, (518) 474-0871, email: heidi.bazicki@dmv.ny.gov

Assessment of Public Comment

Comment: Vision Automotive Group and Vision Resale Center of Webster filed comments opposing the adoption of amendments to Part 78, regarding off-premise sales.

Vision Automotive writes that these amendments do not promote business in the State. Vision Automotive claims the off-premise sales attract business for hotels, the New York State Thruway, fuel stations, car washes, restaurants, retail stores tent rental companies and property owners. Vision Automotive further claims that local service stations and parts suppliers, movie theatres, malls, museums and other small businesses benefit from the off-premise sale events.

Vision Automotive claims that the proposed regulations fly in the face of current consumer trends, that is, consumers often travel far, even out-of-state, to purchase vehicles. Further, consumers purchase vehicles via Craigslist, E-bay and other on-line websites. Off-premise sales give consumers a wider variety of vehicle models to choose from, particularly in rural communities where there are fewer dealerships.

Finally, Vision Automotive writes that it provides strong consumer protection, with warranties, service station partnerships, and permitting the consumer to choose his or her own repair shop during the warranty period.

The owners of The Auto Service Center in Corning, New York and of Matt's Automotive in Hudson, New York, also wrote in support of Vision Resale's position. They explain that Vision Resale conducts business in their geographic locations and brings the residents of their communities a wide variety of vehicle models from which to choose. The owner of Matt's Automotive writes that, "there is a need in this area for a selection of cars. Vision has helped many people...with tough credit issues." In addition, these repair shops service some of the vehicles that Vision Sales sells to area residents and, therefore, Vision Sales' presence is beneficial to their businesses. The owner of The Auto Service Center believes that the proposal is anti-competitive and promotes protectionism.

Response: The Department appreciates these comments but maintains that the amendments to Part 78 are necessary to assure dealer compliance with the Commissioner's regulations and to protect consumers who purchase vehicles at off-premise sales.

Article 16 of the Vehicle and Traffic Law, Registration of Dealers and Transporters, contemplates that the Department of Motor Vehicles (DMV) regulates "brick and mortar" businesses, i.e., that dealers have a fixed

place of business. In fact, the law requires dealers to establish a place of business, "which is the designated location at which the business of the dealer is conducted, and, in relation to a retail dealer, facilities for displaying new or used motor vehicles." This fixed place of business assists consumers because they know precisely where and with whom they are engaging in automotive commerce, and who to turn to when they discover a problem with their purchase. The fixed location also assists the DMV with appropriately regulating, auditing, monitoring, investigating consumer complaints and sanctioning dealers when necessary.

The off-premise sale concept was instituted to allow dealers to display motor vehicles once or twice a year in various locations. The regulation did not contemplate the volume of off-premise sales, nor the distances of such sales from dealerships that currently exist as some dealers, under the current regulation, now conduct off-premise sales as their everyday business model, as opposed to conducting such sales once or twice a year in order to give consumers a wider range of purchasing options, consistent with the original intent of the regulation. With the proliferation of off-premise sales, it is more difficult for the DMV to monitor dealer compliance. In addition, the proposed regulation provides an important consumer protection measure. If a dealer's primary location is a significant distance away, it is much more difficult for a consumer to address repair, warranty and recall issues with the dealer. Vision Automotive claims that their dealership has a relationship with local repair shops and that consumer protection is ensured. However, this "local relationship" is not codified and not regulated, and the consumer is not guaranteed any such access.

The Department is aware of numerous complaints that document how off-premise sales, often referred to as "tent sales", do not serve the public well. These complaints, often filed by the elderly and/or persons with low incomes, indicate that the consumers are enticed at an off-premise site with an apparently good deal on a used car, only to discover later that they are subject to excessive loan payments, the car needs numerous repairs, or that an expensive warranty does not cover repairs. Though the complaints are, in some cases, successfully resolved, in many they are not. The consumers are often unable to track down the dealer who sold them the car because the dealer used out of state staff who has since vacated the sales site or the consumer, at the time of the sale, was given a telephone number that goes unanswered. If the consumer is able to connect to the dealer about a complaint, very often such dealer is based in another part of the State, which makes it more cumbersome for that consumer to resolve the issue. In contrast, if a consumer has a problem with a sale originating at a brick and mortar dealer business, the consumer knows where and with whom to resolve the complaint.

Vision Automotive also maintains that off-premise sales provide access to customers who live in rural areas where there are fewer dealerships. However, the DMV's survey of 200 zip codes in which approximately 1,000 off-premise sales were held since January 1, 2013 indicate an average of 19 active car dealers in that same zip code or an adjacent zip code. Therefore, it would appear, few, if any, off-premise sales under the existing regulation have addressed a lack of access to local dealerships.

Finally, Vision Automotive maintains that limitations on off-premise sales fly in the face of current trends, where consumers purchase vehicles on Craigslist, E-bay and via other on-line sites. However, the argument has absolutely no bearing on off-premise sales. Internet based sales are primarily person-to-person sales (otherwise known as a "casual sale"). Dealer sales cannot be completed via the internet. Dealers advertise cars on the internet and the consumer typically responds to the dealer or the dealer contacts the consumer to determine interest in a vehicle. Dealer sales are then conducted at the dealership (or at an off-premise sale) and all state-required documentation (i.e. the secure Retail Certificate of Sale) is completed. Nothing in these regulations would prevent any dealer from using the internet as a means to continue advertise cars for sale at a dealership or at an off-premise sale.

Niagara Frontier Transportation Authority

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Technical Changes to Existing Rule Regulating Commercial Ground Transportation at the Buffalo Niagara International Airport

I.D. No. NFT-31-15-00001-P

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

Proposed Action: This is a consensus rule making to amend sections 1160.1, 1160.2(b)(c), (w) and 1160.21 of Title 21 NYCRR.

Statutory authority: Public Authorities Law, section 1299(e)(5), (14), (eee)(1)-(10) and (f)(2)-(4)

Subject: Technical changes to existing rule regulating commercial ground transportation at the Buffalo Niagara International Airport.

Purpose: To correct the name of the airport in the existing rule and delete outdated text.

Text of proposed rule: The Title of Part 1160 is amended to read as follows:

Commercial Ground Transportation Rules and Regulations for the Landside Terminal Operations at the [Greater Buffalo Niagara International Airport] *Buffalo Niagara International Airport*.

Section 1160.1 is amended to read as follows:

The objective of these rules and regulations governing commercial ground transportation at [Greater Buffalo International Airport (GBIA)] *Buffalo Niagara International Airport* is to promote high quality and reasonably priced ground transportation services consistent with the public safety and convenience, to insure the efficient movement of passengers to and from the airport terminal, to foster competition among providers of ground transportation services, and to develop revenues for support of the airport system.

Section 1160.2(b), (c), and (w) are amended to read as follows:

(b) Airport. [Greater Buffalo International Airport] *Buffalo Niagara International Airport*.

(c) Airport manager. The [manager] *Director of Aviation* of the [Greater Buffalo International] Airport.

(w) Properties superintendent. An NFTA employee responsible for administration of [the NFTA/GBIA] *commercial ground transportation at the Airport*.

Section 1160.21 is amended to delete the last paragraph of 1160.21 which paragraph starts with the words: "Please note".

Text of proposed rule and any required statements and analyses may be obtained from: Mary Perla, Senior Counsel, Niagara Frontier Transportation Authority, 181 Ellicott Street, Buffalo, New York 14203, (716) 630-6034, email: mary_perla@nfta.com

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

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

Consensus Rule Making Determination

The Niagara Frontier Transportation Authority has determined that no person is likely to object to the rule being repealed or the rule as written for the following reasons:

1. Most of the changes are explanatory and/or are technical in nature.
2. None of the changes are controversial.

Job Impact Statement

The Niagara Frontier Transportation Authority has determined adoption of the proposed rule will have no impact on jobs or employment opportunities for the following reasons:

1. The subject of the proposed rule is an amendment to an existing regulation corrects the name of the airport that the regulation applies and deletes outdated language. When the regulation was originally implemented the name of the airport was Greater Buffalo International Airport. The name of the airport was changed in 1997 to Buffalo Niagara International Airport and the proposed regulation is substituting the correct name. The proposed regulation also deletes language from the tariff that is no longer applicable. The rule does not impact hiring practices nor does it change the rules regarding ground transportation at the Buffalo Niagara International Airport.

Public Service Commission

NOTICE OF ADOPTION

Allowing the Establishment of an Area Code Overlay in the 315 Area Code Region

I.D. No. PSC-20-13-00008-A

Filing Date: 2015-07-17

Effective Date: 2015-07-17

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

Action taken: On July 16, 2015, the PSC adopted an order approving the establishment of an area code overlay to provide additional numbering resources in the 315 Area Code region.

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

Subject: Allowing the establishment of an area code overlay in the 315 Area Code region.

Purpose: To allow the establishment of an area code overlay in the 315 Area Code region.

Substance of final rule: The Commission, on July 16, 2015, adopted an order approving the establishment of an area code overlay for the 315 Area Code to provide additional numbering resources in central New York, subject to the terms and conditions set forth in the order.

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

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

Assessment of Public Comment

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

(07-C-1486SA3)

NOTICE OF ADOPTION

Revisions to Clarify Provisions Related to Electric Generators

I.D. No. PSC-32-14-00015-A

Filing Date: 2015-07-17

Effective Date: 2015-07-17

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

Action taken: On 7/16/15, the PSC adopted an order approving, with modifications, the tariff filing by KeySpan Gas East Corp. d/b/a National Grid to make changes the rates, charges, rules and regulations contained in its Schedule for Gas Service PSC No. 1—Gas.

Statutory authority: Public Service Law, sections 65 and 66

Subject: Revisions to clarify provisions related to electric generators.

Purpose: To allow revisions to clarify provisions related to electric generators.

Substance of final rule: The Commission, on July 16, 2015, adopted an order allowing the tariff revisions filed by KeySpan Gas East Corporation d/b/a National Grid to modify and clarify provisions related to electric generators that take transportation service under Service Classification (SC) No. 7 – Interruptible Transportation Service and SC No. 14 – Non-Core Transportation Service for Electric Generation, contained in PSC No 1—Gas, to become effective, provided the company files further modifications, subject to the terms and conditions set forth in the order.

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

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

Assessment of Public Comment

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

(14-G-0315SA1)

NOTICE OF ADOPTION

Revisions to Clarify Provisions Related to Electric Generators and Cogeneration Facilities

I.D. No. PSC-32-14-00018-A

Filing Date: 2015-07-17

Effective Date: 2015-07-17

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

Action taken: On 7/16/15, the PSC adopted an order approving, with

modifications, the tariff filing by The Brooklyn Union Gas Company dba National Grid NY to make changes the rates, charges, rules and regulations contained in its Schedule for Gas Service PSC No. 12—Gas.

Statutory authority: Public Service Law, sections 65 and 66

Subject: Revisions to clarify provisions related to electric generators and cogeneration facilities.

Purpose: To allow revisions to clarify provisions related to electric generators and cogeneration facilities.

Substance of final rule: The Commission, on July 16, 2015, adopted an order allowing the tariff revisions filed by The Brooklyn Union Gas Company, d/b/a National Grid NY to modify and clarify provisions related to electric generators that take service under Service Classification (SC) No. 18 – Non-Core Transportation Service and SC No. 20 – Non-Core Transportation Service for Electric Generation, and to cogeneration facilities that take service under SC 4A – High Load Factor Sales Service or SC No. 17-4A – High Load Factor Transportation Service, contained in PSC No 12 – Gas, to become effective, provided the company files further modifications, subject to the terms and conditions set forth in the order.

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

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

Assessment of Public Comment

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

(14-G-0316SA1)

NOTICE OF ADOPTION

Addressing NYISO’s Request for a Public Policy Requirement

I.D. No. PSC-45-14-00002-A

Filing Date: 2015-07-20

Effective Date: 2015-07-20

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

Action taken: On 7/16/15, the PSC adopted an order addressing New York Independent System Operator, Inc.’s (NYISO) request for a Public Policy Requirement.

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

Subject: Addressing NYISO’s request for a Public Policy Requirement.

Purpose: To address NYISO’s request for a Public Policy Requirement.

Substance of final rule: The Commission, on July 16, 2015, adopted an order addressing New York Independent System Operator, Inc.’s (NYISO) request for a Public Policy Requirement, related to the potential need for additional transmission capability in western New York, subject to the terms and conditions set forth in the order.

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

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

Assessment of Public Comment

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

(14-E-0454SA1)

NOTICE OF ADOPTION

Funding and Eligibility Rule Changes for the Green Bank Program

I.D. No. PSC-46-14-00008-A

Filing Date: 2015-07-17

Effective Date: 2015-07-17

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

Action taken: On 7/16/15, the PSC adopted an order authorizing NYSEDA to reallocate uncommitted funds totaling \$150 million to support investments of the New York Green Bank.

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

Subject: Funding and eligibility rule changes for the Green Bank program.

Purpose: To authorize NYSEDA to reallocate uncommitted funds totaling \$150 million to support the Green Bank program.

Substance of final rule: The Commission, on July 16, 2015, adopted an order authorizing the New York State Energy Research and Development Authority to reallocate uncommitted NYSEDA funds totaling \$150 million to support investments of the New York Green Bank upon demonstration through a compliance filing that the New York Green Bank has committed \$150 million, representing approximately 75% of its total current capitalization, net of administration, cost recovery fee and evaluation, to fully negotiated and executed agreements, subject to the terms and conditions set forth in the order.

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

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

Assessment of Public Comment

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

(13-M-0412SA2)

NOTICE OF ADOPTION

Implementation of the Community Distributed Generation Program

I.D. No. PSC-08-15-00011-A

Filing Date: 2015-07-17

Effective Date: 2015-07-17

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

Action taken: On 7/16/15, the PSC adopted an order approving the implementation of the Community Distributed Generation Program.

Statutory authority: Public Service Law, sections 5(1)(b), 64(1), (2), (3), 66(1), (2), (5), (12), 66-j and 66-l

Subject: Implementation of the Community Distributed Generation Program.

Purpose: To implement the Community Distributed Generation Program.

Substance of final rule: The Commission, on July 16, 2015, adopted an order approving the implementation of the Community Distributed Generation Program, subject to the terms and conditions set forth in the order.

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

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

Assessment of Public Comment

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

(15-E-0082SA1)

NOTICE OF ADOPTION

Approving NYSEG to Make Amendments to P.S.C No. 120—Electricity

I.D. No. PSC-16-15-00005-A

Filing Date: 2015-07-20

Effective Date: 2015-07-20

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

Action taken: On 7/16/15, the PSC adopted an order approving a tariff fil-

ing by New York State Electric and Gas Corporation (NYSEG) to make amendments to the rates, charges, rules and regulations contained in P.S.C No. 120—Electricity.

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

Subject: Approving NYSEG to make amendments to P.S.C No. 120—Electricity.

Purpose: To approve NYSEG to make amendments to P.S.C No. 120—Electricity.

Substance of final rule: The Commission, on July 16, 2015, adopted an order approving a tariff filing by New York State Electric and Gas Corporation (NYSEG) to effectuate changes to Public Service Law Section 66-j, in relation to net metering for non-residential farm waste generation at their premises and be able to participate in farm waste net metering provisions, and directed NYSEG to comply with the updated Standardized Interconnection Requirements (SIR), subject to the terms and conditions set forth in the order.

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

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

Assessment of Public Comment

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

(15-E-0033SA1)

NOTICE OF ADOPTION

Approving RG&E to Make Amendments to P.S.C. No. 19—Electricity

I.D. No. PSC-16-15-00006-A

Filing Date: 2015-07-20

Effective Date: 2015-07-20

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

Action taken: On 7/16/15, the PSC adopted an order approving a tariff filing by Rochester Gas and Electric Corporation (RG&E) to make amendments to the rates, charges, rules and regulations contained in P.S.C. No. 19—Electricity.

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

Subject: Approving RG&E to make amendments to P.S.C. No. 19 - Electricity.

Purpose: To approve RG&E to make amendments to P.S.C. No. 19 - Electricity.

Substance of final rule: The Commission, on July 16, 2015, adopted an order approving a tariff filing by Rochester Gas and Electric Corporation (RG&E) to effectuate changes to Public Service Law Section 66-j, in relation to net metering for non-residential customers to install farm waste generation at their premises and be able to participate in farm waste net metering provisions, and directed RG&E to comply with the updated Standardized Interconnection Requirements (SIR), subject to the terms and conditions set forth in the order.

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

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

Assessment of Public Comment

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

(15-E-0035SA1)

NOTICE OF ADOPTION

Approving Niagara Mohawk to Make Amendments to P.S.C. No. 220—Electricity**I.D. No.** PSC-16-15-00007-A**Filing Date:** 2015-07-20**Effective Date:** 2015-07-20

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

Action taken: On 7/16/15, the PSC adopted an order approving a tariff filing by Niagara Mohawk Power Corporation d/b/a National Grid (Niagara Mohawk) to make amendments to the rates, charges, rules and regulations contained in P.S.C. No. 220—Electricity.

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

Subject: Approving Niagara Mohawk to make amendments to P.S.C. No. 220 - Electricity.

Purpose: To approve Niagara Mohawk to make amendments to P.S.C. No. 220 - Electricity.

Substance of final rule: The Commission, on July 16, 2015, adopted an order approving a tariff filing by Niagara Mohawk Power Corporation d/b/a National Grid (Niagara Mohawk) to effectuate changes to Public Service Law Section 66-j, in relation to net metering for non-residential customers to install farm waste generation at their premises and be able to participate in farm waste net metering provisions, and directed Niagara Mohawk to comply with the updated Standardized Interconnection Requirements (SIR), subject to the terms and conditions set forth in the order.

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

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

Assessment of Public Comment

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

(15-E-0034SA1)

NOTICE OF ADOPTION

Approving Central Hudson to Make Amendments to P.S.C. No. 15—Electricity**I.D. No.** PSC-16-15-00008-A**Filing Date:** 2015-07-20**Effective Date:** 2015-07-20

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

Action taken: On 7/16/15, the PSC adopted an order approving a tariff filing by Central Hudson Gas and Electric Corporation (Central Hudson) to make amendments to the rates, charges, rules and regulations contained in P.S.C. No. 15—Electricity.

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

Subject: Approving Central Hudson to make amendments to P.S.C. No. 15. - Electricity.

Purpose: To approve Central Hudson to make amendments to P.S.C. No. 15. - Electricity.

Substance of final rule: The Commission, on July 16, 2015, adopted an order approving a tariff filing by Central Hudson Gas and Electric Corporation (Central Hudson) to effectuate changes to Public Service Law Section 66-j, in relation to net metering for non-residential customers to install farm waste generation at their premises and be able to participate in farm waste net metering provisions, and directed Central Hudson to comply with the updated Standardized Interconnection Requirements (SIR), subject to the terms and conditions set forth in the order.

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

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

Assessment of Public Comment

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

(15-E-0031SA1)

NOTICE OF ADOPTION

Approving Con Ed to Make Amendments to P.S.C. No. 10 — Electricity**I.D. No.** PSC-16-15-00009-A**Filing Date:** 2015-07-20**Effective Date:** 2015-07-20

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

Action taken: On 7/16/15, the PSC adopted an order approving a tariff filing by Consolidated Edison Company of New York, Inc. (Con Ed) to make amendments to the rates, charges, rules and regulations contained in P.S.C. No. 10 — Electricity.

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

Subject: Approving Con Ed to make amendments to P.S.C. No. 10 — Electricity.

Purpose: To approve Con Ed to make amendments to P.S.C. No. 10 — Electricity.

Substance of final rule: The Commission, on July 16, 2015, adopted an order approving a tariff filing by Consolidated Edison Company of New York, Inc. (Con Ed) to effectuate changes to Public Service Law Section 66-j, in relation to net metering for non-residential farm waste generation at their premises and be able to participate in farm waste net metering provisions, as well as certain changes required by the Commission's Order Raising Net Metering Minimum Caps, Requiring Tariff Revisions, Making other Findings, and Establishing Further Procedures (issued December 15, 2014), and subsequent Order Clarifying Prior Order (issued January 9, 2015) in Cases 14-E-0151 and 14-E-0422, and directed Con Ed to comply with the updated Standardized Interconnection Requirements (SIR), subject to the terms and conditions set forth in the order.

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

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

Assessment of Public Comment

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

(15-E-0032SA1)

NOTICE OF ADOPTION

Approving O&R to Make Amendments to P.S.C. No. 3 — Electricity**I.D. No.** PSC-16-15-00013-A**Filing Date:** 2015-07-20**Effective Date:** 2015-07-20

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

Action taken: On 7/16/15, the PSC adopted an order approving a tariff filing by Orange and Rockland Utilities, Inc. (O&R) to make amendments to the rates, charges, rules and regulations contained in P.S.C. No. 3 — Electricity.

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

Subject: Approving O&R to make amendments to P.S.C. No. 3 — Electricity.

Purpose: To approve O&R to make amendments to P.S.C. No. 3 — Electricity.

Substance of final rule: The Commission, on July 16, 2015, adopted an order approving a tariff filing by Orange and Rockland Utilities, Inc. (O&R) to effectuate changes to Public Service Law Section 66-j, in relation to net metering for non-residential customers to install farm waste

generation at their premises and be able to participate in farm waste net metering provisions, and directed O&R to comply with the updated Standardized Interconnection Requirements (SIR), subject to the terms and conditions set forth in the order.

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

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

Assessment of Public Comment

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

(15-E-0036SA1)

NOTICE OF ADOPTION

Revisions to Further Clarify Provisions Related to Electric Generators

I.D. No. PSC-19-15-00012-A

Filing Date: 2015-07-17

Effective Date: 2015-07-17

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

Action taken: On 7/16/15, the PSC adopted an order allowing the tariff filing by The Brooklyn Union Gas Company, d/b/a National Grid NY to make changes the rates, charges, rules and regulations contained in its Schedule for Gas Service PSC No. 12—Gas.

Statutory authority: Public Service Law, sections 65 and 66

Subject: Revisions to further clarify provisions related to electric generators.

Purpose: To allow revisions to further clarify provisions related to electric generators.

Substance of final rule: The Commission, on July 16, 2015, adopted an order allowing the tariff revisions filed by The Brooklyn Union Gas Company, d/b/a National Grid NY to further clarify provisions related to electric generators that take service under Service Classification (SC) No. 1B-DG – Residential Heating Distributed Generation Service, SC No. 4A – High Load Factor Service, SC No. 6 – Temperature Controlled Service, SC No. 18 – Non-Core Transportation Service, SC No. 20 – Non-Core Transportation Service for Electric Generation, and SC No. 21 – Baseload Distributed Generation Sales Service, contained in PSC No 12 – Gas, to become effective, provided the company files further modifications, subject to the terms and conditions set forth in the order.

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

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

Assessment of Public Comment

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

(14-G-0316SA2)

NOTICE OF ADOPTION

Revisions to Further Clarify Provisions Related to Electric Generators

I.D. No. PSC-19-15-00013-A

Filing Date: 2015-07-17

Effective Date: 2015-07-17

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

Action taken: On 7/16/15, the PSC adopted an order approving, with modifications, the tariff filing by KeySpan Gas East Corp. d/b/a National Grid to make changes the rates, charges, rules and regulations contained in its Schedule for Gas Service PSC No. 1—Gas.

Statutory authority: Public Service Law, sections 65 and 66

Subject: Revisions to further clarify provisions related to electric generators.

Purpose: To allow revisions to further clarify provisions related to electric generators.

Substance of final rule: The Commission, on July 16, 2015, adopted an order allowing the tariff revisions filed by KeySpan Gas East Corporation d/b/a National Grid to further modify and clarify provisions related to electric generators taking service under Service Classification (SC) No. 1 – Residential Distributed Generation Service, SC 7 – Interruptible Transportation Service, SC 14 – Electric Generation Service, SC 15 – High Load Factor Service and SC 17 – Baseload Distributed Generation Service, contained in PSC No 1 – Gas, to become effective, provided the company files further modifications, subject to the terms and conditions set forth in the order.

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

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

Assessment of Public Comment

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

(14-G-0315SA2)

NOTICE OF ADOPTION

Service Classification No. 14 Applicable to Dual Fuel Electric Generators

I.D. No. PSC-19-15-00014-A

Filing Date: 2015-07-17

Effective Date: 2015-07-17

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

Action taken: On 7/16/15, the PSC adopted an order allowing the tariff filing by Niagara Mohawk Power Corporation d/b/a National Grid to make changes the rates, charges, rules and regulations contained in its Schedule for Gas Service PSC No. 219—Gas.

Statutory authority: Public Service Law, sections 65 and 66

Subject: Service Classification No. 14 applicable to Dual Fuel Electric Generators.

Purpose: To add a new provision to cap the overall transportation rate for SC No. 14 customers.

Substance of final rule: The Commission, on July 16, 2015, adopted an order allowing the tariff revisions, filed by Niagara Mohawk Power Corporation d/b/a National Grid to add a new provision for Service Classification No. 14 – Gas Transportation Service for Dual Fuel Electric Service for Electric Generators, contained in PSC No 219 – Gas, to become effective, provided the company files further modifications, subject to the terms and conditions set forth in the order.

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

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

Assessment of Public Comment

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

(15-G-0246SA1)

NOTICE OF ADOPTION

Transfer of Water Supply Assets

I.D. No. PSC-21-15-00008-A

Filing Date: 2015-07-20

Effective Date: 2015-07-20

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

Action taken: On 7/16/15, the PSC adopted an order approving the joint petition to transfer all of the water supply assets of West Valley Crystal Water Company, Inc. to the Town of Ashford.

Statutory authority: Public Service Law, sections 4(1), 5(1)(f), 89-c(1), (10) and 89(h)

Subject: Transfer of water supply assets.

Purpose: To approve the transfer of water supply assets to the Town of Ashford.

Substance of final rule: The Commission, on July 16, 2015, adopted an order approving the joint petition of West Valley Crystal Water Company, Inc. (Company) and the Town of Ashford (Town) for the transfer and lease of the water supply assets of the Company to the Town, and the dissolution of the company, subject to the terms and conditions set forth in the order.

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

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

Assessment of Public Comment

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

(15-W-0256SA1)

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Extension of Existing Gas Delivery Rate Plan

I.D. No. PSC-31-15-00003-P

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

Proposed Action: The Commission is considering a joint proposal sponsored by Corning Natural Gas Corporation and signed by multiple parties extending Corning's existing rate plan.

Statutory authority: Public Service Law, sections 65 and 66

Subject: Extension of existing gas delivery rate plan.

Purpose: To accept a joint proposal extending Corning's gas delivery rates for two years.

Substance of proposed rule: On July 15, 2015, Corning Natural Gas Corporation (Corning), filed a Joint Proposal signed by Corning, Department of Public Service Staff and several third parties. The Joint Proposal would extend for two years, with some modifications, Corning's existing gas rate plan that expires in 2015. The Commission can approve, deny or modify, in whole or in part, the Joint Proposal, and may consider any 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.

(11-G-0280SP7)

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Proposed Electric Energy Efficiency Budget and Metrics Plan

I.D. No. PSC-31-15-00004-P

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

Proposed Action: The Commission is considering the proposed electric Energy Efficiency Budget and Metrics Plan for 2016-2018 filed by Consolidated Edison Company of New York, Inc. on July 15, 2015 pursuant to a Commission Order issued February 26, 2015 in Case 14-M-0101.

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

Subject: Proposed electric Energy Efficiency Budget and Metrics Plan.

Purpose: To establish an Energy Efficiency Budget and Metrics Plan for the Company's electric portfolio for the years 2016-2018.

Substance of proposed rule: The Public Service Commission is considering a proposed electric Energy Efficiency Budget and Metrics Plan for 2016-2018 filed by Consolidated Edison Company of New York, Inc. on July 15, 2015 pursuant to the February 26, 2015, Commission Order in Case 14-M-0101. The Commission may approve, modify or reject, in whole or in part, the Company's proposal. 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-0252SP3)

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Proposed Gas Energy Efficiency Budget and Metrics Plan

I.D. No. PSC-31-15-00005-P

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

Proposed Action: The Commission is considering the proposed gas Energy Efficiency Budget and Metrics Plan for 2016-2018 filed by Central Hudson Gas & Electric Corporation on July 15, 2015 pursuant to the Commission's Order issued June 19, 2015 in Case 15-M-0252.

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

Subject: Proposed gas Energy Efficiency Budget and Metrics Plan.

Purpose: To establish an Energy Efficiency Budget and Metrics Plan for the Company's gas portfolio for the years 2016-2018.

Substance of proposed rule: The Public Service Commission is considering a proposed gas Energy Efficiency Budget and Metrics Plan for 2016-2018 filed by Central Hudson Gas & Electric Corporation on July 15, 2015 pursuant to the June 19, 2015, Commission Order in Case 15-M-0252. The Commission may approve, modify or reject, in whole or in part, the Company's proposal. 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-0252SP2)

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

Proposed Electric Energy Efficiency Budget and Metrics Plan

I.D. No. PSC-31-15-00006-P

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

Proposed Action: The Commission is considering the proposed electric Energy Efficiency Budget and Metrics Plan for 2016-2018 filed by Central Hudson Gas & Electric Corporation on July 15, 2015 pursuant to the Commission's Order issued February 26, 2015 in Case 14-M-0101.

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

Subject: Proposed Electric Energy Efficiency Budget and Metrics Plan.

Purpose: To establish an Energy Efficiency Budget and Metrics Plan for the Company's electric portfolio for the years 2016-2018.

Substance of proposed rule: The Public Service Commission is considering a proposed electric Energy Efficiency Budget and Metrics Plan for 2016-2018 filed by Central Hudson Gas & Electric Corporation on July 15, 2015 pursuant to the February 26, 2015, Commission Order in Case 14-M-0101. The Commission may approve, modify or reject, in whole or in part, the Company's proposal. 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-0252SP1)

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

Plan to Convert Petroleum Pipeline into a Natural Gas Pipeline

I.D. No. PSC-31-15-00007-P

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

Proposed Action: The Commission will decide whether to grant, deny or modify, in whole or in part, or reject a petition filed by NIC Holding Corp. for approval of its plan to convert a petroleum pipeline to a natural gas pipeline.

Statutory authority: Public Service Law, sections 5, 65, 66 and 68

Subject: Plan to convert petroleum pipeline into a natural gas pipeline.

Purpose: Whether to approve the proposed conversion plan submitted by NIC Holding Corp.

Substance of proposed rule: The Commission is considering whether to grant, deny or modify, in whole or in part, or reject a petition filed by NIC Holding Corp. (Northville) for Commission approval of its Conversion of Service Plan (the Plan) in converting a 22-mile petroleum pipeline that runs between Holtsville and Plainview, New York to a natural gas pipeline (the pipeline). Northville believes its Conversion Plan meets or exceeds all of the Commission's safety requirements found in 16 NYCRR Part 255 to verify the integrity of the pipeline. Northville seeks to establish a Maximum Allowable Operating Pressure (MAOP) at 650 psig based upon the historical records that currently exist and by conducting a hydrostatic pressure test to yield, described in federal rules, 49 CFR Part 192, to confirm pipeline integrity rather than by complying with state rules, 16 NYCRR Part 255, which require random testing of 10% of the pipeline length. The Commission may grant, deny or modify, in whole or in part, the relief requested in the Petition and may consider other, related, issues in its determination.

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-0328SP1)

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

Notice of Intent to Submeter Electricity

I.D. No. PSC-31-15-00008-P

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

Proposed Action: The Public Service Commission is considering whether to grant, deny or modify, in whole or part, the Notice of Intent to submeter electricity filed by 122 2nd Street Assoc., LLC, for the premise located at 122 Second Street, Watervliet, 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 122 2nd Street Assoc., LLC to submeter electricity at 122 Second Street, Watervliet, 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 filed by 122 2nd Street Assoc., LLC, to submeter electricity at 122 Second Street, Watervliet, New York, located in the territory of Niagara Mohawk Power Corporation d/b/a National Grid, 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-0393SP1)

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

Ceilings on the Amount of Net Metered Generation Capacity Utilities Must Interconnect

I.D. No. PSC-31-15-00009-P

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

Proposed Action: The Commission is considering a petition filed by Orange and Rockland Utilities, Inc. requesting relief regarding ceilings on the amount of net metered generation capacity utilities must interconnect.

Statutory authority: Public Service Law, sections 2(2-a)-(2-d), (4), 5(2), 65(1), (2), (3), 66(1), (2), (3), (4), (5), (9), (12), (12-a), 66-c and 66-j

Subject: Ceilings on the amount of net metered generation capacity utilities must interconnect.

Purpose: Consider relief regarding the amount of net metered generation capacity utilities must interconnect.

Substance of proposed rule: The Public Service Commission is considering a petition filed on July 13, 2015 by Orange and Rockland Utilities, Inc. (O&R) requesting relief regarding ceilings on the amount of net metered generation capacity utilities must interconnect in conformance with Public Service Law § 66-j. Once its current ceiling on the amount of net metered capacity it must interconnect is exceeded, O&R proposes to interconnect customers installing generation facilities eligible for net metering under “buy all, sell all” rate arrangements, or to develop alternative rate arrangements, instead of continuing net metering arrangements. It also would continue to accept interconnection applications from those customers eligible for net metering subject to notification that their rate treatment will be determined by subsequent regulatory resolution. The Commission may adopt, reject, or modify, in whole or in part, the relief proposed, may resolve related matters, and may extend relief, in whole or in part or as modified or related, to other electric utilities, including Central Hudson Gas & Electric Corporation, Consolidated Edison Company of New York, Inc., New York State Electric & Gas Corporation, Niagara Mohawk Power Corporation d/b/a National Grid, and Rochester Gas and Electric Corporation, that are subject to ceilings on the amount of net metered generation capacity they must interconnect.

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, 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-0407SP1)

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

**Whether to Approve, Reject or Modify, in Whole or in Part,
Revisions to Appendix B of the December 12, 2014 Order**

I.D. No. PSC-31-15-00010-P

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

Proposed Action: The Commission is considering whether to approve, reject or modify, in whole or in part, revisions filed Consolidated Edison Company of New York, Inc. to Appendix B of the December 12, 2014 Order implementing the Brooklyn/Queens Demand Management Program.

Statutory authority: Public Service Law, sections 2(3), (4), (12), (13), 4(1), 5(1)(b), (2), 22, 65(1), 66(1), (2), (9), (12)(b) and (e)

Subject: Whether to approve, reject or modify, in whole or in part, revisions to Appendix B of the December 12, 2014 Order.

Purpose: To revise Appendix B of the December 12, 2014 Order.

Substance of proposed rule: The Commission is considering whether to approve, modify or reject, in whole or in part, a revised Appendix B of the December 12, 2014 Order implementing the Brooklyn/Queens Demand Management Program (BQDM) filed by Consolidated Edison Company of New York, Inc. (Con Edison or the Company) as directed by the Commission’s April 20, 2015 Order in Case 14-E-0302. The Company also seeks clarification of the filing dates for the semi-annual benefit/cost report required by the April 20, 2015 Order, proposing that the Commission require the reports to be filed 60 days after the end of the second and fourth quarter of each year through the completion of the BQDM Program. The changes proposed to Appendix B are: 1) proposed revisions to sections b. i. 1-3 to modify the diversity index to prevent the mechanism from awarding the full incentive if each vendor contributes the same proportion of megawatts; 2) a new subsection b. i. 4 to clarify the megawatt hours associated with customer-sided solutions effectuated by independent contractors and/or independent sub-contractors will be included as having been provided by separate providers in the calculation of market shares for inclusion in the diversity index; 3) a new subsection b. i. 5 to clarify that

customer-side solutions implemented by a Con Edison retail customer through a demand management program offered to an entire group of similarly situated customers, without involvement of any external party in the solution implementation process, will be considered as a Con Edison provided solution when calculating market shares for inclusion in the diversity index; 4) a new subsection b. i. 6 to clarify that a unique load relief solution designed especially for the customer’s facility based on the customer’s specific energy management needs will be treated as having been provided by the customer as a separate entity when calculating market shares for the purposes of computing the diversity index; and 5) the deletion of subsection b. i. 4, requiring that distributed energy resources (DER) provided by a Con Edison affiliate and customer-owned DER provided by Con Edison be combined when calculating market share for inclusion in the diversity index. The Company also proposes revisions to the calculations of peak-demand reductions (section 1 of the Additional Earnings Descriptions). The proposed revisions are to clarify that “peak demand reductions” refer to peak demand reductions at the Brownsville No. 1 and 2 substation and that the peak periods of the Brownsville No. 1 and 2 substation peak-day load curve are likely non-coincident with the system peaks. Finally, The Company seeks clarification or modification of the filing dates for the semi-annual benefit/cost report required by the April 20, 2015 Order, proposing that the Commission require the reports to be filed 60 days after the end of the second and fourth quarter of each year through the completion of the BQDM Program. The Commission may approve, reject or modify, in whole or in part, the petition and may consider any related matters.

Text of proposed rule and any required statements and analyses may be obtained by filing a Document Request Form (F-96) located on our website <http://www.dps.ny.gov/f96dir.htm>. For questions, contact: Elaine Agresta, Public Service Commission, 3 Empire State Plaza, Albany, New York 12223-1350, (518) 486-2660, email: elaine.agresta@dps.ny.gov

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

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

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

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

(14-E-0302SP3)

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

**Clarification and Revision of Local Distribution Company
Inspection and Remediation Plans for Plastic Fusions**

I.D. No. PSC-31-15-00011-P

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

Proposed Action: The Commission is considering whether to grant, deny or modify, in whole or in part, the relief requested in the Petition for Clarification of Orange and Rockland Utilities, Inc., which seeks revision of a Commission Order issued in Case 14-G-0212.

Statutory authority: Public Service Law, sections 65 and 66

Subject: Clarification and revision of local distribution company inspection and remediation plans for plastic fusions.

Purpose: To grant, deny or modify, in whole or in part, the request in Orange & Rockland Utilities, Inc.’s Petition for Clarification.

Substance of proposed rule: The Public Service Commission is considering whether to grant, deny or modify, in whole or in part, the relief requested in a Petition for Clarification submitted by Orange and Rockland Utilities, Inc. (the “Petitioner” or “O&R”), dated May 29, 2015. The Petitioner seeks clarification and revision of Ordering Clause 5 in the Commission’s Order Requiring Local Distribution Companies to Follow and Complete Remediation Plans as Modified in this Order and to Implement New Inspection Protocols, which was issued May 15, 2015. Ordering Clause 5 requires several local distribution companies, including O&R, to destructively test a minimum of one in-service plastic fusion performed by each person while that person was not properly qualified in accordance with Part 255 requirements as part of their risk and remediation plans. The Petitioner notes that it has no records of who performed the plastic fuses that may have been performed by non-qualified personnel. The Petitioner

therefore requests clarification that Ordering Clause 5 does not apply to O&R and requests that O&R's sampling obligations be limited to those identified in O&R's Remediation Plan. The Commission may grant, deny or modify, in whole or in part, the relief requested in the Petition for Clarification.

Text of proposed rule and any required statements and analyses may be obtained by filing a Document Request Form (F-96) located on our website <http://www.dps.ny.gov/f96dir.htm>. For questions, contact: Elaine Agresta, Public Service Commission, 3 Empire State Plaza, Albany, New York 12223-1350, (518) 486-2660, email: elaine.agresta@dps.ny.gov

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

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

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

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

(14-G-0212SP3)

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

Requirements and Conditions for the Implementation of a Community Distributed Generation Program

I.D. No. PSC-31-15-00012-P

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

Proposed Action: The Commission is considering requirements and conditions for the implementation of a Community Distributed Generation Program as described in an Order issued July 17, 2015 in Case 15-E-0082.

Statutory authority: Public Service Law, sections 5(2), 65(1), (2), (3), 66(1), (2), (3), (4), (5), (9), (12), (12-a) and 66-j

Subject: Requirements and conditions for the implementation of a Community Distributed Generation Program.

Purpose: To consider requirements and conditions for the implementation of a Community Distributed Generation Program.

Substance of proposed rule: The Public Service Commission is considering the requirements, conditions and practices for the implementation of a Community Distributed Generation Program as described in an Order issued July 17, 2015 in Case 15-E-0082. The Commission may adopt, reject or modify, in whole or in part, requirements, conditions and practices related to the Community Distributed Generation Program 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-0082SP2)

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

Proposed Gas Energy Efficiency Budget and Metrics Plan

I.D. No. PSC-31-15-00013-P

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

Proposed Action: The Commission is considering the proposed gas Energy Efficiency Budget and Metrics Plan for 2016-2018 filed by Consolidated Edison Company of New York, Inc. on July 15, 2015 pursuant to the Commission's Order issued June 19, 2015 in Case 15-M-0252.

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

Subject: Proposed gas Energy Efficiency Budget and Metrics Plan.

Purpose: To establish an Energy Efficiency Budget and Metrics Plan for the Company's gas portfolio for the years 2016-2018.

Substance of proposed rule: The Public Service Commission is considering proposed a gas Energy Efficiency Budget and Metrics Plan for 2016-2018 filed by Consolidated Edison Company of New York, Inc. on July 15, 2015 pursuant to the June 19, 2015, Commission Order in Case 15-M-0252. The Commission may approve, modify or reject, in whole or in part, the Company's proposal. 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-0252SP4)

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

Proposed Gas Energy Efficiency Budget and Metrics Plan

I.D. No. PSC-31-15-00014-P

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

Proposed Action: The Commission is considering the proposed gas Energy Efficiency Budget and Metrics Plan for 2016-2018 filed by Orange & Rockland Utilities, Inc. on July 15, 2015 pursuant to the Commission's Order issued June 19, 2015 in Case 15-M-0252.

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

Subject: Proposed gas Energy Efficiency Budget and Metrics Plan.

Purpose: To establish an Energy Efficiency Budget and Metrics Plan for the Company's gas portfolio for the years 2016-2018.

Substance of proposed rule: The Public Service Commission is considering a proposed gas Energy Efficiency Budget and Metrics Plan for 2016-2018 filed by Orange & Rockland Utilities, Inc. on July 15, 2015 pursuant to the June 19, 2015, Commission Order in Case 15-M-0252. The Commission may approve, modify or reject, in whole or in part, the Company's proposal. 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-0252SP10)

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

Proposed Gas Energy Efficiency Budget and Metrics Plan

I.D. No. PSC-31-15-00015-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 the proposed gas Energy Efficiency Budget and Metrics Plan for 2016-2018 filed by National Fuel Gas Distribution Corporation on July 15, 2015 pursuant to the Commission's Order issued June 19, 2015 in Case 15-M-0252.

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

Subject: Proposed gas Energy Efficiency Budget and Metrics Plan.

Purpose: To establish an Energy Efficiency Budget and Metrics Plan for the Company's gas portfolio for the years 2016-2018.

Substance of proposed rule: The Public Service Commission is considering a proposed gas Energy Efficiency Budget and Metrics Plan for 2016-2018 filed by National Fuel Gas Distribution Corporation on July 15, 2015 pursuant to the June 19, 2015, Commission Order in Case 15-M-0252. The Commission may approve, modify or reject, in whole or in part, the Company's proposal. 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-0252SP11)

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

Proposed Electric Energy Efficiency Budget and Metrics Plan

I.D. No. PSC-31-15-00016-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 a proposed electric Energy Efficiency Budget & Metrics Plan for 2016-2018 filed by Niagara Mohawk Power Corporation d/b/a National Grid on July 15, 2015 pursuant to the Commission's February 26, 2015 Order in Case 14-M-0101.

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

Subject: Proposed electric Energy Efficiency Budget and Metrics Plan.

Purpose: To establish an Energy Efficiency Budget and Metrics Plan for the Company's electric portfolio for the years 2016-2018.

Substance of proposed rule: The Public Service Commission is considering a proposed electric Energy Efficiency Budget and Metrics Plan for 2016-2018 filed by Niagara Mohawk Power Corporation d/b/a National Grid on July 15, 2015 pursuant to the February 26, 2015, Commission Order in Case 14-M-0101. The Commission may approve, modify or reject, in whole or in part, the Company's proposal. 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-0252SP5)

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

Proposed Electric Energy Efficiency Budget and Metrics Plans

I.D. No. PSC-31-15-00017-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 proposed 2016-2018 electric Energy Efficiency Budget & Metrics Plans filed by New York State Electric & Gas Corp. and Rochester Gas & Electric Corp. on July 15, 2015 pursuant to its February 26, 2015 Order in Case 14-M-0101.

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

Subject: Proposed electric Energy Efficiency Budget and Metrics Plans.

Purpose: To establish Energy Efficiency Budget and Metrics Plans for the Companies' electric portfolios for the years 2016-2018.

Substance of proposed rule: The Public Service Commission is considering proposed electric Energy Efficiency Budget and Metrics Plans for 2016-2018 filed by New York State Electric & Gas Corporation and Rochester Gas & Electric Corporation on July 15, 2015 pursuant to the February 26, 2015, Commission Order in Case 14-M-0101. The Commission may approve, modify or reject, in whole or in part, the Companies' proposals. 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-0252SP7)

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

Proposed Gas Energy Efficiency Budget and Metrics Plans

I.D. No. PSC-31-15-00018-P

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

Proposed Action: The Commission is considering proposed 2016-2018 gas Energy Efficiency Budget & Metrics Plans filed by New York State Electric & Gas Corp. and Rochester Gas & Electric Corp. on July 15, 2015 pursuant to its Order issued June 19, 2015 in Case 15-M-0252.

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

Subject: Proposed gas Energy Efficiency Budget and Metrics Plans.

Purpose: To establish Energy Efficiency Budget and Metrics Plans for the Companies' gas portfolios for the years 2016-2018.

Substance of proposed rule: The Public Service Commission is considering proposed gas Energy Efficiency Budget and Metrics Plans for 2016-2018 filed by New York State Electric & Gas Corporation and Rochester Gas & Electric Corporation on July 15, 2015 pursuant to the June 19, 2015, Commission Order in Case 15-M-0252. The Commission may ap-

prove, modify or reject, in whole or in part, the Companies' proposals. 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-0252SP8)

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

Proposed Electric Energy Efficiency Budget and Metrics Plan

I.D. No. PSC-31-15-00019-P

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

Proposed Action: The Commission is considering the proposed electric Energy Efficiency Budget and Metrics Plan for 2016-2018 filed by Orange & Rockland Utilities, Inc. on July 15, 2015 pursuant to the Commission's Order issued February 26, 2015 in Case 14-M-0101.

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

Subject: Proposed electric Energy Efficiency Budget and Metrics Plan.

Purpose: To establish an Energy Efficiency Budget and Metrics Plan for the Company's electric portfolio for the years 2016-2018.

Substance of proposed rule: The Public Service Commission is considering a proposed electric Energy Efficiency Budget and Metrics Plan for 2016-2018 filed by Orange & Rockland Utilities, Inc. on July 15, 2015 pursuant to the February 26, 2015, Commission Order in Case 14-M-0101. The Commission may approve, modify or reject, in whole or in part, the Company's proposal. 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-0252SP9)

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

Proposed Gas Energy Efficiency Budget and Metrics Plans

I.D. No. PSC-31-15-00020-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 proposed 2016-2018 gas Energy Efficiency Budget & Metrics Plans filed by Niagara Mohawk, Keyspan Gas East, and The Brooklyn Union Gas Company on July 15, 2015 pursuant to the Commission's June 19, 2015 Order in Case 15-M-0252.

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

Subject: Proposed gas Energy Efficiency Budget and Metrics Plans.

Purpose: To establish Energy Efficiency Budget and Metrics Plans for the Companies' gas portfolios for the years 2016-2018.

Substance of proposed rule: The Public Service Commission is considering proposed gas Energy Efficiency Budget and Metrics Plans for 2016-2018 filed by Niagara Mohawk Power Corporation d/b/a National Grid, Keyspan Gas East Corporation d/b/a National Grid, and The Brooklyn Union Gas Company d/b/a National Grid on July 15, 2015 pursuant to the June 19, 2015, Commission Order in Case 15-M-0252. The Commission may approve, modify or reject, in whole or in part, the Companies' proposals. 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-0252SP6)

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

Uniform System of Accounts, 16 NYCRR 10.2, 167.5, 167.6, 312.5 and 312.6

I.D. No. PSC-31-15-00021-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 10, 167 and 312 of Title 16 NYCRR.

Statutory authority: Public Service Law, sections 4, 5, 65 and 66

Subject: Uniform System of Accounts, 16 NYCRR sections 10.2, 167.5, 167.6, 312.5 and 312.6.

Purpose: To align New York State Uniform System of Accounts requirements with Federal requirements.

Text of proposed rule: Subdivision (b) of section 10.2 is amended to read as follows:

(b) The regulations referred to in this subdivision are available from the Superintendent of Documents, U.S. Government Publishing Office, [P. O. Box 37194, Pittsburgh, PA 15250-7954] 732 North Capitol Street NW, Washington, DC 20401. They are available for inspection and copying at the Public Service Commission's Office, Empire State Plaza, Building 3, Albany, N.Y. 12223. The regulations referred to in this title are:

(1) 18 CFR part 101, Uniform System of Accounts Prescribed for Public Utilities (April 1, [1998] 2015 edition).

Paragraph 2 of subdivision (b) of section 10.2 is amended to read as follows:

(2) 18 CFR part 201, Uniform System of Accounts Prescribed for Natural Gas Companies (April 1, [1998] 2015 edition).

All other sections of Part 10 remain unchanged.

A new section 167.5 is added to Part 167 to read as follows:

Section 167.5 Revenues from the distribution of electricity of others.

Revenues from the distribution of electricity to the utility's customers where the electricity is provided by a party other than the utility shall be included in account 456.2, Revenues from the Distribution of Electricity of Others. Subsidiary accounts shall be maintained to break down these revenues according to the classification of accounts under the sales of electricity revenue accounts. Records shall be maintained so that the quantity of electricity delivered and the revenue received under each rate schedule shall be readily available.

A new section 167.6 is added to Part 167 to read as follows:

Section 167.6 Gains or losses from the settlement of asset retirement obligations.

Gains or losses resulting from the settlement of asset retirement obliga-

tions associated with utility plant resulting from the difference between the amount of the liability for the asset retirement obligation included in account 230, Asset Retirement Obligation, and the actual amount paid to settle the obligation shall be accounted for as follows: (a) gains shall be credited to account 108, Accumulated Provision for Depreciation of Electric Utility Plant, and (b) losses should be charged to account 108, Accumulated Provision for Depreciation of Electric Utility Plant.

All other sections of Part 167 remain unchanged.

A new section 312.5 is added to Part 312 to read as follows:

Section 312.5 Transportation of gas of others-distribution facilities.

Revenues from transporting gas to the utility's customers through the distribution facilities of the utility where the gas is provided by a party other than the utility shall be included in account 489.3, Transportation of Gas of Others- Distribution Facilities. Subsidiary accounts shall be maintained to break down these revenues according to the classification of accounts under the sales of electricity revenue accounts. Records shall be maintained so that the quantity of gas transported and the revenue received under each rate schedule shall be readily available.

A new section 312.6 is added to Part 312 to read as follows:

Section 312.6 Gains or losses from the settlement of asset retirement obligations.

Gains or losses resulting from the settlement of asset retirement obligations associated with utility plant resulting from the difference between the amount of the liability for the asset retirement obligation included in account 230, Asset Retirement Obligation, and the actual amount paid to settle the obligation shall be accounted for as follows: (a) gains shall be credited to account 108, Accumulated Provision for Depreciation of Gas Utility Plant, and (b) losses should be charged to account 108, Accumulated Provision for Depreciation of Gas Utility Plant.

All other sections of Part 312 remain unchanged.

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.state.ny.us/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

Statutory Authority:

Public Service Law (PSL) §§ 4, 5, 65 and 66 assign to the Public Service Commission (PSC, Commission) jurisdiction, supervision, powers, and duties over all electric and gas corporations in the State and the conveying, transportation, and distribution of gas, which includes "all powers necessary or proper," to ensure that gas service is "safe and adequate and in all respects just and reasonable." The PSC has general supervision of all electric and gas corporations (commonly referred to as local distribution companies, or LDCs) operating throughout the State and of all property owned, leased or operated by an electric or gas company in connection with or to facilitate the conveying, transportation, distribution, or furnishing of gas for light, heat or power. See PSL §§ 4(1), 5(1)(b), 65(1) and 66(1). As part of its responsibility under the PSL, the PSC establishes the rates by which such service is provided to New York residents and businesses. Such supervision and rate setting authority encompasses the ability to prescribe uniform methods of keeping accounts, records and books, as well as to require the filing of annual reports. See PSL §§ 4(1), 5(1)(b), 65(1), 66(1), 66(4), 66(5), 66(6), 66(7), 66(9) and 66(10). Pursuant to its statutory mandate to ensure just and reasonable rates, in 1999, the PSC adopted the Federal Energy Regulatory Commission's (FERC) Uniform System of Accounts (USOA) for electric and gas corporations to more closely follow Generally Accepted Accounting Principles (GAAP). Comparing information between and among utility books and records is important to regulators when rates are based on a utility's cost of service. The actions also lessen the burden on utilities which resulted from having to keep separate accounting books for federal and state purposes. See 16 NYCRR Parts 10, 167 and 312.

FERC has made a number of changes to its USOA since 1999 to reflect changes to GAAP and changes in the electric and gas utility industries. These changes have resulted in New York's regulated electric and gas utilities having certain different requirements as to the composition of their accounting books and records required for federal and state purposes. While some differences are necessary because of the different jurisdictions exercised by the PSC and FERC, several differences exist because the PSC has not yet amended its USOA to reflect changes to GAAP and electric and gas utility industry changes since 1999. These differences provide no meaningful benefit to the PSC in its oversight role of utilities on behalf of New York ratepayers.

The PSC's adoption of the most current version of the FERC's USOA will conform the State's requirements with the FERC's books and record keeping requirements except for asset retirement accounting and accounting for revenues from distribution of electric and gas for others which are necessary to the State jurisdiction and oversight performed by the PSC.

Legislative Objectives:

The objective of both the State and federal statutes is to ensure the safe and adequate supply and delivery of electricity and natural gas and just and reasonable rates. The proposed amendments to 16 NYCRR Parts 10, 167 and 312 meet these objectives because the amendments assists the PSC in its oversight of utilities and ensures consistency of reporting, to the extent practicable, while eliminating an undue burden on electric and gas utilities. It also allows the public to compare utilities in a consistent way. Comparable information between and among utility books and records is important to ensure just and reasonable rates when rates are based on a utility's cost of service.

Needs and Benefits:

The proposed regulatory changes are important inasmuch as they align the Commission's USOA requirements with the current GAAP and electric and gas utility industry organization and practices while also being consistent where possible with the USOA requirements imposed on the State's electric and gas utilities by the PSC's federal counterpart, FERC.

Continuing to require a Uniform System of Accounts is necessary to the PSC so that it may be kept aware of the financial information that impacts the justness and reasonableness of the rates charged by utilities to provide service. Requiring that each PSC jurisdictional entity be subject to the same accounting requirements when filing for new rates allows for greater transparency to the State's similarly situated utilities who may compare impacts and resulting rates to each other, to the PSC and its Department Staff in evaluating rate filings made by numerous jurisdictional utilities such that they may be assured that the records submitted are comparable and, therefore, less subject to misunderstanding or misinterpretation, and to the public at large such that customers across the State can more easily compare the accounting records on which their own rates were set with those of other similarly situated utilities.

The benefit to the industry is that the regulated entities will be able to streamline their accounting processes where it makes sense to achieve such streamlining and eliminate any potential confusion as to whether a record created and maintained for FERC jurisdictional purposes will also meet the State obligations on the utility in accordance with the PSC's jurisdictional authority.

Significantly, 16 NYCRR 10.2(b) is being amended to change the specific reference contained therein from FERC's 1998 version of its USOA, to the most recent 2014 version.

16 NYCRR Sections 167.5 and 167.6 are being added to require information that is relevant to State jurisdiction, but not to federal jurisdiction and is, therefore, not a part of the 2014 FERC USOA. Such information, including information about revenues collected from the distribution of electricity where that electricity is provided by a party other than the distributing utility (167.5), and gains or losses resulting from the settlement of electric utility asset retirement obligations associated with utility plant resulting from the difference between the amount of the liability for the asset retirement obligation included in account 230, Asset retirement obligation, and the actual amount paid to settle the obligation (167.6) provide the PSC with necessary information relevant to determining the justness and reasonableness of rates charged to the State's ratepayers.

16 NYCRR Sections 312.5 and 312.6 are being added to require information that is relevant to State jurisdiction, but not to federal jurisdiction and is, therefore, not a part of the 2014 FERC USOA. Such information, including information about revenues collected from the distribution of natural gas where that natural gas is provided by a party other than the distributing utility (312.5), and gains or losses resulting from the settlement of gas utility asset retirement obligations associated with utility plant resulting from the difference between the amount of the liability for the asset retirement obligation included in account 230, Asset retirement obligation, and the actual amount paid to settle the obligation (312.6) provide the PSC with necessary information relevant to determining the justness and reasonableness of rates charged to the State's ratepayers.

COSTS:

Costs to Private Regulated Parties:

As described more fully in the Rural Flexibility Analysis, regulated electric and gas utilities, including municipally-owned companies, are expected to see a modest decrease in their operation and maintenance costs because they will be able to mostly rely on existing federal accounting record keeping and reporting systems already in place.

Costs to Local Government:

For municipalities that own and operate electric and/or gas companies, costs associated with maintaining accounting records are either not expected to be impacted or are expected to modestly decrease as inconsistent State accounting requirements are eliminated.

Costs to the Public Service Commission or the Department of Public Service:

No additional costs to the Department of Public Service are expected.

Costs to Other State Agencies:

There are no known or identifiable costs to other State agencies or offices of State government.

Local Government Mandates:

Local governments are affected only where they own and operate a municipal electric and/or gas utility. Existing mandates are unaffected inasmuch as the mandate to maintain a Uniform System of Accounts currently exists, however, the proposed change would conform the existing requirements with those of the most recent federal requirements.

Paperwork:

The amendments require separate accounting for revenues collected from the distribution of electricity or gas where that electricity or gas is provided by a party other than the distributing utility, and gains or losses resulting from the settlement of electric or gas utility asset retirement obligations associated with utility plant resulting from the difference between the amount of the liability for the asset retirement obligation. Other than these amendments no additional paperwork is contemplated, and it is expected that overall existing paperwork requirements will be reduced inasmuch as the regulations eliminate all other inconsistencies between federal and State record keeping requirements.

Duplication:

The purpose of the new regulations is to update the PSC's UOSA so that it would more closely follow GAAP and current electric and gas utility organization and practices while being consistent with the FERC USOA where possible. There are no relevant State regulations that duplicate, overlap, or conflict with the proposed revisions.

Alternatives:

There are no significant alternatives to consider because the proposed regulations are consistent with federal regulations except for asset retirement accounting and accounting for revenues from distribution of electric and gas for others which are necessary for State jurisdiction and oversight performed by the PSC.

Federal Standards:

The proposed rule amendments are intended to conform 16 NYCRR Part 10 to the 2014 version of 18 CFR 101, the Federal Energy Regulatory Commission's Uniform System of Accounts for electric utilities and 18 CFR 201, the Federal Energy Regulatory Commission's Uniform System of Accounts for gas utilities. The proposed rule amendments in 16 NYCRR Parts 167 and 312 provide PSC specific instructions for asset retirement accounting and accounting for revenues from distribution of electric and gas for others.

Compliance Schedule:

The regulated community would be required to comply with the proposed regulations within 180 days of the adoption of the new rules. Requests for waivers of any rule requirement would be required to be submitted within 30 days of adoption of the new rules.

Regulatory Flexibility Analysis

1. Effect of rule: The proposed rule aligns the PSC's record and reporting requirements with their most recent federal code counterparts eliminating much of the need to maintain separate records for State and federal purposes.

2. Compliance requirements: The proposed rule would require utility accounting systems to maintain records and file reports in a manner consistent with the most recent 2015 federal requirements, eliminating much of the disparate requirements imposed on the utilities by the State's current use of the superseded 1998 federal requirements. There are no additional burdens on industry to increase reporting requirements resulting from the proposed rule.

3. Professional services: There are no professional services that a small business or local government is likely to need to comply with the changes associated with this rule.

4. Compliance costs: No additional costs are expected to be incurred by the industry or consumers. There is a potential for modestly reduced costs to the industry by eliminating the need to maintain separate records.

5. Economic and technological feasibility: The proposed rule does not require any specialized technology for compliance.

6. Minimizing adverse impact: No adverse impacts exist.

7. Small business and local government participation: The PSC will comply with the New York State Administrative Procedure Act (SAPA) section 202-b (6) by assuring that small businesses and local governments have been given an opportunity to participate in the rule making. This participation will occur through the PSC's accepting public comments to the Notice of Proposed Rulemaking and will be summarizing and responding to the comments that are received. The Secretary of the Public Service Commission will also be issuing a notice to stakeholder groups on a distribution list to apprise members of this rulemaking and to solicit comments, during the rulemaking process.

8. Cure period: No cure period is included in the proposed rule because upon enactment of the rule, any affected utility may apply to the Commission for a waiver from the proposed requirement, to the extent that the utility can demonstrate that the new requirements will impose an unforeseen burden on its accounting operations.

Rural Area Flexibility Analysis

1. Types and estimated numbers of rural areas: This rule applies to the entire State and impacts all rural areas of the State.

2. Reporting, recordkeeping and other compliance requirements; and professional services: The proposed rule would require utilities and their accounting staff to maintain books and records more closely aligned with their federal reporting requirements. The existing rule requires utilities to maintain books and records based on year 1998 federal requirements that have been superseded at the federal level resulting in utilities being subject to different accounting record and reporting requirements at the State level. The adoption of the new provisions will bring the State requirements into alignment with the most current federal requirements, eliminating the need for disparate record keeping and reporting. The proposed rule is expected to result in positive impacts by reducing accounting system costs, and treats all areas of the State equally.

3. Costs: Costs to the industry are expected to be reduced by the amended requirements. Such industry cost reductions, although minimal, may also result in reduced costs to consumers.

4. Minimizing adverse impact: No adverse impacts exist needing to be minimized.

5. Rural area participation: The PSC will comply with the New York State Administrative Procedure Act (SAPA) section 202-bb(7) by assuring that public and private interests in rural areas have been given an opportunity to participate in the rule making process. This participation will occur through the PSC's accepting public comments to the Notice of Proposed Rulemaking and will be summarizing and responding to the comments that are received. The Secretary of the Public Service Commission will also be issuing a notice to stakeholder groups on a distribution list to apprise members of this rulemaking and to solicit comments, during the rulemaking process.

Job Impact Statement

1. Nature of impact: Compliance with the requirements associated with the proposed changes to the Uniform System of Accounts provisions align such provisions with their most current 2015 federal code counterparts, eliminating the need to keep two distinct and separate accounting systems and books for State and federal purposes. Such changes are expected to have no job impact.

2. Categories and numbers affected: Beyond streamlining of accounting practices, there are no employment effects anticipated in the utility accounting field.

3. Regions of adverse impact: There are no regions in the State where this rule making will have any adverse impact on jobs or employment opportunities.

4. Minimizing adverse impact: No adverse impacts exist relative to the requirement that utilities will need to maintain their State specific accounting books and records in conformity with the most recent 2015 federal requirements, rather than an older and inconsistent federal requirement from 1998.

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Whether to Modify Customer Sited Supply Pilot Program to Encourage Participation in Steam Demand Response and Supply Programs

I.D. No. PSC-31-15-00022-P

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

Proposed Action: The Public Service Commission is considering whether to approve, reject or modify, in whole or in part, Consolidated Edison Company of New York, Inc.'s proposed revisions to Rider G – Customer Sited Supply Pilot Program contained in P.S.C. No. 4 – Steam.

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

Subject: Whether to modify Customer Sited Supply Pilot Program to encourage participation in steam demand response and supply programs.

Purpose: Modifications to Customer Sited Supply Pilot Program to encourage participation in steam demand response and supply programs.

Substance of proposed rule: The Public Service Commission is considering whether to approve, modify or reject, in whole or in part, a tariff filing by Consolidated Edison Company of New York, Inc. (Con Edison) to

revise Rider G – Customer Sited Supply Pilot Program contained in P.S.C. No. 4 – Steam. Con Edison proposes to make changes to Rider G in order to encourage more customers to participate in the program. Con Edison proposes to: (1) extend the deadline for accepting applications for Rider G to December 31, 2020; (2) permit customers to export a steam quantity that differs each month for the primary and secondary operating periods in the months of April through November, provided the export of all Rider G participants does not exceed 50 Mlb/hr in any month and operating period; (3) allow customers to modify their contracted export quantity (CEQ) once a year; (4) allow customers to export steam and receive a payment for export during more hours of the primary operating period and the secondary operating period; (5) provide Con Edison with the right to reduce a customer’s CEQs if the export during either the primary or secondary operating period in two or more months during the past 12 calendar months is less than 90 percent of the CEQ; and, (6) clarify the basis for charging interconnection costs and allow customers to pay three-quarters of those costs over ten years instead of five years. The amendments have an effective date of October 23, 2015. The Commission may also consider other related matters.

Text of proposed rule and any required statements and analyses may be obtained by filing a Document Request Form (F-96) located on our website <http://www.dps.ny.gov/f96dir.htm>. For questions, contact: Elaine Agresta, Public Service Commission, 3 Empire State Plaza, Albany, New York 12223-1350, (518) 486-2660, email: elaine.agresta@dps.ny.gov

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-S-0405SP1)