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 Audit and Control

NOTICE OF ADOPTION

Mortality and Service Tables for Valuation Purposes

I.D. No. AAC-41-15-00001-A
Filing No. 1027
Filing Date: 2015-12-01
Effective Date: 2015-12-16

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

Action taken: Amendment of section 310.1 and Appendix 10 of Title 2 NYCRR.

Statutory authority: Retirement and Social Security Law, sections 11 and 311

Subject: Mortality and service tables for valuation purposes.

Purpose: To update the mortality and service tables for valuation purposes.

Text or summary was published in the October 14, 2015 issue of the Register, I.D. No. AAC-41-15-00001-P.

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

Text of rule and any required statements and analyses may be obtained from: Jamie Elacqua, Office of the State Comptroller, 110 State Street, Albany, NY 12236, (518) 473-4146, email: jelacqua@osc.state.ny.us

Assessment of Public Comment
The agency received no public comment.

NOTICE OF ADOPTION

Mortality Tables for the Determination of Benefits

I.D. No. AAC-41-15-00002-A
Filing No. 1026
Filing Date: 2015-12-01
Effective Date: 2015-12-16

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

Action taken: Amendment of section 310.2(b) and (c) of Title 2 NYCRR.

Statutory authority: Retirement and Social Security Law, sections 11 and 311

Subject: Mortality tables for the determination of benefits.

Purpose: To conform regulatory language to the most recently updated mortality tables for the determination of benefits.

Text or summary was published in the October 14, 2015 issue of the Register, I.D. No. AAC-41-15-00002-EP.

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

Text of rule and any required statements and analyses may be obtained from: Jamie Elacqua, Office of the State Comptroller, 110 State Street, Albany, NY 12236, (518) 473-4146, email: jelacqua@osc.state.ny.us

Assessment of Public Comment
The agency received no public comment.

Department of Environmental Conservation

PROPOSED RULE MAKING
NO HEARING(S) SCHEDULED

Management of Black Sea Bass

I.D. No. ENV-50-15-00002-P

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

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

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

Subject: Management of black sea bass.

Purpose: Redefine the term trip limit to allow two fishers aboard a single vessel to possess and land the trip limit for black sea bass.

Text of proposed rule: Existing paragraph 40.1(a)(1) of 6 NYCRR is amended to read as follows:

A 'trip limit' means the maximum amount of fish that can be possessed on board or landed by a vessel during a period of time, not less than 24 hours, in which fishing is conducted, beginning when the vessel leaves port and ending when the vessel returns to port. A *vessel or* fisher shall not land more than a possession limit or trip limit *per species* in any one calendar day, except that, where a weekly limit or biweekly limit is specifically authorized by the department pursuant to subdivision (i) of this section, a fisher *authorized to take the weekly or biweekly limit* shall not possess or land more than the weekly limit or biweekly limit in one calendar

day *or; where one trip limit for each of two commercial license holders on board a single vessel is specifically authorized by the department pursuant to subdivision (i) of this section, a vessel with two or more commercial license holders on board shall not possess more than two trip limits of the authorized species in one calendar day.*

Existing subdivision 40.1(c)(1)(i) of 6 NYCRR is amended to read as follows:

(c) Reporting requirements.

(1) Marine commercial food fishing license, food fish landing license and marine bait permit holders.

(i) Any person who is the holder of a marine commercial food fishing license, food fish landing license, or marine bait permit issued pursuant to section 13-0335 of the Environmental Conservation Law shall complete and submit an accurate fishing Vessel Trip Report for each commercial fishing trip, detailing all fishing activities and all species landed, on a form prescribed by the department. *If more than one commercial license holder on board a single vessel is authorized to possess and land the trip limit of a regulated species pursuant to paragraph (1) of subdivision 40.1(a) of this part, then each authorized license holder shall complete and submit a separate, accurate fishing Vessel Trip Report documenting the fishing activities and species landed under the authority of the license holder's permit.* The license holder shall submit such fishing reports monthly to the department within 15 days after the end of each month or at a frequency specified by the department in writing. Fishing Vessel Trip Reports shall be completed, signed, and submitted to the department for each month; if no fishing trips were made during a month, a report must be submitted stating no trips were made for that month. Incomplete fishing Vessel Trip Reports or unsigned reports will not satisfy these reporting requirements. Any New York license holder who is also the holder of a federal fishing permit issued by NOAA Fisheries Service must instead satisfy the reporting requirements specified by NOAA Fisheries Service. If requested in writing by the department, New York license holders who also hold federal fishing permits shall submit to the department the state (blue) copy of the Fishing Vessel Trip Report (NOAA Form No. 88-30) for the month or months identified in the written notification.

Existing subdivision 40.1(i) of 6 NYCRR is amended to read as follows:

Species Striped bass through Scup remain the same. Species Black Sea Bass is amended to read as follows:

40.1(i) Table B – Commercial Fishing.

Species	Open Season	Minimum Length	Trip Limit
Black Sea Bass	All year	11" TL	A trip limit set by the department to be consistent with the requirements of the Interstate Fishery Management Plan for Black Sea Bass. *The department, in its discretion, may authorize up to two commercial license holders per vessel to possess the black sea bass trip limit on any one calendar day.*

Species American Shad through Anadromous river herring remain the same.

Text of proposed rule and any required statements and analyses may be obtained from: Karen Graulich, New York State Department of Environmental Conservation, 205 North Belle Mead Road, Suite 1, East Setauket, New York 11733, (631) 444-5636, email: karen.graulich@dec.ny.gov

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

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

Additional matter required by statute: Pursuant to the State Environmental Quality Review Act, a short EAF is on file with the Department.

Regulatory Impact Statement

1. Statutory authority:

Environmental Conservation law (ECL) section 13-0340-f authorizes the Department of Environmental Conservation to adopt regulations for the management of black sea bass, including catch and possession limits.

2. Legislative objectives:

The above-cited legislation requires that DEC manage marine fisheries in such a way as to: (i) protect these natural resources for their intrinsic value to the marine ecosystem; (ii) optimize resource use for commercial and recreational fishermen through the implementation of sound management practices; (iii) protect public safety and (iv) comply with federal marine fisheries conservation and management policies and interstate fishery management plans.

3. Needs and benefits:

This rule making is proposed at the request of New York's commercial marine fishery industry. It is intended to maximize black sea bass commercial marine fishing opportunities while improving safety and fuel efficiency. Implementation of the proposed amendments will provide an economic benefit from decreased fuel and maintenance costs. The proposed amendments will remain in compliance with the Interstate Fishery Management Plan (FMP) adopted by the Atlantic States Marine Fisheries Commission (ASMFC). Failure to adopt these regulatory amendments will result in the continued practice of commercial black sea bass fishermen working individually on separate vessels to harvest their trip limits under the current regulatory definition, placing them at a higher risk of injury or death.

4. Costs:

The proposed rule does not impose any costs to the department, local municipalities, or the regulated public. In fact, commercial black sea bass fishers are likely to receive an economic benefit from reduced fuel and maintenance costs.

5. Local government mandates:

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

6. Paperwork:

None.

7. Duplication:

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

8. Alternatives:

Alternative 1: "No action" alternative. Under this alternative New York State would not amend 6 NYCRR Section 40.1 Marine Fish. This alternative is more protective of the affected fishery stocks by strictly limiting the amount of fish that can be possessed on board or landed by a vessel to one trip limit during a single fishing trip. However, this alternative was rejected because it fails to mitigate the safety concerns raised by the affected commercial fishers.

Alternative 2: No limit on the number of commercial fishers. Under this alternative New York State would amend 6 NYCRR Section 40.1 Marine Fish but not limit the number of commercially licensed fishers who could possess or land the authorized trip limit on one vessel during a single fishing trip. This alternative would mitigate the safety concern of a single commercial fisher on board one vessel. However, this alternative was rejected because it would be likely to result in an uncontrolled increase in the commercial landings of the affected species and would greatly reduce the effectiveness of the trip limit as a management tool. Although commercial black sea bass landings are closely monitored, there is a delay between actual and reported landings. The substantial increase in black sea bass landings that would be expected under this alternative would prohibit effective management of the species and would likely result in quota exceedances and fishery closures.

Alternate 3: Apply change to all commercial marine fisheries. Under this alternative New York State would amend 6 NYCRR Section 40.1 Marine Fish but not limit the exception to fisheries specifically authorized by the department pursuant to 40.1(i). As a result, two licensed fishers could possess or land the authorized trip limit for any regulated finfish species on one vessel during a single fishing trip. This alternative was rejected because there are some regulated species where the status of the stock (e.g., overfished or experiencing overfishing) warrants a more protective approach to trip limits. Some species are also more difficult to monitor for commercial landings since a large portion of the harvest is kept for bait or sold privately. For these species, allowable commercial catch limits are more likely to be exceeded, resulting in fishery closures. In other fisheries, trip limits are relatively high and exceed the capacity of smaller vessels. In these fisheries, the change would only benefit larger vessels where the safety issue for a single fisher is not a factor.

9. Federal standards:

The proposed amendments to 6 NYCRR 40.1 are in compliance with the ASMFC and Regional Fishery Management Council FMPs for black sea bass.

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 proposed regulations will take effect upon filing with the Department of State after the 45-day public comment period.

Regulatory Flexibility Analysis

1. Effect of rule:

DEC proposes to adopt regulations that amend the current regulatory management measures for black sea bass. The proposed regulations will amend the definition of 'trip limit' for commercial fishers to allow two

licensed commercial fishers on board a single vessel during a single fishing trip to possess the trip limit for black sea bass. The proposed rule will be consistent with the Atlantic States Fisheries Management Commission (ASMFC) and regional fishery management plans (FMPs) for black sea bass.

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 proposed rule. Commercial fishers will not be required to implement the proposed increase in trip limit for black sea bass. Those who do will receive an economic benefit through reduced fuel and vessel maintenance costs.

5. Economic and technological feasibility:

The proposed regulations do not require any expenditure on the part of regulated parties in order to comply with the proposed changes. Commercial fishers will not be required to implement the increase in trip limit for black sea bass. Those who do will receive an economic benefit through reduced fuel and vessel maintenance costs. There is no additional technology required for small businesses, and this action does not apply to local governments.

6. Minimizing adverse impact:

The proposed rule has been requested by commercial black sea bass fishers to mitigate at sea safety concerns for individual fishers working alone on smaller vessels. The changes will not have an adverse impact on the commercial fishing industry. The proposed rule may result in an increase in commercial black sea bass landings in the short term. However, black sea bass is a quota-managed species. Commercial landings are closely monitored. An increase in commercial landings under the proposed rule is not expected to result in an exceedance of the annual black sea bass quota or to have an adverse impact on the long-term sustainability of the resource or the fishery.

7. Small business and local government participation:

The proposed rule was requested by black sea bass fishers at a January 2015 meeting with commercial industry members on quota managed species. Provisions of the rule making will be presented to the Marine Resources Advisory Council by DEC at the next meeting. Additional members of the local fishing communities will have the opportunity to discuss the ramifications of the rule making at that meeting. 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. Current regulations also require a more stringent definition of trip limit than the proposed change.

9. Initial review of rule:

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

Rural Area Flexibility Analysis

The Department of Environmental Conservation has determined that this rule will not impose 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 is not located adjacent to any rural areas of the state. Further, the proposed rule does not impose any reporting, record-keeping, or other compliance requirements on public or private entities in rural areas. Since no rural areas will be affected by the proposed amendments of 6 NYCRR Part 40, a Rural Area Flexibility Analysis is not required.

Job Impact Statement

1. Nature of impact:

DEC is proposing to amend the regulations that manage black sea bass within New York State marine waters. The proposed rule will be consistent with existing federal rules and the provisions of the Atlantic States Marine Fisheries Commission Interstate Fishery Management Plan for Black Sea Bass. The proposed rule will not have an adverse impact on New York State commercial fishermen or recreational anglers. Changing the definition of trip limit to allow up to two licensed commercial fishers on board one vessel to possess the trip limit for black sea bass during a single fishing trip will mitigate safety concerns of the commercial industry who believe the current regulations may inadvertently require black sea bass fishers to work alone aboard separate vessels in order to harvest the legally allowable trip limit. Allowing two licensed commercial fishers to harvest the trip limit during a single fishing trip will provide increased fishing opportunities for some commercial black sea bass fishers while reducing costs associated with a single fishing trip. Increased commercial landings of black sea bass associated with this rule change could result in temporary closures of the fishery but will not have a long term impact on the New York commercial quota.

2. Categories and numbers affected:

DEC proposes to amend regulations that implement commercial management measures for black sea bass, a popular quota-managed species in New York. In 2014 there were 1,006 state food fishing license holders in New York.

3. Regions of adverse impact:

The regions most likely to receive any adverse impact are within the marine and coastal district of the State of New York. This area included all the waters of the Atlantic Ocean within three nautical miles from the coast line and all other tidal waters within the state, including Long Island Sound. Although a portion of the Hudson River is within the marine and coastal district, the Hudson River is not a usual habitat of black sea bass.

4. Minimizing adverse impact:

This proposed rule is not expected to have an adverse impact on New York State commercial fishers or recreational anglers. Commercial black sea bass fishers may receive an economic benefit from reduced fuel and vessel maintenance costs. Increased commercial landings of black sea bass resulting from this change may result in temporary closures of the commercial fishery if period allotments are reached more quickly. However, the annual quota allotment of black sea bass will not be affected. Black sea bass landings are closely monitored and annual quota exceedances are not expected to result from this change.

5. Self-employment opportunities:

Commercial black sea bass fishers are, for the most part, small businesses, usually operated by the owner. Changes in regulations managing fishery resources may have direct effect on the business opportunities and income of these small businesses. Since black sea bass are managed under a quota system, annual landings are limited and the amount available for harvest will not change as a result of this proposed rule. However, the costs associated with a fishing trip for individual license holders may be reduced.

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.

PROPOSED RULE MAKING
NO HEARING(S) SCHEDULED

Atlantic Ocean Surfclam Management

I.D. No. ENV-50-15-00003-P

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

Proposed Action: Amendment of Subparts 43-2 and 43-3 of Title 6 NYCRR.

Statutory authority: Environmental Conservation Law, section 13-0309, subdivision 12

Subject: Atlantic Ocean surfclam management.

Purpose: To amend surfclam regulations to provide consistency with management measures of the Fishery Management Plan.

Text of proposed rule: Part 43 of 6 NYCRR is amended to read as follows:

Subdivision 43-2.6(b) is amended to read as follows:

(b) [Effective January 1, 2010, an] *An* individual fishing quota system (IFQ) [shall be] *has been* established which will allocate to each eligible vessel an annual individual fishing quota. The individual fishing quota shall be determined annually based on the annual harvest limit referenced in subdivision (a) of this section divided equally by the number of eligible vessels authorized to participate in the Atlantic Ocean surfclam fishery. The IFQ assigned to an eligible vessel shall be nontransferable and each vessel can only be used to catch one quota allocation. *No eligible vessel shall take or attempt to take more than one quota allocation of surfclams on any surfclam/ocean quahog Atlantic Ocean permit or take more than the cumulative equivalent of one quota allocation if identified as the eligible vessel on one or more surfclam/ocean quahog Atlantic Ocean permits when authorized pursuant to section 43-3.5 of Subpart 43-3, during any calendar year.*

Subdivision 43-2.8(c) is amended to read as follows:

(c) [Effective January 1, 2010, all] *All* surfclam cages or individual standard bushel containers, or portions thereof, must be tagged with a cage tag prior to offloading from the vessel *except as authorized by the*

department. Such tag must be firmly attached on or near the upper crossbar of the cage or affixed to an industry standard bushel container. A cage tag is required for every 60 cubic feet of cage volume of a standard cage, or portion thereof, or each container holding an industry standard bushel or portion thereof. Each cage tag shall indicate the state issuing the tag, the year issued, the Federal documentation number or State registration number of the vessel assigned the individual fishing quota (IFQ), and the serialized number assigned to that tag in ascending order. *Cage tags shall be affixed to standard cages or containers holding industry standard bushels or portions thereof in ascending order of the serial numbers assigned to the vessel.*

Subdivision 43-2.8(e) is amended to read as follows:

(e) It is unlawful to reuse, alter, sell, offer for sale or transfer any cage tag issued under this section. Once a [vessel owner's] *vessel's* allocation *or cumulative equivalent of one IFQ allocation* of cage tags is used, that vessel may no longer take surfclams by mechanical means from the New York State certified waters of the Atlantic Ocean. *No vessel shall take or attempt to take more than one quota allocation of surfclams on any surfclam/ocean quahog Atlantic Ocean permit or take more than the cumulative equivalent of one quota allocation if identified as the eligible vessel on one or more surfclam/ocean quahog Atlantic Ocean permits when authorized pursuant to section 43-3.5 of Subpart 43-3, during any calendar year.*

Subdivision 43-2.8(h) is amended to read as follows:

(h) It is unlawful to land, offer for sale or sell surfclams taken by mechanical means from New York State certified waters of the Atlantic Ocean in a standard cage or industry standard bushel container which are not properly tagged as described in this section *unless authorized by the department*. A cage tag or tags must not be removed from any standard cage or industry standard bushel container until the cage or standard bushel container is emptied by the processor, at which time the processor must promptly remove and retain the tag(s) for 60 days beyond the end of the calendar year, unless otherwise directed by the department or state or Federal law enforcement agents.

Existing subdivision 43-2.8(i) is renumbered 43-2.8(k) and remains unchanged.

New subdivisions 43-2.8(i) and 43-2.8(j) are adopted to read as follows:

(i) A vessel owner may apply for a temporary exemption from the cage tagging requirements of this section by submitting a written request to the department. The vessel owner must possess a valid surfclam/ocean quahog Atlantic Ocean permit and provide a copy of the cage tag order form that has been submitted to the department or department's approved vendor for the current calendar year. Any vessel taking surfclams under this temporary cage tagging exemption shall keep a copy of the department's written exemption onboard the vessel at all times and made immediately available to a department representative or an enforcement officer upon request.

(j) The captain/operator or owner/lessee of a vessel that has received a temporary exemption to harvest without cage tags shall notify the department prior to commencement of any and all surfclam harvest conducted under an IFQ assigned to an eligible vessel in the Atlantic Ocean surfclam fishery. Such notification must include the following information: identification of the name of the vessel to be fishing, name of captain/operator, date and time harvest will commence, expected time harvest will end, approximate location of fishing area to the nearest landmark or inlet, and identification of dockage and landing location(s). The notification must be made by email, fax or telephone prior to commencement of all surfclam harvesting activities conducted on a daily basis. The captain/operator or owner/lessee must complete and submit a surfclam vessel harvest report immediately following each surfclam harvest trip conducted without cage tags on a daily basis. All surfclam vessel harvest reports must be submitted to the department on the same day as harvest is conducted, on a form provided by the department. The permit holder shall notify the department in writing upon their receipt of cage tags from the authorized cage tag vendor and submit a written request for termination of the temporary cage tagging exemption. The permittee shall be required to surrender cage tags as directed by the department to account for the harvest conducted under the temporary cage tagging exemption based on the quantities of surfclams harvested and reported on the surfclam vessel harvest reports.

Existing subdivision 43-3.3(e) is renumbered 43-3.3(f) and remains unchanged.

New subdivision 43-3.3(e) is adopted to read as follows:

(e) 'Individual fishing quota' means the annual allocation of surfclam quota that is assigned to each eligible surfclam vessel based on the annual harvest limit divided equally by the number of eligible vessels authorized to participate in the Atlantic Ocean surfclam fishery.

New subdivision 43-3.5(d) is adopted to read as follows:

(d) No vessel in the Atlantic Ocean surfclam fishery which has been subject to and identified in the sale, transfer or replacement of an eligible vessel by the vessel owner or lessee under this section shall take more than one individual fishing quota (IFQ) or take more than the cumulative equivalent of one IFQ in any calendar year when identified on one or more Atlantic Ocean surfclam owner/lessee permit(s).

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

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

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

Additional matter required by statute: The action is subject to SEQR 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.

Regulatory Impact Statement

1. Statutory authority:

Environmental Conservation Law (ECL) Section 13-0309 (12) authorizes the Department of Environmental Conservation (the department or DEC) to fix by regulation open seasons, harvest areas, size limits, catch limits, manner of taking and possession, transportation, identification, sale and permit requirements for surfclams and sea, hen, and skimmer clams.

2. Legislative objectives:

It is the objective of the above cited statutory authority that the department implements management measures necessary to protect the sustainability of the surfclam resource and assure the economic viability of the fishery consistent with a comprehensive long-term fishery management plan for this important resource.

3. Needs and benefits:

The New York State (NYS) waters of the Atlantic Ocean have supported an important surfclam fishery for more than sixty years. This fishery has been subject to limited entry of additional surfclam vessels since the early 1990s as a management measure to conserve the surfclam resource and prevent an increase in fishing effort until a comprehensive surfclam management plan was adopted for the Atlantic Ocean surfclam fishery. The department initially adopted a Fishery Management Plan (FMP) for the Mechanical Harvest of the Atlantic Surfclam in NYS waters of the Atlantic Ocean in 2003. The department, working in collaboration with the former Surfclam/Ocean Quahog Management Advisory Board, developed an amendment to the FMP (referred to as Amendment 1) that established an Individual Fishing Quota (IFQ) to be allocated equally to all eligible surfclam vessels in the fishery. The IFQs are nontransferable and each eligible surfclam vessel can only be used to catch one quota allocation in a calendar year.

Amendment 1 to the FMP was adopted in 2009 and the regulations implementing IFQs and other management measures in the surfclam fishery became effective January 1, 2010. However, the regulations in 6 NYCRR Subpart 43-3 which control vessel eligibility and procedures for replacement of eligible vessels were not amended in 2009 to provide consistency with 6 NYCRR Subpart 43-2, Atlantic Ocean.

The department proposes to amend 6 NYCRR Subparts 43-2 and 43-3 to include the following management measures:

The proposed rule making will authorize any eligible surfclam vessel in the Atlantic Ocean fishery, regardless of the Atlantic Ocean surfclam permit they are assigned to, to be used to catch one Individual Fishing Quota (IFQ) or the cumulative equivalent of one IFQ in any given year. This is needed so that harvest activities remain consistent with New York State's FMP for the Atlantic Ocean Surfclam Fishery to minimize the potential for monopolization of the State's annual surfclam quota by a few vessels.

The proposed rule making will amend the container and tagging requirements section to allow a permit holder to obtain a temporary exemption to authorize a surfclam vessel to take surfclams by mechanical means in the certified waters of the Atlantic Ocean without cage tags. This temporary exemption may be authorized provided that the vessel owner has a valid Atlantic Ocean surfclam permit and has placed an order for cage tags for the year but is waiting for the order to be processed. The specific requirements for the temporary exemption to take surfclams without cage tags will be specified in regulation. This is necessary to provide an exception to allow vessels to fish on a temporary basis without cage tags to minimize any potential burden on the surfclam industry to comply with the regulations for cage tagging requirements and prevent any loss of fishing opportunities by permit holders while providing a mechanism for tracking and enforcement of the harvest regulations for the fishery.

The proposed rule making will clarify and amend the vessel replacement rules for eligible vessels in 6 NYCRR Subpart 43-3.5 to be consistent with the regulations for harvest restrictions in 6 NYCRR Subpart 43-2.6 and the provisions of Amendment 1 of the State's FMP for the Atlantic Ocean surfclam fishery. This will allow increased tracking of individual

quota allocations assigned to vessels and ensure that vessels, regardless of the surfclam permit they are assigned to, will only be used to catch no more than one individual quota allocation or cumulative equivalent of one quota allocation for the calendar year.

4. Costs:

(a) Cost to State government:

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

(b) Cost to local government:

There will be no costs to local governments.

(c) Cost to private regulated parties:

There will be no additional costs to private regulated parties in the surfclam industry.

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

There will be no costs to DEC for implementation and administration of the rule. The rule is designed to reduce administrative costs to DEC.

5. Local government mandates:

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

6. Paperwork:

The proposed rule making will not impose any new paperwork requirements for the surfclam industry.

7. Duplication:

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

8. Alternatives:

The "no action alternative" was considered and rejected. The broad language in the surfclam regulations would remain inadequate in preventing the cross replacement of vessels to be used as a mechanism to allow a vessel to take more than one individual quota allocation in a year. This alternative would allow for certain vessels to control a greater share of the quota leading to monopolization of the State's surfclam resource. Failure to reject this alternative will negatively impact the economic viability of small businesses in this fishery. Additionally, the no action alternative would likely force independently owned vessels (traditional New York-based commercial surfclam fishermen) to drop out of the fishery due to economic hardship from lack of markets for sale of surfclams. This is due to their inability to compete in the market with the vessels having access to more than one quota.

A "Denial of Vessel Replacement Requests" alternative was considered and rejected. Under this alternative, DEC would deny all requests for vessel replacement that are submitted for cross replacement of vessels in the fishery. Vessel replacement requests submitted to replace an unworkable vessel with one not presently in the fishery would be exempt as this is consistent with the intent of the regulations. This alternative was rejected because it fails to properly address the inconsistency in regulations for surfclam harvest and vessel replacement.

9. Federal standards:

Although there are Federal government standards (regulations) for the surfclam and ocean quahog fisheries for the Federal waters of the Exclusive Economic Zone (3-200 miles off shore), there are no federal standards for the surfclam fishery in NYS waters (0-3 miles of the coastline).

10. Compliance schedule:

Compliance with the proposed regulation is required upon the effective date of the rule. DEC would provide electronic and regular mail notifications to regulated parties in the surfclam fishery. Since this is a relatively small limited-entry fishery, there is only a fraction of the shellfish industry that is affected by this rule.

Regulatory Flexibility Analysis

1. Effect of rule:

Small businesses that will be affected by the proposed rule making include shellfish harvesters involved with the mechanical harvest of surfclams from the New York State (NYS) waters of the Atlantic Ocean (within three miles of shore). New York's Atlantic Ocean surfclam fishery is subject to limited entry and there are currently 17 vessels eligible to participate in this fishery. These vessels typically harvest with three persons onboard the vessel (captain and two crew members). In 2014, there were 16 permits issued to captains involved with the mechanical harvest of surfclams in the Atlantic Ocean surfclam fishery. Of the 17 vessels, only about 6 vessels were actively fishing during any part of the year in 2014.

The proposed rule making is designed to close a loophole in regulations for replacement of eligible surfclam vessels and assignment of Individual Fishing Quotas (IFQs) to prevent any single vessel from catching more than one IFQ or cumulative equivalent of one IFQ in a calendar year. This will minimize the potential for an inequitable share of the State's annual individual fishing quota to be held by a few vessels. The Individual Fishing Quota system, which allocates to each eligible surfclam vessel an individual fishing quota (IFQ) based on the annual harvest limit divided equally by the number of eligible vessels authorized to participate in the Atlantic Ocean surfclam fishery, was adopted by regulation in 2010 as the most equitable management measure implemented to protect the viability of small businesses engaged in a highly complex and diverse fishery.

This rule making is expected to have a positive impact on small businesses associated with this fishery by reducing the potential for monopolization of the surfclam quota by a few vessels and minimizing any inequitable market advantages to those vessels which adversely impacts the economic viability of New York's traditional-based commercial surfclam fishermen.

2. Compliance requirements:

The proposed rule making would impose no additional compliance requirements on the industry. This rule is also designed to provide a mechanism for surfclam fishermen to temporarily take surfclams without cage tags provided that the vessel owner has a valid Atlantic Ocean surfclam permit and has placed an order for cage tags for the year but is still waiting for the order to be processed. This will minimize the burden on small businesses for compliance with the cage tagging requirements and prevent any lost fishing opportunities due to the timeframe necessary for processing cage tag orders.

3. Professional services:

No professional services will be needed for small businesses to comply with the proposed rule making.

4. Compliance costs:

There will be no costs incurred by small businesses and local government for this rule.

5. Economic and technological feasibility:

There is no additional technology required for small businesses or local governments, so there are no economic or technological impacts for these entities.

6. Minimizing adverse impact:

The proposed rule making will not have any adverse impact on small businesses involved in the Atlantic Ocean Surfclam fishery or local governments. The rule making is designed to address inconsistencies in the current regulations and the provisions of the State's FMP for the Atlantic Ocean surfclam fishery in order to promote the sustainability of the surfclam resource and enhance the economic viability of participants in this commercially important fishery. The rule making is intended to reduce the administrative burden on the department by reducing the number of vessel replacement requests submitted each year. It will also simplify the tracking and enforcement of individual fishing quotas assigned to each vessel. The proposed rule making will address inequities in the quota share available to fishery participants and minimize the unfair market advantage held by a certain sector of the fishery.

7. Small business and local government participation:

The former Surfclam/Ocean Quahog Management Advisory Board (Surfclam Board), now repealed, which was established by the New York State Legislature by Chapter 512 of the Laws of 1994 under Environmental Conservation Law 13-0308, assisted the department with the development of a comprehensive long-term management plan for the protection of surfclams and ocean quahogs in NYS waters. The department worked with the Surfclam Board, which consisted of small business representatives involved in the surfclam industry, since 2005 in order to develop an amendment to the FMP that was designed to address the long-term sustainability of the surfclam resource and economic viability of the Atlantic Ocean surfclam fishery. This rule making is needed to eliminate a loophole in regulations to allow for consistency with the State's FMP. The small businesses in this fishery (independent vessel owners) are in support of this rule making. The rule making does not have any impact on local governments so their direct participation was not solicited by the department.

8. Cure period or other opportunity for ameliorative action:

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

9. Initial review of rule:

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

Rural Area Flexibility Analysis

The proposed rule involves the implementation of management provisions for the mechanical harvest of surfclams in the New York State (NYS) waters of the Atlantic Ocean. The commercial harvest of surfclams in this fishery is entirely located within NYS waters of the Atlantic Ocean that border the counties of Suffolk, Nassau, Queens and Kings and is not located adjacent to any rural areas of the State. There are no rural areas within the marine and coastal district. The majority of the surfclam resource harvested for human consumption in this fishery is shipped out-of-state for processing and sale. 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 rule, a Rural Area Flexibility Analysis is not required.

Job Impact Statement

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

The participation in the New York State (NYS) Atlantic Ocean surfclam fishery is limited to 17 eligible vessels and is closed to new entrants (6 NYCRR Subpart 43-3). There were 17 licensed surfclam/ocean quahog Atlantic Ocean owner/lessees and 16 licensed surfclam/ocean quahog Atlantic Ocean captains/operators in New York's Atlantic Ocean fishery in 2014. Of the 17 licensed surfclam Atlantic Ocean owner/lessee permit holders, only 6 surfclam vessels reported taking surfclams from New York state waters of the Atlantic Ocean. Additionally, there were an estimated 12 surfclam crew members employed by this fishery; the estimated number assumes a crew of 2 for each surfclam fishing vessel since there is no special surfclam permit required other than the possession of a valid shellfish diggers permit to work as a crew member on a surfclam boat in the Atlantic Ocean. In 2013, there were 19 licensed surfclam/ocean quahog Atlantic Ocean captains/operators in New York's Atlantic Ocean fishery. The proposed regulations are not expected to significantly impact existing jobs or employment opportunities in this fishery which are estimated to be at less than 50 licensed participants.

The proposed regulations are intended to address certain deficiencies and inconsistencies in the regulations so that harvest activities and vessel replacement procedures remain consistent with the provisions of the State's Fishery Management Plan for the Atlantic Ocean surfclam fishery. The amendments to 6 NYCRR Part 43 will maintain the economic viability of all fishery participants and reduce the administrative burden on the industry and department. The proposed rule making will allow any eligible vessel in the fishery, regardless of the Atlantic Ocean surfclam permit they are assigned to, to be used to catch only one Individual Fishing Quota (IFQ) or cumulative equivalent of one IFQ or portion thereof in any given calendar year. The proposed amendments are expected to have a positive impact on the economic viability of fishery participants by preventing the potential for the inequitable allocation of the State's surfclam quota to be held by a few vessels in the fishery. The equal distribution of individual fishing quotas amongst the fishery participants will protect existing jobs and create potential employment opportunities in this fishery. The proposed regulations are expected to increase the number of vessels that are actively taking surfclams in the Atlantic Ocean surfclam fishery.

Based on the above and the department's knowledge of similar regulations in the Federal Surfclam fishery, the department has concluded that there will not be any substantial adverse impacts on jobs or employment opportunities in this fishery as a consequence of this rule making.

PROPOSED RULE MAKING
NO HEARING(S) SCHEDULED

Aquatic Invasive Species Spread Prevention

I.D. No. ENV-50-15-00010-P

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

Proposed Action: Addition of Part 576 to Title 6 NYCRR.

Statutory authority: Environmental Conservation Law, section 9-1710

Subject: Aquatic Invasive Species Spread Prevention.

Purpose: To require that ''reasonable precautions'' are taken prior to placing watercraft into public waters to prevent the spread of AIS.

Text of proposed rule: A new 6 NYCRR Part 576 is added in Chapter V, Subchapter C to read as follows:

6 NYCRR Part 576 Aquatic Invasive Species Spread Prevention

576.1 Purpose, scope and applicability.

(a) The purpose of this Part is to establish reasonable precautions such as removing visible plant or animal matter, washing, draining or drying that must be taken by persons launching watercraft or floating docks into public waterbodies to prevent the spread of aquatic invasive species.

(b) The regulations in this Part apply to all sites from which a watercraft or floating dock can be launched into public waterbodies.

(c) The regulations set forth in this Part are in addition to the provisions found in Titles 1 and 6 of the New York Code of Rules and Regulations and local laws or regulations that are designed to prevent the spread of aquatic invasive species in New York. These regulations and local laws, rules and regulations designed to prevent the spread of aquatic invasive species shall apply, unless in conflict, superseded or expressly stated otherwise in this Part.

576.2 Definitions. As used in this Part, the following words and terms shall be defined as follows:

(a) Animal means all vertebrate and invertebrate species, in any stage of development, including but not limited to mammals, birds, reptiles, amphibians, fish, mollusks, arthropods, insects, and their eggs, larvae or young, but excluding human beings, dog or other companion animal defined in section 350 of the Agriculture and Markets Law.

(b) Commissioner means the Commissioner of the Department of Environmental Conservation as well as meaning the Commissioner's designated agent.

(c) Department means the New York State Department of Environmental Conservation.

(d) Floating dock means a removable buoyant platform supported by floating devices or suspended over the surface of a waterbody by anchors or other devices.

(e) Invasive species means a species that is nonnative to the ecosystem under consideration, and whose introduction causes or is likely to cause economic or environmental harm or harm to human health.

(f) Launch means to place a watercraft or floating dock into a public waterbody or any inlet or outlet to such waterbody for any purpose, including by trailer or other device or carrying by hand a watercraft into the waterbody.

(g) Launch site means the specific location along the shoreline of a public waterbody where a watercraft or floating dock is launched.

(h) Marine and coastal district waters means the waters of the Atlantic Ocean within three nautical miles from the coast line and all other tidal waters within the state, including the Hudson River up to the Governor Malcolm Wilson Tappan Zee Bridge.

(i) Nonnative species means a species not indigenous to an ecosystem under consideration or to New York State, and includes an individual specimen.

(j) Person means any individual, firm, co-partnership, association, or corporation, other than the state or a public corporation, as the latter is defined in Article 2A section 66 of the General Construction Law.

(k) Personal watercraft means a vessel which uses an inboard motor powering a water jet pump as its primary source of motive power and which is designed to be operated by a person sitting, standing, or kneeling on, or being towed behind the vessel rather than in the conventional manner of sitting or standing inside the vessel.

(l) Plant means all plant species, in any stage of development, including, but not limited to trees, shrubs, vines, grasses, sedges, rushes, herbs, mosses, lichens, as well as submergent, emergent, free-floating or floating-leaf plants, and includes any part of the plant.

(m) Public waterbody or waterbody means lakes, bays, sounds, ponds, impounding reservoirs, springs, rivers, streams, creeks, estuaries, marshes, inlets, canals, the Atlantic Ocean within the territorial limits of the State of New York and all other bodies of surface water, natural or artificial, inland or coastal, fresh or salt, public or private (except those private waters which do not combine or effect a junction with natural surface waters), which are wholly or partially within or bordering the state or within its jurisdiction.

(n) Reasonable precautions mean intentional actions that prevent or minimize the introduction or spread of aquatic invasive species, as specified in section 576.3 of this Part.

(o) Watercraft means every motorized or non-motorized boat, vessel or vehicle capable of being used or operated as a means of transportation or recreation in or on water.

576.3 Prohibitions. No person shall launch, or attempt to launch, a watercraft or floating dock into a public waterbody unless the following reasonable precautions of (a) cleaning, (b) draining, and (c) treating have been taken:

(a) Cleaning. Cleaning shall include all of the following reasonable precautions:

1. inspecting the watercraft or floating dock and removing any plant or animal, or parts thereof, visible to the human eye, in, on, or attached to any part of the watercraft or floating dock, including livewells and bilges, the motor, rudder, anchor or other appurtenant, equipment or gear on the watercraft or floating dock that may come in contact with the waterbody; or the trailer or any other device used to transport or launch a watercraft or floating dock that may come into contact with the waterbody before launching into a public waterbody; and

2. any plants, animals, and parts thereof, including bait or other fish parts, visible to the human eye, shall be disposed by depositing these materials in a refuse receptacle where available or other receptacle designated for invasive species disposal, or if no receptacle is available, disposing the materials upland from the mean high water mark of the waterbody and in a manner to avoid contact by the material with the waterbody; and

(b) Draining. Draining shall include all of the following reasonable precautions:

1. draining water from the watercraft and the watercraft's motor, bilge, livewell, bait wells and ballast tanks and other areas of the watercraft capable of holding water before launching a watercraft into a public waterbody at a distance from the waterbody and in such a manner to avoid contact of the drainage with the public waterbody; and

2. for personal watercraft only, draining water from the cooling system of personal watercraft immediately following its removal from the water by running the motor out of water for five seconds, unless advised differently by the manufacturer and at a distance from the waterbody and in such a manner to avoid contact of the drainage with the public waterbody; and

(c) Treating. Treating shall include at least one of the following reasonable precautions:

1. Drying method. Treatment by drying must include one of the following steps:

i. Removing any boat cover and air dry watercraft, trailer or floating dock out of the water and in an area exposed to the sun or in a heated building for a minimum of five (5) days; or

ii. Storing watercraft and trailer or floating dock in subfreezing temperatures for a minimum of three (3) days; or

iii. If the drying methods described in subparagraph (i) or (ii) above and the rinsing methods described in paragraph 2 below are not available prior to launching, towel dry portions of the watercraft hull, engine, trailer and associated equipment that have been in contact with the waterbody prior to launching in another waterbody; or

2. Rinsing method. Treatment by rinsing must include one of the following steps:

i. If equipment is available at the launch site or other reasonably accessible location prior to launching, consistent with manufacturer's directions, spraying/rinsing hull and other external areas or equipment with high pressure (2,500 psi) hot water (140 degrees F for 30 seconds) at a location that does not drain into a waterbody; or

ii. If equipment is available at the launch site or other reasonably accessible location prior to launching, consistent with manufacturer's directions rinsing/flushing water cooled motors with water for two (2) minutes at a location that does not drain into a waterbody; or

iii. If equipment is available at the launch site or other reasonably accessible location prior to launching, consistent with manufacturer's directions, rinsing/flushing the bilge area, live wells, bait wells and other water-holding compartments with hot water at a temperature of 140 degrees F for 30 seconds at a location that does not drain into a public waterbody. If water is being drained via a pump, flushing the bilge area, live wells, bait wells and other water-holding compartments with the hottest water for which the pump is rated; or

iv. If hot water is not available at the launch site or other reasonably accessible location prior to launching, thoroughly rinsing the boat hull and flush water- holding compartments with the warmest water available at a location that does not drain into a waterbody. Cold water is acceptable only if it is the only water available; or

3. Painting method to be used prior to launching into marine and coastal district waters only.

Prior to launching a watercraft or floating dock into a public waterbody within marine and coastal district waters, treatment shall include the application and maintenance of anti-fouling paint, in accordance with applicable laws, rules and regulations, to watercraft hull, floating dock or any associated trailer or equipment being used to launch the watercraft or floating dock into marine and coastal district waters, and upon removing the watercraft from the water, inspecting the watercraft or floating dock and removing any attached plant or animals, or any part thereof, visible to the human eye.

576.4 Exemptions.

(a) The provisions of this Part shall not apply to the following:

1. Plants not otherwise defined in law or regulation as invasive species affixed to or transported in watercraft for use as camouflage for hunting or wildlife viewing purposes.

2. Bait or baitfish that can legally be used on a waterbody and is possessed consistent with all applicable laws and regulations.

3. Legally taken game as defined in section 11-0103(2) of the Environmental Conservation Law or fish as defined in section 11-0103(1)(a).

4. The use of plants or animals for habitat restoration, invasive species control, scientific research, aquaculture, landscaping, gardening, or other activity pursuant to express written approval by the department, consistent with all applicable laws and regulations related to their use, possession or harvest.

(b) The provisions of subdivision (c) of section 576.3 of this Part shall not apply to any watercraft and associated equipment or floating dock that is re-launched from a launch site into a public waterbody within the bounds of any permanent barriers impassible to watercraft which was, prior to launching, removed from the same launch site without having been launched into any other waterbody from any other launch site.

576.5 Penalties and enforcement.

Any person who violates the provisions of this Part shall be liable for all penalties and other remedies provided for in the Environmental Conservation Law including section 71-0703(10).

576.6 Severability.

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

Text of proposed rule and any required statements and analyses may be obtained from: Leslie Surprenant, Division of Lands and Forests, 625 Broadway, Albany, NY 12233, (518) 402-8980, email: leslie.surprenant@dec.ny.gov

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

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

Additional matter required by statute: Short EAF/Determination of non-significance

Regulatory Impact Statement

1. Statutory authority

The Governor signed legislation on September 2, 2014 adding ECL section 9-1710 to Environmental Conservation Law (ECL) Article 9, to prevent the introduction and spread of aquatic invasive species (AIS) by prohibiting the launching of watercraft or floating docks unless it can be demonstrated that "reasonable precautions such as removal of any visible plant or animal matter, washing, draining or drying … have been taken." This statute directs the Department of Environmental Conservation (DEC) to develop regulations defining "reasonable precautions" to prevent the introduction and spread of AIS. The proposed Part 576 to 6 NYCRR provides reasonable precautions necessary to prevent the spread of AIS in public waterbodies.

DEC is responsible for promoting and coordinating the management of water, land, fish, wildlife, and air resources (ECL section 3-0301(1)(b)), providing for the propagation, protection, and management of fish and other aquatic life and wildlife (ECL section 3-301(1)(c)), providing for the protection and management of marine and coastal resources, wetlands, estuaries, and shorelines (ECL section 3-0301(1)(e)), promoting the control of weeds and aquatic growth, and developing methods of prevention and eradication necessary to preserve and enhance natural beauty and man-made scenic qualities (ECL section 3-0301(1)(k)).

In conjunction with this broad authority, ECL section 3-0301(2)(m) empowers DEC to "[a]dopt such rules, regulations and procedures as may be necessary, convenient or desirable to effectuate the purposes of [the ECL]." Moreover, ECL section 9-1709 directs DEC, in cooperation with the New York State Department of Agriculture and Markets (DAM), to take action by strengthening controls regarding the prevention, spread, and control of invasive species. Finally, ECL section 9-0105 (3) authorizes DEC to ''make necessary rules and regulations to secure proper enforcement of the provisions hereof."

2. Legislative objectives

ECL section 9-1710 explicitly recognizes that AIS threaten New York's environment and economy. The legislature found that AIS are harming the state by out-competing native species, diminishing biological diversity, altering community structure and, in some cases, changing ecosystem processes. The legislative objectives in the 2014 Assembly's Memorandum in Support of Legislation are "[t]o amend ECL by adding new sections that will ensure reasonable precautions are taken to prevent the spread of aquatic invasive species. Recreational boating is one of the primary ways in which invasive species are transported overland to new waterways. Taking precautionary measures with watercraft and floating docks at launch is a simple step that should be taken to prevent the spread of invasive species and protect our waterways as well as the industries that depend on them." Boaters and anglers are advised to follow "clean, drain, dry" protocols through various outreach mechanisms, but these measures are largely voluntary. The proposed new Part 576 to 6 NYCRR will mandate the inspection, cleaning, draining, and treatment, which may include drying or rinsing, of watercraft, trailers, and associated equipment and floating docks and the removal of any visible plant or animals that are in or attached to watercraft or floating docks, prior to launching. The proposed Part 576 to 6 NYCRR are in addition to, and will complement, the Department's recently promulgated regulations for the sale, importation, purchase, transportation or introduction of invasive species under Part 575 of 6 NYCRR intended to prevent the spread of invasive species through commerce by prohibiting or regulating the intentional and commercial introduction or transport of specific invasive species. It is not always easy to distinguish non-invasive species from invasive species; therefore, the proposed regulations mandate the removal of all plant- and animal material from watercraft, trailers, associated equipment, and float-

ing docks. In this respect, these regulations are similar to the recent amendments to DEC's regulations found in 6 NYCRR Part 59 and section 190.24 and to the New York State Office of Parks, Recreation and Historic Preservation (OPRHP) regulations found in 9 NYCRR Part 377 that address non-commercial transport of aquatic invasive species by recreational watercraft, trailers and associated equipment at access sites administered by DEC or OPRHP, respectively. This new Part 576 will expand the efforts to control the introduction and spread of AIS statewide and will apply to all public waterbodies.

3. Needs and benefits

The transportation of watercraft and floating docks, trailers and equipment from one waterbody to another are one of the primary transport mechanisms for AIS. Unless properly cleaned, drained or treated before being transported from one waterbody to another, there is a high risk that aquatic invasive species can be transported and introduced to new waters. Once introduced, AIS are extremely difficult to control or eliminate. Additionally, efforts to manage AIS are costly, and often do not achieve the intended results. Populations of AIS can negatively impact recreational and commercial uses of a waterbody and tourism.

The proposed regulations will strengthen the DEC's ability to control the spread of AIS associated with the use of watercraft, floating docks, trailers and associated equipment in all public waterbodies across the state, not just at DEC-administered launch sites. Many boaters voluntarily comply with "clean, drain, dry" recommendations to prevent the spread of AIS, as provided in various Department publications and on the Department's website. Due to the substantial environmental and economic impact that can be associated with the introduction of AIS, the proposed regulations will reduce the risk. The proposed regulations will allow Department law enforcement staff to ensure compliance with the "clean, drain and dry" protocol before individuals attempt to launch a watercraft or floating dock. The regulation will require that "reasonable precautions" be taken to remove any visible plants and animals attached to them or to the trailer or associated equipment prior to launching into any public waterbody. Per ECL 71-0703, the penalty for violating this regulation is a written warning for the first violation, a fine of up to one hundred fifty dollars for a second offense, and up to two hundred fifty dollars for a third offense, and no less than two hundred and fifty dollars nor more than one thousand dollars for a fourth or subsequent offense.

These regulations are in addition to, and do not obviate, local laws or regulations. For instance, some local municipalities may determine that additional precautions are necessary to prevent further introduction or spread of AIS into waterbodies within their jurisdiction. Accordingly, the proposed Part 576 regulations provide the basic requirements imposed statewide, while local regulations may require additional steps.

The proposed Part 576 also provides for certain exemptions from the regulation's requirements. The proposed regulation exempts boats or floating docks from the "treatment" or "drying" requirements found in the proposed regulations which are launched from a specific launch site into any public waterbody and directly removed from the same launch site without having been launched from any other launch site. Data suggest that boaters typically use their watercraft in waters as close to their residence as feasible. Launching a watercraft or floating dock into the same waterbody carries less risk of spreading AIS which supports this exemption. By providing certain exemptions, the regulation balances the risks to the environment with burdens required by the regulation on the boating community.

Outreach included two meetings with the Invasive Species Council (ISC) whose statutory membership is nine stakeholder state agencies DEC co-led by the DEC and DAM and one meeting with the Invasive Species Advisory Committee (ISAC) an advisory body, with statutory membership of up to 25 non-governmental stakeholders including the conservation organizations, lake associations, and the marine trades industry. The ISC and ISAC were presented with the regulations currently in place at Department-managed waters (6 NYCRR Part 59 and Part 190) and at Office of Parks, Recreation, and Historic Preservation-managed waters (9 NYCRR Part 377.1) and the Federal Aquatic Nuisance Species Task Force's voluntary guidelines. The ISC and ISAC representatives were given an opportunity to ask questions, comment, and to suggest "reasonable precautions" for the proposed regulations.

Department staff also met with the Empire State Marine Trades Association several times to obtain feedback regarding appropriate "reasonable precautions" to consider in the rulemaking. This organization was also presented with the regulations and voluntary guidelines as described above. The Department considered stakeholder concerns in crafting the draft Part 576 regulations. As a result of the meeting with the stakeholder group, the proposed regulations addressed issues raised including consideration of potential exemptions from the regulations for watercraft or floating docks which are (i) removed from one waterbody, and then launched into the same waterbody, (ii) removed from freshwater waterbodies, and then launched into marine or salt waterbodies, and (iii) removed from marine or salt waterbodies, and then launched into freshwater waterbodies and (iv) the application of hull anti-fouling paint. There is no current requirement that a watercraft used in marine waters be treated with hull anti-fouling paint.

4. Costs

No direct costs to local governments are anticipated. No or minimal direct costs will be incurred by boat owners as they comply with "reasonable precautions" proposed in the regulations. The Department will incur indirect costs for staff time for all rulemaking activities and related outreach and for enforcement of the final regulations.

5. Local government mandates

This new Part 576 to 6 NYCRR will not impose any programs, services, duties or responsibilities upon any county, city, town, village, school district or fire district, or other special district.

6. Paperwork

No additional paperwork or record keeping by the regulated community will result from these proposed regulations, except for applying for a free permit that would require submission of an application containing the necessary information that would meet the approval criteria that would allow for scientific, educational or other approved activities. The Department will incur paperwork associated with enforcement.

7. Duplication

The Department adopted state regulations amending Part 59 and section 190.24 of 6 NYCRR on June 4, 2014. These two regulations restrict the transportation of visible plant and animal material on watercraft, trailers, and associated equipment and in water holding compartments of watercraft, as the watercraft is approaching and leaving a state boating and fishing access site administered by DEC. The Department intends to retain Part 59 and section 190.24 of 6 NYCRR in place to provide a higher level of protection from the spread of AIS since these regulations also require spread prevention actions upon removal of boats from waters. The Office of Parks, Recreation and Historic Preservation adopted state regulations requiring inspecting and removing visible plants and animals and draining watercraft prior to launching and upon departing a launch site by amending subdivision (i) of section 377.1 of Title 9 of NYCRR.

Several county, town and villages have adopted local laws or ordinances pertaining to watercraft in an effort to prevent the spread of AIS. The adoption of Part 576 will reduce the need for such local regulations by establishing statewide standards for "reasonable precautions" that reduce the spread of AIS between waterbodies of the state.

8. Alternatives

Adoption of Part 576 is necessary to meet the express legislative directive of ECL section 9-1710. The Department considered allowing for a "marine" exception; however, research has shown that recreational boating in marine environments contributes to the introduction and spread of marine invasive species.

9. Federal standards

There are currently no Federal regulations which govern the launch of recreational watercraft or floating docks to prevent the introduction or spread of AIS, although the Federal Aquatic Nuisance Species Task Force published voluntary guidelines. The United States Environmental Protection Agency published the Small Vessel General Permit (sVGP) that applies to all non-recreational, non-military vessels less than 79 feet in length in 2014, but are on hold due to a moratorium extended through mid-December, 2017. The sVGP requires vessel hull maintenance intended to prevent the spread of AIS including inspecting vessel hulls for organisms, cleaning and maintenance, and inspecting all visible areas of the vessel for "hitchhiking" organisms, and removing and appropriately disposing them prior to overland transport of the vessels.

10. Compliance schedule

These regulations, once adopted, become effective upon publication in the State Register. The Department will conduct education to achieve compliance.

Regulatory Flexibility Analysis

The proposed new Part 576 to 6 NYCRR seeks to control the introduction and spread of aquatic invasive species by prohibiting the launching of watercraft or floating docks unless it can be demonstrated that "reasonable precautions such as removal of any visible plant or animal matter, washing, draining or drying … have been taken". Environmental Conservation Law (ECL) section 9-1710 directs the Department of Environmental Conservation to develop regulations defining "reasonable precautions" to prevent the introduction and spread of aquatic invasive species.

The proposed rule will prohibit watercraft, trailers, floating docks and associated equipment carrying visible plants and animals from launching on a public waterbody. The rule also establishes measures which boat or floating dock users must take to ensure that the watercraft or floating dock are free of potential invasive species. This rule will help reduce the spread of aquatic invasive species to public waterbodies via watercraft, trailers, floating docks and associated equipment.

The Department has determined that the proposed rules will not impose

an adverse impact on small businesses or local governments due to additional reporting, record-keeping, or other compliance requirements. Watercraft owners and operators regulated by the proposed rule will be able to satisfy the requirements of the rule, and avoid penalties as soon as the rule takes effect. No cure period or opportunity for ameliorative action beyond the language already contained in the rule is necessary to provide regulated entities with the ability to immediately comply with the rule.

The proposed rule, by helping reduce the introduction and spread of aquatic invasive species by watercraft and floating docks in New York State, will have a positive impact on water-based tourism. Prolific growth of aquatic invasive species can seriously impact tourism-based economies associated with waters throughout New York State.

Since the Department's proposed rulemaking will not impose an adverse impact on small businesses or local governments, including no effect on current reporting, record-keeping, or other compliance requirements, the Department has concluded that a regulatory flexibility analysis is not required for this regulatory proposal.

Rural Area Flexibility Analysis

The proposed new Part 576 to 6 NYCRR seeks to control the introduction and spread of aquatic invasive species by prohibiting the launching of watercraft or floating docks unless it can be demonstrated that "reasonable precautions such as removal of any visible plant or animal matter, washing, draining or drying … have been taken". Environmental Conservation Law (ECL) section 9-1710 directs the Department of Environmental Conservation to develop regulations defining "reasonable precautions" to prevent the introduction and spread of aquatic invasive species.

The proposed rule will prohibit watercraft, trailers, floating docks and associated equipment carrying visible plants and animals from launching on a public waterbody. It will also prohibit boats that have not been properly drained of water from launching on a public waterbody. This rule will help reduce the spread of aquatic invasive species to public waterbodies via watercraft, trailers, floating docks and associated equipment.

The Department has determined that the proposed rules will not impose an adverse impact on public or private entities in rural areas due to additional reporting, record-keeping, or other compliance requirements. Watercraft and floating dock owners and operators regulated by the proposed rule will be able to satisfy the requirements of the rule, and avoid penalties, as soon as the rule takes effect. No cure period or opportunity for ameliorative action beyond the language already contained in the rule is necessary to provide regulated entities with the ability to immediately comply with the rule.

The proposed rule, by helping reduce the introduction and spread of aquatic invasive species by watercraft, trailers, floating docks and associated equipment in New York State, will have a positive impact on rural water-based tourism. Prolific growth of aquatic invasive species can seriously impact tourism-based economies associated with waters in rural areas.

Since the Department's proposed rulemaking will not impose an adverse impact on public or private entities in rural areas and will have little effect on current reporting, record-keeping, or other compliance requirements, the Department has concluded that a rural area flexibility analysis is not required for this regulatory proposal.

Job Impact Statement

The proposed new Part 576 to 6 NYCRR seeks to control the introduction and spread of aquatic invasive species by prohibiting the launching of watercraft or floating docks unless it can be demonstrated that "reasonable precautions such as removal of any visible plant or animal matter, washing, draining or drying … have been taken". Environmental Conservation Law (ECL) Section 9-1710 directs the Department of Environmental Conservation to develop regulations defining "reasonable precautions" to prevent the introduction and spread of aquatic invasive species.

The proposed rule will prohibit watercraft, trailers, floating docks and associated equipment carrying visible plants and animals from launching on a public waterbody. The rule also establishes measures which boat or floating dock users must take to ensure that the watercraft or floating dock are free of potential invasive species. This rule will help reduce the spread of aquatic invasive species to public waterbodies via watercraft, trailers, floating docks and associated equipment.

The proposed regulations will not have an adverse impact on jobs or employment in New York State. Reducing the spread of aquatic invasive species and maintaining quality aquatic recreation opportunities in New York will have a positive impact on jobs associated with this form of recreation. The Department therefore concludes that a Job Impact Statement is not required.

Department of Financial Services

PROPOSED RULE MAKING
NO HEARING(S) SCHEDULED

Regulating Transaction Monitoring and Filtering Systems Maintained by Banks, Check Cashers and Money Transmitters

I.D. No. DFS-50-15-00004-P

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

Proposed Action: Addition of Part 504 to Title 3 NYCRR.

Statutory authority: Banking Law, sections 37(3), (4) and 672; Financial Services Law, section 302

Subject: Regulating Transaction Monitoring and Filtering Systems maintained by banks, check cashers and money transmitters.

Purpose: To improve efficiency and transparency in the mortgage banker and mortgage broker licensing process.

Text of proposed rule: *Part 504*

BANKING DIVISION TRANSACTION MONITORING AND FILTERING PROGRAM REQUIREMENTS AND CERTIFICATIONS

§ 504.1 Background.

The Department of Financial Services (the "Department") has recently been involved in a number of investigations into compliance by Regulated Institutions, as defined below, with applicable Bank Secrecy Act/Anti-Money Laundering laws and regulations[1] ("BSA/AML") and Office of Foreign Assets Control ("OFAC")[2] requirements implementing federal economic and trade sanctions.[3]

As a result of these investigations, the Department has become aware of the shortcomings in the transaction monitoring and filtering programs of these institutions and that a lack of robust governance, oversight, and accountability at senior levels of these institutions has contributed to these shortcomings. The Department believes that other financial institutions may also have shortcomings in their transaction monitoring programs for monitoring transactions for suspicious activities, and watch list filtering programs, for "real-time" interdiction or stopping of transactions on the basis of watch lists, including OFAC or other sanctions lists, politically exposed persons lists, and internal watch lists.

To address these deficiencies, the Department has determined to clarify the required attributes of a Transaction Monitoring and Filtering Program and to require a Certifying Senior Officer, as defined below, of Regulated Institutions, to file Annual Certifications, in the form set forth herein, regarding compliance by their institutions with the standards described in this Part.

This regulation implements these requirements.

§ 504.2 Definitions.

The following definitions apply in this Part:

(a) "Annual Certification" means a certification in the form set forth in Attachment A.

(b) "Bank Regulated Institutions" means all banks, trust companies, private bankers, savings banks, and savings and loan associations chartered pursuant to the New York Banking Law (the "Banking Law") and all branches and agencies of foreign banking corporations licensed pursuant to the Banking Law to conduct banking operations in New York.

(c) "Certifying Senior Officer" means the institution's chief compliance officer or their functional equivalent.

(d) "Nonbank Regulated Institutions" shall mean all check cashers and money transmitters licensed pursuant to the Banking Law.

(e) "Regulated Institutions" means all Bank Regulated Institutions and all Nonbank Regulated Institutions.

(f) "Risk Assessment" means an on-going comprehensive risk assessment, including an enterprise wide BSA/AML risk assessment, that takes into account the institution's size, businesses, services, products, operations, customers/ counterparties/ other relations and their locations, as well as the geographies and locations of its operations and business relations;

(g) "Suspicious Activity Reporting" means a report required pursuant to 31 U.S.C. § 5311 et seq that identifies suspicious or potentially suspicious or illegal activities.

(h) "Transaction Monitoring Program" means a program that includes the attributes specified in Subdivisions (a), (c) and (d) of Section 504.3.

(i) "Watch List Filtering Program" means a program that includes the attributes specified in Subdivisions (b), (c) and (d) of Section 504.3.

(k) "Transaction Monitoring and Filtering Program" means a Trans-

action Monitoring Program, and a Watch List Filtering Program, collectively.

§ 504.3 Transaction Monitoring and Filtering Program Requirements.

(a) Each Regulated Institution shall maintain a Transaction Monitoring Program for the purpose of monitoring transactions after their execution for potential BSA/AML violations and Suspicious Activity Reporting, which system may be manual or automated, and which shall, at a minimum include the following attributes:

1. be based on the Risk Assessment of the institution;

2. reflect all current BSA/AML laws, regulations and alerts, as well as any relevant information available from the institution's related programs and initiatives, such as ''know your customer due diligence'', ''enhanced customer due diligence'' or other relevant areas, such as security, investigations and fraud prevention;

3. map BSA/AML risks to the institution's businesses, products, services, and customers/counterparties;

4. utilize BSA/AML detection scenarios that are based on the institution's Risk Assessment with threshold values and amounts set to detect potential money laundering or other suspicious activities;

5. include an end-to-end, pre-and post-implementation testing of the Transaction Monitoring Program, including governance, data mapping, transaction coding, detection scenario logic, model validation, data input and Program output, as well as periodic testing;

6. include easily understandable documentation that articulates the institution's current detection scenarios and the underlying assumptions, parameters, and thresholds;

7. include investigative protocols detailing how alerts generated by the Transaction Monitoring Program will be investigated, the process for deciding which alerts will result in a filing or other action, who is responsible for making such a decision, and how investigative and decision-making process will be documented; and

8. be subject to an on-going analysis to assess the continued relevancy of the detection scenarios, the underlying rules, threshold values, parameters, and assumptions.

(b) Each Regulated Institution shall maintain a Watch List Filtering Program for the purpose of interdicting transactions, before their execution, that are prohibited by applicable sanctions, including OFAC and other sanctions lists, and internal watch lists, which system may be manual or automated, and which shall, at a minimum, include the following attributes:

1. be based on the Risk Assessment of the institution;

2. be based on technology or tools for matching names and accounts[4], in each case based on the institution's particular risks, transaction and product profiles;

3. include an end-to-end, pre- and post-implementation testing of the Watch List Filtering Program, including data mapping, an evaluation of whether the watch lists and threshold settings map to the risks of the institution, the logic of matching technology or tools, model validation, and data input and Watch List Filtering Program output;

4. utilizes watch lists that reflect current legal or regulatory requirements;

5. be subject to on-going analysis to assess the logic and performance of the technology or tools for matching names and accounts, as well as the watch lists and the threshold settings to see if they continue to map to the risks of the institution; and

6. include easily understandable documentation that articulates the intent and the design of the Program tools or technology.

(c) Each Transaction Monitoring and Filtering Program shall, at a minimum, require the following:

1. identification of all data sources that contain relevant data;

2. validation of the integrity, accuracy and quality of data to ensure that accurate and complete data flows through the Transaction Monitoring and Filtering Program;

3. data extraction and loading processes to ensure a complete and accurate transfer of data from its source to automated monitoring and filtering systems, if automated systems are used;

4. governance and management oversight, including policies and procedures governing changes to the Transaction Monitoring and Filtering Program to ensure that changes are defined, managed, controlled, reported, and audited;

5. vendor selection process if a third party vendor is used to acquire, install, implement, or test the Transaction Monitoring and Filtering Program or any aspect of it;

6. funding to design, implement and maintain a Transaction Monitoring and Filtering Program that complies with the requirements of this Part;

7. qualified personnel or outside consultant responsible for the design, planning, implementation, operation, testing, validation, and on-going analysis, of the Transaction Monitoring and Filtering Program, including automated systems if applicable, as well as case management, review and decision making with respect to generated alerts and potential filings; and

8. periodic training of all stakeholders with respect to the Transaction Monitoring and Filtering Program.

(d) No Regulated Institution may make changes or alterations to the Transaction Monitoring and Filtering Program to avoid or minimize filing suspicious activity reports, or because the institution does not have the resources to review the number of alerts generated by a Program established pursuant to the requirements of this Part, or to otherwise avoid complying with regulatory requirements.

§ 504.4 Annual Certification.

To ensure compliance with the requirements of this Part, each Regulated Institution shall submit to the Department by April 15th of each year Certifications duly executed by its Certifying Senior Officer in the form set forth in Attachment A.

§ 504.5 Penalties/Enforcement Actions.

All Regulated Institutions shall be subject to all applicable penalties provided for by the Banking Law and the Financial Services Law for failure to maintain a Transaction Monitoring Program, or a Watch List Filtering Program complying with the requirements of this Part and for failure to file the Certifications required under Section 504.4 hereof. A Certifying Senior Officer who files an incorrect or false Annual Certification also may be subject to criminal penalties for such filing.

§ 504.6 Effective Date.

This Part shall be effective immediately. It shall apply to all State fiscal years beginning with the Fiscal Year starting on April 1, 2017.

ATTACHMENT A

_____

(Regulated Institution Name)

APRIL 15, 20____

Annual Certification For Bank Secrecy Act/Anti-Money Laundering and Office of Foreign Asset Control Transaction Monitoring and Filtering Programs

to

New York State Department of Financial Services

In compliance with the requirements of the New York State Department of Financial Services (the "Department") that each Regulated Institution maintain a Transaction Monitoring and Filtering Program satisfying all the requirements of Section 504.3 and that a Certifying Senior Officer of a Regulated Institution sign an annual certification attesting to the compliance by such institution with the requirements of Section 504.3, each of the undersigned hereby certifies that they have reviewed, or caused to be reviewed, the Transaction Monitoring Program and the Watch List Filtering Program (the "Programs") of (name of Regulated Institution) as of _____ (date of the Certification) for the year ended-_____(year for which certification is provided) and hereby certifies that the Transaction Monitoring and Filtering Program complies with all the requirements of Section 504.3.

By signing below, the undersigned hereby certifies that, to the best of their knowledge, the above statements are accurate and complete.

Signed:

Name: _____ Date: _____

Chief Compliance Officer or equivalent

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[1] With respect to federal laws and regulations, see 31 U.S.C. 5311, et seq and 31 CFR Chapter X. For New York State regulations, see Part 115 (3 NYCRR 115), Part 116 (3 NYCRR 116), Part 416 (3 NYCRR 416) and Part 417 (3 NYCRR 417).

[2] 31 CFR part 501 et seq.

[3] For information regarding the Unites States Code, the Code of Federal Regulations and the Federal Register, see Supervisory Policy G-1.

[4] The technology used in this area by some firms is based on automated tools that develop matching algorithms, such as those that use various forms of so-called "fuzzy logic" and culture-based name conventions to match names. This regulation does not mandate the use of any particular technology, only that the system or technology used must be adequate to capture prohibited transactions.

Text of proposed rule and any required statements and analyses may be obtained from: Gene C. Brooks, New York State Department of Financial Services, One State Street, New York, NY 10004, (212) 709-1663, email: Gene.Brooks@dfs.ny.gov

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

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

Regulatory Impact Statement

1. Statutory Authority.

Pursuant to Sections 37(3) and 37(4) of the New York Banking Law (the "BL"), the Department of Financial Services (the "Department") has broad authority to require reports from state-chartered banks, private banks, trust companies, credit unions, licensed branches and agencies of foreign bank corporations, licensed check cashers and licensed money transmitters (each a "Covered Institution"). The Department also has broad authority to prescribe the form of all such reports pursuant to these two provisions. In addition, Section 302 of the Financial Services Law ("FSL") provides the Department with equally broad authority to adopt regulations relating to "financial products and services" which are broadly defined in the FSL to mean essentially any product or services offered by a regulated institution. Accordingly, the Department has ample authority to adopt the proposed regulation.

In addition, Section 672 of the BL imposes potential criminal liability on individuals submitting reports containing false entries or statements.

2. Legislative Objectives.

The BL and the FSL are both intended to ensure the safe and sound operation of the financial system. The proposed regulation is intended to ensure that the financial system is not used for money laundering, sanctions violations, or terrorist funding purposes. This goal is perfectly consistent with the objective of the BL and FSL. Federal Bank Secrecy Act/ Anti-Money Laundering laws and regulations and Office of Foreign Assets Control requirements (together, "Requirements") generally prohibit financial institutions from engaging in or facilitating money laundering, sanctions violations, and funding for terrorist or criminal organizations and countries.

The proposed rule creates a more granular framework for a chief compliance officer or their functional equivalent at a Covered Institution to follow in designing, implementing and maintaining a program that ensures compliance by their institutions with the Requirements.

3. Needs and Benefits.

The proposed rule does not change existing compliance requirements imposed on Covered Institutions. Rather, it mandates that the chief compliance officer at these institutions file an annual certification with the Department regarding compliance by their institution with the Requirements. It is the Department's intent that this certification requirement will cause compliance officers to proactively ensure compliance by their institutions with the Requirements.

4. Costs.

All Covered Institutions are currently subject to existing federal Requirements. The proposed regulation provides more granular guidance and requires the chief compliance officer or their functional equivalent at a Covered Institution to certify compliance with the proposal. It is the Department's intent that this certification requirement will cause compliance officers to proactively ensure compliance by their institutions with existing federal Requirements. The cost of complying with the proposed regulation generally should have been incurred previously to ensure compliance. Hence, it is arguable that only costs associated with the proposed regulation reflect costs that institutions should have expensed in the past.

5. Local Government Mandates.

This proposal imposes no program, service, duty or responsibility upon any county, city, town, village, school district or other special district.

6. Paperwork.

The regulation does not change the process utilized by the Department to determine compliance with the Requirements. However, it does require Covered Institutions to document their compliance with the requirements of this proposal. Nevertheless, it is not believed that this requirement will be significant as Covered Institutions are already required to maintain compliance programs applicable to the Requirements. This proposal will only require that such compliance be documented.

7. Duplication.

The regulation does not duplicate, overlap or conflict with any other regulations.

8. Alternatives.

The Department is not aware of any alternatives to the proposed rule.

9. Federal Standards.

Not applicable.

10. Compliance Schedule.

The proposed rule will become applicable upon formal adoption.

Regulatory Flexibility Analysis

1. Effect of the Rule:

The proposed rule does not have any impact on local governments.

The proposed rule sets forth a methodology to be used by the Banking Division of the Department of Financial Services (the "Department") to assess the processes and systems used by chartered banks, private banks, trust companies, licensed branches and agencies of foreign banking corporations, licensed check cashers and licensed money transmitters (each a "Covered Institution") to comply with federal Bank Secrecy Act, Anti-Money Laundering laws and regulations and Office of Foreign Assets Control requirements (together, "Requirements"). The regulation should not significantly increase existing compliance costs of these entities. Rather, this new regulation requires that the chief compliance officer or their functional equivalent at these entities take steps to ensure compliance by their institutions with existing federal Requirements. Those Requirements, which are implemented under both federal and state law, protect against money laundering, sanctions violations, and funding for terrorist or criminal organizations and countries.

2. Compliance Requirements:

The proposed rule does not change existing compliance requirements imposed on Covered Institutions, except that it creates a more granular framework for the chief compliance officer or their functional equivalent for these institutions to follow in designing, implementing and maintaining a program that ensures compliance by their institutions with existing federal Requirements. It is the Department's intent that this new certification requirement will cause compliance officers or their functional equivalents to proactively ensure compliance by their institutions with federal Requirements.

3. Professional Services:

None beyond existing costs to comply with the Requirements under applicable federal and state law.

After their review of the requirements of this proposal, certain institutions may decide to engage third party service providers to ensure compliance with applicable federal and state laws and regulations.

4. Compliance Costs:

All Covered Institutions are currently subject to existing federal Requirements. Depending on the size of the institution, regulatory compliance systems or processes may be manual or automated. The proposed regulation provides more granular guidance and requires the chief compliance officer or their functional equivalent at a Covered Institution to certify compliance with the proposal. It is the Department's intent that this certification requirement will cause compliance officers to proactively ensure compliance with existing federal requirements. The cost of compliance with the new rule generally should have been incurred previously to ensure compliance. Hence, it is arguable that only costs associated with the proposed regulation reflect costs that institutions should have incurred in the past.

5. Economic and Technological Feasibility:

Covered Institutions should already have in place processes and systems, whether manual or automated to ensure compliance with the Requirements. At most, the proposed regulation will focus the attention of institutions on the adequacy of existing systems.

6. Minimizing Adverse Impacts:

As noted above, the proposed regulation does not impose a substantially new regulatory requirement. Rather, it is intended to cause institutions to review their systems and processes to ensure their adequacy.

7. Small Business and Local Government Participation:

This regulation does not impact local governments. Covered Institutions will be able to comment on the rule during the public comment period.

As noted above, under existing federal and state law designed to protect against money laundering and funding for terrorists organizations and countries, Covered Institutions already must have systems and processes in place to protect against money laundering and funding for terrorist organizations and countries. The proposed regulation is intended merely to foster compliance with existing requirements.

Rural Area Flexibility Analysis

A Rural Area Flexibility Analysis for these amendments is not being submitted because the amendments will not impose any adverse impact or significant reporting, record keeping or other compliance requirements on public or private entities in rural areas. There are no professional services, capital, or other compliance costs imposed on public or private entities in rural areas as a result of the amendments.

Job Impact Statement

A Job Impact Statement for the proposed amendments is not being submitted because it is apparent from the nature and purposes of the amendments that they will not have a substantial adverse impact on jobs and/or employment opportunities.

Department of Health

EMERGENCY RULE MAKING

Personal Care Services Program (PCSP) and Consumer Directed Personal Assistance Program (CDPAP)

I.D. No. HLT-50-15-00001-E
Filing No. 1024
Filing Date: 2015-12-01
Effective Date: 2015-12-01

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

Action taken: Amendment of sections 505.14 and 505.28 of Title 18 NYCRR.

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

Finding of necessity for emergency rule: Preservation of public health.

Specific reasons underlying the finding of necessity: Pursuant to the authority vested in the Commissioner of Health by Social Services Law § 365-a(2)(e), the Commissioner is authorized to adopt standards, pursuant to emergency regulation, for the provision and management of services for individuals whose need for such services exceeds a specified level to be determined by the Commissioner.

Subject: Personal Care Services Program (PCSP) and Consumer Directed Personal Assistance Program (CDPAP).

Purpose: To establish definitions, criteria and requirements associated with the provision of continuous PC and continuous CDPA services.

Text of emergency rule: Paragraph (3) of subdivision (a) of section 505.14 is repealed and a new paragraph (3) is added to read as follows:

(3) Continuous personal care services means the provision of uninterrupted care, by more than one person, for more than 16 hours per day for a patient who, because of the patient's medical condition and disabilities, requires total assistance with toileting, walking, transferring or feeding at times that cannot be predicted.

Paragraph (4) of subdivision (a) of section 505.14 is amended by adding new subparagraph (iii) to read as follows:

(iii) Personal care services shall not be authorized if the patient's need for assistance can be met by either or both of the following:

(a) voluntary assistance available from informal caregivers including, but not limited to, the patient's family, friends or other responsible adult; or formal services provided by an entity or agency; or

(b) adaptive or specialized equipment or supplies including, but not limited to, bedside commodes, urinals, walkers and wheelchairs, when such equipment or supplies can be provided safely and cost-effectively.

Paragraph (5) of subdivision (a) of section 505.14 is repealed and a new paragraph (5) is added to read as follows:

(5) Live-in 24-hour personal care services means the provision of care by one person for a patient who, because of the patient's medical condition and disabilities, requires some or total assistance with one or more personal care functions during the day and night and whose need for assistance during the night is infrequent or can be predicted.

Clause (b) of subparagraph (i) of paragraph (6) of subdivision (a) of section 505.14 is amended to read as follows:

(b) The [initial] authorization for Level I services shall not exceed eight hours per week. [An exception to this requirement may be made under the following conditions:

(1) The patient requires some or total assistance with meal preparation, including simple modified diets, as a result of the following conditions:

(i) informal caregivers such as family and friends are unavailable, unable or unwilling to provide such assistance or are unacceptable to the patient; and

(ii) community resources to provide meals are unavailable or inaccessible, or inappropriate because of the patient's dietary needs.

(2) In such a situation, the local social services department may authorize up to four additional hours of service per week.]

Clause (b) of subparagraph (ii) of paragraph (6) of subdivision (a) of section 505.14 is amended to read as follows:

(b) When continuous [24-hour care] *personal care services* is indicated, additional requirements for the provision of services, as specified in clause (b)(4)(i)(c) of this section, must be met.

Clause (c) of subparagraph (ii) of paragraph (3) of subdivision (b) of section 505.14 is relettered as clause (d) and a new clause (c) is added to read as follows:

(c) When live-in 24-hour personal care services is indicated, the social assessment shall evaluate whether the patient's home has adequate sleeping accommodations for a personal care aide.

Subclauses (5) and (6) of clause (b) of subparagraph (iii) of paragraph (3) of subdivision (b) of section 505.14 are renumbered as subclauses (6) and (7), and new subclause (5) is added to read as follows:

(5) an evaluation whether adaptive or specialized equipment or supplies including, but not limited to, bedside commodes, urinals, walkers and wheelchairs, can meet the patient's need for assistance with personal care functions, and whether such equipment or supplies can be provided safely and cost-effectively;

Subclause (7) of clause (a) of subparagraph (iv) of paragraph (3) of subdivision (b) of section 505.14 is amended to read as follows:

(7) whether the patient can be served appropriately and more cost-effectively by using *adaptive or* specialized medical equipment *or supplies* covered by the MA program including, but not limited to, *bedside commodes, urinals, walkers, wheelchairs and* insulin pens; and

Clause (c) of subparagraph (iv) of paragraph (3) of subdivision (b) of section 505.14 is amended to read as follows:

(c) A social services district may determine that the assessments required by subclauses (a)(1) through *(6) and* (8) of this subparagraph may be included in the social assessment or the nursing assessment.

Clause (c) of subparagraph (i) of paragraph (4) of subdivision (b) of section 505.14 is amended to read as follows:

(c) the case involves the provision of continuous [24-hour] personal care services as defined in paragraph (a)(3) of this section. Documentation for such cases shall be subject to the following requirements:

Subclause (2) of clause (c) of subparagraph (i) of paragraph (4) of subdivision (b) of section 505.14 is amended to read as follows:

(2) The nursing assessment shall document that*:* the functions required by the patient[,]*;* the degree of assistance required for each function*, including that the patient requires total assistance with toileting, walking, transferring or feeding;* and the time of this assistance require the provision of continuous [24-hour care] *personal care services*.

Subparagraph (ii) of paragraph (4) of subdivision (b) of section 505.14 is amended to read as follows:

(ii) The local professional director, or designee, must review the physician's order and the social, nursing and other required assessments in accordance with the standards for levels of services set forth in subdivision (a) of this section, and is responsible for the final determination of the level and amount of care to be provided. *The local professional director or designee may consult with the patient's treating physician and may conduct an additional assessment of the patient in the home.* The final determination must be made [within five working days of the request] *with reasonable promptness, generally not to exceed seven business days after receipt of the physician's order and the completed social and nursing assessments, except in unusual circumstances including, but not limited to, the need to resolve any outstanding questions regarding the level, amount or duration of services to be authorized.*

Paragraph (4) of subdivision (b) of section 505.28 is amended to read as follows:

(4) "continuous [24-hour] consumer directed personal assistance" means the provision of uninterrupted care, by more than one consumer directed personal assistant, *for more than 16 hours per day* for a consumer who, because of the consumer's medical condition [or] *and* disabilities, requires total assistance with toileting, walking, transferring or feeding at [unscheduled times during the day and night] *at times that cannot be predicted*.

Paragraphs (8) through (13) of subdivision (b) of section 505.28 are renumbered as paragraphs (9) through (14) and the renumbered paragraph (9) is amended to read as follows:

(9) "personal care services" means the nutritional and environmental support functions, personal care functions, or both such functions, that are specified in Section 505.14(a)(6) of this Part *except that, for individuals whose needs are limited to nutritional and environmental support functions, personal care services shall not exceed eight hours per week.*

A new paragraph (8) of subdivision (b) of section 505.28 is added to read as follows:

(8) "live-in 24-hour consumer directed personal assistance" means the provision of care by one consumer directed personal assistant for a consumer who, because of the consumer's medical condition and disabilities, requires some or total assistance with personal care functions, home health aide services or skilled nursing tasks during the day and night and whose need for assistance during the night is infrequent or can be predicted.

Subparagraph (iii) of paragraph (2) of subdivision (d) of section 505.28

is amended, and new subparagraphs (iv) and (v) of such paragraph are added, to read as follows:

(iii) an evaluation of the potential contribution of informal supports, such as family members or friends, to the individual's care, which must consider the number and kind of informal supports available to the individual; the ability and motivation of informal supports to assist in care; the extent of informal supports' potential involvement; the availability of informal supports for future assistance; and the acceptability to the individual of the informal supports' involvement in his or her care [.] *and;*

(iv) for cases involving continuous consumer directed personal assistance, documentation that: all alternative arrangements for meeting the individual's medical needs have been explored or are infeasible including, but not limited to, the provision of consumer directed personal assistance in combination with other formal services or in combination with contributions of informal caregivers; and

(v) for cases involving live-in 24-hour consumer directed personal assistance, an evaluation whether the individual's home has adequate sleeping accommodations for a consumer directed personal assistant.

Subparagraph (i) of paragraph (3) of subdivision (d) of section 505.28 is repealed and a new subparagraph (i) is added to read as follows:

(i) The nursing assessment must be completed by a registered professional nurse who is employed by the social services district or by a licensed or certified home care services agency or voluntary or proprietary agency under contract with the district.

Clauses (g) and (h) of subparagraph (ii) of paragraph (3) of subdivision (d) of section 505.28 are relettered as clauses (h) and (i) and a new clause (g) is added to read as follows:

(g) for continuous consumer directed personal assistance cases, documentation that: the functions the consumer requires; the degree of assistance required for each function, including that the consumer requires total assistance with toileting, walking, transferring or feeding; and the time of this assistance require the provision of continuous consumer directed personal assistance;

Paragraph (5) of subdivision (d) of section 505.28 is amended to read as follows:

(5) Local professional director review. If there is a disagreement among the physician's order, nursing and social assessments, or a question regarding the level, amount or duration of services to be authorized, or if the case involves continuous [24-hour] consumer directed personal assistance, an independent medical review of the case must be completed by the local professional director, a physician designated by the local professional director or a physician under contract with the social services district. The local professional director or designee must review the physician's order and the nursing and social assessments and is responsible for the final determination regarding the level and amount of services to be authorized. *The local professional director or designee may consult with the consumer's treating physician and may conduct an additional assessment of the consumer in the home.* The final determination must be made with reasonable promptness, generally not to exceed [five] *seven* business days after receipt of the physician's order and the completed social and nursing assessments, except in unusual circumstances including, but not limited to, the need to resolve any outstanding questions regarding the level, amount or duration of services to be authorized.

Paragraph (1) of subdivision (e) of section 505.28 is amended to read as follows:

(1) When the social services district determines pursuant to the assessment process that the individual is eligible to participate in the consumer directed personal assistance program, the district must authorize consumer directed personal assistance according to the consumer's plan of care. The district must not authorize consumer directed personal assistance unless it reasonably expects that such assistance can maintain the individual's health and safety in the home or other setting in which consumer directed personal assistance may be provided. *Consumer directed personal assistance shall not be authorized if the consumer's need for assistance can be met by either or both of the following:*

(i) voluntary assistance available from informal caregivers including, but not limited to, the consumer's family, friends or other responsible adult; or formal services provided by an entity or agency; or

(ii) adaptive or specialized equipment or supplies including, but not limited to, bedside commodes, urinals, walkers and wheelchairs, when such equipment or supplies can be provided safely and cost-effectively.

This notice is intended to serve only as a notice of emergency adoption. This agency intends to adopt this emergency rule as a permanent rule and will publish a notice of proposed rule making in the *State Register* at some future date. The emergency rule will expire February 28, 2016.

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

Regulatory Impact Statement

Statutory Authority:

Social Services Law ("SSL") § 363-a(2) and Public Health Law § 201(1)(v) provide that the Department has general rulemaking authority to adopt regulations to implement the Medicaid program.

The Commissioner has specific rulemaking authority under SSL § 365-a(2)(e)(ii) to adopt standards, pursuant to emergency regulation, for the provision and management of personal care services for individuals whose need for such services exceeds a specified level to be determined by the Commissioner.

Under SSL § 365-a(2)(e)(iv), personal care services shall not exceed eight hours per week for individuals whose needs are limited to nutritional and environmental support functions.

Legislative Objectives:

The Legislature sought to reform the Medicaid personal care services program by controlling expenditure growth and promoting self-sufficiency.

The Legislature authorized the Commissioner of Health to adopt standards for the provision and management of personal care services for Medicaid recipients whose need for such services exceeds a specified level. The regulations adopt such standards for Medicaid recipients who seek continuous personal care services or continuous consumer directed personal assistance for more than 16 hours per day.

The Legislature additionally sought to promote the goal of self-sufficiency among Medicaid recipients who do not need hands-on assistance with personal care functions such as bathing, toileting or transferring. It determined that recipients whose need for personal care services is limited to nutritional and environmental support functions, such as shopping, laundry and light housekeeping, could receive no more than eight hours per week of such assistance.

Needs and Benefits:

The regulations have two general purposes: to conform the Department's personal care services and consumer directed personal assistance program (CDPAP) regulations to State law limiting the amount of services that can be authorized for individuals who require assistance only with nutritional and environmental support functions; and, to implement State law authorizing the Department to adopt standards for the provision and management of personal care services for individuals whose need for such services exceeds a specified level that the Commissioner may determine.

The term "nutritional and environmental support functions" refers to housekeeping tasks including, but not limited to, laundry, shopping and meal preparation. Department regulations refer to these support functions as "Level I" personal care services. Department regulations have long provided that social services districts cannot initially authorize Level I services for more than eight hours per week; however, an exception permitted authorizations for Level I services to exceed eight hours per week under certain circumstances.

The Legislature has nullified this regulatory exception. The regulations conform the Department's personal care services regulations to the new State law. They repeal the regulatory exception that permitted social services districts to authorize up to 12 hours of Level I services per week, capping such authorizations at no more than eight hours per week.

The regulations similarly amend the Department's CDPAP regulations. Some CDPAP participants are authorized to receive only assistance with nutritional and environmental support functions. Since personal care services are included within the CDPAP, it is consistent with the Legislature's intent to extend the eight hour weekly cap on nutritional and environmental services to that program.

The regulations also implement the Department's specific statutory authority to adopt standards pursuant to emergency regulation for the provision and management of personal care services for individuals whose need for such services exceeds a specified level. The Commissioner has determined to adopt such standards for individuals whose need for continuous personal care services or continuous consumer directed personal assistance exceeds 16 hours per day.

The regulations repeal the definition of "continuous 24-hour personal care services," replacing it with a definition of "continuous personal care services." The prior definition applied to individuals who required total assistance with certain personal care functions for 24 hours at unscheduled times during the day and night. The new definition applies to individuals who require such assistance for more than 16 hours per day at times that cannot be predicted.

Cases in which continuous personal care services are indicated must be referred to the local professional director or designee. Such referrals would now be required in additional cases: those involving provision of continuous care for more than 16 hours per day.

The regulations permit the local professional director or designee to consult with the recipient's treating physician and conduct an additional assessment of the recipient in the home.

The regulations amend the documentation requirements for nursing assessments in continuous personal care services cases.

The regulations add a definition of live-in 24 hour personal care services. This level of service has long existed, primarily in New York City, but has never been explicitly set forth in the Department's regulations. The regulations also require that, for recipients who may be eligible for such services, the social assessment evaluate whether the recipient's home has adequate sleeping accommodations for the live-in aide.

The regulations provide that personal care services shall not be authorized when the recipient's need for assistance can be met by the voluntary assistance of informal caregivers or by formal services or by adaptive or specialized equipment or supplies that can be provided safely and cost-effectively. The regulations require that the nursing assessments that districts currently complete or obtain include an evaluation whether adaptive or specialized equipment or supplies can meet the recipient's need for assistance and whether such equipment or supplies can be provided safely and cost-effectively.

The regulations adopt conforming amendments to the Department's CDPAP regulations.

Costs:

Costs to Regulated Parties:

Regulated parties include entities that voluntarily contract with social services districts to provide personal care services to, or to perform certain CDPAP functions for, Medicaid recipients. These entities include licensed home care services agencies, agencies that are exempt from licensure, and CDPAP fiscal intermediaries.

Social services districts may no longer authorize certain Medicaid recipients to receive more than eight hours per week of assistance with nutritional and environmental support functions. To the extent that regulated parties were formerly reimbursed for more than eight hours per week for these services, their Medicaid revenue will decrease. This is a consequence of State law, not the regulations. The regulations do not impose any additional costs on these regulated parties.

Costs to State Government:

The regulations impose no additional costs on State government.

The statutory cap on nutritional and environmental support functions will result in cost-savings to the State share of Medicaid expenditures. The estimated annual personal care services and CDPAP cost-savings for subsequent State fiscal years are approximately $3.4 million.

This estimate is based on 2010 recipient and expenditure data for the personal care services program. According to such data, 2,377 New York City recipients received more than eight hours per week of Level I services, the average being 11 weekly hours of such service. The number of Level I hours that exceeded eight hours per week was thus approximately 370,800 hours (2,377 recipients x 3 hours per week x 52 weeks). Multiplying this hourly total by the 2010 average hourly New York City personal care aide cost ($17.30) results in total annual savings of $6.4, or $3.2 million in State share savings. Application of this calculation to the Rest of State recipient and expenditure data yields an additional $200,000 in State share savings, or $3.4 million.

State Medicaid cost-savings are also projected to occur as a result of changes to continuous personal care services authorizations. It is not possible to accurately estimate such savings. However, the Department anticipates that most recipients currently authorized for continuous 24-hour personal care services will continue to receive that level of care. Others may be authorized for continuous services for 16 hours per day or live-in 24 hour personal care services. Still others may be authorized for services for more than 16 hours per day but fewer than 24 hours per day.

The estimated State share savings for this portion of the regulations are $33.1 million. This comprises approximately $17.1 million in personal care savings and $15.9 million in CDPAP savings. This estimate is based on 2010 personal care services and CDPAP recipient and expenditure data. In 2010, 1,809 Medicaid recipients were authorized to receive more than 16 hours of services per day. The assumption is that these recipients were authorized for continuous 24-hour services, which has an average annual per person cost of approximately $166,000. Assuming that 20 percent were authorized for live-in 24-hour services at an average annual per person cost of approximately $83,000, and 15 percent were authorized for 16 hours per day at an average hourly cost of between approximately $17.00 and $22.00, depending on service and location, the annual State share savings per recipient would range from approximately $28,000 to $35,000.

Costs to Local Government:

The regulation will not require social services districts to incur new costs. State law limits the amount that districts must pay for Medicaid services provided to district recipients. Districts may claim State reimbursement for any costs they may incur when administering the Medicaid program.

Costs to the Department of Health:

There will be no additional costs to the Department.

Local Government Mandates:

The regulations require social services districts to refer additional cases to their local professional directors or designees. Currently, the regulations require that such referrals be made for continuous 24 hour care and certain other cases. Under the proposed regulations, such referrals must also be made for recipients who may require continuous services for more than 16 hours.

Paperwork:

The regulations specify additional documentation requirements for the social and nursing assessments that districts currently complete or obtain for personal care services and CDPAP applicants and recipients. For persons who may be eligible for live-in 24 hour services, the social assessment must evaluate whether the recipient's home has adequate sleeping accommodations for the live-in aide. The nursing assessments for all personal care services and CDPAP cases, including those not involving continuous services, must include an evaluation whether adaptive or specialized equipment or supplies can meet the recipient's need for assistance and whether such equipment or supplies can be used safely and cost-effectively. The amendments to the CDPAP regulations also specify additional documentation requirements for the social and nursing assessments for cases involving continuous consumer directed personal assistance. These requirements mirror long-standing documentation requirements in the personal care services regulations.

Duplication:

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

Alternatives:

With respect to the regulation that caps authorizations for nutritional and environmental support functions to eight hours per week, no alternatives exist. The regulation must conform to State law that imposes this weekly cap. With respect to the regulation that establishes new requirements for continuous services, alternatives existed but were not now pursued. One such alternative may be the repeal of the regulatory authorization for continuous 24-hour services. The Department determined to promulgate further regulatory controls regarding the provision and management of continuous services, rather than repeal such services in their entirety.

Federal Standards:

This rule does not exceed any minimum federal standards.

Compliance Schedule:

The Department has issued instructions to social services districts advising them of the new State law that limits nutritional and environmental support functions to no more than eight hours per week for certain recipients. Districts should not now be authorizing more than eight hours per week of such assistance and should thus be able to comply with the regulations when they become effective. With regard to the remaining regulations, social services districts should be able to comply with the regulations when they become effective. For applicants, social services districts would apply the regulations when assessing applicants' eligibility for personal care services and the CDPAP. For current recipients, districts would apply the regulations upon reassessing these recipients' continued eligibility for services.

Regulatory Flexibility Analysis

Effect of Rule:

The regulation limiting authorizations of nutritional and environmental support functions to no more than eight hours per week primarily affects licensed home care services agencies and exempt agencies that provide only such Level I services. These entities are the primary employers of individuals providing Level I services. Most recipients of Level I personal care services are located in New York City. There are currently eight Level I only personal care service providers in New York City, none of which employ fewer than 100 persons.

Fiscal intermediaries that are enrolled as Medicaid providers and that facilitate payments for the nutritional and environmental support functions provided to consumer directed personal assistance program (CDPAP) participants may also experience slight reductions in service hours reimbursed. There are approximately 46 fiscal intermediaries that contract with social services districts. Fiscal intermediaries are typically non-profit entities such as independent living centers but may also include home care services agencies.

With respect to continuous care, a significant majority of existing 24-hour a day continuous care cases are located in New York City. There are currently 60 Level II personal care service providers in New York City, none of which employ fewer than 100 persons.

The regulations also affect social services districts. There are 62 counties in New York State, but only 58 social services districts. The City of New York comprises five counties but is one social services district.

Compliance Requirements:

Social services districts currently assess whether Medicaid recipients are eligible for personal care services and the CDPAP. When 24 hour continuous care is indicated, districts are currently required to refer such cases to the local professional director or designee for final determination.

The regulations would require districts to refer additional continuous care cases to the local professional director or designee; namely, those cases in which continuous care for more than 16 hours a day is indicated would also be referred to the local professional director or designee. The local professional director or designee would be required to consult with the recipient's treating physician before approving continuous care for more than 16 hours per day.

In addition, the nursing assessments that districts currently complete or obtain for personal care services and CDPAP applicants and recipients would be required to include an evaluation of whether adaptive or specialized equipment or supplies would be appropriate and could be safely and cost-effectively provided. In cases involving the authorization of live-in 24 hour services, the social assessments that districts currently are required to complete would have to include an evaluation whether the recipient's home had sufficient sleeping accommodations for a live-in aide.

Professional Services:

No new or additional professional services are required in order to comply with the rule.

Compliance Costs:

No capital costs will be imposed as a result of this rule, nor are there any annual costs of compliance.

Economic and Technological Feasibility:

There are no additional economic costs or technology requirements associated with this rule.

Minimizing Adverse Impact:

The regulations should not have an adverse economic impact on social services districts. Districts currently assess Medicaid recipients to determine whether they are eligible for personal care services or the CDPAP. The regulations modify these assessment procedures. Should districts incur administrative costs to comply with the regulation, they may seek State reimbursement for such costs.

Small businesses providing Level I personal care services and consumer directed environmental and nutritional support functions may experience slight reductions in service hours provided. This is a consequence of State law limiting these services to no more than eight hours per week.

Small businesses currently providing continuous 24-hour services may experience some reductions in service hours provided.

Small Business and Local Government Participation:

The Department solicited comments on the regulations from the New York City Human Resources Administration, which administers the personal care services program and CDPAP for New York City Medicaid recipients who are not enrolled in managed care. Most of the State's personal care services and CDPAP recipients reside in New York City. Personal care services provided to New York City recipients comprises approximately 84 percent of Medicaid personal care services expenditures.

Small business and local governments also have the opportunity to provide input into the redesign of New York State's Medicaid program. The Medicaid Redesign Team (MRT) was tasked by Governor Cuomo to find ways to reduce costs and increase quality and efficiency in the Medicaid program for the 2011-12 Fiscal Year. As part of its work, the MRT sought and continues to seek ideas from the public at large, as well as experts in health care delivery and insurance, the health care workforce, economics, business, consumer rights and other relevant areas. The MRT conducted regional public hearings across the State to solicit ideas from the public on ways to reduce costs and improve the quality of the Medicaid program. Additionally, a web page was established, providing a vehicle for all individuals and organizations to provide ideas, comments and recommendations.

Cure Period:

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

Rural Area Flexibility Analysis

Types and Estimated 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 persons or less per square mile. In 2010, only 6% of all continuous care cases resided in the counties listed below. Currently there are 34 organizations which maintain contracts with local districts to provide consumer directed environmental and nutritional support functions, and 50 individual licensed home care services agencies which maintain contracts with local districts to provide Level I personal care services, within the following 43 counties having populations of less than 200,000:

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

Reporting, Recordkeeping and Other Compliance Requirements and Professional Services:

Social services districts would be required to refer additional cases to their local professional directors or designees. Currently, the personal care services and CDPAP regulations require that such referrals be made for recipients seeking continuous 24-hour services and in certain other cases. Under the regulations, such referrals must also be made for recipients who require continuous care for more than 16 hours. The regulations also specify additional documentation requirements for the social and nursing assessments that districts currently complete or obtain for personal care services and CDPAP applicants and recipients.

Costs:

There are no new capital or additional operating costs associated with the rule.

Minimizing Adverse Impact:

It is anticipated the rule will have minimal impact on rural areas as the Department has determined that the preponderance of Level I services in excess of eight hours per week occur in downstate urban areas. Additionally, in 2010, only 6% of all individuals receiving continuous care services resided in those counties listed above. To the extent that social services districts incur administrative costs to comply with the regulations' requirements for referral of continuous care cases and social and nursing assessment documentation requirements, they may seek State reimbursement of such expenses.

Rural Area Participation:

Individuals and organizations from rural areas have the opportunity to provide input into the redesign of New York State's Medicaid program. The Medicaid Redesign Team (MRT) is tasked by Governor Cuomo to find ways to reduce costs and increase quality and efficiency in the Medicaid program for the 2011-12 Fiscal Year. As part of its work, the MRT sought and continues to seek ideas from the public at large, as well as experts in health care delivery and insurance, the health care workforce, economics, business, consumer rights and other relevant areas. The MRT conducted regional public hearings across the State to solicit ideas from the public on ways to reduce costs and improve the quality of the Medicaid program. Additionally, a web page was established, providing a vehicle for all individuals and organizations to provide ideas, comments and recommendations.

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 proposed amendment, that it will not have a substantial adverse impact on jobs and employment opportunities.

Metropolitan Transportation Agency

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

MTA Bus Company— Rules and Regulations

I.D. No. MTA-50-15-00005-P

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

Proposed Action: Addition of Part 1044 to Title 21 NYCRR.

Statutory authority: Public Authorities Law, sections 1264 and 1265.5

Subject: MTA Bus Company— Rules and Regulations.

Purpose: Regulate conduct on MTA buses and facilities to enhance safety and protect employees, customers, bus facilities and the public.

Substance of proposed rule (Full text is posted at the following State website:www.mta.info): MTA Bus Company (“MTABC”) is a public benefit corporation and an independent subsidiary of the Metropolitan Transportation Authority (‘‘MTA’’) created pursuant to Public Authorities Law, section 1266(5). As such, MTABC is empowered by the New York State Public Authorities Law to make rules and regulations governing the conduct and safety of the public in the use and operation of its transportation facilities, buses and other conveyances. Public Authorities Law, sections 1265(5), 1265(14), 1266(4) and 1266(8).

These rules are established by MTABC to promote safety, to facilitate the proper use of MTABC transportation facilities, and to protect its transportation facilities, its customers, its employees and the public and to assure the payment of fares and other lawful charges for the use of its system. In addition to these rules, all applicable provisions of the Penal Law or any other applicable law shall continue to be enforceable.

These rules may be amended or added to from time to time at the sole discretion of MTABC in accordance with law.

Text of proposed rule and any required statements and analyses may be obtained from: Elizabeth A. Cooney, MTA Bus Company, 2 Broadway, Room D30.13, New York, NY 10004, (646) 252-3754, email: Elizabeth.Cooney@nyct.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.

Regulatory Impact Statement

Statutory Authority: Public Authorities Law §§ 1264 and 1265.5 authorize the Metropolitan Transportation Authority and affiliated Agencies (the “Authority”) to make rules and regulations that govern the exercise of its powers and the fulfillment of its purposes, which include providing safe, adequate, and efficient transportation within the New York Metropolitan area. Public Authorities Law § 1264 specifically empowers the Authority to “develop and implement a unified mass transportation policy. . . .”

Legislative Objective: Public Authorities Law §§ 1264 and 1265.5 was enacted to further develop and improve commuter transportation by, among other things, empowering the Authority to develop and implement a unified mass transportation policy. The Legislature determined that “efficient and adequate transportation of commuters within the New York metropolitan area is of vital importance to the commerce, defense and general welfare of the people of the New York metropolitan area, the state and the nation.” The MTA Bus Company is a public benefit corporation and an independent subsidiary of the Authority, created pursuant to section 1266(5) of the Public Authorities Law. The proposed rules embody and advance the Legislature’s statutory objective by promoting safety and protecting MTA Bus Company’s facilities, buses, customers, employees, and the public at large.

Needs and Benefits: Presently, there are no rules or regulations for the MTA Bus Company. In accordance with the statutory authority and the legislative objective, the proposed rules are aimed at developing and implementing a unified transportation policy and as mandated by PAL § 1265.5, and therefore support the fulfillment of the Authority’s purposes. Specifically, the proposed rules, modeled on those promulgated by New York City Transit Authority and the Manhattan and Bronx Surface Transit Operating Authority, will provide a unified Code of Conduct and basis for consistent enforcement thereof, among all MTA Bus carriers. The proposed rules set the standard for appropriate conduct and promote safety on MTA Bus Company’s facilities and buses, and are necessary to protect MTA Bus Company’s facilities, buses, customer, employees, and the public at large.

Costs: The Authority will not incur any costs from promulgating the proposed rules.

Local Government Mandate: There are no mandates on local governments.

Paperwork: This regulation requires no additional paperwork.

Duplication: There are no relevant State regulations which duplicate, overlap, or conflict with the proposed amendment.

Alternatives: The Authority has determined that this action is necessary for the safety of MTA Bus Company’s facilities, buses, customers, employees, and the public at large.

Federal Standards: The proposed amendment does not exceed any minimum operating standards imposed by the Federal government.

Compliance Schedule: The proposed rule will be effective upon publication of the Notice of Adoption in the New York State Register.

Regulatory Flexibility Analysis

No regulatory flexibility analysis is required pursuant to section 202-(b)(3)(a) of the State Administrative Procedure Act. The proposed amendment does not impose an adverse economic impact on small businesses or local governments, and it does not impose reporting, record keeping or other compliance requirements on small businesses or local governments.

The proposed rules will not have an adverse economic impact or impose recordkeeping compliance requirements on small businesses or local government. Therefore, pursuant to SAPA 202-(b)(3)(a), MTA Bus Company is exempt from RFA requirements.

Rural Area Flexibility Analysis

No rural area flexibility analysis is required pursuant to section 202-bb(4)(a) of the State Administrative Procedure Act. The proposed amendment does not impose an adverse impact on entities in rural areas, and it does not impose reporting, record keeping or other compliance requirements on entities in rural areas.

The proposed rules will not have an adverse impact or impose recordkeeping compliance requirements on public or private entities in rural areas. Therefore, pursuant to SAPA 202-bb(4)(a), MTA Bus Company is exempt from the RAFA requirements.

Job Impact Statement

The proposed rules are intended to regulate conduct in MTA Bus Company’s facilities and on buses, by promoting safety and protecting the buses, facilities, customers, employees and the public at large. The proposed rules will not have an adverse impact on jobs or employment opportunities. The promulgation of the proposed rules may contribute to an expansion of the MTA Bus Company’s enforcement team. The enforcement team is charged with issuing appearance tickets and ejecting persons from MTA Bus Company’s facilities or buses for rule violation. It is evident from the nature of the rule that it will have a positive impact, or no impact, on jobs or employment opportunities.

Office for People with Developmental Disabilities

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Amendments to Reimbursement Methodology for Continuing Residential Leases

I.D. No. PDD-50-15-00012-P

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

Proposed Action: Amendment of section 635-6.3 of Title 14 NYCRR.

Statutory authority: Mental Hygiene Law, section 13.09(b)

Subject: Amendments to Reimbursement Methodology for Continuing Residential Leases.

Purpose: To make changes concerning reimbursement methodology for lease costs for continuing residential lease arrangements.

Text of proposed rule: • Section 635-6.3(b) is amended as follows:

(b) This subdivision governs the allowability of lease costs applicable to continuing residential lease arrangements for periods after December 31, 2011, for which periods OPWDD has not approved lease costs for an

entire calendar year. This subdivision applies to residential lease renewals which are not renewals pursuant to an option to renew.

(1) There shall be an allowable lease cost, exclusive of any ancillary costs, for an entire calendar year. The allowable lease cost, exclusive of any ancillary costs, for a calendar year shall be the base lease amount for such calendar year [increased] *adjusted* by [the] *an* annual [increase] percentage for such calendar year.

(2) Base lease amount. The base lease amount for a calendar year shall be the allowable lease cost calculated in accordance with this section in effect on December 31st of the prior calendar year, exclusive of any ancillary costs (see paragraph [4] *3* of this subdivision).

[(3) Annual increase percentage.

(i) The annual increase percentage for 2012 is 1.97 percent.

(ii) The annual increase percentage for 2013 is 2.5 percent.

(iii) The annual increase percentage for 2014 is 2.6 percent.]

Note: Existing paragraphs (4) and (5) are renumbered to be (3) and (4).

Text of proposed rule and any required statements and analyses may be obtained from: Office of Counsel, Office for People With Developmental Disabilities (OPWDD), 44 Holland Avenue, 3rd floor, Albany, NY 12229, (518) 474-7700, email: RAU.Unit@opwdd.ny.gov

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

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

Additional matter required by statute: Pursuant to the requirements of the State Environmental Quality Review Act, OPWDD, as lead agency, has determined that the action described herein will have no effect on the environment, and an E.I.S. is not needed.

Regulatory Impact Statement

1. Statutory Authority: OPWDD has the authority to adopt rules and regulations necessary and proper to implement any matter under its jurisdiction as stated in the New York State (NYS) Mental Hygiene Law Section 13.09(b).

2. Legislative Objectives: The proposed amendments further the legislative objective embodied in section 13.09(b) of the Mental Hygiene Law. The proposed amendments make changes to regulations concerning reimbursement methodology for lease costs for continuing residential lease arrangements.

3. Needs and Benefits: In 2012, OPWDD implemented methodology for an annual calendar year increase in the allowable lease costs for continuing residential lease arrangements. Since then, OPWDD has updated the lease increase percentage in regulation in accordance with section 43.02 of the Mental Hygiene Law, which required OPWDD to publish its reimbursement methodology in regulation. In 2015, this provision of the Mental Hygiene Law was amended to designate the commissioner of the Department of Health with rulemaking authority for OPWDD's reimbursement methodology. The proposed amendments would update language in the regulation to refer to the annual increase as an annual adjustment to reflect how reimbursement for continuing residential leases is currently determined, and to remove the past increase percentages since OPWDD no longer has this rulemaking authority.

4. Costs:

a. Costs to the Agency and to the State and its local governments.

OPWDD does not anticipate costs to the State in its role paying for Medicaid as a result of these amendments. The amendments merely update reimbursement methodology language for continuing residential leases to reflect current practice in determining reimbursement for these leases and the recent change in rulemaking authority.

The proposed amendments will not result in any costs to OPWDD as a provider of services for the same reasons stated above.

There will be no impact to local governments as a result of any of these amendments.

b. Costs to private regulated parties: There are no initial capital investment costs or initial non-capital expenses for either of these amendments.

There will be no costs to regulated parties as a result of these amendments. As stated above, the amendments merely update reimbursement methodology language for continuing residential leases to reflect current practice in determining reimbursement for these leases and the recent change in rulemaking authority.

5. Local Government Mandates: There are no new requirements imposed by the rule on any county, city, town, village; or school, fire, or other special district.

6. Paperwork: No additional paperwork is required by the proposed amendments.

7. Duplication: The amendments do not duplicate any existing requirements that are applicable to services for individuals with developmental disabilities.

8. Alternatives: OPWDD did not consider any alternatives to the proposed amendments as the amendments need to be updated as proposed in order to reflect current practice in determining reimbursement for continuing residential leases and the recent change in rulemaking authority.

9. Federal Standards: The proposed amendments do not exceed any minimum standards of the federal government for the same or similar subject areas.

10. Compliance Schedule: OPWDD intends to finalize the proposed amendments as soon as possible within the time frames mandated by the State Administrative Procedure Act. These amendments will not impose any new requirements with which regulated parties are expected to comply.

Regulatory Flexibility Analysis

A regulatory flexibility analysis for small businesses and local governments is not being submitted because these amendments will not impose any adverse economic impact or reporting, record keeping or other compliance requirements on small businesses. There are no professional services, capital, or other compliance costs imposed on small businesses as a result of these amendments.

The proposed amendments update the reimbursement methodology language for continuing residential lease arrangements to reflect the current practice in determining reimbursement for these leases and the recent change in rulemaking authority. The amendments will not result in costs or new compliance requirements for regulated parties and, consequently, the amendments will not have any adverse effects on providers of small business and local governments.

Rural Area Flexibility Analysis

A Rural Area Flexibility Analysis for these amendments is not being submitted because the amendments will not impose any adverse impact or significant reporting, record keeping or other compliance requirements on public or private entities in rural areas. There are no professional services, capital, or other compliance costs imposed on public or private entities in rural areas as a result of the amendments.

The proposed amendments update the reimbursement methodology language for continuing residential lease arrangements to reflect the current practice in determining reimbursement for these leases and the recent change in rulemaking authority. The amendments will not result in costs or new compliance requirements for regulated parties and, consequently, the amendments will not have any adverse effects on providers in rural areas and local governments.

Job Impact Statement

A Job Impact Statement for the proposed amendments is not being submitted because it is apparent from the nature and purposes of the amendments that they will not have a substantial adverse impact on jobs and/or employment opportunities.

The proposed amendments update the reimbursement methodology language for continuing residential lease arrangements to reflect the current practice in determining reimbursement for these leases and the recent change in rulemaking authority. The amendments will not result in costs, including staffing costs, or new compliance requirements for regulated parties and, consequently, the amendments will not have a substantial impact on jobs or employment opportunities in New York State.

Public Service Commission

NOTICE OF WITHDRAWAL

Petitions for Rehearing of the April 20, 2015 Order Continuing and Expanding the Standby Rate Exemption

I.D. No. PSC-24-15-00009-W

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

Action taken: Notice of proposed rule making, I.D. No. PSC-24-15-00009-P, has been withdrawn from consideration. The notice of proposed rule making was published in the *State Register* on June 17, 2015.

Subject: Petitions for rehearing of the April 20, 2015 Order Continuing and Expanding the Standby Rate Exemption.

Reason(s) for withdrawal of the proposed rule: Withdrawn, Commission decision rendered the matter moot.

NOTICE OF ADOPTION

Submetering of Electricity

I.D. No. PSC-42-12-00007-A
Filing Date: 2015-11-30
Effective Date: 2015-11-30

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

Action taken: On 11/19/15, the PSC adopted an order authorizing 215 West 91st Street Corp. (215 West 91st Street) to submeter electricity at 215 West 91st Street, New York, New York.

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

Subject: Submetering of electricity.

Purpose: To authorize 215 West 91st Street Corp. to submeter electricity.

Substance of final rule: The Commission, on November 19, 2015, adopted an order authorizing 215 West 91st Street Corp. to submeter electricity at 215 West 91st Street, New York, 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: John Pitucci, Public Service Commission, Three Empire State Plaza, Albany, New York, 12223, (518) 486-2655, email: john.pitucci@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.

(12-E-0430SA1)

NOTICE OF ADOPTION

Transfer of Street Lighting Facilities

I.D. No. PSC-14-15-00010-A
Filing Date: 2015-11-25
Effective Date: 2015-11-25

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

Action taken: On 11/19/15, the PSC adopted an order authorizing New York State Electric and Gas Corporation (NYSEG) to transfer street lighting facilities to the Town of West Seneca.

Statutory authority: Public Service Law, section 70

Subject: Transfer of street lighting facilities.

Purpose: To authorize NYSEG to transfer street lighting facilities.

Substance of final rule: The Commission, on November 19, 2015, adopted an order authorizing New York State Electric and Gas Corporation to transfer street lighting facilities to the Town of West Seneca, 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: John Pitucci, Public Service Commission, Three Empire State Plaza, Albany, New York, 12223, (518) 486-2655, email: john.pitucci@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-M-0142SA1)

NOTICE OF ADOPTION

Model 5 Transfer Prover

I.D. No. PSC-15-15-00004-A
Filing Date: 2015-11-30
Effective Date: 2015-11-30

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

Action taken: On 11/19/15, the PSC adopted an order approving Niagara Mohawk Power Corporation d/b/a National Grid's (NMPC) petition to use the GE/Dresser 5M/20M Model 5 (Model 5) Transfer Prover for gas meter testing applications in New York State.

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

Subject: Model 5 Transfer Prover.

Purpose: To approve NMPC's petition to use of the Model 5 Transfer Prover.

Substance of final rule: The Commission, on November 19, 2015, adopted an order approving Niagara Mohawk Power Corporation d/b/a National Grid's petition to use the GE/Dresser 5M/20M Model 5 Transfer Prover for gas meter testing applications in New York State, 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: John Pitucci, Public Service Commission, Three Empire State Plaza, Albany, New York, 12223, (518) 486-2655, email: john.pitucci@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-0519SA1)

NOTICE OF ADOPTION

Con Ed's Transfer of Property

I.D. No. PSC-27-15-00018-A
Filing Date: 2015-11-25
Effective Date: 2015-11-25

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

Action taken: On 11/19/15, the PSC adopted an order approving Consolidated Edison Company of New York, Inc.'s (Con Ed) petition to transfer property located on the Verplanck Peninsula, Town of Cortlandt.

Statutory authority: Public Service Law, section 70

Subject: Con Ed's transfer of property.

Purpose: To approve Con Ed's petition to transfer property.

Substance of final rule: The Commission, on November 19, 2015, adopted an order approving Consolidated Edison Company of New York, Inc.'s petition to transfer property totaling approximately 99 acres of land on the Verplanck Peninsula, Town of Cortlandt, portions of Section-Block-Lots: 43.13-1-1, 43.14-3-3, 43.17-1-1 43.13-1-2, and 43.13-2-1, 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: John Pitucci, Public Service Commission, Three Empire State Plaza, Albany, New York, 12223, (518) 486-2655, email: john.pitucci@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-M-0316SA1)

NOTICE OF ADOPTION

Use of Various Current and Voltage Transformers

I.D. No. PSC-29-15-00021-A
Filing Date: 2015-11-30
Effective Date: 2015-11-30

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

Action taken: On 11/19/15, the PSC adopted an order approving Instrument Transformer Equipment Corporation's (ITEC) petition to use various current and voltage transformers for substation applications in New York State.

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

Subject: Use of various current and voltage transformers.

Purpose: To approve ITEC's petition to use various current and voltage transformers.

Substance of final rule: The Commission, on November 19, 2015, adopted an order approving Instrument Transformer Equipment Corporation's (ITEC) petition to use the ITEC DDC-938, CTO, CVTO, SVTO and VTO transformers for substation applications in New York State, 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: John Pitucci, Public Service Commission, Three Empire State Plaza, Albany, New York, 12223, (518) 486-2655, email: john.pitucci@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-0303SA1)

NOTICE OF ADOPTION

Transfer of Street Lighting Facilities

I.D. No. PSC-30-15-00002-A

Filing Date: 2015-11-25

Effective Date: 2015-11-25

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

Action taken: On 11/19/15, the PSC adopted an order approving Orange and Rockland Utilities, Inc.'s (O&R) petition to transfer street lighting facilities to the Town of Clarkson.

Statutory authority: Public Service Law, sections 65, 66 and 70

Subject: Transfer of street lighting facilities.

Purpose: To approve O&R's petition to transfer street lighting facilities.

Substance of final rule: The Commission, on November 19, 2015, adopted an order approving Orange and Rockland Utilities, Inc.'s petition to transfer street lighting facilities to the Town of Clarkson, 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: John Pitucci, Public Service Commission, Three Empire State Plaza, Albany, New York 12223, (518) 486-2655, email: john.pitucci@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-M-0330SA1)

NOTICE OF ADOPTION

Submetering of Electricity

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

Filing Date: 2015-11-30

Effective Date: 2015-11-30

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

Action taken: On 11/19/15, the PSC adopted an order authorizing 122 2nd Street Assoc., LLC (122 2nd Street) to submeter electricity 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: Submetering of electricity.

Purpose: To authorize 122 2nd Street to submeter electricity.

Substance of final rule: The Commission, on November 19, 2015, adopted an order authorizing 122 2nd Street Assoc., LLC to submeter electricity at 122 Second Street, Watervliet, 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: John Pitucci, Public Service Commission, Three Empire State Plaza, Albany, New York, 12223, (518) 486-2655, email: john.pitucci@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-0393SA1)

NOTICE OF ADOPTION

Submetering of Electricity

I.D. No. PSC-36-15-00024-A

Filing Date: 2015-11-30

Effective Date: 2015-11-30

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

Action taken: On 11/19/15, the PSC adopted an order authorizing 12393 Owners Corp. (12393 Owners) to submeter electricity at 123 W 93rd Street, New York, New York.

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

Subject: Submetering of electricity.

Purpose: To authorize 12393 Owners to submeter electricity.

Substance of final rule: The Commission, on November 19, 2015, adopted an order authorizing 12393 Owners Corp. to submeter electricity at 123 W 93rd Street, New York, 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: John Pitucci, Public Service Commission, Three Empire State Plaza, Albany, New York, 12223, (518) 486-2655, email: john.pitucci@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-0456SA1)

PROPOSED RULE MAKING
NO HEARING(S) SCHEDULED

Reduction of Rates

I.D. No. PSC-50-15-00006-P

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

Proposed Action: The Public Service Commission is considering a petition filed November 16, 2015 by Home Depot, U.S.A., Inc. to reduce the rates charged by Independent Water Works, Inc.

Statutory authority: Public Service Law, section 89(c)

Subject: Reduction of rates.

Purpose: To consider the reduction of rates charged by Independent Water Works, Inc.

Text of proposed rule: The Public Service Commission is considering a petition filed November 16, 2015 by Home Depot U.S.A., Inc. (Home Depot) to reduce the rates charged by Independent Water Works, Inc. (the Company). The Company provides metered water service and fire protection service to 15 commercial customers in a shopping center known as "The Highlands" located in the Town of Southeast, Putnam County. The Commission may adopt, reject, or modify, in whole or in part, the relief proposed and may resolve related matters.

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

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

Public comment will be received until: 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-W-0656SP1)

PROPOSED RULE MAKING
NO HEARING(S) SCHEDULED

Collaborative Report on Proposed Consumer Protections for the Low Income Customers of Energy Services Companies

I.D. No. PSC-50-15-00007-P

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

Proposed Action: The Commission is considering a Collaborative Report filed on November 5, 2015 on proposed consumer protections for the low income customers of energy services companies.

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

Subject: Collaborative Report on proposed consumer protections for the low income customers of energy services companies.

Purpose: To consider the Collaborative Report on proposed consumer protections for the low income customers of energy services companies.

Substance of proposed rule: The Public Service Commission is considering a Collaborative Report filed on November 5, 2015 that addresses proposed consumer protections for the low income customers of energy services companies (ESCOs). The Report seeks to implement the Commission's directive that when an ESCO serves a utility low income assistance program participant (APP), it must either guarantee that the APP will pay no more than the APP would have paid as a customer of the utility, or serve the APP with energy-related value-added products without diluting the effectiveness of the financial assistance programs. The Report: (1) identifies a mechanism by which ESCOs can confirm, at the point of sale, whether a potential customer is an APP; (2) defines the energy-related value-added products or services which satisfy the Commission's criteria and may be offered to APPs; and (3) explains how protections will be provided to existing ESCO APPs and ESCO customers who become APPs. The Commission may adopt, reject or modify, in whole or in part, the relief proposed and may resolve related matters.

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

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

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

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

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

(12-M-0476SP13)

PROPOSED RULE MAKING
NO HEARING(S) SCHEDULED

Transfer of 1,064 Utility Poles

I.D. No. PSC-50-15-00008-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 a petition filed by Orange and Rockland Utilities, Inc. for the transfer of 1,064 utility poles to Frontier Communications Corporation.

Statutory authority: Public Service Law, sections 65, 66 and 70

Subject: Transfer of 1,064 utility poles.

Purpose: To consider the transfer of 1,064 utility poles from Orange and Rockland Utilities, Inc. to Frontier Communications Corp.

Substance of proposed rule: The Public Service Commission (Commission) is considering the petition filed by Orange and Rockland Utilities, Inc. (O&R) on November 20, 2015. In that petition, the Company seeks the Commission's approval to transfer ownership of 1,064 utility poles to Frontier Communications Corporation (Frontier). The utility poles are joint use poles, used by both companies in the provision of service. According to the petition, the transfer will ensure that each company and/or its customers will bear its fair share of the cost required to install and maintain the join use poles. The Commission may adopt, reject or modify, in whole or in part, the relief proposed and may resolve related matters.

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

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

Public comment will be received until: 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-0687SP1)

PROPOSED RULE MAKING
NO HEARING(S) SCHEDULED

Notice of Intent to Submeter Electricity

I.D. No. PSC-50-15-00009-P

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

Proposed Action: The Public Service Commission is considering the Notice of Intent filed by 31 Lincoln Road Development LLC, to submeter electricity at 31-33 Lincoln Road and 510 Flatbush Avenue, Brooklyn, New York.

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

Subject: Notice of Intent to submeter electricity.

Purpose: To consider the request to submeter electricity at 31-33 Lincoln Road and 510 Flatbush Avenue, Brooklyn, New York.

Substance of proposed rule: On October 8, 2015, 31 Lincoln Road Development LLC submitted a Notice of Intent to Submeter Electricity at 31-33 Lincoln Road, Brooklyn, New York and 510 Flatbush Avenue, Brooklyn, New York. The Commission may adopt, reject or modify, in whole or in part, the relief proposed and may resolve related matters.

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

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

Public comment will be received until: 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-0598SP1)

Office of Temporary and Disability Assistance

NOTICE OF ADOPTION

Video Hearings

I.D. No. TDA-15-15-00003-A
Filing No. 1025
Filing Date: 2015-12-01
Effective Date: 2015-12-16

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

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

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

Subject: Video Hearings.

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

Text or summary was published in the April 15, 2015 issue of the Register, I.D. No. TDA-15-15-00003-P.

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

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

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 Office of Temporary and Disability Assistance (OTDA) received comments from seven entities or organizations on the proposed regulations to specifically allow the Office of Administrative Hearings (OAH) to conduct fair hearings by means of video equipment. All of the comments have been reviewed and duly considered in this Assessment of Public Comments.

Scheduling of video hearings

A comment recommended that OTDA needs ''to actively and mindfully schedule'' video hearings in social services districts (SSDs) that host large numbers of fair hearings. Also a comment asserted that rescheduled in-person hearings should be heard on the next available calendar, and the appellants should be given the opportunity to travel to other sites for the hearings.

OTDA plans to continue actively and mindfully scheduling video hearings in all SSDs. Also OTDA will be sensitive to scheduling in-person hearings as quickly as possible.

Notices

Comments asserted that OTDA's Notices of Fair Hearing must be revised to clearly inform appellants when hearings will be conducted using video equipment. Comments also recommended that OTDA should develop educational videos, brochures and literature to familiarize appellants with video hearings and their rights during the fair hearing process.

The Notices of Fair Hearing will be revised to inform appellants that their hearings may be conducted by video equipment and will include information regarding opting out of video hearings. Also OAH has developed a video hearings guide that will be provided with the Acknowledgements of Fair Hearing Request. The scheduling notices will also set forth the appellants' rights during the video hearings process.

Initiation of the video hearing process

Comments asserted that the video hearings process should begin on a roll out basis or as a pilot program to enable OTDA to monitor and evaluate the impact of the new process. One comment stated that while the video hearing process is being initiated, all unfavorable hearing decisions should be subject to extra scrutiny, and in-person hearings should be ordered where miscommunication and related problems are detected. Additional comments requested that all stakeholders be included in the evaluation process, and that a neutral organization complete the evaluation.

OTDA plans to closely monitor and evaluate the video hearings process on an ongoing basis. OAH will be particularly watchful for any difficulties that may develop during video hearings and take all appropriate actions so that the appellants' due process rights are protected. OAH will welcome comments and suggestions from all stakeholders regarding the video hearings process both during and after its implementation.

Opt-in process

Comments asserted that OTDA should provide an opt-in process for video hearings.

Although an opt-in process was considered, OAH due to administrative constraints has determined not to provide an opt-in option at this time.

Opt-out process

The comments made varying recommendations as to when appellants should be allowed to make opt-out requests pursuant to 18 NYCRR § 358-5.13(c). One comment stated that opt-out requests should only be allowed up to 24 hours prior to the scheduled video hearings. Another comment stated that opt-out requests should be allowed at any time during the video hearings. Various comments chose points-in-time between these two recommendations.

OTDA has determined that appellants should be allowed to object to hearings conducted using video equipment at the earliest possible opportunity before the time set for the hearings, but no later than at the commencement of the hearings. This is reflected in 18 NYCRR § 358-5.13(c). If appellants become concerned with the video hearings process after the commencement of their hearings, they should raise their objections, and OAH will determine whether in-person hearings should be held pursuant to 18 NYCRR § 358-5.13(d).

Comments asserted that all "opt-out" requests made pursuant to 18 NYCRR § 358-5.13(c) should be granted. They also maintained that the regulations should clarify who will make the opt-out determinations, and if opt-out requests are denied, there should be mandatory, immediate supervisory review. Lastly, comments stated that opt-out requests should be done via dedicated phone lines, fax numbers, e-mails or postal addresses.

OTDA maintains that the regulation at 18 NYCRR § 358-5.13(c) does provide an opt-out opportunity for appellants; however, the subdivision does not require OAH to grant all opt-out requests. OAH will establish administrative processes for supervisory review of opt-out determinations and will dedicate administrative resources so that opt-out requests are handled appropriately.

Safeguarding an appellant's due process rights and protecting fundamental fairness

One comment stated that the regulations at 18 NYCRR § 358-5.13(d)(1) and (2) appear to provide standards by which OAH will require hearings be held in-person, even in the absence of requests or objections by appellants. The comment stated that the ''provisions appear to emanate from the fundamental duty of [hearing officers] and fair hearing staff to promote fairness and justice."

OTDA agrees. This is the purpose of 18 NYCRR § 358-5.13(d)(1) and (2).

Comments asserted that hearing officers must have the power to stop video hearings at any time and refer them for in-person hearings. Comments noted that hearing officers need to be very attuned to an appellants' failure to understand.

Pursuant to 18 NYCRR § 358-5.13(d), hearing officers have the authority to stop video hearings at any time and refer them for in-person hearings. OTDA agrees that the hearing officers need to pay close attention to whether the appellants understand what is occurring during the fair hearing process, whether the hearings are held in-person or by video equipment.

Comments asserted that the proposed regulations at 18 NYCRR § 358-5.13(d) should provide clear standards and examples of situations when hearings should be conducted in-person. A comment also asserted that the provisions at 18 NYCRR § 358-5.13(c) and (d) should be rewritten to clarify how they relate to each other.

OTDA maintains that the provisions of 18 NYCRR § 358-5.13(d) provide clear guidance to OAH. OTDA has chosen not to set forth specific examples that must be met in order to adjourn from video hearings to in-person hearings. OTDA wants to provide OAH the greatest possible flexibility to take each Appellant's unique needs and circumstances into consideration. OTDA does not agree with the comment that 18 NYCRR § 358-5.13(c) and (d) should be rewritten.

Video experience

Comments asserted that OAH should ensure hearing officers receive appropriate training prior to conducting video hearings.

OAH maintains that hearing officers will receive thorough and appropriate training before they hold hearings by means of video equipment.

Comments expressed concern for appellants with disabilities who participate in video hearings. The comments also warned about misunderstandings and cross conversations during video hearings and wanted OAH to ensure that video hearing participants would be able to see and hear each other, as well as the hearing officer.

At the beginning of hearings held by video equipment, the hearing officers will describe the process that will take place during the video

hearings. The hearing officers will assess whether the fair hearing participants understand each other and confirm that they can see and hear each other and the hearing officers. The hearing officers will actively guard against cross conversations so that any communication misunderstandings are resolved. If there are unresolvable issues related to these matters, the hearing officers will utilize 18 NYCRR § 358-5.13(d) and adjourn for in-person hearings.

A comment asserted that video monitors should not be bolted to furniture in a manner which prevents adequate viewing.

OAH maintains that the monitors will be located in a manner that provides ample viewing during video hearings.

A comment asserted that due to the physical absence of the hearing officer, video hearings could result in increased safety risks. The comment stated that SSDs would either experience increased costs of enhancing security or increased risks because existing security would need to cover more areas.

OAH maintains that the SSDs should already have adequate security in place whether their fair hearings are conducted in-person or by video equipment. The hearing officers hold the administrative hearings; they do not provide security to fair hearing participants.

Submission of documents

Comments expressed concern regarding the submission of documents at video hearings. A comment asserted that if SSD representatives submit new evidence to the hearing officers at the hearings, the appellants should receive paper copies of the new evidence. The comment went on to discuss the unfairness of appellants being relegated to terminals to view new evidence.

OTDA asserts that the video hearings process has been designed to accommodate the submission of documents by both the appellants and the SSD representatives at the hearings. If the SSD representatives want to submit new documents at the hearings, photocopies must be offered to the appellants, and the new documents will be electronically transmitted to the hearing officers. If the appellants want to submit new documents at the hearings, photocopies could be made for the SSDs, and the new documents will be electronically transmitted to the hearing officers. The hearing officers will then be able to review the documents submitted by the appellants and/or the SSDs' representatives and, when appropriate, accept the documents into evidence.

Comments asserted that the regulatory proposal should require that neutral persons be on site at video hearings to handle the submission of documents to the hearing officers.

OTDA maintains that this measure is not necessary. The hearing officers will be able to see the activities in the hearing room and assess whether documents are being handled properly. In the ordinary course of business, the electronic transmittal of documents will take place in the hearing rooms in the presence of the appellants, and the hearing officers will confirm on the record which documents are being accepted into evidence. Those documents, in turn, will become part of the record. As noted above, appellants will be offered photocopies of all documents being submitted by the SSD representatives.

Comments raised issues with Medicaid Managed Care hearings. The comments stated that Managed Care Organizations (MCOs) often submit documents, instead of appearing in-person at hearings, and to protect the appellants' privacy, SSD representatives are not in the rooms during the hearings. The comments recommended that neutral persons trained by OTDA in confidentiality be in the rooms during video hearings to handle the appellants' medical documents.

OAH presently is planning to conduct Medicaid Managed Care hearings by means of video equipment. Under the guidance of the hearing officers, the electronic equipment in the hearing room will be used to transmit the evidence to the hearing officers.

Confidentiality

A comment stated that the regulations should specifically address the security and the confidentiality of the following: (1) video hearings technology; (2) the scanned and transmitted documents; and (3) the handling and retention of the video and/or audio components of such hearings.

OAH and the SSDs already abide by strict security and confidentiality protections and will continue to do so.

Costs and operation of computer equipment

A comment acknowledged that video hearings offer significant opportunities to reduce the overall costs of the hearings process and to improve operational efficiency, but opposed any changes that do not provide commensurate financial and operational resources to the SSDs.

OTDA anticipates that the video hearings process will reduce the overall costs of the hearings process and improve operational efficiency. Furthermore, it is noted that if the SSDs' decisions are affirmed, the SSDs may see a reduction in costs associated with aid-to-continue when cases are heard more rapidly due to the efficiencies of the video hearing process.

A comment asserted that New York State should fully reimburse the SSDs for costs associated with the repair, the replacement, and/or the insurance coverage for the video equipment. The comment also asserted that SSDs need to be advised of the service level agreements that OTDA has with its warranty and maintenance vendors.

OTDA maintains that New York State purchased the required video equipment and should be responsible for repairs and needed replacements that are not due to neglectful actions on the part of the SSDs. Examples of neglect would include, but are not limited to: (1) poor security for the equipment and resulting thefts or damage; or (2) damage to the equipment from inappropriate usage or storage. OTDA agrees that if New York State has warranties or maintenance contracts available for use by the SSDs, New York State should share those with the SSDs. OTDA will establish procedures for the SSDs to report issues with the equipment to New York State Information Technology Services (ITS). ITS will be the party who contacts the maintenance vendor. OTDA will not be revising current agreements addressing insurance coverage for the video equipment.

A comment stated that the proposal's assumption that the SSDs' Local Area Network (LAN) administrators will be able to provide on-time support for video hearings is problematic. The comment maintained that OTDA or State Information Technology Services (ITS) needs to provide expedited support and inform the SSDs of details regarding the process.

OTDA maintains that in the event the system fails to operate and the video hearing must be adjourned, the SSDs' LAN administrators will have time to coordinate with OAH and ITS to identify a solution.

Additional issues

A comment stated that aid-to-continue must be provided without disruption.

The current regulatory provisions and policies addressing the right to aid-to-continue will remain in place and govern the fair hearing process whether in-person or video hearings are at issue.

A comment asserted that if OAH is going to use video technology, appellants should have the benefit of requesting recorded videos of their fair hearings.

At the present time, OAH is not planning to make video recordings of the hearings. OAH is planning to continue making audio recordings of both the in-person hearings and the video hearings.

A comment asserted that the proposed regulations do not adequately reflect aspects of the consensus that had been reached by the former director of OAH, OTDA staff, and the advocates.

The published regulations reflect OAH's plans for the video hearings process. OAH will welcome comments and suggestions regarding the video hearings process both during and after its implementation.

A comment asserted that OAH should contact SSDs to address their concerns regarding the video hearings process.

During the public comment period for this regulatory proposal, SSDs had an opportunity to advise OTDA of concerns they have regarding the video hearing process. Only one SSD expressed limited opposition, and even that SSD wrote, "[We are] a strong proponent of governmental efficiency and innovation. We commend [OTDA] for considering fair hearing video conferencing. We believe that video conferencing offers significant opportunity to reduce overall fair hearing costs and improve operational efficiency for all parties."

Comments were received regarding the translation of notices, the use of jargon and terms of art during hearings, the earlier submission of hearing packets by managed care organizations, and the ability of SSDs to receive waivers of appearance. These comments are outside the scope of the Notice of Proposed Rule Making.