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.

Office of Alcoholism and Substance Abuse Services

ERRATUM

The following Notices of Adoption, ASA-36-15-00020-A, ASA-36-15-00021-A, ASA-36-15-00022-A, ASA-36-15-00023-A and ASA-37-15-00001-A, filed by the Office of Alcoholism and Substance Abuse Services and published in the December 9, 2015 issue of the State Register contained the incorrect effective date. The effective date for each Notice of Adoption cited above is December 9, 2015.

The Department of State apologizes for any confusion this may have caused.

Department of Audit and Control

NOTICE OF ADOPTION

Rate of Regular Interest, Rate of Estimated Earnings and Mortality Tables

I.D. No. AAC-39-15-00007-A
Filing No. 1040
Filing Date: 2015-12-08
Effective Date: 2015-12-23

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

Action taken: Amendment of section 300.1; repeal of Appendix 10-A, tables 44-56; and addition of new Appendix 10-A, tables 44-53 to Title 2 NYCRR.

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

Subject: Rate of regular interest, rate of estimated earnings and mortality tables.

Purpose: To conform the rate of regular interest and the rate of estimated earnings to the current rates established by the Comptroller.

Text or summary was published in the September 30, 2015 issue of the Register, I.D. No. AAC-39-15-00007-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.

Office of Children and Family Services

EMERGENCY RULE MAKING

Durable and Consistent Safeguards for Vulnerable Persons

I.D. No. CFS-39-15-00001-E
Filing No. 1038
Filing Date: 2015-12-08
Effective Date: 2015-12-08

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

Action taken: Amendment of Parts 166, 180 and 182 of Title 9 NYCRR; and amendment of Parts 402, 421, 433, 435, 441, 442, 443, 447, 448, 449, 476, 477 and 489 of Title 18 NYCRR.

Statutory authority: Social Services Law, sections 20(3)(d) and 34(3)(f); Executive Law, sections 501(5) and 532-e; L. 2012, ch. 501

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

Specific reasons underlying the finding of necessity: Chapter 501 of the Laws of 2012 established the Justice Center for the Protection of People with Special Needs ("Justice Center"). The Justice Center is tasked with overseeing and improving consistency in responses to incidents of abuse and neglect of vulnerable people. The Justice Center has also been tasked with establishing standards for tracking and investigating complaints and enforcement against those who commit substantiated acts of abuse and neglect. The legislation requires the Office of Children and Family Services, as a state oversight agency of vulnerable persons, to develop standards consistent with the Justice Center. These standards are to protect vulnerable people against abuse, neglect and other conduct that may jeopardize their health, safety and welfare, and to provide fair treatment and notice to the employees. The Office of Children and Family Services must promulgate regulations to provide notice, guidance and standards to all facilities, provider agencies and employees who are affected by the legislation. The Justice Center took effect June 30, 2013.

Facilities and provider agencies covered by the legislation include voluntary agencies that operate residential programs that are licensed or certified by the Office of Children and Family Services, residential runaway and homeless youth programs, family type homes for adults, certified detention programs, OCFS operated juvenile justice programs, and any local department of social services that runs a detention program or has a contract with an authorized agency for detention services or has a contract(s) for care of foster children in out of state facilities.

Effective June 30, 2013 reports of suspected child abuse or neglect in a residential program are no longer under the jurisdiction of the Statewide Central Register of Child Abuse and Maltreatment (SCR). Any concerns regarding abuse or neglect of a child in a residential care program must be reported to the Vulnerable Persons Central Register (VPCR). The VPCR will also register reports of suspected abuse or neglect of persons residing in Family Type Homes for Adults (FTHA). Reports registered by the VPCR will be forwarded to Justice Center investigative staff or to investigative staff at the State Agency that licenses, certifies or operates the facility or provider agency. Regulations are required to provide direction to facilities, provider agencies, employees, local government staff and the public. It is imperative that rules be in place for the proper implementation of the Justice Center legislation.

In addition, these emergency regulations re-insert language at section 182-1.5 of Title 9 NYCRR to prohibit discrimination on the basis of sexual orientation, gender identity or expression. This language had been part of the regulations until June 2014 when they were inadvertently overwritten by other regulatory changes. This language is necessary to provide protection from such discrimination for the persons receiving services in the programs regulated by section 182-1.5 of Title 9 NYCRR.

Promulgating emergency regulations will ensure compliance with legislative requirements and provide the necessary guidance to affected persons. Absent the filing of emergency regulations, guidance, protections and processes will not be available to the aforementioned listed facilities and agencies.

Subject: Durable and consistent safeguards for vulnerable persons.

Purpose: To create an immediate set of durable and consistent safeguards for vulnerable persons.

Substance of emergency rule: Chapter 501 of the Laws of 2012 established the Justice Center for the Protection of People with Special Needs ("Justice Center"). The legislation requires the Office of Children and Family Services ("OCFS) to promulgate regulations consistent with the Justice Center oversight, regulations and enforcement. These regulations enact changes in line with the legislation to protect vulnerable people against abuse, neglect and other conduct that may jeopardize their health, safety and welfare, and to provide fair treatment and notice to the employees. The included additions and amendments allow OCFS to comply with the statutory requirements that became effective June 30, 2013.

The facilities and provider agencies that are license, operated or certified by OCFS that are affected are the following: residential runaway and homeless youth programs; family type homes for adults; certified detention programs; OCFS operated juvenile justice programs; voluntary agency run institutions, group residences, group homes, agency operated boarding homes including supervised independent living programs; and, any local department of social services that runs a detention program or has a contract with an authorized agency for detention services or has a contract(s) for care of foster children in out-of-state facilities. In addition, additional background check requirements were added for Family Foster Boarding Homes, and families applying to adopt a child. Regulations were added or amended to incorporate reporting, investigative, record keeping, record production, administrative, and personnel requirements, among others.

The first category of regulations added or amended address jurisdiction of the newly created Vulnerable Persons Central Register (VPCR). Regulations will now reflect that reports of suspected abuse or neglect of persons receiving services in OCFS licensed, certified or operated residential care programs will be reported to the VPCR. Additionally reports regarding significant incidents that harm or put a service recipient at risk of harm at those same programs will be reported to the VPCR.

The second category of regulations added or amended addresses requirements of mandated reporters and what mandated reporters will be required to report to the VPCR. Acts of abuse/neglect and significant incidents are defined and procedures regarding making a report to the VPCR are outlined.

The third category of regulations added or amended provides for the requirement of data collection by the facility or provider agencies in response to requests by the Justice Center and standards for release of that information by the Justice Center.

The fourth category of regulations added or amended provides for the creation of incident review committees to affected facilities and provider agencies.

The fifth category of regulations added or amended provides criminal history background checks and checks of the Justice Center's list of substantiated category one reports of abuse and neglect prior to hiring certain employees, use of volunteers or contracts with certain entities have been added or amended.

Lastly, language inadvertently overwritten in June 2014 was re-inserted at section 182-1.5 of Title 9 of the NYCRR. The re-inserted language prohibits discrimination on the basis of sexual orientation, gender identity or expression. Inclusion of this language provides protection from such discrimination for the persons receiving services in the regulated programs.

This notice is intended to serve only as a notice of emergency adoption. This agency intends to adopt the provisions of this emergency rule as a permanent rule, having previously submitted to the Department of State a notice of proposed rule making, I.D. No. CFS-39-15-00001-EP, Issue of September 30, 2015. The emergency rule will expire December 22, 2015.

Text of rule and any required statements and analyses may be obtained from: Public Information Office, New York State Office of Children and Family Services, 52 Washington Street, Rensselaer, New York 12144, (518) 473-7793, email: info@ocfs.ny.gov

Regulatory Impact Statement

1. Statutory authority:

Section 20(3)(d) of the Social Services Law (SSL) authorizes the Office of Children and Family Services (OCFS) to establish rules and regulations to carry out its powers and duties pursuant to the provisions of the SSL.

Section 34(3)(f) of the SSL requires the Commissioner of OCFS to establish regulations for the administration of public assistance and care within the State.

Section 501(5) and 532-e of the New York State Executive Law authorizes the Commissioner of OCFS to promulgate rules and regulations for the establishment, operation and maintenance of division facilities and programs.

Section 490 of the SSL as found in Chapter 501 of the Laws of 2012 requires the Commissioner of OCFS to promulgate regulations that contain procedures and requirements consistent with guidelines and standards developed by the justice center and addressing incident management programs required by the Chapter Law.

2. Legislative objectives:

The proposed changes to the regulations concerning vulnerable persons in programs licensed, certified or operated by OCFS are necessary to further the legislative objective that vulnerable persons be safe and afforded appropriate care.

3. Needs and benefits:

To the extent a change to the run away and homeless youth regulations is a technical change, the need is to reauthorize language already found in regulation and implemented by program.

The proposed changes to the regulations concerning vulnerable persons in programs licensed, certified or operated by OCFS providers is in response to the recognized need to strengthen and standardize the safety net for vulnerable persons, adults and children alike, who are receiving care from New York's human service agencies and programs. The Protection of People with Special Needs Act creates a set of uniform safeguards, to be implemented by a justice center whose primary focus will be on the protection of vulnerable persons. Accordingly, the benefit of this legislation is to create a durable set of consistent safeguards for all vulnerable persons that will protect them against abuse, neglect and other conduct that may jeopardize their health, safety and welfare, and to provide fair treatment to the employees upon whom they depend.

4. Costs:

The proposed regulatory changes are not expected to have an adverse fiscal impact on authorized agencies, family type homes for adults, or on the social services districts with regard to reporting and record keeping requirements. Current laws and regulations impose similar levels of reporting and record keeping. In conforming to and complying with the new statutory and regulatory requirements authorized agencies and other facilities will necessarily have to reconfigure current utilization of staff and duties. The enhancement of services for the protections of Vulnerable Persons will incur additional costs.

To the extent a change to the run away and homeless youth regulations is a technical change, there is no anticipated cost.

5. Local government mandates:

The proposed regulations will not impose any additional mandates on social services districts. Local Districts have been provided with an amended model contract for use in securing out of state residential services for children in foster care. This model contract replaced a model contract already in existence and used by Local Districts.

To the extent a change to the run away and homeless youth regulations is a technical change, there are no additional mandates.

6. Paperwork:

The proposed regulations do not require any additional paperwork.

Requirements regarding documentation are currently in regulation. These regulations will require sharing such documentation with the Justice Center.

7. Duplication:

The proposed regulations do not duplicate any other State or Federal requirements.

8. Alternatives:

These regulations are required to comply with Chapter 501 of the Laws of 2012 and add a technical change to 9 NYCRR 182-1.5.

9. Federal standards:

The regulatory amendments do not conflict with any federal standards.

10. Compliance schedule:

The regulations will be effective on September 9, 2015 to ensure compliance with Chapter 501 of the Laws of 2012.

Regulatory Flexibility Analysis

1. Types and estimated number of small businesses and local governments:

Social services districts and voluntary authorized agencies contracting with such social services districts to provide residential foster care services to children, authorized agencies providing juvenile detention services, runaway and homeless youth shelters and adult family type homes will be affected by the proposed regulations, as well as state operated juvenile justice facilities.

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

Prior to Chapter 501 of the Laws of 2012, authorized agencies, facilities and mandated reporters employed by the same were required reporters of suspected child abuse or maltreatment to the New York Statewide Central Register of Child Abuse and Maltreatment. Pursuant to the statutory requirements of Social Services Law Sections 490 and 491, those mandated reporters are now required to report all reportable incidents, which will include but not be limited to those things previously falling within the definitions of abuse and neglect of a child in residential care, to the Vulnerable Persons Central Register. Authorized Agencies and facilities will be required to maintain the same level of practice as it relates to recordkeeping, and prevention and remediation plans. Authorized agencies and facilities will be required to comply with investigations and information requests as required by the Justice Center for the Protection of People with Special Needs, as defined in Article 20 of the Executive Law.

The proposed regulations and amendments alter practice to conform to statutory obligations set forth in Chapter 501 of the Laws of 2012.

3. Costs:

To the extent a change to the run away and homeless youth regulations is a technical change, there is no anticipated cost. All affected programs such as authorized agencies or facilities are currently subject to requirements governing reporting, record keeping, management of approved procedures and policies. As such the proposed regulations should not impose any additional costs associated with those functions. The statutory and regulatory requirements will necessarily require a reconfiguration of the current utilization of administrative costs to conform and comply with the requirements of the new law and conforming regulations. The statutory scheme provides for the enhancement of services for the protections of Vulnerable Persons, which will have added costs.

4. Economic and technological feasibility:

The proposed regulatory changes would not require any additional technology and should not have any adverse economic consequences for regulated parties.

5. Minimizing adverse impact:

The proposed changes to the regulations will require authorized agencies and facilities to conform to new reporting and record keeping requirements, however inconsistent and duplicative measures have been addressed by the regulations to minimize the impact. Trainings will be taking place across systems, as well as the dissemination of guidance documentation in advance of the effective date of the regulations.

6. Small business and local government participation:

Potential changes to the regulations governing the protection of people with special needs will be thoroughly addressed through statewide trainings and guidance documentation distributed to local representatives of social services, authorized agencies and facilities.

Rural Area Flexibility Analysis

1. Types and estimated number of rural areas:

Social services districts in rural areas and voluntary authorized agencies contracting with such social services districts to provide residential foster care services to children, authorized agencies providing juvenile detention services, runaway and homeless youth shelters and adult family type homes will be affected by the proposed regulations, as well as state operated juvenile justice facilities.

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

Prior to Chapter 501 of the Laws of 2012, authorized agencies, facilities and mandated reporters employed by the same were required reporters of suspected child abuse or maltreatment to the New York Statewide Central Register of Child Abuse and Maltreatment. Pursuant to the statutory requirements of Social Services Law Sections 490 and 491, those mandated reporters are now required to report all reportable incidents, which will include but not be limited to those things previously falling within the definitions of abuse and neglect of a child in residential care, to the Vulnerable Persons Central Register. Authorized Agencies and facilities will be required to maintain the same level of practice as it relates to recordkeeping, and prevention and remediation plans. Authorized agencies and facilities will be required to comply with investigations and information requests as required by the Justice Center for the Protection of People with Special Needs, as defined in Article 20 of the Executive Law.

The proposed regulations and amendments alter practice to conform to statutory obligations set forth in Chapter 501 of the Laws of 2012.

3. Costs:

To the extent a change to the run away and homeless youth regulations is a technical change, there is no anticipated cost. An authorized agency or facility is currently subject to requirements governing reporting, record keeping, management of approved procedures and policies, so the proposed regulations should not impose any additional costs associated with those functions. The statutory and regulatory requirements will necessarily require a reconfiguration of the current utilization of administrative costs to conform and comply with the requirements of the new law and conforming regulations. The statutory scheme provides for the enhancement of services for the protections of Vulnerable Persons, which will have added costs.

4. Minimizing adverse impact:

The proposed changes to the regulations require authorized agencies and facilities approved, licensed, certified or operated by the Office of Children and Family Services to protect Vulnerable Persons as defined by Social Services Law Section 488. The regulations are in direct response to the need to strengthen and standardize the protection of vulnerable people in residential care. The Protection of People with Special Needs Act creates uniform standards across systems to be implemented and monitored by the Justice Center.

5. Rural area participation:

Potential changes to the regulations governing implementation of the statute regarding the protection of people with special needs will be addressed through trainings and guidance documentation distributed to representatives of socials services districts, authorized agencies, including those that serve rural communities.

Job Impact Statement

The proposed regulations are not expected to have a negative impact on jobs or employment opportunities in either public or private sector service providers. A full job statement has not been prepared for the proposed regulations as it is not anticipated that the proposed regulations will have any adverse impact on jobs or employment opportunities.

Assessment of Public Comment

The agency received no public comment since publication of the last assessment of public comment.

NOTICE OF ADOPTION

Durable and Consistent Safeguards for Vulnerable Persons

I.D. No. CFS-39-15-00001-A
Filing No. 1039
Filing Date: 2015-12-08
Effective Date: 2015-12-23

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

Action taken: Amendment of Parts 166, 180 and 182 of Title 9 NYCRR; and amendment of Parts 402, 421, 433, 435, 441, 442, 443, 447, 448, 449, 476, 477 and 489 of Title 18 NYCRR.

Statutory authority: Social Services Law, sections 20(3)(d) and 34(3)(f); Executive Law, sections 501(5) and 532-e; L. 2012, ch. 501

Subject: Durable and consistent safeguards for vulnerable persons.

Purpose: To create an immediate set of durable and consistent safeguards for vulnerable persons.

Text or summary was published in the September 30, 2015 issue of the Register, I.D. No. CFS-39-15-00001-EP.

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

Text of rule and any required statements and analyses may be obtained from: Public Information Office, New York State Office of Children and Family Services, 52 Washington Street, Rensselaer, New York 12144, (518) 473-7793, email: info@ocfs.ny.gov

Initial Review of Rule
As a rule that requires a RFA, RAFA or JIS, this rule will be initially reviewed in the calendar year 2018, which is no later than the 3rd year after the year in which this rule is being adopted.

Assessment of Public Comment
The agency received no public comment.

Department of Civil Service

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Jurisdictional Classification

I.D. No. CVS-51-15-00002-P

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

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

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

Subject: Jurisdictional Classification.

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

Text of proposed rule: Amend Appendix 2 of the Rules for the Classified Service, listing positions in the non-competitive class, in the Department of Financial Services, by adding thereto the position of øChief Information Security Officer 1 (1).

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

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

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

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

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

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

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

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Jurisdictional Classification

I.D. No. CVS-51-15-00003-P

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

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

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

Subject: Jurisdictional Classification.

Purpose: To classify a position in the exempt class.

Text of proposed rule: Amend Appendix 1 of the Rules for the Classified Service, listing positions in the exempt class, in the Executive Department under the subheading "Office for the Aging," by increasing the number of positions of Deputy Director from 3 to 4.

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

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

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

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

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

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

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

Education Department

NOTICE OF EXPIRATION

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

Field Tests for State Assessments, Alternate Assessments and Regents Examinations

I.D. No.	Proposed	Expiration Date
EDU-48-14-00008-P	December 3, 2014	December 3, 2015

Department of Environmental Conservation

PROPOSED RULE MAKING HEARING(S) SCHEDULED

Distributed Generation (DG) Sources That Feed the Distribution Grid or Produce Electricity for Use at Host Facilities or Both

I.D. No. ENV-51-15-00004-P

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

Proposed Action: Amendment of Part 200, Subpart 227-2; and addition of Part 222 to Title 6 NYCRR.

Statutory authority: Environmental Conservation Law, sections 1-0101, 3-0301, 19-0103, 19-0105, 19-301, 19-0303, 19-305, 19-0311, 71-2103 and 71-2105

Subject: Distributed generation (DG) sources that feed the distribution grid or produce electricity for use at host facilities or both.

Purpose: Establish emission limits for distributed generation sources.

Public hearing(s) will be held at: 10:00 a.m., Feb. 8, 2016 at One Hunter's Point Plaza, 47-40 21st St., Long Island City, NY; 1:00 p.m., Feb. 9, 2016 at 6274 E. Avon-Lima Rd., Avon, NY; and 9:00 a.m., Feb. 11, 2016 at 625 Broadway, Public Assembly Rm. 129, Albany, NY.

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

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

Substance of proposed rule (Full text is posted at the following State website:www.dec.ny.gov): The Department of Environmental Conservation (Department) proposes to adopt 6 NYCRR Part 222, 'Distributed Generation Sources' and revise Part 200, 'General Provisions' and Subpart 227-2, 'Reasonably Available Control Technology (RACT) for Oxides of Nitrogen (NO_x)' to conform to new Part 222. A distributed generation (DG) source is defined in Section 222.2(b)(2) as a stationary reciprocating or rotary internal combustion engine that feeds into the distribution grid or produces electricity for use at the host facility or both.

Applicability

Part 222 will apply to owners and operators of distributed generation (DG) sources where the potential NO_x emissions are below the major source threshold set forth in paragraph 201-2.1(b)(21) of Part 201 and that have maximum mechanical output ratings of 200 horsepower (hp) or greater in the New York City metropolitan area or 400 hp or greater elsewhere in the state.

Emergency generators owned and operated by municipalities or municipal agencies may be used when the usual supply of power is available if doing so would prevent a violation of the Clean Water Act or Article 17 of the New York State Environmental Conservation Law through April 30, 2021. Thereafter, such sources will be subject to the emission standards set forth in Section 222.4 of Part 222.

Definitions and General Provisions

Definitions specific to Part 222 are presented in Part 222. Besides the definition of DG sources presented above, the other key term defined in Section 222.2 is 'economic dispatch source': "(a) distributed generation source used to reduce energy costs or ensure a reliable electricity supply for a facility. A distributed generation source that is not an emergency power generating stationary internal combustion engine as defined in section 200.1 is considered to be an economic dispatch source" (see paragraph 222.2(b)(3)).

A requirement that owners or operators of economic sources subject to Part 222 notify the Department in writing no later than April 1, 2016 regarding whether the sources will continue to be operated as economic dispatch sources or operated a emergency generators is incorporated into Section 222.3. If a source owner or operator fails to notify the Department as required in paragraph 222.3(a)(1), the Department will assume that such sources remain classified as economic dispatch sources.

Control Requirements (Section 222.4)

Economic dispatch sources must meet the following NO_x standards effective on May 1, 2016:

1. combined cycle combustion turbines firing natural gas: 25 parts per million on a dry volume basis corrected to 15 percent oxygen;

2. combined cycle combustion turbines firing oil: 42 parts per million on a dry volume basis corrected to 15 percent oxygen;

3. simple cycle combustion turbines firing natural gas: 50 parts per million on a dry volume basis corrected to 15 percent oxygen;

4. simple cycle combustion turbines firing oil: 100 parts per million on a dry volume basis corrected to 15 percent oxygen;

5. reciprocating engines firing natural gas: 1.5 grams per brake horsepower-hour.

6. reciprocating engines firing distillate oil (solely or in combination with other fuels): 2.3 grams per brake horsepower-hour.

Diesel-fired economic dispatch sources will be subject to a particulate matter limit of 0.30 grams per brake horsepower-hour effective May 1, 2016. An alternative compliance option is to equip affected sources with pollution control devices designed to remove 85 percent or more of the particulate matter from the exhaust stream.

Alternative Compliance Options

There are five alternative compliance options for owners or operators of economic dispatch sources which cannot meet the proposed NO_x emission limits set forth in Part 222. First, an owner or operator could apply for a variance for a source-specific NO_x limit. The owner or operator must provide sufficient documentation or other proof to convince the Department that it is economically or technically infeasible for the source to comply with the appropriate NO_x limit.

Second, an owner or operator may permanently shut down a DG source by May 1, 2017. The intent to shut down a source must be recorded as part of an enforceable permit modification prior to May 1, 2016.

Third, an owner or operator of a diesel-fired economic dispatch source may convert the source to fire natural gas by May 1, 2017. The intent to shut down a source must be recorded as part of an enforceable permit modification prior to May 1, 2016.

The fourth option is available to facilities with renewable generation systems (RGS).[1] An effective emission rate, calculated using Equation 1 (below), may be compared to the applicable NO_x emission limit to demonstrate compliance with the emission limit. This option may only be used in cases where the NO_x standard is in units of grams per brake horsepower-hour. This approach allows a facility to take credit for electricity generated by the RGS.

Equation 1. $E = 0.338*N/(D+R)$

where:

E = effective emission rate (grams per brake horsepower-hour);

N = NO_x emissions (pounds);

D = electricity generated by the DG source (megawatt-hours); and

R = electricity generated by the RGS (megawatt-hours).

The fifth option (subdivision 222.5(b)) is available only to DG sources enrolled during calendar years 2014 or 2015 in demand response programs established to maintain the reliability of the electric grid. Eligible sources would be granted an extra year (until May 1, 2017) to comply with the emission standards set forth in Section 222.4 provided:

1. the source owner or operator complies with the notification requirement of subdivision 222.3(a) of Part 222;

2. the source owner or operator provides evidence that the source was enrolled during calendar year 2014 or 2015 in a demand response program established to maintain the reliability of the electric grid; and

3. the source owner or operator does not pledge an amount of generation during calendar year 2016 greater than that pledged during 2014 or 2015.

The Department may extend the compliance date for sources subject to subdivision 222.5(b) of Part 222 until May 1, 2018 or May 1, 2019 based, at least in part, on a determination by the New York State Department of Public Service that an extension is needed to preserve reliability of the electric grid in the particular zone or subzone in which an affected source is located.

Emissions Testing

Sources subject to emission limits must be tested by April 30, 2016 and must undergo additional emissions testing once every 10 years. Emergency generators are exempt from this provision since this class of sources will not be subject to any emission limits.

Changes to Part 200 and Subpart 227-2

The definition of a 'stationary internal combustion engine' under current 6 NYCRR Subpart 227-2.2(b)(11) will be removed and added to Section 200.1 since the term will now be applicable to multiple regulations.

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[1] A renewable generation system is defined in Section 222.2 as a photovoltaic or wind power electricity generating system.

Text of proposed rule and any required statements and analyses may be obtained from: John Barnes, P.E., NYSDEC, Division of Air Resources, 625 Broadway, Albany, NY 12233-3251, (518) 402-8396, email: air.regs@dec.ny.gov

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

Public comment will be received until: February 18, 2016.

Additional matter required by statute: Pursuant to Article 8 of the State Environmental Quality Review Act, a Short Environmental Assessment Form, a Negative Declaration and a Coastal Assessment Form have been prepared and are on file.

Summary of Regulatory Impact Statement

Distributed generation (DG) sources are engines used by a site to supply electricity outside that which is supplied by the electrical grid. This on-site generation of electricity by DG sources is used by a wide-range of facilities either in non-emergency situations that reduce demand on the electric grid and preserve the overall reliability of the grid, or in emergency situations when the usual supply of power from central station power plants becomes unavailable. Currently, the exact number of DG sources in New York is unknown, but the Northeast States for Coordinated Air Use Management (NESCAUM) estimated that there may be over 15,000 diesel generators in the state,[1] which provide electricity in times of high demand or during emergency events.

Therefore, the Department of Environmental Conservation (Department) is proposing to adopt 6 NYCRR Part 222, 'Distributed Generation Sources' and make conforming revisions to Part 200, 'General Provisions' and Subpart 227-2, 'Reasonably Available Control Technology (RACT) for Oxides of Nitrogen (NO_x)' to establish emission standards, monitoring requirements and record keeping requirements for certain DG sources in

New York State. The proposed rule will apply to DG sources not currently regulated under Subpart 227-2 or subject to a federal New Source Performance Standard (NSPS), as long as the federal standards are less than or equal to the Part 222 emission limits.

The statutory authority to promulgate Part 222 and the revise 6 NYCRR Part 200 and Subpart 227-2 is found in the New York Environmental Conservation Law (ECL), Sections 1-0101, 3-0301, 19-0103, 19-0105, 19-0301, 19-0303, 19-0305, 19-0311, 71-2103 and 71-2105.

As required by the New York State Administrative Procedures Act (SAPA), a Regulatory Impact Statement (RIS) is being submitted with this rulemaking package and sets forth, among other things, the Department's reasoning for this rulemaking, costs for complying with the rule, and a summary of considered alternatives to this rulemaking. A summary of the RIS is presented below.

I. NEEDS AND BENEFITS

The Department is proposing to adopt Part 222 to reduce NO_x emissions from DG sources, thereby helping New York attain the federal 2008 ozone National Ambient Air Quality Standard (NAAQS) and protect human health and welfare. In particular, the proposed rule is a critical component in the state's ability to meet the federal 2008 ozone NAAQS in the New York City metropolitan area (NYMA), which is currently designated as non-attainment for ozone. The increased of certain DG sources, especially uncontrolled diesel-fired generators, has made it increasingly difficult for the state to comply with the 2008 ozone NAAQS. This proposed rule will address attainment of the 2008 ozone NAAQS as well as the public health impacts of NO_x and PM, pollutants emitted by DG sources. In addition, NYMA is currently meeting the PM2.5 NAAQS, but only by a small margin. The PM controls in the proposed rule will help ensure that NYMA continues to meet the standard.

For purposes of determining which DG sources are subject to the emission limits under proposed Part 222, the Department divided DG sources into two primary regulatory classifications: emergency power generating stationary reciprocating internal combustion engines ("emergency generators") and economic dispatch sources. Emergency generators, defined in 6 NYCRR 200.1(cq), are not subject to the proposed emission limits. Economic dispatch sources are subject to the proposed emissions limits.

Economic dispatch sources are defined in proposed Part 222 as DG sources used to reduce energy costs or ensure reliable electricity for a facility. Any DG source that is not exclusively an emergency generator, is considered to be an economic dispatch source for purposes of the rule, including CHP systems and DG sources enrolled in demand response programs. Generally, economic dispatch sources are used in two ways: peak load generation; and base load generation. Peak load generation is used during times when the cost of electricity supplied by utilities is high. Alternatively, base load generation systems are designed to provide all or a portion of the electricity demand for a facility throughout the year.

DG sources enrolled in demand response programs are typically uncontrolled emergency generators that operate when called upon by a sponsoring organization to reduce demand on the electric grid, thus preserving the reliability of the grid. These sources are typically used on high electric demand days, which generally correspond to days with high ground-level ozone concentrations. Demand response programs are sponsored by the New York Independent System Operator (NYISO), Long Island Power Authority (LIPA), New York Power Authority (NYPA) and Consolidated Edison Company of New York (Con Edison). According to a NYISO filing, DG resources comprised approximately 13 percent of the total capacity enrolled in the NYISO programs in May 2011.[2] The remainder of demand response resources consisted of curtailment and load shifting resources. Facilities enrolled in demand response programs receive revenue from the program sponsors for guaranteeing load reductions (kW) or for electricity generated and/or curtailed (kWh).

The total capacity of the DG sources enrolled in the NYISO demand response programs in the New York City metropolitan area was 134.7 MW in May 2011. The average duration of a demand response event is approximately six (6) hours. Assuming all of these DG sources operate during a typical event, these sources would emit approximately 13 tons of NO_x per event. This estimate does not include emissions from generation sources enrolled in demand response programs sponsored by Con Edison, NYPA or LIPA. The NO_x emissions estimate for DG sources enrolled in NYISO's demand response programs would be reduced to 2.7 tons per day if the sources were required to meet the proposed NO_x emission standard. Since demand response programs are typically activated on high ozone days, a 10 ton per day reduction in emissions from these sources is a step towards attaining the 2008 ozone NAAQS.

Further, the New York City Energy Policy Task Force estimated that the total capacity of emergency generators in New York City at 1,320 MW.[3] Potentially, all of these emergency generators could be enrolled in demand response programs.[4] If this estimate is accurate and all such sources are used as demand response sources, the estimated daily NO_x emissions would be more than 127 tons. It would be very difficult to develop a regulatory strategy to bring the NYMA into attainment with the 2008 ozone NAAQS if all emergency generators in New York City were allowed to participate in demand response programs without requiring pollution controls.

DG sources have short stacks, which means the exhaust plumes are not dispersed as effectively as plumes from central station power plants. Therefore, emissions from DG sources can have a greater impact on populations living and working in the vicinity of the sources. DG sources emit NO_x, a precursor to ground-level ozone, which can irritate lung tissues and cause symptoms such as coughing, wheezing and difficulty breathing.[5] Additionally, chronic exposure to ground-level ozone may cause permanent lung damage.[6] DG sources also emit PM which has been linked to adverse health impacts including aggravated asthma, decreased lung function, irregular heartbeat and heart attacks.[7]

DG sources should be subject to emission standards to reduce public health impacts since these sources displace the electricity traditionally generated by central station power plants which are subject to strict emission limits. The reliance on demand response programs is a disincentive for building new central station power plants since the electricity generated during demand response events is necessary to maintain the integrity of the grid.

Therefore, the NO_x and PM emission limits established for DG sources in this proposed rule will help reduce public health impacts, especially for individuals living and working near them, and the reduction in ground-level ozone from the proposed NO_x limits will help the state attain the federal 2008 ozone NAAQS.

II. COMPLIANCE REQUIREMENTS

On the effective date of this rule, Part 222 will apply to DG sources that meet the following applicability thresholds:

1. Mechanical output rating of 200 horsepower (hp) or greater for DG sources located in the NYMA; and

2. Mechanical output rating of 400 hp or greater for sources located outside of the NYMA.

Emergency generators owned by municipalities or municipal agencies may by operated in cases where the usual supply of electricity is still available if such operation would prevent a violation of the Clean Water Act or Article 17 of the ECL through April 30, 2021. This would allow such generators to run in order to prevent direct sewage discharges to waterways in the state, while giving municipalities time to control emissions from their emergency generators. Beginning May 1, 2021, such sources would be required to meet the standards set forth in Section 222.4 of Part 222 or be replaced with engines meeting standards adopted by the USEPA.

On May 1, 2016, the following NO_x emission limits will apply to economic dispatch sources subject to Part 222:

-- natural gas-fired simple cycle combustion turbines: 50 parts per million by volume on a dry basis (ppmvd) corrected to 15 percent O_2;

-- oil-fired simple cycle combustion turbines: 100 ppmvd corrected to 15 percent O_2;

-- natural gas-fired combined cycle combustion turbines: 25 ppmvd corrected to 15 percent O_2;

-- oil-fired combined cycle combustion turbines: 42 ppmvd corrected to 15 percent O_2;

-- natural gas-fired engines: 1.5 grams per brake horsepower-hour (g/bhp-h);

-- diesel-fired engines: 2.3 g/bhp-h

Also on May 1, 2016, diesel-fired economic dispatch sources must meet a PM emission limit of 0.30 g/bhp-h, or be equipped with a pollution control device designed to remove 85 percent or more of PM from the exhaust stream. Part 222 compliance requirements are further described in the RIS.

III. COSTS

Selective catalytic reduction (SCR) systems can reduce the NO_x emissions from lean-burn natural gas fired-engines and diesel-fired engines by up to 90 percent.[8] The capital cost (installed) of SCR control systems range from $188,000 (1200 hp engine) to $304,000 (2000 hp engine).

The Department evaluated the costs for operating SCR systems under a wide range of scenarios over a 10-year period. Control costs of $5,000 per ton of NO_x reduced are considered reasonable under Subpart 227-2. For pre-NSPS engines, the cost per ton of NO_x reduced would be less than $5,000 for sources operating 1,500 hours per year or more. For post-NSPS engines, the $5,000 per ton threshold would be met when operating 3,000 hours per year or more. Therefore, in the opinion of the Department, the costs to operate SCR systems are reasonable.

Non-selective catalytic reduction (NSCR) systems can reduce the NO_x emissions from rich-burn natural gas fired-engines engines by up to 98 percent.[9] The capital cost (installed) of NSCR control systems range from $53,000 (1200 hp engine) to $83,000 (2000 hp engine). The cost per ton of NO_x reduced is less than $5,000 when operating more than 200 hours per year.

'Compliance Testing'

The emission testing costs are estimated to be $8,000 ($NO_x$ only) to $15,000 ($NO_x$ and PM) per source[10]. Emission testing must be performed once every ten years. Emission testing for PM is not required for engines equipped with pollution control devices verified by the California Air Resources Board (CARB) as meeting the Level 3 or Level 3 Plus Classification per the California Code of Regulations, Title 13, Sections 2700-2711.

'Alternative Compliance Options'

There are five alternative compliance options for owners or operators of economic dispatch sources set forth in Section 222.5 of Part 222. These options include source-specific emission rates in cases where it is economically or technically infeasible to meet the NO_x standard; additional time to permanently shut down a DG source; converting a diesel-fired economic dispatch source to fire natural gas; and a credit for using a renewable generation system (photovoltaic or wind generation systems). A one-year extension of the compliance date for sources enrolled in demand response programs established to maintain reliability of the electric grid is included in the rule. This provision is limited to DG sources enrolled in demand response programs in 2014 or 2015.

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[1] "Stationary Diesel Engines in the Northeast: An Initial Assessment of the Regional Population, Control Technology Options and Air Quality Policy Issues", NESCAUM, June 2003, pg. 26.

[2] "Semi-Annual Compliance Report of Demand Response Programs", New York Independent System Operator, June 1, 2011.

[3] "New York City Energy Policy: An Electricity Resource Roadmap", New York City Energy Policy Task Force, January 2004, page 32.

[4] At which point such sources would no longer be considered emergency generators.

[5] "Health Effects", EPA (www.epa.gov/airquality/ozonepollution/health.html)

[6] Ibid.

[7] USEPA, www.epa.gov/pm/ health.html

[8] "NO_x Control for Stationary Gas Engines", Wilson Chu (Johnson-Matthey), Advances in Air Pollution Control Technology, MARAMA Workshop, May 19, 2011.

[9] "NO_x Control for Stationary Gas Engines", Wilson Chu (Johnson-Matthey), Advances in Air Pollution Control Technology, MARAMA Workshop, May 19, 2011.

[10] Stack testing costs are based upon an informal Department survey of several stack testing companies.

Regulatory Flexibility Analysis

The Department of Environmental Conservation (Department) proposes to adopt 6 NYCRR Part 222, 'Distributed Generation Sources' and revise Part 200, 'General Provisions' and Subpart 227-2, 'Reasonably Available Control Technology (RACT) for Oxides of Nitrogen (NO_x)' to conform to new Part 222. A distributed generation (DG) source is any stationary internal combustion engine used to produce electricity exclusively for use at the host facility. The purpose of this rulemaking is to establish emission limits, recordkeeping and testing requirements for DG sources.

EFFECT OF THE RULE

Distributed generation can be used to meet all or part of the electricity demand of any facility for short periods of time (e.g., emergency generator use during a blackout) or year-round. The type of DG application depends upon the needs of the facility (e.g., the need for a constant, reliable electricity supply) and economic considerations. Distributed generation is used in a wide range of commercial and industrial facilities including, but not limited to, hospitals, financial institutions, colleges, shopping centers, farms, apartment complexes and office buildings. It is estimated that as many as 26,000 sites in New York could potentially use combined heat and power (CHP) systems.[1, 2] Although not all of those sites would use CHP systems, this estimate provides insight as to the number of sites where DG applications might be used. Small businesses and local governments with DG sources other than emergency generators would be subject to emission standards and emissions testing requirements set forth in Part 222.

Energy services companies (ESCOs) would also be affected by Part 222. ESCOs enroll facilities into demand response (DR) programs sponsored by the New York Independent System Operator and some transmission operators. ESCOs' DR portfolios contain curtailment, load shifting, energy efficiency and DG resources. Most DG resources in these portfolios are uncontrolled, diesel-fired engines that would be subject to NO_x and PM emission standards set forth in Section 222.4 of the rule. These standards would take effect on May 1, 2016. Post-combustion pollution control systems would likely be required for most engines that commenced operation prior to the effective date of Part 222 in order to meet the emission standards. There is a potential that owners of generators enrolled in DR programs may not make the necessary investments to meet the emission standards and would be dropped from ESCOs' DR portfolios resulting in a reduction in income for both the ESCO and the source owner.[3] DG resources comprised 13 percent of the resources enrolled in the NYISO's Emergency Demand Response Program and Special Case Resources Program (combined) as of May 2011.[4] Therefore, it is expected that the provisions of Part 222 would minimally impact ESCOs.

COMPLIANCE REQUIREMENTS

On the effective date of this rule, Part 222 would apply to DG sources that meet the following thresholds:

1. mechanical output rating of 200 horsepower (hp) or greater for sources located in the New York City metropolitan area; and

2. mechanical output rating of 400 hp or greater for sources located outside of the New York City metropolitan area.

Emergency generators owned by municipalities or municipal agencies may by operated in cases where the usual supply of electricity is still available if such operation would prevent a violation of the Clean Water Act or Article 17 of the ECL through April 30, 2021. The purpose of this provision is to allow such generators to run in order to prevent direct sewage discharges to waterways in the state. Beginning May 1, 2021, such sources would be required to meet the standards set forth in Section 222.4 of Part 222 or be replaced with engines meeting standards adopted by the USEPA.

Also on the effective date of this rule, the maintenance and testing of emergency power generating stationary internal combustion engines would be prohibited during the hours of 1:00 pm and 8:00 pm during the period of May 1 through September 30 of each year.

By April 1, 2016, owners or operators of DG sources required to operate under permits or registration certificates must notify the Department whether the sources would be operated as emergency generators or economic dispatch sources. In cases where such notification is not provided by the compliance date, the DG source would be considered an economic dispatch source for regulatory purposes.

On May 1, 2016, the following NO_x emission limits would apply to economic dispatch sources subject to Part 222:

- natural gas-fired simple cycle combustion turbines: 50 parts per million on a dry volume basis (ppmvd) corrected to 15 percent O_2
- oil-fired simple cycle combustion turbines: 100 ppmvd corrected to 15 percent O_2
- natural gas-fired combined cycle combustion turbines: 25 ppmvd corrected to 15 percent O_2
- oil-fired combined cycle combustion turbines: 42 ppmvd corrected to 15 percent O_2
- natural gas engines: 1.5 grams per brake horsepower-hour (g/bhp-h)
- diesel-fired engines: 2.3 g/bhp-h

Also on May 1, 2016, diesel-fired DG sources must be in compliance with one of the following requirements regarding particulate emissions:

a. must be equipped with a pollution control device designed to remove 85 percent or more of the PM in the exhaust stream; or

b. must be in compliance with a particulate emission limit of 0.30 g/bhp-h.

By April 30, 2016, owners and operators of DG sources subject to an emission limit(s) must conduct an initial emissions test to demonstrate compliance with the emission limits set forth in Part 222. Additional testing must be conducted at a frequency of once every 10 years. Also, the rule requires owners and operators of DG sources to notify DEC 60 days prior to testing and to submit a copy of the test report to DEC within 60 days following the test. Records of the emission tests must be maintained and made available to the DEC.

Emission testing for PM is not required for engines equipped with pollution control devices verified by CARB as meeting the Level 3 or Level 3 Plus classification per the California Code of Regulations, Title 13, Sections 2700-2711.

Within one year of the effective date of the rule or within 12 months of commencing operation of a DG source subject to the rule, whichever is later, the owner and operator of the source must conduct an initial tune-up of the source. Additionally, the DG source must be tuned-up at least once every 12 months. Records of annual tune-ups must be maintained at the facility for a period of five years.

PROFESSIONAL SERVICES

The services of an engineering consultant may be required in order to complete a permit. A stack testing company would be required to conduct the emissions testing required in 222.6. The services of a certified technician may be required to conduct the annual tune-up required in Section 222.4.

COMPLIANCE COSTS

The costs for post-combustion control systems are presented in the following sections for 1200 hp and 2000 hp engines. As a point of comparison, replacement costs for new 1200 hp or 2000 hp engines that meet the NSPS requirements range from $525,000 to $1,000,000.[5, 6]

Selective Catalytic Reduction (SCR) Systems

Selective catalytic reduction (SCR) systems can reduce the NO_x emis-

sions from lean-burn natural gas fired-engines and diesel-fired engines by up to 90 percent.[7] The capital cost (installed) of SCR control systems are presented in Table 1.

Table 1: Capital Costs for SCR Systems

Cost Component	1200 hp Engine	2000 hp Engine
SCR System[8]	$103,000	$171,700
Installation	$61,800	$103,000
Taxes	$8,300	$13,800
Testing[9]	$15,000	$15,000
Total Cost	$188,100	$303,500

Operational costs vary depending upon several factors. The primary driver is the reagent (urea) cost. The other operational factors DEC considered in developing cost estimates for SCR systems were insurance, maintenance and labor costs.

The Department evaluated the costs for operating SCR systems under a wide range of scenarios over a 10-year period. Control costs of $5,000 per ton of NO_x reduced are considered reasonable under Subpart 227-2. For pre-NSPS engines, the cost per ton of NO_x reduced would be less than $5,000 for sources operating 1,500 hours per year or more. For post-NSPS engines, the $5,000 per ton threshold would be met when operating 3,000 hours per year or more. Therefore, in the opinion of the Department, the costs to operate SCR systems are reasonable.

Non-Selective Catalytic Reduction (NSCR) Systems

Non-selective catalytic reduction (NSCR) systems can reduce the NO_x emissions from rich-burn natural gas fired-engines engines by up to 98 percent.[10] The capital cost (installed) of NSCR control systems are presented in Table 2.

Table 2: Capital Costs for NSCR Systems

Cost Component	1200 hp Engine	2000 hp Engine
SCR System	$26,700	$44,400
Installation	$16,000	$26,700
Taxes	$2,100	$3,500
Testing[11]	$8,000	$8,000
Total Cost	$52,800	$82,600

NSCR catalysts need to be replaced every five years.[12] Replacement catalyst is estimated to cost 7 percent of the original NSCR system cost. In DEC cost analyses, the cost of installing the replacement catalyst was assumed to be 60 percent of the cost of the new catalyst. Annual costs for operating NSCR include insurance, maintenance and labor. The cost per ton of NO_x reduced is less than $5,000 when operating more than 200 hours per year.

'Particulate Matter (PM) Emissions'

Particulate control equipment (e.g. - particulate traps or oxidation catalysts) may be required in order for some sources to comply with the particulate emission standard. The costs for particulate control equipment are approximately $55 per KW installed ($49,200 - $82,000 for the engine sizes discussed in this section).[13]

'Compliance Testing'

The emission testing costs are estimated to be $8,000 ($NO_x$ only) to $15,000 ($NO_x$ and PM) per source.[14] Emission testing for PM is not required for engines equipped with pollution control devices verified by the California Air Resources Board as meeting the Level 3 or Level 3 Plus Classification per Chapter 14, Title 13 of the California Code of Regulations.

MINIMIZING ADVERSE IMPACT

There were several instances where the Department incorporated measures into Part 222 to minimize the impact of the rule on small businesses or local governments. Summaries of these measures are presented below.

There are five alternative compliance options for owners or operators of economic dispatch sources set forth in Section 222.5 of Part 222. These options include source-specific emission rates in cases where it is economically or technically infeasible to meet the NO_x standard; additional time to permanently shut down a DG source; converting a diesel-fired economic dispatch source to fire natural gas; and a credit for using a renewable generation system (photovoltaic or wind generation systems). Further, a one-year extension of the compliance date for sources enrolled in demand response programs established to maintain reliability of the electric grid is included in the rule. This provision is limited to DG sources enrolled in demand response programs in 2014 or 2015.

The Department considered establishing caps on the number of sources enrolled in demand response programs to reduce emissions from this source category. The capacity of such units, measured in units of megawatts, would have been used as a basis for the caps. This alternative was rejected because the implementation of the capping provisions would put the Department in the position of determining which demand response sources could be enrolled in a demand response program by approving or denying permit applications. This could put the Department in the position of regulating demand response programs which is not within the Department's legal authority.

New biogas-fired sources would be exempt from Part 222. Farms with animal waste digesters and municipalities with waste water treatment plants would only need to comply with 40 CFR 60 Subpart JJJJ when installing and operating new DG sources fired with biogas.

SMALL BUSINESS AND LOCAL GOVERNMENT PARTICIPATION

The proposed rulemaking is the result of a stakeholder process initiated by the Department in 2001. Stakeholder Meetings were held on November 13, 2001, December 12, 2002, April 8, 2003, May 17, 2004, June 29, 2006 and June 25, 2013. Drafts of Part 222 were circulated electronically to stakeholders in May 2004, January 2005, June 2006 and May 2013. More than 175 stakeholders have been involved in the process of developing Part 222 and anyone who requested to be added to the list of stakeholders was added. The meeting of April 8, 2003 was advertised in the Department's Environmental Notice Bulletin.

Many of the participants in the stakeholder process represented small businesses and local governments. These groups include law firms, consultants, trade organizations, manufacturers, and governmental agencies that work with small businesses and local governments.

ECONOMIC AND TECHNOLOGICAL FEASIBILITY

The pollution control technologies that would be required in order for a small business or local government to comply with the emission standards incorporated into Part 222 are readily available and are proven technologies. Three-way catalyst systems for rich-burn engines and selective catalytic reduction systems are used today in a wide-range of applications.

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[1] CHP is a subset of distributed generation sources in which energy is recovered from exhaust gases to provide heat or hot water.

[2] "NYSERDA's CHP Program: Moving the Market Forward", Dana Levy and Brian Platt. Presentation at the NYSDPS CHP Technical Conference, May 13, 2013.

[3] Demand response payments are not the primary source of income for DR source owners or operators.

[4] "Semi-Annual Compliance Report on Demand Response Programs", NYISO, June 1, 2011.

[5] E-mail from Joe Suchecki (Truck & Engine Manufacturers Association) to John Barnes (DEC) dated November 8, 2013.

[6] Replacement costs as well as the costs for pollution control systems could be higher than the costs presented in this section in cases where there are space limitations or building or fire code requirements that must be met.

[7] "NO_x Control for Stationary Gas Engines", Wilson Chu (Johnson-Matthey), Advances in Air Pollution Control Technology, MARAMA Workshop, May 19, 2011.

[8] Sources: CARB 2010. Regulatory Analysis for Revisions to Stationary Diesel Engine Air Toxic Control Measure. Appendix B. Analysis of Technical Feasibility and Costs of After-treatment Controls on Emergency Diesel Engines; and (2) Producer Price Index, U.S. Department of Labor, Bureau of Labor Statistics.

[9] Testing costs include NO_x and PM tests (diesel engines). For natural gas-fired engines, the estimated cost is $8,000 for NO_x tests only.

[10] "NO_x Control for Stationary Gas Engines", Wilson Chu (Johnson-Matthey), Advances in Air Pollution Control Technology, MARAMA Workshop, May 19, 2011.

[11] Emissions tests for NO_x only since the PM standard does not apply to natural gas engines.

[12] E-mail from Wilson Chu (Johnson Matthey) to John Barnes (DEC) dated January 24, 2008.

[13] Sources: CARB 2010. Regulatory Analysis for Revisions to Stationary Diesel Engine Air Toxic Control Measure. Appendix B. Analysis of Technical Feasibility and Costs of After-treatment Controls on Emergency Diesel Engines; and (2) Producer Price Index, U.S. Department of Labor, Bureau of Labor Statistics.

[14] Stack testing costs are based upon an informal Department survey of several stack testing companies.

Rural Area Flexibility Analysis

The Department of Environmental Conservation (Department) proposes to 1) adopt 6 NYCRR Part 222, 'Distributed Generation Sources', and 2) revise Part 200, 'General Provisions' and Subpart 227-2, 'Reasonably Available Control Technology (RACT) for Oxides of Nitrogen (NO_x)' to conform to the new Part 222. A distributed generation (DG) source is any stationary internal combustion engine used to produce electricity for use at the host facility. The purpose of this rulemaking is to establish emission limits, recordkeeping and testing requirements for DG sources that are not subject to Subpart 227-2.

TYPES AND ESTIMATED NUMBERS OF RURAL AREAS AFFECTED

Part 222 and the revisions to Part 200 will apply to facilities statewide. The primary impact of the rule will be in urban areas, especially in the New York City metropolitan area, although the rules will also apply to facilities in rural areas. The types of rural facilities that could be subject to the rules include hospitals, universities, wastewater treatment plants and farms.

COMPLIANCE REQUIREMENTS

On the effective date of this rule, Part 222 will apply to DG sources that meet the following thresholds:

1. mechanical output rating of 200 horsepower (hp) or greater for sources located in the New York City metropolitan area; and

2. mechanical output rating of 400 hp or greater for sources located outside of the New York City metropolitan area.

Emergency generators owned by municipalities or municipal agencies may by operated in cases where the usual supply of electricity is still available if such operation would prevent a violation of the Clean Water Act or Article 17 of the ECL through April 30, 2021. The purpose of this provision is to allow such generators to run in order to prevent direct sewage discharges to waterways in the state. Beginning May 1, 2021, such sources would be required to meet the standards set forth in Section 222.4 of Part 222 or be replaced with engines meeting standards adopted by the USEPA.

Also on the effective date of this rule, the maintenance and testing of emergency power generating stationary internal combustion engines will be prohibited during the hours of 1:00 pm and 8:00 pm during the period of May 1 through September 30 of each year.

By April 1, 2016, owners or operators of DG sources that are required to operate under permits or registration certificates must notify the Department whether the sources will be operated as emergency generators or economic dispatch sources. In cases where such notification is not provided by the compliance date, the DG source will be considered an economic dispatch source for regulatory purposes.

On May 1, 2016, the following NO_x emission limits will apply to economic dispatch sources subject to Part 222:

- natural gas-fired simple cycle combustion turbines: 50 parts per million on a dry volume basis (ppmvd) corrected to 15 percent O_2
- oil-fired simple cycle combustion turbines: 100 ppmvd corrected to 15 percent O_2
- natural gas-fired combined cycle combustion turbines: 25 ppmvd corrected to 15 percent O_2
- oil-fired combined cycle combustion turbines: 42 ppmvd corrected to 15 percent O_2
- natural gas engines: 1.5 grams per brake horsepower-hour (g/bhp-h)
- diesel-fired engines: 2.3 g/bhp-h

Also, on May 1, 2016, diesel-fired DG sources must be in compliance with one of the following requirements regarding particulate emissions:

a. must be equipped with a pollution control device designed to remove 85 percent or more of the PM in the exhaust stream; or

b. must be in compliance with a particulate emission limit of 0.30 g/bhp-h.

By April 30, 2016, owners and operators of DG sources subject to an emission limit(s) must conduct an initial emissions test to demonstrate compliance with the emission limits set forth in Part 222. Additional testing must be conducted at a frequency of once every 10 years. Also, the rule requires owners and operators of DG sources to notify the Department 60 days prior to testing and submit a copy of the test report to the Department within 60 days following the test. Records of the emission tests must be maintained, and made available to the Department.

Emission testing for PM is not required for engines equipped with pollution control devices verified by CARB as meeting the Level 3 or Level 3 Plus classification per the California Code of Regulations, Title 13, Sections 2700-2711.

Within one year of the effective date of the rule or within 12 months of commencing operation of a DG source subject to the rule, whichever is later, the owner and operator of the source must conduct an initial tune-up of the source. Additionally, the DG source must be tuned-up at least once every 12 months. Records of annual tune-ups must be maintained at the facility for a period of five years.

'Professional Services'

The services of an engineering consultant may be required in order to complete a permit application. A stack testing company will be required to conduct the emissions testing required in 222.6. The services of a certified technician may be required to conduct the annual tune-up required in Section 222.4.

COSTS

Post-combustion control systems may be required in order to meet the emission limits set forth in Part 222. Selective catalytic reduction (SCR) systems may be required in order for diesel-fired engines and lean-burn natural gas-fired engines to meet the appropriate NO_x emission limit. In addition, diesel-fired engines may need to be equipped with filtering systems in order to meet the PM standard. Non-selective catalytic reduction (NSCR) systems may be required in order for rich-burn natural gas-fired engines to meet the NO_x emission limit. The costs for post-combustion control systems are presented in the following sections for 1200 hp and 2000 hp engines. As a point of comparison, replacement costs for new 1200 hp or 2000 hp engines that meet the NSPS requirements range from $525,000 to $1,000,000.[1, 2]

Selective catalytic reduction (SCR) systems can reduce the NO_x emissions from lean-burn natural gas fired-engines and diesel-fired engines by up to 90 percent.[3] The capital cost (installed) of SCR control systems are presented in Table 1.

Table 1: Capital Costs for SCR Systems

Cost Component	1200 hp Engine	2000 hp Engine
SCR System[4]	$103,000	$171,700
Installation	$61,800	$103,000
Taxes	$8,300	$13,800
Testing[5]	$15,000	$15,000
Total Cost	$188,100	$303,500

Operational costs vary depending upon several factors. The primary driver is the reagent (urea) cost. The other operational factors the Department considered in developing cost estimates for SCR systems were insurance, maintenance and labor costs.

The Department evaluated the costs for operating SCR systems under a wide range of scenarios over a 10-year period. Control costs of $5,000 per ton of NO_x reduced are considered reasonable under Subpart 227-2. For pre-NSPS engines, the cost per ton of NO_x reduced would be less than $5,000 for sources operating 1,500 hours per year or more. For post-NSPS engines, the $5,000 per ton threshold would be met when operating 3,000 hours per year or more. Therefore, in the opinion of the Department, the costs to operate SCR systems are reasonable.

Non-Selective Catalytic Reduction (NSCR) Systems

Non-selective catalytic reduction (NSCR) systems can reduce the NO_x emissions from rich-burn natural gas fired-engines engines by up to 98 percent.[6] The capital cost (installed) of NSCR control systems are presented in Table 2.

Table 2: Capital Costs for NSCR Systems

Cost Component	1200 hp Engine	2000 hp Engine
SCR System	$26,700	$44,400
Installation	$16,000	$26,700
Taxes	$2,100	$3,500
Testing[7]	$8,000	$8,000
Total Cost	$52,800	$82,600

NSCR catalysts need to be replaced every five years.[8] Replacement catalyst is estimated to cost 7 percent of the original NSCR system cost. In the cost analyses conducted by the Department, the cost of installing the replacement catalyst was assumed to be 60 percent of the cost of the new catalyst. Annual costs for operating NSCR include insurance, maintenance and labor. The cost per ton of NO_x reduced is less than $5,000 when operating more than 200 hours per year.

'Particulate Matter (PM) Emissions'

Particulate control equipment (e.g. - particulate traps or oxidation catalysts) may be required in order for some sources to comply with the particulate emission standard. The costs for particulate control equipment are approximately $55 per KW installed ($49,200 - $82,000 for the engine sizes discussed in this section).[9]

'Compliance Testing'

The emission testing costs are estimated to be $8,000 ($NO_x$ only) to $15,000 ($NO_x$ and PM) per source[10]. Emission testing for PM is not required for engines equipped with pollution control devices verified by the California Air Resources Board as meeting the Level 3 or Level 3 Plus Classification per the California Code of Regulations, Title 13, Sections 2700 through 2711.

MINIMIZING ADVERSE IMPACT

The Department considered the practical impacts of the proposed rule on rural facilities, such as small farms. As of April 2010, there were an estimated 151 farms in 31 states[11] (including New York) generating electricity via biogas-fired DG sources.

Livestock farms use animal waste digesters as a means of odor control. One of the by-products of these systems is biogas (fuel gas containing methane and other compounds) that can be used to fire DG sources. Biogas contains impurities which erode engine gaskets and other components which reduces the useful life of an engine. Biogas-fired engines need to be replaced more often than engines fired with fossil fuels. These impurities can also damage post-combustion control systems which in turn can lead to damage to the DG source. Biogas-fired DG sources will not be subject to Part 222. New biogas-fired sources are subject to 40 CFR 60 Subpart JJJJ.

RURAL AREA PARTICIPATION

The proposed rulemaking is the result of a stakeholder process initiated by the Department in 2001. Stakeholder Meetings were held on November 13, 2001, December 12, 2002, April 8, 2003, May 17, 2004, June 29, 2006 and June 25, 2013. In addition, drafts of Part 222 were circulated electronically to stakeholders in May 2004, January 2005, June 2006 and May 2013. More than 175 stakeholders have been involved in the process of developing Part 222 and anyone who requested to be added to the list of stakeholders was added. The meeting of April 8, 2003 was advertised in the Department's Environmental Notice Bulletin.

The participants in the stakeholder process represented a wide range of interests. These groups include law firms, consultants and trade organizations, manufacturers, and government agencies. In addition, Department staff met with individual or small groups of stakeholders (such as the New York Farm Bureau) on several occasions.

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[1] E-mail from Joe Suchecki (Truck & Engine Manufacturers Association) to John Barnes (DEC) dated November 8, 2013.

[2] Replacement costs as well as the costs for pollution control systems could be higher than the costs presented in this section in cases where there are space limitations or building or fire code requirements that must be met.

[3] "NO_x Control for Stationary Gas Engines", Wilson Chu (Johnson-Matthey), Advances in Air Pollution Control Technology, MARAMA Workshop, May 19, 2011.

[4] Sources: CARB 2010. Regulatory Analysis for Revisions to Stationary Diesel Engine Air Toxic Control Measure. Appendix B. Analysis of Technical Feasibility and Costs of After-treatment Controls on Emergency Diesel Engines; and (2) Producer Price Index, U.S. Department of Labor, Bureau of Labor Statistics.

[5] Testing costs include NO_x and PM tests (diesel engines). For natural gas-fired engines, the estimated cost is $8,000 for NO_x tests only.

[6] "NO_x Control for Stationary Gas Engines", Wilson Chu (Johnson-Matthey), Advances in Air Pollution Control Technology, MARAMA Workshop, May 19, 2011.

[7] Emissions tests for NO_x only since the PM standard does not apply to natural gas engines.

[8] E-mail from Wilson Chu (Johnson Matthey) to John Barnes (DEC) dated January 24, 2008.

[9] Sources: CARB 2010. Regulatory Analysis for Revisions to Stationary Diesel Engine Air Toxic Control Measure. Appendix B. Analysis of Technical Feasibility and Costs of After-treatment Controls on Emergency Diesel Engines; and (2) Producer Price Index, U.S. Department of Labor, Bureau of Labor Statistics.

[10] Stack testing costs are based upon an informal Department survey of several stack testing companies.

[11] http://bradpennsgeo.com/wp-content/uploads/2012/07/BRADPENN__ANAEROBIC__DIGESTION__-PAPER__SEPT__10.pdf

Job Impact Statement

Distributed generation (DG) sources are engines used by a host site to supply electricity outside that which is supplied by the electric grid and used either in non-emergency situations to reduce demand on the electric grid and preserving the overall reliability of the grid, or when the usual supply of power becomes unavailable. There may be more than 15,000 DG sources in the state, many of which are not currently regulated. DG sources produce air pollution, including nitrogen oxides (NO_x), a precursor to ground-level ozone, and particulate matter (PM) – both of which have been linked to adverse public health impacts. The increasing use of uncontrolled DG sources, if left unchecked, will exacerbate public health impacts and make it very difficult for New York to meet its obligations under the Clean Air Act (CAA) to attain the 2008 8-hour ozone National Ambient Air Quality Standard (NAAQS).

Therefore, the Department of Environmental Conservation (Department) is proposing to adopt a new regulation, 6 NYCRR Part 222, 'Distributed Generation Sources', and make conforming revisions to Part 200, 'General Provisions' and Subpart 227-2, 'Reasonably Available Control Technology (RACT) for Oxides of Nitrogen (NO_x)' to establish emission standards, monitoring requirements and record keeping requirements for certain DG sources in New York State. The proposed rule will apply generally to DG sources which are not currently regulated under Subpart 227-2 or subject to a federal New Source Performance Standard (NSPS), as long as the federal standards are less than or equal to the Part 222 emission limits.

I. NATURE OF IMPACT

Part 222 may impact jobs and employment opportunities at a wide range of businesses in New York State. Discussion of the potential impacts are presented in the following subsections.

A. Facilities with Existing DG Sources

Northeast States for Coordinated Air Use Management (NESCAUM) released a study in 2003 indicating there may be as many as 15,000 diesel generators in New York State.[1] Most of these sources are believed to be emergency generators which are currently exempt from permitting requirements. Though owners and operators of emergency generators will be subject to annual tune-up and record keeping requirements under the proposed rule, the Department presumes that these activities are already being conducted as part of the facility's standard business practices. Therefore, the Department does not anticipate any additional compliance costs or negative impacts on jobs or employment opportunities in cases where a facility exclusively uses DG sources as emergency generators.

DG sources not used exclusively for emergencies will be subject to the proposed NO_x emission limits. Diesel-fired sources will be required to comply with either a PM emission limit or a pollution control device standard. Owners or operators of DG sources that meet the proposed emission limits without post-combustion controls will have minimal compliance costs. For example, stack testing is estimated at $15,000 per source at a frequency of once every 10 years. In such cases, the proposed rule should have no negative impacts on jobs or employment opportunities.

However, in cases where DG sources are required to use pollution control systems to meet the proposed emission limits, the rule may negatively impact jobs or employment opportunities depending upon the compliance strategy utilized. In some cases, the capital and operational costs for pollution control systems may impact jobs or employment opportunities directly. Owners or operators of existing DG sources that do not meet the emission standards may choose to replace existing DG sources with new DG sources. In cases where the owners or operators of existing DG sources are planning to replace units near or past their useful life, regardless of proposed Part 222, the negative impacts to jobs or employment opportunities would be minimal. Replacement of units not near the end of their useful life could constitute a previously unplanned cost that may have an impact on jobs and employment opportunities. Existing DG sources that cannot meet the emission standards, but could be used as emergency generators, are expected to have minimal impacts on jobs and employment opportunities.

B. Impacts to Energy Services Companies

Energy services companies (ESCOs) enroll facilities into demand response (DR) programs sponsored by the New York Independent System Operator (NYISO) and transmission operators. ESCOs' demand response portfolios include curtailment, load shifting, energy efficiency and DG resources. Most DG resources in these portfolios are uncontrolled, diesel-fired engines that will be subject to the NO_x and PM emission standards proposed in Part 222. These standards will take effect on May 1, 2016. The Department anticipates that owners and operators of DR sources that cannot, or choose not to, meet the emission standards would be dropped from ESCOs' DR portfolios, resulting in a reduction in income for both the ESCO and the source owner or operator.[2] DG resources comprised 13 percent of the resources enrolled in the NYISO's Emergency Demand Response Program and Special Case Resources Program (combined) as of May 2011.[3] Therefore, it is expected that the provisions of Part 222 will minimally impact employment opportunities with ESCOs.

C. Impacts to Professional Services Companies and Vendors of Pollution Control Systems

DG sources that commenced operation prior to the effective date of Part 222 may need to be equipped with pollution control systems in order to meet the emission standards set forth in the rule. Stack testing will be

required to demonstrate compliance with Part 222 emission standards. Therefore, employment opportunities with consultants and vendors specializing in design and installation of pollution control equipment and stack testing are expected to increase as a result of the adoption of Part 222.

D. Impacts to the NYSDEC

There will be an additional work load for the Department to implement Part 222, including preparing new and modified air permits, reviewing stack test reports and creating compliance reports in the Air Facility System database. It is estimated that it will take one staff-year to initiate the program to implement Part 222 and five staff-years annually to implement Part 222. The Department does not anticipate hiring additional staff to implement Part 222.

II. CATEGORIES AND NUMBERS OF JOBS OR EMPLOYMENT OPPORTUNITIES AFFECTED

Distributed generation can be used at a wide range of facilities including, but not limited to, hospitals, financial institutions, colleges, shopping centers, farms, apartment complexes and office buildings. It is estimated that as many as 26,000 sites in New York could potentially use a combined heat and power (CHP) application.[4] Although not all of those sites will use CHP applications, this estimate provides insight as to the number of sites where DG applications might be used.

The adoption of Part 222 may lead to increased employment opportunities with professional services companies that provide environmental monitoring and compliance services (such as stack testing) as well as for vendors who sell and install pollution control systems.

III. REGIONS OF ADVERSE IMPACT

It is anticipated that most of the facilities subject to the proposed rule will be located in the New York City metropolitan area where the cost of electricity is higher than the rest of the state. Facilities located in upstate areas, such as shopping centers, colleges and hospitals, may also be affected by the proposed rule.

IV. MINIMIZING ADVERSE IMPACT

There are three alternate compliance options in proposed Part 222 available to facilities with existing DG sources which are subject to emission standards. Affected facilities will have greater flexibility to control their compliance costs than would occur if only one compliance option was included in the rule.

NO_x emission limits for new DG sources were considered but are not included in the proposed rule. Emission limits stricter than those set forth in the EPA's New Source Performance Standard (NSPS)[5] rules which would have been specific to New York and would have been a deterrent to investing in DG applications, especially in cases where post-combustion controls would be required to meet DEC's standards but not EPA's standards. Therefore, by not adopting stricter standards than those set forth in the NSPS rules, Part 222 will not adversely impact employment opportunities at facilities investing in new DG applications.

Livestock farms use animal waste digesters as a means of odor control. One of the by-products of these systems is biogas (fuel gas containing methane and other compounds) that can be used to fire DG sources. As of April 2010, there were an estimated 151 farms in 31 states[6] (including New York) generating electricity via biogas-fired DG sources. Biogas contains impurities which erode engine gaskets and other components which reduce the useful life of an engine. Since biogas-fired engines need to be replaced more often than engines fired with fossil fuels, the Department has determined that these engines do not need to be subject to Part 222. Replacement biogas-fired engines will be subject to 40 CFR 60 Subpart JJJJ.

V. SELF-EMPLOYMENT OPPORTUNITIES

The adoption of Part 222 is not expected to result in negative impacts to self-employment opportunities.

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[1] "Stationary Diesel Engines in the Northeast: An Initial Assessment of the Regional Population, Control Technology Options and Air Quality Policy Issues", NESCAUM, June 2003, pg. 26.

[2] Demand response revenue is not the primary source of income for DR source owners or operators.

[3] "Semi-Annual Compliance Report on Demand Response Programs", NYISO, June 1, 2011.

[4] "NYSERDA's CHP Program: Moving the Market Forward", Dana Levy and Brian Platt. Presentation at the NYSDPS CHP Technical Conference, May 13, 2013.

[5] The NSPS rules applicable to DG sources are: 40 CFR 60 Subparts IIII, JJJJ, and KKKK.

[6] http://bradpennsgeo.com/wp-content/uploads/2012/07/BRADPENN__ANAEROBIC__DIGESTION__-PAPER__SEPT__10.pdf

PROPOSED RULE MAKING
NO HEARING(S) SCHEDULED

Big Bore Air Rifles

I.D. No. ENV-51-15-00005-P

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

Proposed Action: Amendment of section 180.3 of Title 6 NYCRR.

Statutory authority: Environmental Conservation Law, sections 11-0303 and 11-0901

Subject: Big bore air rifles.

Purpose: To allow big bore air rifles as legal implements for hunting big game.

Text of proposed rule: Repeal existing 6 NYCRR section 180.3 and adopt new 6 NYCRR section 180.3 to read as follows:

180.3 Definition and use of firearm, gun, airgun, and big bore air rifle

For the purposes of the Fish and Wildlife Law and this Title:

(a) The terms firearm or gun shall mean any rifle, pistol, shotgun or muzzleloading firearm which by force of gunpowder, or an airgun as defined in subdivision (b) of this section or a big bore air rifle as defined in subdivision (c) of this section, that expels a missile or projectile capable of killing, wounding or otherwise inflicting physical damage upon fish, wildlife or other animals.

(b) The term airgun shall mean any implement which by the force of a spring, air or other non-ignited compressed gas expels a projectile 0.17 caliber (17/100 of an inch in diameter) or larger, having a rifled or smooth barrel, producing projectile velocities of not less than 600 feet per second. For the purposes of the Fish and Wildlife Law, an implement meeting the above specifications shall be considered a firearm or gun, and may be used to take wildlife that may legally be taken with a rimfire rifle.

(c) The term big bore air rifle shall mean any implement which by the force of a spring, air or other non-ignited compressed gas expels a projectile and has a rifled barrel, using ammunition 0.30 caliber (30/100 of an inch in diameter) or larger, producing projectile velocities of not less than 650 feet per second. For the purposes of the Fish and Wildlife Law, an implement meeting the above specifications shall be considered a firearm or gun, and may be used to take big game or wildlife that may legally be taken with a rimfire rifle.

(d) The term taken down shall mean:

(1) separating the action from the barrel of a long gun which is designed to be dismantled without the use of tools; and

(2) rendering inoperable a long gun which is not designed to be dismantled without tools, so as to require tools to restore such long gun to an operable condition. A bolt action firearm with the bolt removed shall not be considered "taken down" unless it is otherwise dismantled as provided in this subdivision.

(e) Pistol means a firearm intended to be aimed and fired with one hand, and having a barrel length not exceeding 16 inches.

Text of proposed rule and any required statements and analyses may be obtained from: Joe Racette, New York State Department of Environmental Conservation, 625 Broadway, Albany, NY 12233-4754, (518) 402-8933, email: wildliferegs@dec.ny.gov

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

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

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

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

Regulatory Impact Statement

1. Statutory authority:

Section 11-0303 of the Environmental Conservation Law (ECL) directs the Department of Environmental Conservation (department) to develop and carry out programs that will maintain desirable species in ecological balance, and to observe sound management practices. This directive is to be met with regard to: ecological factors, the compatibility of production and harvest of wildlife with other land uses, the importance of wildlife for recreational purposes, public safety, and protection of private premises. Environmental Conservation Law 11-0303 grants the department authority to efficiently manage fish and wildlife resources of the State.

2. Legislative objectives:

The legislative objectives behind the statutory provisions listed above are to authorize the department to establish, by regulation, certain basic

wildlife management tools, including hunting. Periodically, the department adjusts its hunting regulations in response to changes in hunting technology. By doing so, wildlife management tools are kept up to date.

3. Needs and benefits:

The department proposes to allow the use of air powered firearms or guns for use in hunting big game. The popularity of these firearms is growing, largely because of technological advancements. These modern firearms are sophisticated and efficient at harvesting big game species.

Environmental Conservation Law section 11-0901 states that small game may only be taken with a longbow or gun. However, a "gun" is not defined in the ECL or in 6 NYCRR section 180.3 ("Definition of Firearms") so hunters do not have clear legal guidance allowing the use of air-powered firearms. The department proposes adding language to 6 NYCRR section 180.3 to allow the use of air-powered firearms for hunting big game by defining the term "big bore air rifle." The Department previously (2010) amended this regulation to clearly allow the use of air-powered firearms for hunting small game.

Air-powered firearms are powered in one of three ways: (1) CO2 cartridges; (2) spring or lever-action to compress air in an internal cylinder; (3) a pneumatic pump to compress air in an internal cylinder. Air-powered firearms designed for big game ("big bore air rifles") are available commercially, and they fire bullets that are 0.30 inches (0.30 caliber) or larger in diameter at sufficient velocities to safely and efficiently harvest big game at ranges of about 100 yards or less. The Department proposes a clear definition of "big bore air rifle" that must produce projectile velocities of not less than 650 feet per second, and fire projectiles that are no smaller than 0.30 inches (0.30 caliber) in diameter. This technical requirement will ensure that big bore air rifles have adequate downrange energy to effectively harvest New York big game species at commonly encountered ranges (100 yards and less).

Because big bore air rifles are not as loud as a conventional rifle or shotgun, it is possible that allowing their use may make it more acceptable to use them in locations with higher human densities than New York's rural countryside. Since a big bore air rifle is about as loud as a 0.22 caliber rimfire, it could enhance the ability of hunters to take deer where they are overabundant. By defining and allowing the use of big bore air rifles for hunting big game, New York hunters will have a modest increase in hunting opportunity. Also, with the growth in popularity of these firearms reflected in increased production by manufacturers, there could also be a modest increase in economic activity associated with this proposed change in New York's hunting regulations.

4. Costs:

None, beyond normal administrative costs.

5. Local government mandates:

There are no local governmental mandates associated with this proposed regulation.

6. Paperwork:

No additional paperwork is associated with this proposed regulation.

7. Duplication:

There are no other regulations similar to this proposal.

8. Alternatives:

The only alternative considered was the "no action" alternative. However, the Department decided that an expansion of the use of air-powered firearms would provide a modest amount of additional opportunity for big game hunters.

9. Federal standards:

There are no federal standards pertaining to the use of air-powered firearms.

10. Compliance schedule:

Hunters will be able to comply with this regulation upon adoption during the 2015-2016 hunting season.

Regulatory Flexibility Analysis

The proposed regulation has no effect on small businesses or local governments. It simply clarifies that air-powered firearms or guns may be used for big game hunting pursuant to Environmental Conservation Law section 11-0901. Therefore, the Department of Environmental Conservation has determined that a Regulatory Flexibility Analysis for Small Businesses and Local Governments is not needed.

Rural Area Flexibility Analysis

The proposed regulation has no effect on rural areas. It simply clarifies that air-powered firearms or guns may be used for big game hunting pursuant to Environmental Conservation Law section 11-0901. Therefore, the Department of Environmental Conservation has determined that a Rural Area Flexibility Analysis is not needed.

Job Impact Statement

The proposed regulation does not affect jobs. It simply clarifies that air-powered firearms or guns may be used for big game hunting pursuant to Environmental Conservation Law section 11-0901. Therefore, the Department of Environmental Conservation has determined that a Job Impact Statement is not needed.

Department of Health

NOTICE OF ADOPTION

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

I.D. No. HLT-36-14-00012-A
Filing No. 1028
Filing Date: 2015-12-02
Effective Date: 2015-12-23

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); and Social Services Law, sections 363-a(2), 365-a(2)(e) and 365-f

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.

Substance of final rule: The proposed regulations conform the Department's personal care services regulations at 18 NYCRR § 505.14 to State law [Social Services Law ("SSL") § 365-a(2)(e)(iv)], which caps social services districts' authorizations for nutritional and environmental support functions, commonly referred to as housekeeping or Level I functions, to no more than eight hours per week for those Medical Assistance ("Medicaid") recipients who need only that level of care. The proposed regulations also revise the criteria for social services districts' authorizations of continuous personal care services (i.e. "split-shift" services) and live-in 24-hour personal care services consistent with the preliminary injunction decision in Strouchler v. Shah, 891 F.Supp. 2d 504 (S.D.N.Y. 2012).

In subdivision 505.14(a), which contains definitions and provisions relating to the scope of personal care services, the definitions of "some assistance," "total assistance," and "continuous 24-hour personal care services" are repealed. Definitions of "continuous personal care services" and "live-in 24-hour personal care services" are added. Also added is a provision that personal care services shall not be authorized to the extent that the patient's need for assistance can be met by voluntary assistance from informal caregivers, by formal services other than the Medicaid program, or by adaptive or specialized equipment or supplies that can be provided safely and cost-effectively.

With regard to nutritional and environmental support functions ("Level I" services), a provision is added limiting the authorization to no more than eight hours per week, consistent with SSL § 365-a(2)(e)(iv). The list of Level II personal care functions is amended by the addition of "turning and positioning."

In paragraph 505.14(b)(3), which specifies factors that the nursing assessment must include, the nursing assessment must include an evaluation whether adaptive or specialized equipment or supplies can meet the patient's need for assistance and whether such equipment or supplies can be provided safely and cost-effectively. The nursing assessment would no longer be required to include an evaluation of the degree of assistance required for each function or task, since the definitions of "some assistance" and "total assistance" are repealed.

In paragraph 505.14(b)(4), which specifies the circumstances under which the local professional director must conduct an independent medical review, such reviews would have to be conducted in cases involving live-in 24-hour personal care services as well as cases involving continuous personal care services. The nursing assessment in continuous personal care services and live-in 24-hour personal care services cases would have to document certain factors, such as whether the physician's order had documented a medical condition that causes the patient to need frequent assistance during a calendar day with toileting, walking, transferring, turning and positioning, or feeding.

The social assessment in live-in 24-hour personal care services cases would have to evaluate whether the patient's home has sleeping accommodations for a personal care aide. If not, the district must authorize continuous personal care services; however, should the patient's circumstances change and sleeping accommodations for a personal care aide

become available in the patient's home, the district must promptly review the case. If a reduction of the patient's continuous personal care services to live-in 24-hour personal care services is appropriate, the district must send the patient a timely and adequate notice of the proposed reduction.

In continuous personal care services and live-in 24-hour personal care services cases, the local professional director could consult with the patient's treating physician and conduct an additional assessment in the home. The final determination regarding the amount of care to be authorized would have to be made with reasonable promptness, generally not to exceed seven business days after receipt of required documentation.

In subparagraph 505.14(b)(5)(v), the provisions governing social services districts' notices to recipients for whom districts have determined to deny, reduce or discontinue personal care services are revised and reorganized.

The proposed regulations make conforming changes to the Department's regulations governing the consumer directed personal assistance program ("CDPAP"), which are at 18 NYCRR § 505.28.

In subdivision 505.28(b), which contains definitions relating to the CDPAP, the definitions of "continuous 24-hour consumer directed personal assistance" "some assistance" and "total assistance" are repealed. The definition of "consumer directed personal assistance" is amended to delete references to "some or total" assistance. Definitions of "continuous consumer directed personal assistance" and "live-in 24-hour consumer directed personal assistance" are added.

The definition of "personal care services" is amended to provide that, for individuals whose needs are limited to nutritional and environmental support functions (i.e. housekeeping tasks), personal care services shall not exceed eight hours per week.

In paragraph 505.28(d)(2), which specifies factors that the social assessment must include, the social assessment in continuous consumer directed personal assistance and live-in 24-hour consumer directed personal assistance cases must document that all alternative arrangements for meeting the individual's medical needs have been explored and are infeasible. The social assessment for live-in 24-hour cases must evaluate whether the consumer's home has sleeping accommodations for a consumer directed personal assistant. If not, the district must authorize continuous consumer directed personal assistance; however, if the consumer's circumstances change and sleeping accommodations for a consumer directed personal assistant become available in the consumer's home, the district must promptly review the case. If a reduction of the consumer's continuous services to live-in services is appropriate, the district must send the consumer a timely and adequate notice of the proposed reduction.

In paragraph 505.28(d)(3), which specifies factors that the nursing assessment must include, the nursing assessment in continuous consumer directed personal assistance cases and live-in 24-hour consumer directed personal assistance cases would have to document certain factors, such as whether the physician's order has documented a medical condition that causes the consumer to need frequent assistance during a calendar day with toileting, walking, transferring, turning and positioning, feeding, home health aide services, or skilled nursing tasks.

Paragraph 505.28(d)(5), which specifies requirements for the local professional director's review, is repealed and a new paragraph 505.28(d)(5) is added. Cases involving continuous consumer directed personal assistance and live-in 24-hour consumer directed personal assistance would have to be referred to the local professional director or designee for review and final determination of the amount of services to be authorized. The local professional director or designee would be required to consider information in the social and nursing assessments and may consult with the consumer's treating physician and conduct an additional assessment in the home. The final determination of the amount of care to be authorized must be made with reasonable promptness, generally not to exceed seven business days after receipt of all information.

Subdivision 505.28(e), which pertains to the authorization process, would be amended to provide that consumer directed personal assistance shall not be authorized to the extent that a consumer's need for assistance can be met by voluntary assistance from informal caregivers, by formal services other than the Medicaid program, or by adaptive or specialized equipment or supplies when such equipment or supplies can be provided safely and cost-effectively.

Paragraph 505.28(h)(5) would be amended to provide additional detail regarding the content of social services district notices when the district denies, reduces or discontinues consumer directed personal assistance.

Final rule as compared with last published rule: Nonsubstantive changes were made in sections 505.14(a)(2), (4), (b)(3), (4), 505.28(b)(4), (12), (d)(3) and (e)(1).

Revised rule making(s) were previously published in the State Register on September 16, 2015.

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

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

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

Assessment of Public Comment

The Department received comments from the following: counsel for the plaintiff class in Strouchler v. Shah (Cardozo Bet Tzedek Legal Services, JASA/Legal Services for the Elderly in Queens, and New York Legal Assistance Group) and the law firm of Hinman Straub, on behalf of a managed care plan.

1. Comment: Both commentators asked that the Department clarify the extent to which 18 NYCRR §§ 505.14, personal care services, and 505.28, consumer directed personal assistance program ("CDPAP"), apply to services provided by Medicaid managed care organizations and Medicaid managed long term care plans.

Response: The Department has not revised the proposed regulations in response to the comments. The revisions the commentators suggest would require that substantive revisions be made to the proposed regulations, necessitating the filing of yet another notice of revised rule making for an additional minimum public comment period of 30 days. This would delay the final adoption of regulations necessary to comply with the stipulation of settlement in Strouchler v. Shah. The Department is nonetheless considering how best to address these comments, whether by a future notice of proposed rule making or by other means.

2. Comment: Counsel for the Strouchler class commented that the proposed regulations must require that a live-in 24-hour personal care aide be able to obtain a total of eight hours of sleep with at least one five hour period of uninterrupted sleep.

Response: Counsel had suggested similar revisions in their comments on the proposed regulations published on September 10, 2014. In response to those earlier comments, the Department revised the proposed definitions of continuous personal care services and live-in 24-hour personal care services. As discussed in the Assessment of Public Comment published on September 16, 2015, these proposed revisions clarify that a live-in 24-hour aide's "five hours daily of uninterrupted sleep" is within an eight hour period. This is consistent with State Department of Labor guidance, which requires that live-in aides have an eight hour sleep period and actually receive five hours of uninterrupted sleep. In view of the renewed comment on this point, however, the Department has revised the proposed regulations once again to clarify that this five hour period of uninterrupted sleep is during the aide's eight hour period of sleep. Similar revisions were made to Section 505.28 governing the CDPAP.

3. Comment: Counsel for the Strouchler class commented that the purpose of the requirement to consider whether the Medicaid recipient could be "safely left alone without care for a period of one or more hours in a calendar day" should be clarified to avoid improper denials of services. They commented that such a provision, without some clarification of the legitimate regulatory purpose, could be used to deny care to individuals with dementia who have a documented need for live-in home care services.

Response: Counsel offered similar comments in response to the proposed regulations published on September 10, 2014. At that time, the Department declined to revise the proposed regulations in response to the comment. In its Assessment of Public Comment published on September 16, 2015, the Department noted that this provision, although relocated in the proposed regulations, was not new. The Department's regulations had long provided that, when the individual providing personal care services is living in the home of the patient, the social services district must determine whether or not, based on the social and nursing assessments, the patient can be safely left alone without care for a period of one or more hours per day.

In considering the renewed public comments, however, the Department determined that this provision should be deleted. It is an anachronism, a remnant of a past practice, no longer followed, under which social services districts negotiated reimbursement rates for personal care services, including determining the number of hours of services for which a live-in aide would be paid. The Department of Labor, not social services districts, now determines the number of hours for which live-in aides must be paid. Accordingly, the revised regulations would repeal this provision as obsolete.

4. Comment: Counsel for the Strouchler class commented that the regulations must clarify that only voluntary assistance from informal caregivers may be considered and that informal caregivers cannot be compelled to assist with activities of daily living or similar tasks.

Response: The Department has not revised the proposed regulations in response to the comments. The proposed regulations address this concern, providing in no fewer than six provisions that the assistance of informal caregivers, such as family members and friends, must be voluntary. Specifically, the following provisions of the proposed personal care ser-

vices regulations require that the assistance of informal caregivers be voluntary: Sections 505.14(a)(3)(iii)(a)(1), 505.14(a)(3)(iii)(b), and 505.14(b)(4)(i)(c)(1). Similarly, the following provisions of the proposed CDPAP regulations require the same: Sections 505.28(d)(2)(iv), 505.28(e)(1)(ii)(a), and 505.28(e)(1)(iii). No further regulatory recitations of this requirement are needed.

NOTICE OF ADOPTION

Patient Access of Laboratory Test Results

I.D. No. HLT-24-15-00006-A
Filing No. 1032
Filing Date: 2015-12-07
Effective Date: 2015-12-23

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

Action taken: Amendment of Parts 34 and 58 of Title 10 NYCRR.

Statutory authority: Public Health Law, section 576 and 587

Subject: Patient Access of Laboratory Test Results.

Purpose: To give patients a right to access medical records directly from clinical, including completed lab. test reports.

Text or summary was published in the June 17, 2015 issue of the Register, I.D. No. HLT-24-15-00006-P.

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

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

Assessment of Public Comment

Comment:

One comment generally supported the right of patients to access patient information but also expressed reservations about clinical laboratory test results being immediately available to patients prior to being seen or signed off by the ordering physician. The commenter thought this could be detrimental when the testing was for difficult or life-threatening diagnoses. The commenter asks that wording be included in the regulation to allow the physician who ordered the testing the opportunity to review the results prior to the patient having access to them. This would give the doctor the ability to speak to the patient and clarify what the test results mean before the patient sees the report.

Response:

The Federal Department of Health and Human Services (HHS) addressed this concern in responses to public comments received on the newly adopted federal rule. HHS emphasized that the rule does not alter the role of the ordering or treating provider in reporting and explaining test results to patients. HHS expects that patients will continue to obtain test results and advice about what those test results mean through their ordering or treating providers.

HHS also noted that under 45 CFR § 164.524(b)(2)(i), laboratories are not required to provide individuals with access to their laboratory test reports immediately; laboratories can wait up to 30 days. HHS believes 30 days is generally sufficient to allow the ordering or treating provider to receive the test report in advance of the patient's receipt of the report, and to communicate the result to the patient, and counsel the patient as necessary with regard to the result. HHS emphasized that laboratories will not be responsible for providing interpretations of laboratory test results to patients.

Comment:

A comment requested information regarding how the proposed rule would be implemented given the requirements in PHL § 2781(5) for persons ordering HIV related tests to communicate test results to the subject of the test.

Response:

This regulation will have no effect on such requirements. Persons ordering HIV related tests will continue to be required to comply with PHL § 2781(5) in exactly the same manner.

Comment:

Some commenters requested that language be removed from 10 NYCRR § 34-2.11 that requires a clinical laboratory to direct patient inquiries regarding the meaning or interpretation of the test results to the referring health services purveyor, because this language prohibits a clinical laboratory pathologist from conferring with a patient on the interpretation of laboratory/pathology test results.

Response:

Removal of the language in 10 NYCRR § 34-2.11 is not consistent with the Department's goal of aligning its regulations with the federal requirements. Additionally, the requirement that a clinical laboratory direct patient inquiries regarding the meaning or interpretation of the test results to the referring health services purveyor applies to all clinical laboratory directors, including those individuals who are not pathologists. The Department of Health is planning on meeting with stakeholder groups to obtain additional feedback on conferrals between pathologists and patients.

Comment:

One comment generally supported the right of patients to access patient information but requested that language be removed from 10 NYCRR § 34-2.11 that requires a clinical laboratory to advise a patient that test results have already been, or are simultaneously being, communicated to the referring health services purveyor. The commenter stated that the current regulations would require a clinical lab to make customized statements on their reports for NYS patients indicating that that the provider has, or is receiving, results. This additional language on reports issued to NYS patients would be administratively burdensome and costly due to the need for additional programming of their reporting systems. They also stated that these requirements are of no therapeutic benefit to the patient.

Response:

The Department does not believe it is necessary to change the regulation as it does not specifically require that a statement be made on a patient report.

PROPOSED RULE MAKING
NO HEARING(S) SCHEDULED

General Provisions Concerning State Aid Eligibility

I.D. No. HLT-51-15-00001-P

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

Proposed Action: This is a consensus rule making to amend section 40-2.1 of Title 18 NYCRR.

Statutory authority: Public Health Law, section 619

Subject: General Provisions Concerning State Aid Eligibility.

Purpose: To clarify that rent and maintenance of space in lieu of rent (MILOR) remain eligible for State Aid.

Text of proposed rule: Section 40-2.1 is amended by adding a new subdivision (c), as follows:

(c) The following costs related to the facility space used by the local health department are eligible for State Aid:

(1) Rent paid to a person, a private entity, or a public entity other than the municipality that operates the local health department.

(2) For space owned by the municipality that operates the local health department, the cost of maintenance of space in lieu of rent (MILOR).

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

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

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

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

Consensus Rule Making Determination

Statutory Authority:

The Commissioner of Health is authorized by Section 619 of the Public Health Law (PHL) to promulgate rules and regulations to effectuate the provisions and purposes of the State Aid program.

Basis:

The proposed amendment to Subpart 40-2 will clarify that rent and maintenance of space in lieu of rent (MILOR) remain eligible for State Aid.

The former 10 NYCRR 40-1.52 (g) and (h) explicitly provided that rent and MILOR were eligible for State Aid. However, the substance of these former provisions was inadvertently omitted when the Department repealed Subpart 40-2 and issued completely revised State Aid regulations, effective December 31, 2014. It was the Department's intent that rent and MILOR remain eligible for State Aid under the revised regulations.

Several local health departments have requested reinstatement of the former provisions. Accordingly, the Department does not anticipate any objection to this clarifying amendment.

Job Impact Statement

No job impact statement is required pursuant to section 201-a(2)(a) of the State Administrative Procedures 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.

PROPOSED RULE MAKING
NO HEARING(S) SCHEDULED

Children's Camps

I.D. No. HLT-51-15-00008-P

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

Proposed Action: Amendment of Subpart 7-2 of Title 10 NYCRR.

Statutory authority: Public Health Law, section 225

Subject: Children's Camps.

Purpose: To include camps for children with developmental disabilities as a type of facility within the oversight of the Justice Center.

Substance of proposed rule (Full text is posted at the following State website:www.health.ny.gov): The following summarizes the proposed regulations pertaining to children with disabilities attending a children's camp.

Pursuant to the proposed amendments, the following requirements, which previously pertained only to camps with 20 percent or more campers with a developmental disability, will now apply to any camp enrolling campers with a disability, beginning October 1, 2016:

- For campers who cannot independently manipulate a wheelchair or adaptive equipment, camps must provide at least 1:2 supervision;
- Staff that have direct care responsibilities of campers with disabilities must receive training relevant to the specific needs of the campers in their charge;
- Camps must obtain and implement, as appropriate, care and treatment plans for campers with disabilities that have such plans as well as obtain other available information relevant to the care and specific needs of a camper with disabilities including pre-existing medical conditions, allergies, modified diets, and activity restrictions;
- During swimming activities, camps must provide one counselor for each camper who is non-ambulatory or has a disability that may result in an increased risk for an emergency in the water;
- For campers with developmental disabilities, camps must provide one counselor for every five campers during swimming activities;
- Camps must obtain parent/guardian's written permission to allow campers with developmentally disabilities to participate in swimming activities;
- Camps must develop procedures and training for handling seizures or aspiration of water by campers with developmental disabilities that may occur during swimming activities;
- All lavatories and showers used by campers with physical disabilities must be equipped with specialized features and grab bars;
- Lavatories and showers used by campers with a disability, who are unable to moderate water temperature safely, shall have a water temperature not greater than 110 degrees Fahrenheit;
- Buildings housing non-ambulatory campers shall have ramps to facilitate access.
- Non-ambulatory campers may not have housing above ground level; and
- Exterior paths must be constructed and maintained, as appropriate for the camp population served, to provide for safe travel during inclement weather.

The amendments also define a "Camp for Children with Developmental Disabilities." Such camps would be immediately required to adhere to the following additional requirements, pursuant to the legislation that established the Justice Center, in addition to immediately complying with the provisions above:

- Reportable incident is defined to include abuse, neglect and other significant incidents specified in section 488 of Social Services Law. Camp staff must report all reportable incidents to the Justice Center Vulnerable Persons' Central Registry and the permit-issuing official;
- A definition of a personal representative was added to be consistent with section 488 of Social Services Law;
- Prior to hiring camp staff, camps must verify that candidates are not on the Justice Center's staff exclusion list or on the Office of Children and Family Services State Central Registry of Child Abuse and Maltreatment;
- All camp staff must obtain mandated reporter training and review and acknowledge an understanding of the Justice Center's code of conduct;
- Camps must ensure that immediate protections are in place following an incident to prevent further risk or harm to campers;
- Camps must notify the victim, any potential witnesses, and each camper's personnel representative (as appropriate) that the camper may be interviewed as part an abuse or neglect investigation;
- Camps must cooperate fully with reportable incident investigations and provide/disclose all necessary information and access to conduct investigations;
- Reportable incident investigations procedures are established;
- Camps must promptly obtain an appropriate medical examination of a physically injured camper with a developmental disability;
- Unless a waiver is granted, camps must convene a Facility Incident Review Committee to review the camp's responses to a reportable incident including making recommendations for improvement, reviewing incident trends, and making recommendations to reduce reportable incidents;
- Camps must implement any corrective actions identified as the result of a reportable incident investigation.

Note that, for organizational reasons, these amendments repeal section 7-2.25 in its entirety, and replace it with a new section 7-2.25. Although reorganized, some provisions have been left substantially unchanged, including certain provisions relating to camp directors and health directors.

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

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

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

Summary of Regulatory Impact Statement

Statutory Authority:

The Public Health and Health Planning Council (PHHPC) is authorized by section 225(4) of the Public Health Law (PHL) to establish, amend and repeal sanitary regulations known as the State Sanitary Code (SSC), subject to the approval of the Commissioner of Health. Article 13-B of the PHL authorizes the PHHPC to prescribe standards and establish regulations for children's camps. PHL sections 225 and 201(1)(m) authorize SSC regulation of the sanitary aspects of businesses and activities affecting public health including children's camps.

Legislative Objectives:

In enacting Chapter 501 of the Laws of 2012, the Legislature established the New York State Justice Center for the Protection of People with Special Needs (Justice Center). This legislation amended Article 11 of Social Service Law to include children's camps for children with developmental disabilities, and it required the Department of Health to promulgate regulations pertaining to incident management.

Needs and Benefits:

The following requirements, which previously pertained only to camps with 20 percent or more campers with a developmental disability, will now apply to any camper with a disability, as of October 1, 2016:

- For campers who cannot independently manipulate a wheelchair or adaptive equipment, camps must provide at least 1:2 supervision;
- Staff providing direct care of campers with disabilities must be trained on the needs of the campers in their charge;
- Camps must obtain health information and existing care/treatment plans and implement adequate procedures to protect the safety and health of camper with disabilities;
- During swimming activities, camps must provide one counselor for each camper who is non-ambulatory or has a disability that might result in unusual emergencies in the water. For campers with developmental disabilities, camps must provide one counselor for every five campers and obtain parent/guardian's written permission to allow for swimming participation;
- Non-ambulatory campers cannot have housing above ground level;
- Provisions for adaptive equipment, ramps and accessible design are included for lavatories, showers, and buildings. A maximum water temperature is established lavatories and showers.

To implement Article 11, the Department of Health proposes these amendments to 10 NYCRR Subpart 7-2, relating to "Children's Camp for Children with Developmental Disabilities". The amendments define a Children's Camp for the Developmentally Disabled as a children's camp with camper enrollments of 20 percent or more campers with a developmental disability. In addition to immediately complying with the requirements above, the amended regulations would immediately require these camps to comply with the following:

- Reportable incidents are defined and required to be reported by camp staff to the Justice Center and permit-issuing official;
- Camps must implement immediate protections following an incident to prevent further risk or harm to campers;
- Camps must notify the victim, potential witnesses, and each camper's personnel representative that the camper may be interviewed as part of an abuse or neglect investigation;
- Camps must verify staff are not on the Justice Center's Staff Exclusion List (SEL) prior to hiring. After this verification, the operator must consult the Office of Children and Family Services (OFCS) State Central Registry of Child Abuse and Maltreatment (SCR);

• Camp staff must receive mandated reporter training and acknowledge an understanding of the Justice Center's code of conduct;
• Camps need to cooperate with investigations, including providing access and disclosing necessary information;
• Camps must convene a Facility Incident Review Committee to review the camp's response to a reportable incident and make recommendations to reduce reportable incidents.

Compliance Costs:

Cost to Regulated Parties:

Costs to Camps for Children with Developmental Disabilities:

Costs to regulated parties are difficult to estimate due to variation in staff salaries and time needed to investigate incidents. Reporting incidents should take less than half an hour; assisting with investigations will range from several hours to two staff days. The Department estimates that the total staff costs range from $120 to $1600 for each investigation. Expenses should be minimal statewide as less than 55 Camps for Children with Developmental Disabilities operate each year, with an average of six camps reporting a total of 18 incidents per year.

There will be minimal expense for determining if potential employees are on the SEL and SCR. An entry level staff person earning the minimum wage of $8.75/hour should be able to compile the information for 100 employees within six to eight hours. OCFS requires a $25.00 screening fee for new or prospective employees and no fee for volunteers.

Camps will be required to: disclose certain information to the Justice Center and to the permit issuing official charged with investigating reportable incidents; ensure immediate protections are in place for victims; and notify the victims and any witnesses that they may be interviewed as part of an investigation. Costs associated with these activities include staff time for locating information, contacting camper's parent/guardians and expenses for copying materials. The typical cost should be under $100 per incident.

Costs associated with mandated reporting training are minimal as training materials will be provided to the camps and will take about one hour to review during routine staff training. The telephone number for the Justice Center reporting hotline must be conspicuously posted for campers and staff. Costs associated with posting is limited to making and posting copies in appropriate locations.

Camp operators must provide each camp staff member or volunteer with the code of conduct established by the Justice Center. The code must be provided at the time of initial employment and annually thereafter. The employee must acknowledge they received, read, and understand the code. The cost of providing the code, and obtaining and filing the required employee acknowledgment should be minimal. Staff should need less than 30 minutes to review the code.

Camps will be required to establish and maintain a facility incident review committee to review the camp's responses to reportable incidents. The cost to maintain a facility incident review committee is difficult to estimate due to the variations in salaries and the amount of time needed for the committee to meet. An incident review committee will be required to meet to fulfill its duties if any reportable incidents occur. Because most camps only operate during the summer season, it is expected that the incident review committee will meet no more than once a year. The cost is estimated to be $450.00 dollars per meeting. The regulations provide opportunity for a camp to seek an exemption, which may be granted based on the duration of the camp season and other factors.

Camps are now required to obtain a medical examination of any camper physically injured during a reportable incident. Because a medical examination is an expected standard of care in response to such injuries, there will be no additional cost.

Costs to camps enrolling campers with a disability:

Certain regulations, which previously pertained only to camps with 20 percent or more campers with a developmental disability, will now apply to any camp that enrolls one or more campers with a disability. The cost to affected parties is difficult to estimate due to variation in salaries and the unknown number of campers with a disability attending camps.

Camps will be required to provide at least: 1:2 supervision for campers who cannot independently manipulate a wheelchair or other adaptive equipment; 1:1 supervision during swimming for each camper who is non-ambulatory or has a disability that may result in an increased risk of an emergency in the water; and 1:5 supervision for campers with a developmental disability during swimming. Entry level staff person earning the minimum wage of $8.75/hour should be able to comply with the supervision requirements. The expense for camps will vary depending on the number of campers with these disabilities and the length of time the campers are in attendance.

Camps will be required to obtain and follow existing care/treatment plans and other available information relevant to the care of a camper with disabilities, such as pre-existing medical conditions, allergies, modified diets, and activity restrictions. Staff providing direct care of these campers must be trained on the specific needs of each camper. Costs to obtain existing health and care information are expect to be minimal, since camps currently collect health information. Costs to provide staff training will vary based on needs of individual campers, but are expected to be a minimal as they currently provide staff training in other areas.

Camps will need to obtain parent or guardian's written permission to allow campers with developmental disabilities to participate in swimming activities. The cost of obtaining permission slips should be minimal, as it is limited to copying, distributing, and filing with other materials from parents/guardians.

Cost to State and Local Government:

State agencies and local governments operating camps will have the same costs described in the section entitled "Cost to Regulated Parties."

The regulation imposes requirements on local health departments (LHDs) for receiving incident reports, investigating incidents, and oversight of corrective actions. The total cost for these services is difficult to estimate because of the variation in the number of incidents and amount of time to investigate an incident. The cost to investigate an incident, including report completion, is estimated to range from $400 to $1600.

Cost to the Department of Health:

There will be costs associated with printing and distributing the amended Code. There will be minimal costs for printing and distributing training materials, as most information will be distributed electronically. LHDs will likely include copies of training materials in routine correspondence to camps.

Local Government Mandates:

Camps operated by local governments must comply with the requirements imposed on camps operated by other entities, as described in the section entitled "Cost to Regulated Parties." Local governments serving as permit issuing officials will face additional reporting and investigation requirements, as described in the section entitled "Cost to State and Local Government." The proposed amendments otherwise do not impose new responsibilities on local governments.

Paperwork:

The paperwork associated with the amendment includes the completion and submission of incident report forms to the LHD and Justice Center. Camps will be required to provide records necessary for LHD investigation of incidents, and to retain documentation regarding whether prospective employees were found on the SEL or SCR. Camps enrolling campers with a disability will be required to obtain health care related documents/information and permission slips for swimming and document in-service training for aquatic staff.

Duplication:

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

Alternatives Considered:

The amendments to the code that relate to Camps for Children with Developmental Disabilities are mandated by law. No alternatives were considered for these requirements.

The Department considered not imposing additional requirements on camps that enroll less than 20% of campers with a disability; however, this option was rejected because the requirements are viewed as necessary to protect campers with disabilities attending camp.

The Department also considered imposing all of the requirements for Camps for Children with Development Disabilities on all children's camps with one or more qualifying campers; however, this option was rejected due to the burdensome costs associated with implementing the requirements. The State Camp Safety Advisory Council also expressed concern that applying the regulations to all camps enrolling a child with a developmental disability could be burdensome and have unintended consequences. The Department received correspondences from two State Senators, who expressed concern that expanding the regulations to all children's camps would have unintended financial consequences that could impact access.

Public comments were delivered by municipal organizations, children's camps and camp organizations, all of which argued in favor of keeping the 20 percent threshold. The Justice Center conveyed agreement with the Department's application of the additional requirements to camps serving a population of 20 percent or more children with developmental disabilities.

Federal Standards:

No current federal law governs the operation of children's camps.

Compliance Schedule:

The proposed amendments will be effective upon publication of the Notice of Adoption in the State Register. For Camps for Children with Developmental Disabilities, compliance with all requirements will be immediately required. For camps serving a population of less than 20 percent of children with developmental disabilities, the requirements pertaining to such camps will be effective October 1, 2016.

Regulatory Flexibility Analysis

Types and Estimated Number of Small Businesses and Local Governments:

There are approximately 2,510 regulated children's camps (533 overnight and 1977 summer day camps) operating in New York State. Any such camp that enrolls a camper with a disability will be affected by the proposed rule. Municipalities (towns, villages, cities and school districts) operate approximately 295 summer day camps and no overnight camp. Most of the remaining camps are believed to be small businesses.

Of the estimated 49 Children's Camps for Children with Development Disabilities (21 overnight camps and 28 summer day camps) that will be affected by the proposed rule, approximately nine summer day camps and none of the overnight camps are operated by municipalities (towns, villages, and cities). Most of the remaining Children's Camps for Children with Development Disabilities are believed to be small businesses.

Regulated children's camps representing small business include those owned or operated by corporations, hotels, motels and bungalow colonies, non-profit organizations (e.g., Girl/Boy Scouts of America, Cooperative Extension, YMCA) and others. The proposed amendments would affect these camps if they enroll children with disabilities. None of the proposed amendments will apply solely to camps operated by small businesses or local governments.

Compliance Requirements:

Reporting and Recordkeeping:

The obligations imposed on small business and local government as camp operators are no different from those imposed on camps generally, as described in "Cost to Regulated Parties," "Local Government Mandates," and "Paperwork" sections of the Regulatory Impact Statement. The obligations imposed on local government as the permit issuing official is described in "Cost to State and Local Government" and "Local Government Mandates" portions of the Regulatory Impact Statement.

Other Affirmative Acts:

The obligations imposed on small business and local government as camp operators are no different from those imposed on camps generally, as described in "Cost to Regulated Parties", "Local Government Mandates," and "Paperwork" sections of the Regulatory Impact Statement.

Professional Services:

Camps for Children with Developmental Disabilities are now explicitly required to obtain an appropriate medical examination of a camper physically injured from a reportable incident; however, a medical examination has always been expected for such injuries, so this is not a new required service.

Compliance Costs:

Cost to Regulated Parties:

The obligations imposed on small business and local government as camp operators are no different from those imposed on camps generally, as described in "Cost to Regulated Parties" and "Paperwork" sections of the Regulatory Impact Statement.

Cost to Small Businesses and State and Local Government:

The obligations imposed on small business and local government as camp operators are no different from those imposed on camps generally, as described in the "Cost to Regulated Parties" and "Paperwork" section of the Regulatory Impact Statement. The obligations imposed on local government as the permit issuing official is described in "Cost to State and Local Government" and "Local Government Mandates" portions of the Regulatory Impact Statement.

Economic and Technological Feasibility:

There are no changes requiring the use of technology.

The proposal is believed to be economically feasible for impacted parties. The amendments impose additional reporting and investigation requirements that will use existing staff that already have similar job responsibilities. There are no requirements that that involve capital improvements.

Minimizing Adverse Economic Impact:

The amendments for Camps for Children with Developmental Disabilities are mandated by law. No alternatives were considered.

Amendments for camps that have less than 20 percent of the campers with developmental disabilities are believed to be what is minimally necessary to protect this vulnerable population. Requirements for camps serving a population of less than 20 percent of children with developmental disabilities will be effective October 1, 2016. This will allow camps to adequately prepare for and implement these requirements.

Small Business and Local Government Participation:

The regulations were discussed at several State Camp Safety Advisory Council meetings which are open to the public and attended by camp operators, local health department staff and other local government officials. However, due to the need to have regulations in place by the 2016 camping season with adequate time for camps to prepare for the new requirements, no formal outreach was conducted.

Rural Area Flexibility Analysis

Types and Estimated Number of Rural Areas:

There are approximately 2,510 regulated children's camps (533 overnight and 1,977 summer day camps) operating in New York State. Any of these camps that enrolls a camper with a disability will be affected by the proposed rule. There are an estimated 412 day camps and 402 overnight camps operating in the 44 counties that have population less than 200,000. There are an additional 395 day camps and 97 overnight camps in the nine counties identified to have townships with a population density of 150 persons or less per square mile.

Of the approximate 814 camps operating in the 44 counties that have populations less than 200,000, there are 9 summer day and 13 overnight Camps for Children with Development Disabilities. There are an additional 5 day camps and 4 overnight camps in the 9 counties identified as having townships with a population density of 150 persons or less per square mile.

Reporting and Recordkeeping and Other Compliance Requirements:

Reporting and Recordkeeping:

The obligations imposed on camps operators in rural areas are no different from those imposed on camps generally, as described in "Cost to Regulated Parties" and "Paperwork" sections of the Regulatory Impact Statement.

Other Compliance Requirements:

The obligations imposed on camps in rural areas are no different from those imposed on camps generally, as described in "Cost to Regulated Parties" and "Paperwork" sections of the Regulatory Impact Statement.

Professional Services:

Camps for the Children with Development Disabilities are now explicitly required to obtain an appropriate medical examination of a camper physically injured from a reportable incident; however a medical examination has always been expected for such injuries, so this is not an additional service.

Compliance Costs:

Cost to Regulated Parties:

The costs imposed on camps in rural areas are no different from those imposed on camps generally, as described in "Cost to Regulated Parties" and "Paperwork" sections of the Regulatory Impact Statement.

Economic and Technological Feasibility:

There are no changes requiring the use of technology.

The proposal is believed to be economically feasible for impacted parties. The amendments impose additional reporting and investigation requirements that will use existing staff that already have similar job responsibilities. There are no requirements that involve capital improvements beyond requirements already imposed by the Americans with Disabilities Act.

Minimizing Adverse Economic Impact on Rural Area:

The amendments for Camps for Children with Developmental Disabilities are mandated by law. No alternatives were considered. No impacts are expected to be unique to rural areas.

Amendments for camps that have less than 20 percent of the campers with developmental disabilities are necessary to protect this vulnerable population. The Department has sought to strike a balance between protecting this vulnerable population and ensuring that costs are feasible. Amendments for camps that have less than 20 percent of the campers with developmental disabilities are believed to be what is minimally necessary to protect this vulnerable population.

Requirements for camps serving a population of less than 20 percent of children with developmental disabilities will be effective October 1, 2016. This will allow camps to adequately prepare for and implement these requirements.

Rural Area Participation:

The regulations were discussed at several State Camp Safety Advisory Council meetings which are open to the public and attended by camp operators from rural areas However, due to the need to have regulations in place by the 2016 camping season with adequate time for camps to prepare for the new requirements, no formal outreach was conducted.

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 have no adverse impact on the number of jobs and employment opportunities at children's camps, because it does not result in a decrease in current staffing level requirements.

Department of Labor

NOTICE OF ADOPTION

Tipped Workers in the Hospitality Industry

I.D. No. LAB-40-15-00015-A
Filing No. 1029
Filing Date: 2015-12-04
Effective Date: 2015-12-31

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

Action taken: Amendment of section 146-1.3(a)(4), (b)(4); and addition of section 146-3.12 to Title 12 NYCRR.

Statutory authority: Labor Law, sections 21(11), 652 and 656

Subject: Tipped workers in the hospitality industry.

Purpose: To implement changes to the wage rates for food service workers and service employees in the hospitality industry.

Text or summary was published in the October 7, 2015 issue of the Register, I.D. No. LAB-40-15-00015-P.

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

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

Revised Regulatory Flexibility Analysis

Effect of Rule: All small businesses, but no local governments, are potentially affected by the changes in the regulations.

Compliance Requirements: There are no changes in the reporting or record-keeping requirements regarding the minimum wage. Small businesses in the hospitality industry, and small businesses in other industries that employ workers at rates that are near, or below, the new statutory minimum wage rates, will have to review their payrolls in light of the new statutory minimum wage rates and the proposed wage orders to determine whether they will need to increase the amount that they pay to their workers.

Professional Services: No professional services would be required to effectuate the purposes of this rule.

Compliance Costs: These rules do not impose any additional compliance costs separate and apart from the costs imposed under the current rule. Such compliance costs do not exceed the cost of reviewing rates of pay, issuing appropriate pay rate notices, and increasing pay rates consistent with the increases implemented by this rulemaking.

Economic and Technological Feasibility: Compliance with these regulations will be economically and technologically feasible because these regulations simply adjust existing rates, without imposing new, or altering existing, requirements or procedures for complying with minimum wage requirements.

Minimizing Adverse Impact: Employers who testified and provided comments to the wage board and the Commissioner indicated that if rates for tipped workers are increased, employers will not absorb those increased costs, but will, instead, pass them along to consumers in the form of higher prices, or offset them by identifying cost savings that will allow them to maintain their overall labor costs at desired levels.

Small Business and Local Government Participation: Opportunities to participate in the development of this rulemaking were provided through two stages of notice and comment. At the first stage, a wage board for the hospitality industry met nine times between September 15, 2014 and January 30, 2015, including four public hearings around the state at which 127 persons testified, with an additional 140 persons in attendance, and four deliberative meetings and received 135 written submissions. Each of these nine meetings was publicized in advance, open to the public, videotaped, and subsequently webcast. The notices, webcasts, written submissions, and other materials, including the Commissioner's initial charge to the wage board, are posted on the Department of Labor's website at www.labor.ny.gov/wageboard2014.

At the second stage, upon receipt and filing of the wage board's report and recommendations, the Commissioner gave public notice of, and solicited public comment on, the wage board's report and recommendations, and received over 6,000 submissions.

Revised Rural Area Flexibility Analysis

1. Types and estimated numbers of rural areas: These rules apply to all private employers in all areas of the state.

2. Reporting, recordkeeping and other compliance requirements: There are no changes in the reporting or record-keeping requirements regarding the minimum wage. Employers in the hospitality industry, and employers in other industries that employ workers at rates that are near, or below, the new statutory minimum wage rates, will have to review their payrolls in light of the new statutory minimum wage rates and the proposed wage orders to determine whether they will need to increase the amount that they pay to their workers.

3. Professional services: No professional services will be required to comply with this rule.

4. Costs: These rules do not impose any additional compliance costs separate and apart from the costs that exist under the current rule. Such compliance costs do not exceed the cost of reviewing rates of pay, issuing appropriate pay rate notices, and increasing pay rates consistent with the increases implemented by this rulemaking.

5. Minimizing adverse impact: Employers who testified and provided comments to the wage board and the Commissioner indicated that if rates for tipped workers are increased, employers will not absorb those increased costs, but will, instead, pass them along to consumers in the form of higher prices, or offset them by identifying cost savings that will allow them to maintain their overall labor costs at desired levels.

6. Rural area participation: Opportunities to participate in the development of this rulemaking were provided through two stages of notice and comment. At the first stage, a wage board for the hospitality industry met nine times between September 15, 2014 and January 30, 2015, including four public hearings around the state at which 127 persons testified, with an additional 140 persons in attendance, and four deliberative meetings and received 135 written submissions. Each of these nine meetings was publicized in advance, open to the public, videotaped, and subsequently webcast. The notices, webcasts, written submissions, and other materials, including the Commissioner's initial charge to the wage board, are posted on the Department of Labor's website at www.labor.ny.gov/wageboard2014.

At the second stage, upon receipt and filing of the wage board's report and recommendations, the Commissioner gave public notice of, and solicited public comment on, the wage board's report and recommendations, and received over 6,000 submissions.

Initial Review of Rule

As a rule that requires a RFA, RAFA or JIS, this rule will be initially reviewed in the calendar year 2018, which is no later than the 3rd year after the year in which this rule is being adopted.

Assessment of Public Comment

The Department received several comments following publication of the original rule in the October 7, 2015 edition of the NY Register. The following represents a summary and an analysis of such comments, the reasons why any significant alternatives were not incorporated into the rule, and a description of the changes made in the proposed rule as a result of such comments.

Specific comments, and responses to them, are contained below.

Comment 1:

Food service delivery drivers who receive tips should be within the coverage of the proposed rule.

Response 1:

The rule will apply to delivery drivers that are properly classified as service employees and that are covered by the Hospitality Industry Wage Order (12 NYCRR Part 146 and § 146-3.3).

Comment 2:

The proposed rule should not limit resort hotels to a $1.50 per hour tip credit where employees earn more than $5.05 per hour in tips, as it creates a different tip scale for tipped workers at resort hotels.

Response 2:

The rule sets a uniform $1.50 per hour limitation on the maximum tip allowance in the Hospitality Industry for all tipped employees because that is what Wage Board recommended and the Commissioner adopted.

Comment 3:

The significant cash wage increase will harm businesses in the hospitality industry.

Response 3:

As stated more fully in the previously published Regulatory Impact Statement, the Department anticipates that the cost to employers in the hospitality industry will be de minimis, and that employers will be able to pass along costs to consumers through price increases, or through identifying areas of cost savings that permits them to maintain appropriate levels of labor costs.

Comment 4:

This rulemaking should be enacted as soon as possible to give employers more time to prepare to comply with the requirements.

Response 4:

The effective date of this rule is December 31, 2015, and the provisions

remain unchanged from those previously published in the October 7, 2015 edition of the State Register. To further notify the regulated community, the Department has provided information on the requirements of this rulemaking on its website.

Comment 5:

There will be increased compliance costs for this rulemaking due to employer's need to provide employees with a new notice of pay in accordance with Section 195 of the Labor Law, and such is not reflected in the Regulatory Flexibility Analysis.

Response 5:

The Department has amended the Regulatory Flexibility Analysis and the Rural Area Flexibility Analysis to reflect this minimal cost.

NOTICE OF ADOPTION

Fast Food Minimum Wage

I.D. No. LAB-42-15-00003-A

Filing No. 1069

Filing Date: 2015-12-10

Effective Date: 2015-12-31

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

Action taken: Amendment of section 146-1.2; and addition of section 146-3.13 to Title 12 NYCRR.

Statutory authority: Labor Law, sections 21(11), 652 and 656

Subject: Fast Food Minimum Wage.

Purpose: To implement changes to the wages for food service workers and service employees in the hospitality industry.

Text or summary was published in the October 21, 2015 issue of the Register, I.D. No. LAB-42-15-00003-P.

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

Text of rule and any required statements and analyses may be obtained from: Michael Paglialonga, NYS Department of Labor, Building 12, State Office Campus, Room 509, Albany, NY 12240, (518) 457-4380, email: fastfood@labor.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 Department received several comments following publication of the original rule in the October 21, 2015 edition of the NY Register. The following represents a summary and an analysis of such comments, and the reasons why any significant alternatives were not incorporated into the rule.

Specific comments, and responses to them, are contained below.

Comment 1:

The proposed rule will provide significant health and economic benefits for low wage and disadvantaged workers facing economic hardship.

Response 1:

The Department agrees with this comment.

Comment 2:

The proposed rule could impact private nonprofitmaking colleges that have fast food establishments on campus that are staffed by student workers, some of whom are funded through federal work-study.

Response 2:

This rule only applies to employers within the coverage of the Hospitality Wage Order (12 NYCRR Part 146), which contains specific exclusions that may be relevant to private colleges. (See, 12 NYCRR 146-3.1(d).) Whether those exclusions apply will depend on the particular facts and circumstances surrounding the employment.

Comment 3:

The proposed rule could impact retail employers that have fast food establishments located within retail establishments.

Response 3:

This rule applies to fast food establishments that are located within non-fast food establishments. Whether the rule impacts retail employers will depend on the particular facts and circumstances surrounding the employment.

Public Service Commission

NOTICE OF ADOPTION

EDI Standards Documents

I.D. No. PSC-34-15-00015-A

Filing Date: 2015-12-07

Effective Date: 2015-12-07

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 modifications to the Electronic Data Interchange (EDI) Standards documents, as set forth in the EDI Report submitted on July 24, 2015.

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

Subject: EDI Standards documents.

Purpose: To approve modifications to the EDI Standards documents.

Substance of final rule: The Commission, on November 19, 2015, adopted an order approving modifications to the Electronic Data Interchange (EDI) Standards documents, as set forth in the EDI Report submitted on July 24, 2015, subject to the terms and conditions set forth in the order.

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

Text of rule may be obtained from: 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-M-0476SA12)

PROPOSED RULE MAKING
NO HEARING(S) SCHEDULED

New York State Reliability Council's Establishment of an Installed Reserve Margin of 17.5%

I.D. No. PSC-51-15-00009-P

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

Proposed Action: The Commission is considering an Installed Reserve Margin of 17.5% established by the New York State Reliability Council for the Capability Year beginning May 1, 2016, and ending April 30, 2017.

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

Subject: New York State Reliability Council's establishment of an Installed Reserve Margin of 17.5%.

Purpose: To consider an Installed Reserve Margin for the Capability Year beginning May 1, 2016, and ending April 30, 2017.

Substance of proposed rule: The Public Service Commission (Commission) is considering an Installed Reserve Margin (IRM) of 17.5% established by the New York State Reliability Council's Executive Committee on December 4, 2015, for the Capability Year beginning May 1, 2016, and ending April 30, 2017. The IRM is based on the Technical Study Report entitled "New York Control Area Installed Capacity Requirement for the Period May 2016 to April 2017" (Report). The Report is available on the internet at: http://www.nysrc.org/NYSRC_NYCA_ICR_Reports.html. The Commission may adopt, reject or modify, in whole or in part, the proposed IRM and may resolve other related matters.

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

(07-E-0088SP10)

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Modification of the EDP

I.D. No. PSC-51-15-00010-P

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

Proposed Action: The Commission is considering modifying the Environmental Disclosure Labeling Program (EDP) for consistency with the proposed New York Generation Attribute Tracking System (NYGATS) rules.

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

Subject: Modification of the EDP.

Purpose: To consider modifying the EDP.

Substance of proposed rule: The Commission is considering modifying the Environmental Disclosure Labeling Program (EDP) for consistency with the proposed New York Generation Attribute Tracking System (NYGATS) rules or replacing or eliminating EDP. NYGATS Draft Operating Rules are available on the New York Energy Research and Development Authority's website at www.nyserda.ny.gov/Cleantech-and-Innovation/Environment/Research-Crosscutting-Topics/New-York-Generation-Attribute-Tracking-System. In addition, the Secretary to the Commission has issued a Notice Instituting Proceeding and Soliciting Comments on Environmental Disclosure Labeling Program. The Commission may adopt, reject or modify, in whole or in part, the relief proposed, may take other actions to support consistency between Commission programs and NYGATS, 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-0696SP1)

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

National Grid's Electric Economic Development Programs

I.D. No. PSC-51-15-00011-P

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

Proposed Action: The Public Service Commission is considering proposed modifications to the electric Economic Development Programs filed by Niagara Mohawk Power Corporation d/b/a National Grid.

Statutory authority: Public Service Law, sections 4, 5 and 66

Subject: National Grid's electric Economic Development Programs.

Purpose: To consider modifications to the economic development assistance to qualified businesses.

Substance of proposed rule: The Public Service Commission is considering a petition filed by Niagara Mohawk Power Corporation d/b/a/ National Grid requesting approval to modify seven of their electric Economic Development Programs. The request was filed as part of the utility's Economic Development Grant Programs Annual Report on October 15, 2015. The modifications proposed would i) add Service Class 2 applicants as eligible to the Capital Investment Incentive program, ii) expand eligibility for the Agricultural Business Productivity program to all types of farm/food processing and eliminate the NYSERDA participation requirement, iii) add language to the Main Street Revitalization program to clarify when less than 100% vacant buildings and buildings larger than 100,000 square feet are eligible, iv) increase the 3-Phase Power Incentive program maximum grant level from $100,000 to $200,000 for utility upgrades and $150,000 to $250,000 for renewable energy alternatives, v) lower the population requirement of the Urban Center/Commercial District Revitalization program from 15,000 to 10,000 and offer a maximum grant of $100,000 for project populations less than 15,000, vi) increase the maximum grant level for the Power Quality Enhancement program from $100,000 to $250,000 and add language to clarify that project work includes the customer side of the meter, and vii) include eligibility in the Targeted Financial Assistance program for businesses in a single facility/location employing at least 500 and excluding the 500 kW demand requirement. The Commission may adopt, reject or modify the petition, in whole or in part, the relief proposed and may address any related matters.

Text of proposed rule and any required statements and analyses may be obtained by filing a Document Request Form (F-96) located on our website http://www.dps.ny.gov/f96dir.htm. For questions, contact: 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-E-0201SP8)

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

A Waiver of the Rule Requiring New Electric Lines to be Constructed Underground in Residential Subdivisions

I.D. No. PSC-51-15-00013-P

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

Proposed Action: The Public Service Commission is considering a petition filed by Lost Lake Resort for a waiver of the rule requiring new electric lines to be constructed underground in residential subdivisions.

Statutory authority: Public Service Law, sections 31(4), 51, 65(1) and 66(1)

Subject: A waiver of the rule requiring new electric lines to be constructed underground in residential subdivisions.

Purpose: To consider a waiver of the rule requiring new electric lines to be constructed underground in residential subdivisions.

Substance of proposed rule: The Public Service Commission (Commission) is considering a letter petition filed on June 1, 2015, by Lost Lake Resort, seeking a waiver of the regulatory requirements contained in 16 NYCRR § 100.1, so that it may construct new electric distribution lines, service lines, and appurtenant facilities overhead instead of underground in a residential subdivision. 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-0310SP1)

Department of State

NOTICE OF ADOPTION

Rules Relating to Insurance and Bond Requirements

I.D. No. DOS-38-15-00003-A
Filing No. 1042
Filing Date: 2015-12-08
Effective Date: 2015-12-23

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

Action taken: Repeal of section 160.9; and addition of new section 160.9 to Title 19 NYCRR.

Statutory authority: Executive Law, section 91; General Business Law, sections 402(5) and 404

Subject: Rules relating to insurance and bond requirements.

Purpose: To enhance protections to workers by adding new provisions requiring wage coverage.

Text of final rule: *19 NYCRR § 160.9 Bond or liability insurance*

(a) An owner must maintain proof of minimum financial security in the following amounts:

(1) for accident and professional liability, at least $25,000 per individual occurrence and $75,000 in the aggregate; and

(2) for payment of wages and remuneration legally due employees who provide nail specialty services pursuant to the following schedule:

(i) if owner employs the equivalent of two to five full time individuals who provide nail specialty services, at least $25,000 or in such other amount as directed by the Secretary;

(ii) if owner employs the equivalent of six to ten full time individuals who provide nail specialty services, at least $40,000 or in such other amount as directed by the Secretary;

(iii) if owner employs the equivalent of 11 to 25 full time individuals who provide nail specialty services, at least $75,000 or in such other amount as directed by the Secretary; or

(iv) if owner employs the equivalent of 26 or more full time individuals who provide nail specialty services, at least $125,000 or in such other amount as directed by the Secretary.

(b) Such proof may be satisfied by purchasing:

(1) accident and professional liability insurance, or general liability insurance; or

(2) a bond with a corporate surety, from a company authorized to do an insurance business in this state, payable in favor of the people of the state of New York; or

(3) any combination of (1) or (2) as provided in this Subdivision provided that the coverage amounts set forth in Subdivision (a) of this Section are satisfied.

(c) Proof of bond and liability insurance coverage, as applicable, must be filed with the Secretary and may be terminated only in accordance with the following provisions:

(1) A bond shall not be cancelled, revoked, or terminated by the owner, nor shall the owner take action that would result in the cancellation, revocation, or termination of such bond, except after notice to, and with the consent of, the Secretary at least forty-five days in advance of such cancellation, revocation, or termination. The bond shall include a provision requiring the surety to provide forty-five days' notice to the Secretary prior to terminating the bond, except in the case of termination for nonpayment of premium in which case such notice shall be provided to the Secretary upon termination.

(2) A liability insurance policy obtained pursuant to this Section shall not be cancelled, revoked, or terminated by the owner, nor shall the owner take action that would result in the cancellation, revocation, or termination of such insurance policy, except after notice to the Secretary at least forty-five days in advance of such cancellation, revocation, or termination, in a form prescribed by the Secretary.

(d) Proof of such bond or liability insurance policy must be maintained on the business premises. Such proof shall be accessible by all employees at all times that the business is open.

Final rule as compared with last published rule: Nonsubstantive changes were made in section 160.9(b)(2), (c)(1) and (e).

Text of rule and any required statements and analyses may be obtained from: David Mossberg, NYS Dept. of State, 123 William St., 20th Fl., New York, NY 10038, (212) 417-2063, email: david.mossberg@dos.ny.gov

Revised Regulatory Impact Statement

Changes made to the text of the last published rule do not necessitate revisions to the previously published Regulatory Impact Statement.

After reviewing the sole public comment and consulting with other agencies as part of Governor Cuomo's Task Force to Combat Wage Abuse in the Nail Salon Industry, the Department made the following text changes to this rule: 1) amended text to conform to proper terminology used by the Department of Financial Services ("DFS"); 2) amended text to reduce paperwork and notification requirements for surety companies; and 3) amended text to remove references to expired grace periods. These changes do not require a revised Regulatory Impact Statement.

The original rule on this matter required a bond to be obtained from a "business authorized to do business in this state." DFS has informed the Department that the proper term of art used in the insurance industry is "authorized to do an insurance business in this state." Giving deference to DFS, the Department changed the text to use the correct terminology. This is a technical change which does not require a revised Regulatory Impact Statement.

The original rule on this matter required 45 days' notification prior to termination, cancellation or revocation of a bond regardless of the circumstances. The Department received a public comment from the American Insurance Association ("AIA") which indicated that when a surety intends to terminate a bond for non-payment of premium, the bond is usually renewed in approximately 85% of the time upon notifying the holder to make a payment. The AIA suggested therefore that notification for non-payment of premium be made after termination is effective. The Department considered this recommendation, and found that changing the requirement to notify upon termination for non-payment would reduce paperwork and ease burdens on both the Department as well as surety companies. As this revision merely changes the time requirements for notifications which were otherwise required under the original rule, a revised Regulatory Impact Statement is not needed.

The original rule on this matter, filed on May 18, 2015, was superseded by a similar but different emergency rulemaking on June 10, 2015, the text of which first appeared in the July 1, 2015 edition of the State Register. On September 4, 2015, the Department simultaneously re-adopted the June 10th emergency regulation and proposed the regulation for permanent adoption by filing a Notice of Emergency/Proposed Rulemaking. On October 30, 2015, the Department filed a second emergency re-adoption of the rule that has been in effect since June 10th. The rule text, however, continued to include grace periods to provide businesses sufficient time to come into compliance. The Department has removed such grace period provisions because they have since expired.

The Department finds that the foregoing changes are not substantive and therefore do not require a Revised Regulatory Impact Statement.

Revised Regulatory Flexibility Analysis

Changes made to the text of the last published rule do not necessitate revisions to the previously published Revised Regulatory Flexibility Analysis.

After reviewing the sole public comment and consulting with other agencies as part of Governor Cuomo's Task Force to Combat Wage Abuse in the Nail Salon Industry, the Department made the following text changes to this rule: 1) amended text to conform to proper terminology used by the Department of Financial Services ("DFS"); 2) amended text to reduce paperwork and notification requirements for surety companies; and 3) amended text to remove references to expired grace periods. These changes do not require a Revised Regulatory Flexibility Analysis.

The original rule on this matter required a bond to be obtained from a "business authorized to do business in this state." DFS has informed the Department that the proper term of art used in the insurance industry is "authorized to do an insurance business in this state." Giving deference to DFS, the Department changed the text to use the correct terminology. This is a technical change which does not require a Revised Regulatory Flexibility Analysis.

The original rule on this matter required 45 days' notification prior to termination, cancellation or revocation of a bond regardless of the circumstances. The Department received a public comment from the American Insurance Association ("AIA") which indicated that when a surety intends to terminate a bond for non-payment of premium, the bond is usually renewed in approximately 85% of the time upon notifying the holder to make a payment. The AIA suggested therefore that notification

for non-payment of premium be made after termination is effective. The Department considered this recommendation, and found that changing the requirement to notify upon termination for non-payment would reduce paperwork and ease burdens on both the Department as well as surety companies. As this revision merely changes the time requirements for notifications which were otherwise required under the original rule, a Revised Regulatory Flexibility Analysis is not needed.

The original rule on this matter, filed on May 18, 2015, was superseded by a similar but different emergency rulemaking on June 10, 2015, the text of which first appeared in the July 1, 2015 edition of the State Register. On September 4, 2015, the Department simultaneously re-adopted the June 10th emergency regulation and proposed the regulation for permanent adoption by filing a Notice of Emergency/Proposed Rulemaking. On October 30, 2015, the Department filed a second emergency re-adoption of the rule that has been in effect since June 10th. The rule text, however, continued to include grace periods to provide businesses sufficient time to come into compliance. The Department has removed such grace period provisions because they have since expired.

The Department finds that the foregoing changes are not substantive and therefore do not require a Revised Regulatory Flexibility Analysis.

Revised Rural Area Flexibility Analysis

Changes made to the text of the last published rule do not necessitate revisions to the previously published Revised Rural Area Flexibility Analysis.

After reviewing the sole public comment and consulting with other agencies as part of Governor Cuomo's Task Force to Combat Wage Abuse in the Nail Salon Industry, the Department made the following text changes to this rule: 1) amended text to conform to proper terminology used by the Department of Financial Services ("DFS"); 2) amended text to reduce paperwork and notification requirements for surety companies; and 3) amended text to remove references to expired grace periods. These changes do not require a Revised Rural Area Flexibility Analysis.

The original rule on this matter required a bond to be obtained from a "business authorized to do business in this state." DFS has informed the Department that the proper term of art used in the insurance industry is "authorized to do an insurance business in this state." Giving deference to DFS, the Department changed the text to use the correct terminology. This is a technical change which does not require a Revised Rural Area Flexibility Analysis.

The original rule on this matter required 45 days' notification prior to termination, cancellation or revocation of a bond regardless of the circumstances. The Department received a public comment from the American Insurance Association ("AIA") which indicated that when a surety intends to terminate a bond for non-payment of premium, the bond is usually renewed in approximately 85% of the time upon notifying the holder to make a payment. The AIA suggested therefore that notification for non-payment of premium be made after termination is effective. The Department considered this recommendation, and found that changing the requirement to notify upon termination for non-payment would reduce paperwork and ease burdens on both the Department as well as surety companies. As this revision merely changes the time requirements for notifications which were otherwise required under the original rule, a Revised Rural Area Flexibility Analysis is not needed.

The original rule on this matter, filed on May 18, 2015, was superseded by a similar but different emergency rulemaking on June 10, 2015, the text of which first appeared in the July 1, 2015 edition of the State Register. On September 4, 2015, the Department simultaneously re-adopted the June 10th emergency regulation and proposed the regulation for permanent adoption by filing a Notice of Emergency/Proposed Rulemaking. On October 30, 2015, the Department filed a second emergency re-adoption of the rule that has been in effect since June 10th. The rule text, however, continued to include grace periods to provide businesses sufficient time to come into compliance. The Department has removed such grace period provisions because they have since expired.

The Department finds that the foregoing changes are not substantive and therefore do not require a Revised Rural Area Flexibility Analysis.

Revised Job Impact Statement

Changes made to the text of the last published rule do not necessitate revisions to the previously published Revised Job Impact Statement.

After reviewing the sole public comment and consulting with other agencies as part of Governor Cuomo's Task Force to Combat Wage Abuse in the Nail Salon Industry, the Department made the following text changes to this rule: 1) amended text to conform to proper terminology used by the Department of Financial Services ("DFS"); 2) amended text to reduce paperwork and notification requirements for surety companies; and 3) amended text to remove references to expired grace periods. These changes do not require a Revised Job Impact Statement.

The original rule on this matter required a bond to be obtained from a "business authorized to do business in this state." DFS has informed the Department that the proper term of art used in the insurance industry is "authorized to do an insurance business in this state." Giving deference to DFS, the Department changed the text to use the correct terminology. This is a technical change which does not require a Revised Job Impact Statement.

The original rule on this matter required 45 days' notification prior to termination, cancellation or revocation of a bond regardless of the circumstances. The Department received a public comment from the American Insurance Association ("AIA") which indicated that when a surety intends to terminate a bond for non-payment of premium, the bond is usually renewed in approximately 85% of the time upon notifying the holder to make a payment. The AIA suggested therefore that notification for non-payment of premium be made after termination is effective. The Department considered this recommendation, and found that changing the requirement to notify upon termination for non-payment would reduce paperwork and ease burdens on both the Department as well as surety companies. As this revision merely changes the time requirements for notifications which were otherwise required under the original rule, a Revised Job Impact Statement is not needed.

The original rule on this matter, filed on May 18, 2015, was superseded by a similar but different emergency rulemaking on June 10, 2015, the text of which first appeared in the July 1, 2015 edition of the State Register. On September 4, 2015, the Department simultaneously re-adopted the June 10th emergency regulation and proposed the regulation for permanent adoption by filing a Notice of Emergency/Proposed Rulemaking. On October 30, 2015, the Department filed a second emergency re-adoption of the rule that has been in effect since June 10th. The rule text, however, continued to include grace periods to provide businesses sufficient time to come into compliance. The Department has removed such grace period provisions because they have since expired.

The Department finds that the foregoing changes are not substantive and therefore do not require a Revised Job Impact Statement.

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

Since the most recent publication of this rule in the State Register, the Department received 1 comment from the American Insurance Association ("AIA"). The AIA recommended 2 changes to the rule text, one of which the Department agrees with and amended accordingly.

The original rule on this matter required 45 days' notification prior to termination, cancellation or revocation of a bond regardless of the circumstances. The AIA indicated that when a surety intends to terminate a bond for nonpayment of premium, the bond is usually renewed in approximately 85% of the time upon notifying the holder to make a payment. The AIA suggested therefore that notification for nonpayment of premium be made after termination is effective. The Department considered this recommendation, and found that changing the requirement to notify upon termination for nonpayment would reduce paperwork and ease burdens on both the Department as well as surety companies. This change was therefore incorporated into the final rule.

The second proposal from the AIA was to change the notification for cancellations for any other reason besides nonpayment of premium, to a 15 day notice which could be provided simultaneously to both the insured and the Department. As cancellation for reasons other than nonpayment would generally present itself in instances of fraud or other illegality, the Department believes that 15 days' notice is insufficient to protect workers. The Department believes that if notification is made that a holder's policy is being canceled for fraud or other illegality, the Department could commence an investigation into the matter while the policy is still in effect if 45 days' notice is provided. During that period the Department could potentially take appropriate action to ensure that the license is suspended to prevent operation without a required bond. In order to ensure that sufficient time is available to commence an investigation, this recommendation was not incorporated into the final rule.

NOTICE OF ADOPTION

Personal Protective Equipment

I.D. No. DOS-38-15-00004-A
Filing No. 1041
Filing Date: 2015-12-08
Effective Date: 2015-12-23

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

Action taken: Amendment of section 160.11(a)-(b); and addition of sections 160.11(c) and 160.20(h)-(j) to Title 19 NYCRR.

Statutory authority: Executive Law, section 91; General Business Law, sections 402(5) and 404

Subject: Personal protective equipment.

Purpose: To require the provision of personal protective equipment.

Text of final rule: Section 160.11 of Title 19 of the NYCRR is amended as follows:

Section 160.11. Owner responsibilities

(a) An owner [, an area renter or both] shall be responsible for the proper conduct of the licensed business and for the proper provision of appearance enhancement services to the public by its employees or operators.

(b) An owner [, an area renter or both] shall be responsible for compliance with all applicable health and sanitary codes, and all statutory and regulatory requirements with respect to the practices of the occupation and business prescribed by this Part.

(c) An owner shall be responsible for maintaining the following equipment at each workstation, to be made available, upon request and without cost, to each person providing nail care services who uses such workstation:

(1) A properly fitting N-95 or N-100 respirator, approved by the National Institute for Occupational Safety and Health ("NIOSH"), for each individual who uses such workstation, to reduce inhalation of dust and particulate matter;

(2) Protective gloves made of nitrile, or other similar non-permeable material for workers with a sensitivity to nitrile gloves, in quantities sufficient to allow each individual providing nail care services to have a new pair of gloves for each customer served; and

(3) Eye protection sufficient to protect from splashes when pouring or transferring potentially hazardous chemicals from bulk containers or when preparing potentially hazardous chemicals for use in nail care services.

Section 160.20 of Title 19 of the NYCRR is amended as follows:

160.20 Hygienic practices.

(a) Cotton applicators may be used and must be stored in a closed container or sealed bag.

(b) A clean sheet of paper or a clean towel not previously used for any purpose shall be placed on the table or headrest before any client reclines on a table or chair.

(c) Cloth towels may be used once then bagged, machine washed and dried.

(d) A paper strip or clean towel shall be placed completely around the neck of each client before an apron or any other protective device is fastened around the neck.

(e) All practitioners and nail care clients must wash hands with soap and water before each client service.

(f) All sharp or pointed equipment shall be stored when not in use so as not to be accessible to consumers.

(g) All fluids, semifluids and powders must be dispensed with a shaker, dispenser pump or spray type container. All creams, lotions and other cosmetics used for clients must be kept in closed containers and dispensed with disposable applicators. When only a portion of a preparation is to be used on a client, it shall be removed from the container in such a way as not to contaminate the remaining portion.

(h) All practitioners shall have access to and may use a properly fitted N-95 or N-100 respirator, provided by the owner and approved by the National Institute for Occupational Safety and Health ("NIOSH"), in accordance with manufacturer's specifications when buffing or filing artificial nails or using acrylic powder.

(i) All practitioners shall have access to and may wear gloves, provided by the owner, when handling potentially hazardous chemicals or waste and during cleanup, or when performing any procedure that has a risk of breaking a customer's skin.

(j) All practitioners shall have access to and may wear eye protection, provided by the owner, when pouring or transferring potentially hazardous chemicals from bulk containers and when preparing potentially hazardous chemicals for use in nail care services.

Final rule as compared with last published rule: Nonsubstantive changes were made in sections 160.11(d) and 160.20(k).

Text of rule and any required statements and analyses may be obtained from: David Mossberg, NYS Dept. of State, 123 William St., 20th Fl., New York, NY 10038, (212) 417-2063, email: david.mossberg@dos.ny.gov

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

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

The original rule on this matter, filed on May 18, 2015, was superseded by a similar but different emergency rulemaking on June 10, 2015, the text of which first appeared in the July 1, 2015 edition of the State Register. On September 4, 2015, the Department simultaneously re-adopted the June 10th emergency regulation and proposed the regulation for permanent adoption by filing a Notice of Emergency/Proposed Rulemaking. On October 30, 2015, the Department filed a second emergency re-adoption of the rule that has been in effect since June 10th. The rule text, however, continued to include grace periods to provide businesses sufficient time to come into compliance. The Department has removed such grace period provisions because they have since expired. No other changes have been made to the rule text.

The Department finds that removing references to expired grace periods is not a substantial change requiring a Revised Regulatory Impact Statement, Revised Regulatory Flexibility Analysis, Revised Rural Area Flexibility Analysis and Revised Job Impact Statement.

Initial Review of Rule

As a rule that requires a RFA, RAFA or JIS, this rule will be initially reviewed in the calendar year 2018, which is no later than the 3rd year after the year in which this rule is being adopted.

Assessment of Public Comment

The agency received no public comment.

Department of Taxation and Finance

EMERGENCY RULE MAKING

City of New York Withholding Tables and Other Methods

I.D. No. TAF-51-15-00007-E

Filing No. 1037

Filing Date: 2015-12-08

Effective Date: 2015-12-23

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

Action taken: Repeal of Appendix 10-C; and addition of new Appendix 10-C to Title 20 NYCRR.

Statutory authority: Tax Law, sections 171, subdivision First, 671(a)(1), 697(a), 1309 and 1312(a); Administrative Code of the City of New York, sections 11-1771(a) and 11-1797(a); and L. 2015, ch. 59, part B

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

Specific reasons underlying the finding of necessity: Part B of Chapter 59 of the Laws of 2015 made certain changes to the personal income tax law that require the Commissioner to adjust the withholding tables and other methods in Appendix 10-C of 20 NYCRR, and to promulgate rules to implement the changes as soon as practicable. Section 4 of Part B specifically authorizes emergency action to adopt rules implementing these changes. Sections 1309 and 671(a)(1) of the Tax Law mandates that employers withhold from employees amounts that are substantially equivalent to the tax reasonably estimated to be due for the taxable year. These amendments to Appendix 10-C reflect the revision of the City of New York tax tables in accordance with the increased rate of New York City personal income tax applicable to income over $500,000 enacted by Part B of Chapter 59 of the Laws of 20 15, implemented over a twelve month period for the 2016 tax year, rather than the shorter implementation period required for tax year 2015. These rules are being adopted on an emergency basis in accordance with the requirement that rules be adopted and effective as soon as practicable and consistent with the statutory requirement that employers must withhold amounts substantially equivalent to the tax reasonably estimated to be due for the taxable year.

Subject: City of New York withholding tables and other methods.

Purpose: To provide current City of New York withholding tables and other methods.

Substance of emergency rule: Section 1309 of the Tax Law and section 11-1771 of the Administrative Code of the City of New York mandate that employers withhold from employee wages amounts that are substantially equivalent to the amount of City of New York personal income tax on residents reasonably estimated to be due for the taxable year. The provi-

sions authorize the Commissioner of Taxation and Finance to provide for withholding of these taxes through regulations promulgated by the Commissioner.

This rule repeals and replaces Appendix 10-C of Title 20 NYCRR, New York City Personal Income Tax on Residents Withholding Tables and Other Methods of such Title, to provide new City of New York withholding tables and other methods. The amendments to Appendix 10-C reflect the revision of the City of New York tax tables in accordance with the increased rate of New York City personal income tax applicable to income over $500,000 enacted by Part B of Chapter 59 of the Laws of 2015, implemented over a twelve month period for the 2016 tax year, rather than the shorter implementation period required for tax year 2015, and the requirement that the withholding rates reflect the full amount of tax liability as accurately as practicable.

The rule applies to wages and other compensation subject to withholding paid on or after January 1, 2016.

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 March 6, 2016.

Text of rule and any required statements and analyses may be obtained from: Kathleen D. O'Connell, Tax Regulations Specialist 1, Department of Taxation and Finance, Taxpayer Guidance Division, Building 9, W.A. Harriman Campus, Albany, NY 12227, (518) 530-4153, email: Kathleen.OConnell@tax.ny.gov

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

A Regulatory Impact Statement, Regulatory Flexibility Analysis, Rural Area Flexibility Analysis and Job Impact Statement are not submitted, but will be published in the *Register* within 30 days of the rule's effective date.