

RULE MAKING ACTIVITIES

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

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

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

Department of Civil Service

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Jurisdictional Classification

I.D. No. CVS-29-15-00006-P

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

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

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

Subject: Jurisdictional Classification.

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

Text of proposed rule: Amend Appendix 1 of the Rules for the Classified Service, listing positions in the exempt class, in the Department of Public Service, by deleting therefrom the position of Chief, Division of Telecommunications and by increasing the number of positions of Secretary from 2 to 3 and Special Assistant from 6 to 12.

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-29-15-00007-P

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

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

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

Subject: Jurisdictional Classification.

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

Text of proposed rule: Amend Appendix 2 of the Rules for the Classified Service, listing positions in the non-competitive class, in the Department of Family Assistance under the subheading "Office of Children and Family Services," by decreasing the number of positions of Associate Counsel from 2 to 1 and by deleting therefrom the positions of Affirmative Action Administrator 1 (2), Computer Systems Design and Development Specialist (1), Director Affirmative Action Programs 2 (1), Recreation Program Leader 1 (Indian Affairs) (1), Supervisor of Facilities Security (1) (Until first vacated after May 16, 1990) and Teaching Assistant; in the Department of Family Assistance under the subheading "Office of Temporary and Disability Assistance," by deleting therefrom the positions of Associate Social Services Medicaid Analyst (1) (Until first vacated after September 5, 1990), Chief of Social Services Cost Containment 1 (1), Director, Child Care Systems Development (1) (Until first vacated after March 20, 1985), Family and Children's Services Minority Planning Specialist (1), Supervising Social Services Medicaid Analyst (1) (Until first vacated after September 5, 1990) and Technical Consultant for Communications Network Implementation (1); in the Department of Family Assistance by deleting therefrom the subheading "Bureau of the State Commission for the Blind" and the positions of Home Teacher for the Blind and Sales Assistant for the Blind (part-time); and, in the Executive Department under the subheading "Office of Parks, Recreation and Historic Preservation," by deleting therefrom the positions of Area Captain of L.I.S.P.C. Lifeguards, Curator (History), John Jay Homestead (1), Fabric Specialist (L.I.S.P.C.), Heritage Trails Program Specialist (2), Parks and Recreation Regional Program Analyst (1) (Appointment not to exceed eighteen months) and Planning Survey Aide.

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-29-15-00008-P

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

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

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

Subject: Jurisdictional Classification.

Purpose: To classify positions in the non-competitive class.

Text of proposed rule: Amend Appendix 2 of the Rules for the Classified Service, listing positions in the non-competitive class, in the Executive Department under the subheading "Office of General Services," by increasing the number of positions of Multimedia Production Technician from 18 to 22 and by adding thereto the positions of Multimedia Production Representative 1 (7), Multimedia Production Representative 2 (13) and Multimedia Production Representative 3 (2).

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

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

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

Regulatory Impact Statement

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

Regulatory Flexibility Analysis

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

Rural Area Flexibility Analysis

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

Job Impact Statement

A job impact statement is not submitted with this notice because this rule is subject to a consolidated job impact statement that was previously

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

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Jurisdictional Classification

I.D. No. CVS-29-15-00009-P

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

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

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

Subject: Jurisdictional Classification.

Purpose: To 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 Mental Hygiene under the subheading "Office of Mental Health," by increasing the number of positions of Mental Health Program Manager 1 from 6 to 7.

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-29-15-00010-P

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

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

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

Subject: Jurisdictional Classification.

Purpose: To delete positions from the exempt class.

Text of proposed rule: Amend Appendix 1 of the Rules for the Classified Service, listing positions in the exempt class, in the Executive Department under the subheading "Office of General Services," by deleting therefrom the positions of Empire State Fellow (120).

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-29-15-00011-P

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

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

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

Subject: Jurisdictional Classification.

Purpose: To 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 of General Services," by increasing the number of positions of Deputy Director Business Services Center from 1 to 2.

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

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

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

Regulatory Impact Statement

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

Regulatory Flexibility Analysis

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

Rural Area Flexibility Analysis

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

Job Impact Statement

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

**Department of Environmental
Conservation**

NOTICE OF ADOPTION

Hunting Wild Turkey

I.D. No. ENV-19-15-00008-A

Filing No. 600

Filing Date: 2015-07-02

Effective Date: 2015-07-22

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

Action taken: Amendment of section 1.40 of Title 6 NYCRR.

Statutory authority: Environmental Conservation Law, sections 11-0303, 11-0903 and 11-0905

Subject: Hunting wild turkey.

Purpose: To revise the fall wild turkey hunting seasons statewide.

Text of final rule: Title 6/Part 1 of NYCRR, Section 1.40, entitled "Hunting Wild Turkey" is amended as follows:

Amend existing paragraph 1.40(c)(1) and subparagraph 1.40(d)(1)(ii) to read as follows:

(c) Season dates and boundaries.

(1) Fall.

A permittee may hunt wild turkey only during those open seasons and in those Wildlife Management Units (as described in section 4.1 of this Title) listed below.

Open Season	Wildlife Management Units
October 1st through [the first Friday after] October 14[5]th	5A, 5C, 5F, 5G, 5H, 5J, 6A, 6C, 6F, 6G, 6H, 6J, 6K and 6N
14 consecutive days beginning the first Saturday after October 14th [October 1st through the day before the Southern Zone regular deer season]	3A, 3C, 3F, 3G, 3H, 3J, 3K, 3M, 3N, 3P, 3R, 3S, 4A, 4B, 4C, 4F, 4G, 4H, 4J, 4K, 4L, 4O, 4P, 4R, 4S, 4T, 4U, 4W, 4Y, 4Z, 5R, 5S, 5T, 6P, 6R, 6S, 7A, 7F, 7H, 7J, 7M, 7P, 7R, [and] 7S, 8A, 8C, 8F, 8G, 8H, 8J, 8M, 8N, 8P, 8R, 8S, 8T, 8W, 8X, 8Y, 9A, 9C, 9F, 9G, 9H, 9J, 9K, 9M, 9N, 9P, 9R, 9S, 9T, 9W, 9X, and 9Y
14 consecutive days beginning the third Saturday in November [14 consecutive days beginning 28 days prior to the Southern Zone regular deer season]	1C [7A, 8A, 8C, 8F, 8G, 8H, 8J, 9A, 9C, and 9F]
[The 28 days immediately prior to the Southern Zone regular deer season]	[8M, 8N, 8P, 8R, 8S, 8T, 8W, 8X, 8Y, 9G, 9H, 9J, 9K, 9M, 9N, 9P, 9R, 9S, 9T, 9W, 9X and 9Y]

(d) Bag limits.

(1) Fall. A permittee may take:

(i) One turkey of either sex during the fall season on the Statewide carcass tag in any open area.

(ii) A second turkey of either sex on the 2 bird area carcass tag only in Wildlife Management Units 3A, 3C, 3F, 3G, 3H, 3J, 3K, 3M, 3N, 3P, 3R, 3S, 4A, 4B, 4C, 4F, 4G, 4H, 4J, 4K, 4L, 4O, 4P, 4R, 4S, 4T, 4U, 4W, 4Y, 4Z, 5R, 5S, 5T, 6A, 6C, 6G, 6H, 6P, 6R, 6S, 7F, 7H, 7J, 7M, 7P, 7R & 7S (as described in section 4.1 of this Title.)

Final rule as compared with last published rule: Nonsubstantive changes were made in section 1.40(c)(1) and (d)(1)(ii).

Text of rule and any required statements and analyses may be obtained from: Michael Schiavone, Department of Environmental Conservation, 625 Broadway, Albany, NY 12233-4754, (518) 402-8883, email: wildliferegs@dec.ny.gov

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

Revised Regulatory Impact Statement

1. Statutory Authority

Section 3-0301 of the Environmental Conservation Law (ECL) directs the Department of Environmental Conservation (DEC or department) to provide for the propagation, protection, and management of wildlife.

Section 11-0303 of the ECL directs DEC 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.

ECL sections 11-0903 and 11-0905 direct DEC to promulgate regulations to establish seasons and bag limits for wild turkeys. ECL sections 11-0917 and 11-1101 describe the conditions under which wild game may be possessed, transported, or sold.

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 the setting of open areas for hunting wild turkeys. These tools are used by the department in recognition of the importance of hunting for recreational purposes.

3. Needs and Benefits

The Division of Fish, Wildlife and Marine Resources (Division) proposes to amend the wild turkey hunting regulations to revise the fall hunting season structure (i.e., season zones, season length, bag limits) beginning in fall 2015. We are proposing a reduction in season length in most areas of the state in response to long-term population declines. A two-week season is proposed for each of three season zones (Northern Zone, Southern Zone, Long Island) with a seasonal bag limit of one bird of either sex. This represents a contraction of the fall turkey hunting season in much of the state, no change in the Great Lakes Plain, and a modest expansion in Suffolk County.

The Division proposes to revise fall hunting season zones statewide to better align harvest opportunities with current wild turkey populations and environmental conditions. Wild turkey populations in New York State have changed dramatically since the last time fall seasons were revised in 2002. Statewide, populations have declined significantly as measured by both the spring harvest and the bowhunter sighting log survey conducted during the fall. There are several reasons for this decline including a decline in reproductive success (e.g., nest success, poult success), loss of landscape-scale habitat diversity (particularly the loss of early successional habitats such as old fields, shrublands, and young forests that are important for nesting and brood rearing), and a more diverse and abundant predator community.

During the fall season a turkey of either sex may be taken. Overharvesting hens can cause populations to decline. In order to ensure that the turkey harvest is sustainable, we must adjust fall hunting seasons so that they are more appropriate for the current status of wild turkey populations in light of limiting factors such as hen survival, productivity, and habitat quality.

The proposed changes have been developed as part of a four-year research study. Department staff have banded and radio-tagged hen wild turkeys for two years under the current fall season structure (2013 and 2014) and will continue to do so for two years after the proposed seasons are implemented (2015 and 2016) to assess the effect of this management action. Information on harvest and survival, as well as abundance, productivity, and hunter survey data, will then be used to ensure that fall seasons are appropriate based on current environmental conditions and to update the New York State Wild Turkey Management Plan.

4. Costs

None beyond normal administrative costs.

5. Paperwork

There is no additional paperwork required based on this regulatory proposal. Wild turkey hunters have always been required to purchase a turkey hunting permit, complete a carcass tag for any bird harvested, and to report the harvest within 7 days. This regulatory proposal does not change any of these requirements.

6. Local Government Mandates

These amendments do not impose any program, service, duty or responsibility upon any county, city, town, village, school district or fire district.

7. Duplication

There are no other regulations similar to this proposal.

8. Alternatives

1. Close the fall season.

While New York's turkey populations have declined, they can still sustain a limited fall harvest. The Division used a structured-decision making process (SDM) to identify the optimal season structure for various

regions of the State that balances turkey abundance and hunter satisfaction. While eliminating the fall season would eliminate hunting mortality and maximize the number of turkeys on the landscape, it would disenfranchise the 50,000 New Yorkers who pursue this popular game bird each fall, and the generations of New York hunters that have enjoyed a fall turkey hunting opportunity for over 50 years.

2. Continue with the existing fall season structure.

The current hunting season structure does not account for current ecological conditions such as weather, landscape-scale habitat, turkey abundance, productivity, and survival, and social conditions such as hunters' motivation and what drives hunter satisfaction. We evaluated various harvest alternatives based on biological and social data for major physiographic regions of the State to determine the optimal season structure. Where changes are proposed to season length or bag limit, it was because the new season structure provided a better balance between turkey abundance and hunter satisfaction than the existing season does.

3. Only allow the harvest of male turkeys during the fall season.

Data from hunter-killed birds in the fall indicate that hunters often have difficulty identifying the age and sex of the birds they harvest. Many of the birds hunters encounter during the fall are young, so the physical characteristics that help identify sex and age may not be conspicuous, making it difficult to comply with hunting regulations.

Were we to allow only the harvest of "bearded birds", this would significantly restrict hunting opportunities as the vast majority of birds with conspicuous beards during the fall are adult males, which currently only make up about 22% of the total fall harvest.

4. Consider other harvest alternatives (longer/shorter, different bag limit).

The Division evaluated four harvest alternatives that represented a range of opportunity and hunting pressure from a conservative season (2 weeks, 1 bird bag limit) to a liberal season (7 weeks, 2 bird bag limit). As mentioned above, the SDM process that was employed identified the optimal season structure for various regions of the State that balanced turkey abundance and hunter satisfaction. Social science surveys indicated that fall turkey hunters place greater value on seeing and hearing turkeys over other aspects such as harvest success or avoiding conflicts with other hunters. Since "hearing and seeing more turkeys" is directly tied to turkey abundance, the relatively conservative two-week season minimizes the impacts of hen harvest mortality while still providing hunters the chance to go afield. More lengthy seasons and liberal bag limits would provide more hunting opportunity, but would also increase the probability that populations would continue to decline.

Survey data indicate that fall turkey hunters spend 4-6 days afield on average, regardless of whether they hunt in a region with a two-week season (i.e., the Lake Plains) or a seven-week season (southeastern New York). Because the proposed season dates in the three proposed zones do not overlap (Northern Zone: Oct. 1-14; Southern Zone: Oct. 17-30; Suffolk County: Nov. 21-Dec. 4), a very dedicated hunter could hunt turkeys for up to six weeks in total if they were willing to move around the State.

Important factors in hunter satisfaction include hearing and seeing more birds (i.e., a stable or growing turkey population), a season that includes at least two weekends, and a season that does not overlap with the firearms deer season. The optimal two week-one bird season structure identified by the SDM process will meet these criteria.

5. Consider alternate season dates (e.g., earlier or later opening date in the Southern Zone).

The October 1 start date in the Northern Zone was selected because it represented a time when small game hunters can go afield prior to the start of the firearms deer season. The season dates in the Southern Zone were selected to grant hunters the opportunity to go afield during the peak of small game hunting, prior to the firearms deer season, and to minimize conflicts with archery deer hunting which, harvest data indicate, is higher during early October and early November.

Fall turkey hunting has run concurrently with seasons for other species for several years without complicating or negatively affecting law enforcement or hunter compliance with regulations. It is incumbent upon hunters to know the season dates, legal implements, and other regulations for the species they are pursuing.

Turkey harvest data indicate that hunting activity is highest during the opening week of the fall season regardless of whether it starts on October 1 or mid to late October. In addition, the fall turkey seasons in western New York have opened in mid to late October for several years, so the proposed season start dates are not a significant departure from what hunters there have previously experienced.

9. Federal Standards

There are no federal standards associated with wild turkey hunting.

10. Compliance Schedule

Licensed hunters would have to comply with the new regulations beginning in the fall of 2015, if they are adopted as proposed.

Revised Regulatory Flexibility Analysis

The purpose of this rule making is to amend the wild turkey hunting regulations to revise the fall hunting season structure (i.e., season zones,

season length, bag limits) beginning in fall 2015, including a reduction in season length in most areas of the State in response to long-term population declines. A two-week season is proposed for each of three season zones (Northern Zone, Southern Zone, Long Island) with a seasonal bag limit of one bird of either sex. This rule will not impose any reporting, record-keeping, or other compliance requirements on small businesses or local government. Therefore, a Regulatory Flexibility Analysis is not required.

All reporting or record keeping requirements associated with hunting in general, and wild turkey hunting in particular, are administered by the New York State Department of Environmental Conservation (department). Small businesses may, and town or village clerks do, sell hunting licenses, but this rule does not affect that activity. Thus, there will be no effect on reporting or record keeping requirements imposed on those entities.

Based on the department's past experience in promulgating regulations of this nature, and based on the professional judgment of department staff, the department has determined that this rulemaking may slightly decrease the number of participants or the frequency of participation in fall turkey hunting over the short-term, but will ultimately result in higher participation if and when turkey populations recover from current low levels. Some small businesses currently benefit from hunting because hunters spend money on goods and services, and thus an increase in hunting participation should lead to positive economic impacts on such businesses over the long-term.

Changes in hunting activity will not require any new or additional reporting or record-keeping by any small businesses or local governments. For these reasons, the department has concluded that this rulemaking does not require a Regulatory Flexibility Analysis.

Revised Rural Area Flexibility Analysis

The purpose of this rule making is to amend the wild turkey hunting regulations to revise the fall hunting season structure (i.e., season zones, season length, bag limits) beginning in fall 2015, including a reduction in season length in most areas of the State in response to long-term population declines. A two-week season is proposed for each of three season zones (Northern Zone, Southern Zone, Long Island) with a seasonal bag limit of one bird of either sex. This rule will not impose any reporting, record-keeping, or other compliance requirements on public or private entities in rural areas.

All reporting or record keeping requirements associated with hunting are administered by the New York State Department of Environmental Conservation (department). Small businesses may, and town or village clerks do, issue hunting licenses, but this rule making does not affect that activity.

Any changes in hunting activity over the short-term or long-term that may result from this rulemaking will not require any new or additional reporting or record-keeping by entities in rural areas, and no professional services will be needed for people living in rural areas to comply with the proposed rule. Furthermore, this rule making is not expected to have any adverse impacts on any public or private interests in rural areas of New York State. For these reasons, the department has concluded that this rulemaking does not require a Rural Area Flexibility Analysis.

Revised Job Impact Statement

The purpose of this rule making is to amend the wild turkey hunting regulations to revise the fall hunting season structure (i.e., season zones, season length, bag limits) beginning in fall 2015, including a reduction in season length in most areas of the State in response to long-term population declines. A two-week season is proposed for each of three season zones (Northern Zone, Southern Zone, Long Island) with a seasonal bag limit of one bird of either sex. The New York State Department of Environmental Conservation (DEC or department) has historically made regular revisions to its hunting regulations. Based on DEC's experience in promulgating those revisions and the familiarity of regional department staff with the specific areas of the State impacted by this proposed rulemaking, the department has determined that this rule making will not have a substantial adverse impact on jobs and employment opportunities. Few persons, if any, actually use recreational hunting as a means of employment. This rulemaking will help ensure the long-term security of wild turkey populations while providing sustainable harvest opportunities. This rulemaking may slightly decrease the number of participants or the frequency of participation in fall turkey hunting over the short-term, but will ultimately result in higher participation if and when turkey populations recover from current low levels. A more abundant turkey population may benefit local businesses and businesses that sell hunting supplies and equipment.

For these reasons, the department anticipates that this rulemaking will have no impact on jobs and employment opportunities. Therefore, the department has concluded that a job impact statement is not required.

Assessment of Public Comment

The Department received approximately one hundred comments on the proposed amendment. A summary of comments and the Department's response follows.

Comment:

Many comments stated support for the proposed fall turkey hunting seasons.

Response:

Many commenters were concerned about declines in wild turkey populations and were in favor of the proposed fall turkey hunting regulations and the process used to develop the proposal. The Department appreciates this support and will evaluate the impact of the season changes on harvest and survival to ensure that fall harvest opportunities are sustainable. We will continue to monitor turkey populations, including regional variation based on differences in environmental factors, and adjust seasons as necessary.

Comment:

Some people felt that turkeys were abundant in their local area so no changes to fall hunting regulations were necessary. Others had observed a decline in turkey numbers, but felt that changes to fall hunting regulations would not slow or reverse this trend.

Response:

The Department's goal when adjusting hunting regulations is to ensure that harvest opportunities are sustainable based on current population levels and ecological conditions. Multiple data sources indicate that turkey populations have declined throughout upstate New York over the past 15 years, and environmental factors such as habitat and predator populations have changed as well. We developed and used a population model based on data from New York to evaluate various harvest alternatives. Although recent studies by the Department indicate that fall harvest rates are relatively low, the model indicated that the proposed season should improve hen survival and did a better job at minimizing the potential negative impacts of harvest on turkey abundance than other season alternatives.

The proposed changes were developed as part of a four-year research study. Department staff banded and radio-tagged hen wild turkeys for two years under the current fall season structure (2013 and 2014) and will continue to do so for two years after the proposed seasons are implemented (2015 and 2016) to assess the effect of this management action. Information on harvest and survival, as well as abundance, productivity, and hunter survey data, will then be used to ensure that fall seasons are appropriate based on current environmental conditions and hunters' desires, and to update the Wild Turkey Management Plan.

Comment:

The proposed two-week season will not provide enough time for hunters to go afield and have the chance to harvest a turkey.

Response:

The Department surveyed a sample of turkey hunters to help determine the optimal fall season structure. Important factors in hunter satisfaction include hearing and seeing more birds (i.e., a stable or growing turkey population), a fall season that includes at least two weekends, and a season that does not overlap with the firearms deer season. Other survey data indicated that fall turkey hunters in New York spend 4-6 days afield on average, regardless of whether they hunt in a region with a two-week season (i.e., the Lake Plains) or a seven-week season (southeastern New York). We evaluated four harvest alternatives ranging from a conservative season (2 weeks, 1-bird bag limit) to a liberal season (7 weeks, 2-bird bag limit). A two-week season provides the most benefit to the turkey population, while allowing hunters time to continue a similar level of effort, albeit with less choice of when to go afield. The proposed season dates in all three zones do not overlap with one another, so a hunter could hunt turkeys for up to six weeks in total if they were willing to travel around the state.

For perspective, the average maximum season length in Northeast states is 3 weeks, so hunting opportunity in New York would be similar to its neighbors.

Comment:

The proposed season dates are undesirable due to concerns about safety, law enforcement, conflicts with other hunters, and/or hunter preference.

Response:

Some commenters were concerned that the proposed season dates in the Southern Zone pose a safety risk to hunters because of other concurrent hunting seasons and foliage that may still be on trees and limit visibility. However, the proposed season dates in most areas fall within the time frame that seasons have previously been held. The Lake Plains area is an exception, where the season will be about two weeks earlier than it was previously, but consistent with past seasons in other areas of the state. In selecting the proposed season dates, the Department considered the possibility of safety and law enforcement issues but concluded that the proposed dates would not increase the potential for hunting accidents or conflicts with other hunters (e.g., bowhunters). Hunting accidents during fall turkey seasons are rare (about one/year statewide, on average), and the number of incidents between turkey hunters or between turkey hunters and other hunters is negligible. Fall turkey season has run concurrently

with seasons for other species for many years without negatively affecting law enforcement or hunter compliance with regulations. It is incumbent upon hunters to know season dates, legal implements, and other regulations for species they are pursuing.

Some commenters stated a preference to hunt turkey in early October or the week just prior to the Southern Zone firearms deer season (early November). Turkey harvest data indicate that hunting activity is highest during the opening week of the fall season regardless of whether it starts on October 1 or mid-late October. In addition, fall turkey seasons in western New York have opened in mid-late October for several years, so the proposed season start dates are not a significant departure from what hunters have previously experienced.

Comment:

The proposed season dates in the Southern Zone (roughly, the last two weeks of October) will result in more turkeys being taken by bowhunters.

Response:

The overlap in fall turkey season and archery-only deer season has existed for many years without evidence of increased take. Furthermore, bowhunting participation is higher in early October and early November than during the proposed season.

Comment:

The fall season should be closed until wild turkey populations increase.

Response:

Although New York's turkey populations have declined, they can still sustain a limited fall harvest. Closing the fall season would have the greatest benefit to turkey populations, but could disenfranchise the 50,000 New Yorkers who pursue this popular game bird each fall, and undermine a tradition that generations of hunters have enjoyed for over 50 years. The Department does not believe that a complete season closure is warranted at this time.

Comment:

Management efforts to help wild turkeys should focus on improving habitat, not on hunting regulations.

Response:

We agree that changes in habitat quantity and quality over the past 25 years have contributed to the decline in wild turkey populations. As the State's forests have matured, habitat diversity has declined, negatively influencing turkey nest success and poult survival. The Department is working to improve habitat conditions on State-owned lands, but most land in the State is privately held, so landscape-scale changes in habitat will take a much larger effort to improve conditions for turkeys. Such an effort is outside the scope of the proposed regulations, although Department staff did take habitat conditions (and regional variation in those conditions), into account when developing the regulatory proposal.

Comment:

Hunting and trapping seasons for predators should be liberalized, such as a year-round season for coyotes, to reduce their populations.

Response:

New York already has liberal hunting and trapping seasons for many predators, including coyotes (e.g., six months long, no bag limit), and has proposed additional seasons as predators such as bobcat have increased in number and distribution. Department staff will continue to monitor furbearer populations and modify seasons to accommodate sustainable harvest opportunities for these species; however, expanding seasons for species that prey upon turkeys or their nests is unlikely to improve turkey populations on a large scale.

The Department is opposed to a year-round coyote season for several reasons: 1) during spring and summer, coyote pelts have little or no value and their meat has no redeeming culinary qualities; consequently, coyotes killed at that time would not be killed for any legitimate purpose or use; 2) most coyotes rear their young between early April and mid-summer, so killing adult coyotes during that time would result in pups dying from starvation; and 3) few people would go afield for coyotes during the spring and summer, so even a year-round hunting season would not achieve the high harvest rates needed (about 65% mortality) to reduce coyote numbers.

Comment:

Wild turkeys should be trapped from out of state or parts of New York with higher turkey populations and released in areas with low turkey populations.

Response:

A trap and transfer program would not solve the decline in wild turkey populations. Environmental conditions such as habitat, weather, and predator populations have all played a role in the decline in turkey populations, so introducing "new" birds into the same conditions would only be a short-term fix to a long-term problem. Trap and transfer programs are logistically difficult, cost prohibitive, and have risks such as an increased chance for disease transmission.

Comment:

The bag limit for the fall season should be restricted to male birds.

Response:

Most hunters cannot accurately identify juvenile male turkeys during fall, so this would have to be implemented as a "bearded bird only" regulation, similar to our spring season. This would greatly reduce harvest opportunities as the vast majority of birds in fall are young of the year or hens, as adult males currently make up only about 22% of the total fall harvest. This would place a burden on hunters to confirm the presence of a beard at a time of year when such determinations are more difficult than in spring (when adult males are easily recognized by appearance, calls and behavior), which could result in significant incidental take of non-bearded birds.

Comment:

Some commenters suggested reducing the spring turkey season to improve turkey populations.

Response:

The primary driver of wild turkey populations is survival of hens (females). Current spring regulations are designed to protect breeding hens and minimize disruption to breeding/nesting behaviors. The spring season is currently May 1-31 and has a bag limit of two "bearded" birds, almost all of which are males. Available data indicate that spring harvest of male turkeys does not affect long-term turkey population levels. From 2006-09, the Department conducted an extensive study of survival rates and spring harvest rates statewide. Based on that research, overall spring hunting mortality rate is estimated to be 30-35% in New York. Reducing male harvest rates would increase the proportion of adult gobblers in the population, but it would not affect overall population growth rates. Fall hunting seasons, where a bird of either sex may be taken, are the primary tool managers have for affecting population changes.

Comment:

Expand wild turkey hunting opportunities on Long Island through a longer fall season or a spring season.

Response:

We proposed a modest increase to the current turkey hunting season on Long Island. Fall take per unit effort is higher in Suffolk County than in other parts of the state and other survey data indicate that turkey populations there are similar to parts of the state that have had a longer season, providing evidence that the Suffolk County turkey population can sustain a two-week season. The proposed season for Suffolk County overlaps the regular Southern Zone deer season, so participation and harvest are expected to be low. Harvests during the 5-day fall season to date have been low, averaging about 100 birds per year.

Some commenters favor a spring season in Suffolk County; however, due to multiple uses of public land where turkeys occur in eastern Long Island, a fall season when other hunting seasons are open has fewer potential conflicts between the hunting and non-hunting public than a spring season.

Conclusion

After considering all of the comments received on the proposed changes to fall turkey hunting seasons, the Department has concluded that the proposal as published provides the optimal balance between the enhancement of turkey populations and hunter opportunity and satisfaction. Consequently, the regulation is being adopted as originally proposed.

Department of Financial Services

EMERGENCY RULE MAKING

Public Retirement Systems

I.D. No. DFS-29-15-00001-E

Filing No. 601

Filing Date: 2015-07-03

Effective Date: 2015-07-03

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

Action taken: Amendment of Part 136 (Regulation 85) of Title 11 NYCRR.

Statutory authority: Financial Services Law, sections 202 and 302; Insurance Law, sections 301, 314, 7401(a) and 7402(n)

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

Specific reasons underlying the finding of necessity: The Second Amendment to 11 NYCRR 136 (Insurance Regulation 85), effective November 19, 2008, established new standards of behavior with regard to investment

of the assets of the New York State Common Retirement Fund ("Fund"), conflicts of interest, and procurement. In addition, it created new audit and actuarial committees, and greatly strengthened the investment advisory committee. The Second Amendment also set high ethical standards, strengthened internal controls and governance, enhanced the operational transparency of the Fund, and strengthened supervision by the Department.

Nevertheless, recent events surrounding how placement agents conduct business on behalf of their clients with regard to the Fund compel the Superintendent to conclude that the mere strengthening of the Fund's control environment is insufficient to protect the integrity of the state employees' retirement systems. Rather, only an immediate ban on the use of placement agents will ensure sufficient protection of the Fund's members and beneficiaries and safeguard the integrity of the Fund's investments.

This regulation was previously promulgated on an emergency basis on June 18, 2009, September 16, 2009, January 5, 2010, April 2, 2010, May 28, 2010, July 29, 2010, September 23, 2010, November 19, 2010, January 18, 2011, March 21, 2011, May 19, 2011, August 16, 2011, November 10, 2011, February 7, 2012, May 7, 2012, August 3, 2012, October 31, 2012, January 28, 2013, April 26, 2013, July 24, 2013, October 21, 2013, January 17, 2014, April 16, 2014, July 14, 2014, October 10, 2014, January 7, 2015, and April 6, 2015.

Subject: Public Retirement Systems.

Purpose: To ban the use of placement agents by investment advisors engaged by the state employees' retirement systems.

Text of emergency rule: Section 136-2.2 is amended to read as follows:
§ 136-2.2 Definitions.

The following words and phrases, as used in this Subpart, unless a different meaning is plainly required by the context, shall have the following meanings:

[(a) Retirement system shall mean the New York State and Local Employees' Retirement System and the New York State and Local Police and Fire Retirement System.]

[(b) Fund shall mean the New York State Common Retirement Fund, a fund in the custody of the Comptroller as trustee, established pursuant to Section 422 of the Retirement and Social Security Law, which holds the assets of the retirement system.]

[(c)](a) Comptroller shall mean the Comptroller of the State of New York in his capacity as administrative head of the Retirement System and the sole trustee of the [fund] Fund.

[(d) OSC shall mean the Office of the State Comptroller.]

[(e)](b) Consultant or advisor shall mean any person (other than an OSC employee) or entity retained by the [fund] Fund to provide technical or professional services to the [fund] Fund relating to investments by the [fund] Fund, including outside investment counsel and litigation counsel, custodians, administrators, broker-dealers, and persons or entities that identify investment objectives and risks, assist in the selection of [money] investment managers, securities, or other investments, or monitor investment performance.

(c) Family member shall mean any person living in the same household as the Comptroller, and any person related to the Comptroller within the third degree of consanguinity or affinity.

(d) Fund shall mean the New York State Common Retirement Fund, a fund in the custody of the Comptroller as trustee, established pursuant to Section 422 of the Retirement and Social Security Law ("RSSL"), which holds the assets of the Retirement System.

[(f) (e) Investment manager shall mean any person (other than an OSC employee) or entity engaged by the Fund in the management of part or all of an investment portfolio of the [fund] Fund. "Management" shall include, but is not limited to, analysis of portfolio holdings, and the purchase, sale, and lending thereof. For the purposes hereof, any investment made by the Fund pursuant to RSSL § 177(7) shall be deemed to be the investment of the Fund in such investment entity (rather than in the assets of such investment entity).

(f) Investment policy statement shall mean a written document that, consistent with law, sets forth a framework for the investment program of the Fund.

(g) OSC shall mean the Office of the State Comptroller.

[(g)](h) Placement agent or intermediary shall mean any person or entity, including registered lobbyists, directly or indirectly engaged and compensated by an investment manager (other than [an] a regular employee of the investment manager) to promote investments to or solicit investment by [assist the investment manager in obtaining investments by the fund, or otherwise doing business with] the [fund] Fund, whether compensated on a flat fee, a contingent fee, or any other basis. Regular employees of an investment manager are excluded from this definition unless they are employed principally for the purpose of securing or influencing the decision to secure a particular transaction or investment by the Fund.[obtaining investments or providing other intermediary services with respect to the fund.] For purpose of this paragraph, the term "em-

ployee" shall include any person who would qualify as an employee under the federal Internal Revenue Code of 1986, as amended, but shall not include a person hired, retained or engaged by an investment manager to secure or influence the decision to secure a particular transaction or investment by the Fund.

[(h) Investment policy statement shall mean a written document that, consistent with law, sets forth a framework for the investment program of the fund.]

[(i) Third party administrator shall mean any person or entity that contractually provides administrative services to the retirement system, including receiving and recording employer and employee contributions, maintaining eligibility rosters, verifying eligibility for benefits or paying benefits and maintaining any other retirement system records. Administrative services do not include services provided to the fund relating to fund investments.]

(i) Retirement System shall mean the New York State and Local Employees' Retirement System and the New York State and Local Police and Fire Retirement System.

(j) Third party administrator shall mean any person or entity that contractually provides administrative services to the Retirement System, including receiving and recording employer and employee contributions, maintaining eligibility rosters, verifying eligibility for benefits, paying benefits or maintaining any other Retirement System records. "Administrative services" do not include services provided to the Fund relating to Fund investments.

[(j)](k) Unaffiliated Person shall mean any person other than: (1) the Comptroller or a family member of the Comptroller, (2) an officer or employee of OSC, (3) an individual or entity doing business with OSC or the [fund] Fund, or (4) an individual or entity that has a substantial financial interest in an entity doing business with OSC or the [fund] Fund. For the purpose of this paragraph, the term "substantial financial interest" shall mean the control of the entity, whereby "control" means the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of the entity, whether through the ownership of voting securities, by contract (except a commercial contract for goods or non-management services) or otherwise; but no individual shall be deemed to control an entity solely by reason of his being an officer or director of such entity. Control shall be presumed to exist if any individual directly or indirectly owns, controls or holds with the power to vote ten percent or more of the voting securities of such entity.

[(k) Family member shall mean any person living in the same household as the Comptroller, and any person related to the Comptroller within the third degree of consanguinity or affinity.]

Section 136-2.4(d) is amended to read as follows:

(d) Placement agents or intermediaries: In order to preserve the independence and integrity of the [fund] Fund, to [address] preclude potential conflicts of interest, and to assist the Comptroller in fulfilling his or her duties as a fiduciary to the [fund] Fund, [the Comptroller shall maintain a reporting and review system that must be followed whenever the fund] the Fund shall not [engages, hires, invests with, or commits] engage, hire, invest with or commit to[,] an outside investment manager who is using the services of a placement agent or intermediary to assist the investment manager in obtaining investments by the [fund] Fund. [, or otherwise doing business with the fund. The Comptroller shall require investment managers to disclose to the Comptroller and to his or her designee payments made to any such placement agent or intermediary. The reporting and review system shall be set forth in written guidelines and such guidelines shall be published on the OSC public website.]

Section 136-2.5(g) is amended to read as follows:

(g) The Comptroller shall:

(1) file with the superintendent an annual statement in the format prescribed by Section 307 of the Insurance Law, including the [retirement system's] Retirement System's financial statement, together with an opinion of an independent certified public accountant on the financial statement;

(2) file with the superintendent the Comprehensive Annual Financial Report within the time prescribed by law, but no later than the time it is published on the OSC public website;

(3) disclose on the OSC public website, on at least an annual basis, all fees paid by the [fund] Fund to investment managers, consultants or advisors, and third party administrators;

[(4) disclose on the OSC public website, on at least an annual basis, instances where an investment manager has paid a fee to a placement agent or intermediary;]

[(5)](4) disclose on the OSC public website the [fund's] Fund's investment policies and procedures; and

[(6)](5) require fiduciary and conflict of interest reviews of the [fund] Fund every three years by a qualified unaffiliated person.

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 September 30, 2015.

Text of rule and any required statements and analyses may be obtained from: Mark McLeod, New York State Department of Financial Services, One State Street, New York, NY 10004, (212) 480-4937, email: mark.mcleod@dfs.ny.gov

Regulatory Impact Statement

1. Statutory authority: The Superintendent's authority for the adoption of the rule to 11 NYCRR 136 is derived from sections 202 and 302 of the Financial Services Law ("FSL") and sections 301, 314, 7401(a), and 7402(n) of the Insurance Law.

FSL section 202 establishes the office of the Superintendent and designates the Superintendent to be the head of the Department of Financial Services ("DFS").

FSL section 302 and Insurance Law section 301, in material part, authorize the Superintendent to effectuate any power accorded to him by the Insurance Law, the Banking Law, the Financial Services Law, or any other law of this state and to prescribe regulations interpreting the Insurance Law.

Insurance Law section 314 vests the Superintendent with the authority to promulgate standards with respect to administrative efficiency, discharge of fiduciary responsibilities, investment policies and financial soundness of the public retirement and pension systems of the State of New York, and to make an examination into the affairs of every system at least once every five years in accordance with Insurance Law sections 310, 311 and 312. The implementation of the standards is necessarily through the promulgation of regulations.

As confirmed by the Court of Appeals in *Matter of Dinallo v. DiNapoli*, 9 N.Y. 3d 94 (2007), the Superintendent functions in two distinct capacities. The first is as regulator of the insurance industry. The second is as statutory receiver of financially distressed insurance entities. Article 74 of the Insurance Law sets forth the Superintendent's role and responsibilities in this latter capacity.

Insurance Law section 7401(a) sets forth the entities, including the public retirement systems, to which Article 74 applies.

Insurance Law section 7402(n) provides that it is a ground for rehabilitation if an entity subject to Article 74 has failed or refused to take such steps as may be necessary to remove from office any officer or director whom the Superintendent has found, after appropriate notice and hearing, to be a dishonest or untrustworthy person.

2. Legislative objectives: Insurance Law section 314 authorizes the Superintendent to promulgate and amend, after consultation with the respective administrative heads of public retirement and pension systems and after a public hearing, standards with respect to the public retirement and pension systems of the State of New York.

This rule, which in effect bans the use of an investment tool that has been found to be untrustworthy, is consistent with the public policy objectives that the Legislature sought to advance in enacting Insurance Law section 314, which provides the Superintendent with the powers to promulgate standards to protect the New York State Common Retirement Fund (the "Fund").

3. Needs and benefits: The Second Amendment to 11 NYCRR 136 (Regulation 85), effective November 19, 2008, established new standards with regard to investment of the assets of the Fund, conflicts of interest and procurement. In addition, the Second Amendment created new audit and actuarial committees, and greatly strengthened the investment advisory committee. The Second Amendment also set high ethical standards, strengthened internal controls and governance, enhanced the operational transparency of the Fund, and strengthened supervision by the Department.

Nevertheless, recent allegations regarding "pay to play" practices, whereby politically connected individuals reportedly sold access to investment opportunities with the Fund, compel the Superintendent to conclude that the mere strengthening of the Fund's control environment is insufficient to protect the integrity of the state employees' retirement systems. The Third Amendment to Regulation 85 will adopt an immediate ban on the use of placement agents to ensure sufficient protection of the Fund's members and beneficiaries, and safeguard the integrity of the Fund's investments. Further, the rule defines "placement agent or intermediary" in a manner that both thwarts evasion of the ban while ensuring that such ban not extend to persons otherwise acting lawfully on behalf of investment managers.

4. Costs: The rule does not impose any additional requirements on the Comptroller, and no additional costs are expected to result from the implementation of the ban imposed by this rule. There are no costs to the Department or other state government agencies or local governments. Investment managers, consultants and advisors who provide services to the Fund, which are required to discontinue the use of placement agents in connection with investment services they provide to the Fund, may lose opportunities to do business with the Fund.

5. Local government mandates: The rule imposes no new programs, services, duties or responsibilities on any county, city, town, village, school district, fire district or other special district.

6. Paperwork: No additional paperwork should result from the prohibition imposed by the rule.

7. Duplication: This rule will not duplicate any existing state or federal rule.

8. Alternatives: The Superintendent considered other ways to limit the influence of placement agents, including a partial ban, increased disclosure requirements, and adopting alternative definitions of placement agent or intermediary. The Department considered limiting the ban to include intent on the part of the party using placement agents, or defining "placement agent" in more general terms.

In developing the rule, the Superintendent and State Comptroller not only consulted with one another, but also briefed representatives of: (1) New York State and New York City Public Employee Unions; (2) New York City Retirement and Pension Funds; (3) the Borough Presidents of the five counties of New York City; and (4) officials of the New York City Mayor's Office, Comptroller's Office and Finance Department. These entities agreed with the concerns expressed by the Department and intend to explore remedies most appropriate to the pension funds that they represent.

Initially, the Superintendent concluded that only an immediate total ban on the use of placement agents could provide sufficient protection of the Fund's members and beneficiaries and safeguard the integrity of the Fund's investments. The proposed rule was published in the *State Register* on March 17, 2010. A Public Hearing was held on April 28, 2010. The following comments were received:

Blackstone Group, a global investment manager and financial advisor, wrote to oppose the proposed ban on the use of placement agents by investment advisors engaged by the New York State Common Retirement Fund ("The Fund"). It stated that the rule would lessen the number of investment opportunities brought before the Fund, adversely affect small, medium-sized and women-and minority-owned investment firms seeking to do business with the Fund, and adversely affect a number of New York-headquartered financial institutions doing business as placement agents.

Blackstone suggested the inclusion of the following provisions in the rule instead:

- A ban on political contributions by any employee of any placement agent seeking to do business with the Fund;
- A requirement that any placement agent seeking to do business with the Fund be registered as a broker dealer with the SEC and ensure that its professionals have passed the appropriate Series qualifications administered by Financial Industry Regulatory Authority ("FINRA");
- A requirement that any placement agent seeking to do business in New York register with the Department; and
- A requirement that any placement agent representing an investment manager before the Fund fully disclose the contractual arrangement between it and the manager, including the fee arrangement and the scope of services to be provided.

The Securities Industry and Financial Markets Association ("SIFMA"), representing hundreds of securities firms, banks, and asset managers, commented that the proposed rule (1) inadvertently limits the access of smaller fund managers to the Fund; (2) restricts the number and types of advisers that could be utilized by the Fund; (3) creates an inherent conflict between federal and state law that would make it impossible to do business with the Fund while complying with both; and (4) adds duplicative regulation in an area already substantially regulated at the state level and that is primed for further federal regulation through the imminent imposition of a federal pay-to-play regime on all registered broker-dealers acting as placement agents. In addition, SIFMA provided language that it believes would be consistent with the existing federal requirements on the use of placement agents. SIFMA requested that the Department either exclude from the proposed rule those placement agents who are registered as broker-dealers under the Securities Exchange Act of 1934 or delay the enactment of the proposed rule until the federal and state placement agent initiatives are finalized.

The Superintendent did consider other ways to limit the influence of placement agents, including a partial ban, increased disclosure requirements, and adopting alternative definitions of placement agent or intermediary. The Department considered limiting the ban to include intent on the part of the party using placement agents, or defining "placement agent" in more general terms. At the time, the Superintendent concluded that only an immediate, total ban on the use of placement agents could provide sufficient protection of the Fund's members and beneficiaries and safeguard the integrity of the Fund's investments.

9. Federal standards: The Securities and Exchange Commission issued a "Pay-To-Play" regulation for financial advisors on July 1, 2010, which may have an impact on the issues addressed in the proposed rule.

10. Compliance schedule: The emergency adoption of this regulation

on June 18, 2009 ensured that the ban would become enforceable immediately. The ban needs to remain in effect on an emergency basis until such time as an amended regulation can be made permanent.

Regulatory Flexibility Analysis

1. Effect of the rule: This rule strengthens standards for the management of the New York State and Local Employees' Retirement System and New York State and Local Police and Fire Retirement System (collectively, "the Retirement System"), and the New York State Common Retirement Fund ("the Fund").

The Second Amendment to 11 NYCRR 136 (Insurance Regulation 85), effective November 19, 2008, established new standards with regard to investment of the assets of the Fund, conflicts of interest and procurement. In addition, the Second Amendment created new audit and actuarial committees, and greatly strengthened the investment advisory committee. The Second Amendment also set high ethical standards, strengthened internal controls and governance, enhanced the operational transparency of the Fund, and strengthened supervision by the Department.

Nevertheless, recent allegations regarding "pay to play" practices, whereby politically connected individuals reportedly sold access to investment opportunities with the Fund, compel the Superintendent to conclude that the mere strengthening of the Fund's control environment is insufficient to protect the integrity of the state employees' retirement systems. The Third Amendment to Insurance Regulation 85 will adopt an immediate ban on the use of placement agents to ensure sufficient protection of the Fund's members and beneficiaries, and safeguard the integrity of the Fund's investments. Further, the rule defines "placement agent or intermediary" in a manner that both thwarts evasion of the ban while ensuring that such ban not extend to persons otherwise acting lawfully on behalf of investment managers.

These standards are intended to assure that the conduct of the business of the Retirement System and the Fund, and of the State Comptroller (as administrative head of the Retirement System and as sole trustee of the Fund), are consistent with the principles specified in the rule. Most among all affected parties, the State Comptroller, as a fiduciary whose responsibilities are clarified and broadened, is impacted by the rule. The State Comptroller is not a "small business" as defined in section 102(8) of the State Administrative Procedure Act.

This rule will affect investment managers and other intermediaries (other than OSC employees) who provide technical or professional services to the Fund related to Fund investments. The rule will prohibit investment managers from using the services of a placement agent unless such agent is a regular employee of the investment manager and is acting in a broader capacity than just providing specific investment advice to the Fund. In addition, the rule is also directed to placement agents, who as a result of this rule, will no longer be engaged directly or indirectly by investment managers that do business with the Fund. Some investment managers and placement agents may come within the definition of "small business" set forth in section 102(8) of the State Administrative Procedure Act, because they are independently owned and operated, and employ 100 or fewer individuals.

The rule bans the use of placement agents in connection with investments by the Fund. This may adversely affect the business of placement agents, who will lose opportunities to earn profits in connection with investments by the Fund. Nevertheless, as a result of recent allegations regarding "pay to play" practices, whereby politically connected individuals reportedly sold access to investment opportunities with the Fund, the Superintendent has concluded that an immediate ban on the use of placement agents is necessary to protect the Fund's members and beneficiaries and to safeguard the integrity of the Fund's investments.

This rule will not impose any adverse compliance requirements or result in any adverse impacts on local governments. The basis for this finding is that this rule is directed at the State Comptroller; employees of the Office of State Comptroller; and investment managers, placement agents, consultant or advisors - none of which are local governments.

2. Compliance requirements: None.

3. Professional services: Investment managers, consultants and advisors who provide services to the Fund, and are required to discontinue the use of placement agents in connection with investment services they provide to the Fund, may need to employ other professional services.

4. Compliance costs: The rule does not impose any additional requirements on the Comptroller, and no additional costs are expected to result from the implementation of the ban imposed by this rule. There are no costs to the Department of Financial Services or other state government agencies or local governments. However, investment managers, consultants and advisors who provide services to the Fund, which are required to discontinue the use of placement agents in connection with investment services they provide to the Fund, may lose opportunities to do business with the Fund.

5. Economic and technological feasibility: The rule does not impose any economic and technological requirements on affected parties, except

for placement agents who will lose the opportunity to earn profits in connection with investments by the Fund.

6. Minimizing adverse impact: The costs to placement agents are lost opportunities to earn profits in connection with investments by the Fund. The Superintendent considered other ways to limit the influence of placement agents, including a partial ban, increased disclosure requirements, and adopting alternative definitions of placement agent or intermediary. But in the end, the Superintendent concluded that only an immediate total ban on the use of placement agents could provide sufficient protection of the Fund's members and beneficiaries and safeguard the integrity of the Fund's investments.

7. Small business and local government participation: In developing the rule, the Superintendent and State Comptroller not only consulted with one another, but also briefed representatives of: (1) New York State and New York City Public Employee Unions; (2) New York City Retirement and Pension Funds; (3) the Borough Presidents of the five counties of New York City; and (4) officials of the New York City Mayor's Office, Comptroller's Office and Finance Department.

A public hearing was held on April 28, 2010. Comments were received from two entities recommending that the total ban on the use of placement agents be modified. The Department will continue to assess the comments that have been received and any others that may be submitted.

Rural Area Flexibility Analysis

1. Types and estimated numbers of rural areas: Investment managers, placement agents, consultants or advisors that do business in rural areas as defined under State Administrative Procedure Act Section 102(10) will be affected by this rule. The rule bans the use of placement agents in connection with investments by the New York State Common Retirement Fund ("the Fund"), which may adversely affect the business of placement agents and of other entities that utilize placement agents and are involved in Fund investments.

2. Reporting, recordkeeping and other compliance requirements, and professional services: This rule will not impose any reporting, recordkeeping or other compliance requirements on public or private entities in rural areas, with the exception of requiring investment managers, consultants and advisors who provide services to the Fund to discontinue the use of placement agents.

3. Costs: The costs to placement agents are lost opportunities to earn profits in connection with investments by the Fund.

4. Minimizing adverse impact: The rule does not adversely impact rural areas.

5. Rural area participation: A public hearing was held on April 28, 2010. Comments were received from two entities recommending that the total ban on the use of placement agents be modified. The Department will continue to assess the comments that have been received and any others that may be submitted.

Job Impact Statement

The Department of Financial Services finds that this rule will have little or no impact on jobs and employment opportunities. The rule bans investment managers from using placement agents in connection with investments by the New York State Common Retirement Fund ("the Fund"). The rule may adversely affect the business of placement agents, who could lose the opportunity to earn profits in connection with investments by the Fund. Nevertheless, in view of recent events about how placement agents conduct business on behalf of their clients with regard to the Fund, the Superintendent has concluded that an immediate ban on the use of placement agents is necessary to protect the Fund's members and beneficiaries, and to safeguard the integrity of the Fund's investments.

New York State Gaming Commission

NOTICE OF ADOPTION

Permits Coupled Entries with Thoroughbred Superfecta Wagering

I.D. No. SGC-19-15-00017-A

Filing No. 609

Filing Date: 2015-07-07

Effective Date: 2015-07-22

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

Action taken: Renumbering and amendment of section 4011.22 to section 4011.21; addition of new section 4011.22 to Title 9 NYCRR.

Statutory authority: Racing, Pari-Mutual Wagering and Breeding Law, sections 103(2), 104(1), (19) and 122

Subject: Permits coupled entries with thoroughbred superfecta wagering.

Purpose: To improve wagering opportunities in thoroughbred horse racing.

Text or summary was published in the May 13, 2015 issue of the Register, I.D. No. SGC-19-15-00017-P.

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

Text of rule and any required statements and analyses may be obtained from: Kristen Buckley, Acting Secretary, New York State Gaming Commission, One Broadway Center, PO Box 7500, Schenectady, New York 12305-7500, (518) 388-3407, email: gamingrules@gaming.ny.gov

Initial Review of Rule

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

Assessment of Public Comment

The Commission received a written comment from the New York Racing Association in support of the proposed rule to allow superfecta wagering in races with coupled entries. NYRA estimates that NYRA could generate an additional \$23.1 million in incremental annual wagering if the rule making were adopted. NYRA estimates annual revenue increases to various racing interests, including \$876,000 to horsemen in purses, up to \$32,000 to the New York State Thoroughbred Breeding and Development Fund, as much as \$97,000 to the State of New York through taxes and fees and more than \$1 million to NYRA.

“NYRA firmly believes that the proposed rule would make superfecta wagers more competitive and attractive to all bettors,” NYRA wrote.

No other comments were received.

NOTICE OF ADOPTION

Amendments to Coupled Entries in Thoroughbred Wagering

I.D. No. SGC-20-15-00003-A

Filing No. 610

Filing Date: 2015-07-07

Effective Date: 2015-07-22

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

Action taken: Amendment of section 4025.10 of Title 9 NYCRR.

Statutory authority: Racing, Pari-Mutual Wagering and Breeding Law, sections 103(2), 104(1), (19) and 122

Subject: Amendments to coupled entries in thoroughbred wagering.

Purpose: To improve wagering opportunities in thoroughbred horse racing.

Text or summary was published in the May 20, 2015 issue of the Register, I.D. No. SGC-20-15-00003-P.

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

Text of rule and any required statements and analyses may be obtained from: Kristen Buckley, Acting Secretary, New York State Gaming Commission, One Broadway Center, PO Box 7500, Schenectady, New York 12305-7500, (518) 388-3407, email: gamingrules@gaming.ny.gov

Initial Review of Rule

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

Assessment of Public Comment

The Commission received written comments from the New York Racing Association in support of the amendment. NYRA estimates that it could generate an additional \$6.9 million in incremental annual wagering if the amendment is adopted. NYRA estimates that each additional betting interest created by uncoupling horses with common ownership in stakes races with purses of more than \$50,000 could yield more than \$177,000 in handle per race. NYRA estimates annual revenue increases to various racing interests, including \$262,000 to horsemen in purses, up to \$10,000 to the New York State Thoroughbred Breeding and Development Fund, as much as \$29,000 to the State of New York through taxes and fees and \$319,000 to NYRA.

“NYRA fully supports the proposed amendment as it will increase field size, wagering opportunities and wagering Revenue,” the comments stated.

No other comments were received.

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Definitions of Terms Used in Proposed Part 5301 and Proposed Parts 5303 Through 5307

I.D. No. SGC-29-15-00012-P

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

Proposed Action: Addition of section 5300.1 to Title 9 NYCRR.

Statutory authority: Racing, Pari-Mutuel Wagering and Breeding Law, sections 104(19) and 1307(1)

Subject: Definitions of terms used in proposed Part 5301 and proposed Parts 5303 through 5307.

Purpose: To define terms applicable to proposed Part 5301 and proposed Parts 5303 through 5307.

Text of proposed rule: Subchapter B [Casino Gambling] *Casino Gaming*
PART 5300

General

§ 5300.1. Definitions.

Unless the context indicates otherwise, the following definitions and the definitions set forth in *Racing, Pari-Mutuel Wagering and Breeding Law* section 1301 are applicable throughout this Subchapter:

(a) *Ancillary casino vendor* means a vendor providing goods or services to a gaming facility applicant or licensee that are ancillary to gaming activity.

(b) *Casino vendor* means a vendor providing goods or services to a gaming facility applicant or licensee that directly relate to gaming activity.

(c) *Career offender* means any person whose behavior is pursued in an occupational manner or context for the purpose of economic gain, using such methods as are deemed criminal violations of the public policy of this State.

(d) *Career offender cartel* means any group of persons who operate together as career offenders.

(e) *Commission* means the commissioners, staff and designees of the New York State Gaming Commission.

(f) *Gaming facility* means the premises approved under a gaming license, which includes a gaming area and any other nongaming structure related to the gaming area and may include, without limitation, hotels, restaurants and other amenities.

(g) *Material change* means modification to physical or financial aspects in a manner that creates an inconsistency with the application submitted by a licensee or applicant for license. Physical aspects impact the proposed gaming facility or project site through addition, removal or alteration of the quality and nature of gaming and non-gaming amenities. Financial aspects impact the capital and financing structure through addition, removal or alteration of financing source or sources, schedule of financing source or sources and arrangement or agreements of financing plan.

(h) *Non-gaming employee* means any natural person, not otherwise included in the definition of casino key employee or gaming employee, who is employed by a gaming facility licensee or an affiliate, intermediary, subsidiary or holding company of a gaming facility licensee.

(i) *Passive investor* means an investor owning, holding or controlling up to 25 percent of the publicly traded securities issued by a gaming facility licensee or applicant or holding, intermediate or parent company of a licensee in the ordinary course of business for investment purposes only and who does not, nor intends to, exercise influence or control over the affairs of the issuer of such securities, nor over any licensed subsidiary of the issuer of such securities.

(j) *Qualified institutional investor* means an institutional investor holding up to 15 percent of the publicly traded securities of a gaming facility applicant or licensee, or holding, intermediary or subsidiary company thereof, for investment purposes only and does not, nor intends, to exercise influence or control over the affairs of the issuer of such securities, nor over any licensed subsidiary of the issuer of such securities. To qualify as an institutional investor, an investor, other than a State or Federal pension plan, must meet the requirements of a qualified institutional buyer as defined in regulations of the United States Securities and Exchange Commission. A qualified institutional investor includes, without limitation, any of the following:

(1) a bank as defined under Federal securities laws;

(2) an insurance company as defined under Federal investment company laws;

(3) an investment company registered under Federal investment company laws;

(4) an investment advisor registered under Federal investment company laws;

(5) collective trust funds as defined under Federal investment company laws;

(6) an employee benefit plan or pension fund subject to the Employee Retirement Income Security Act, subject to certain exclusions;

(7) a State or Federal government pension plan; and

(8) such other persons as the commission may determine for reasons consistent with policies of the commission.

(k) *Qualifier* means a related party in interest to an applicant, including, without limitation, a close associate or financial resource of such applicant. *Qualifiers* may include, without limitation:

(1) if the gaming facility applicant is a corporation:

(i) each officer;

(ii) each director;

(iii) each shareholder holding five percent or more of the common stock of such company; and

(iv) each lender;

(2) if the gaming facility applicant is a limited liability corporation:

(i) each member;

(ii) each transferee of a member's interest;

(iii) each director;

(iv) each manager; and

(v) each lender;

(3) if the gaming facility applicant is a limited partnership:

(i) each general partner;

(ii) each limited partner; and

(iii) each lender;

(4) if the gaming facility applicant is a partnership:

(i) each partner; and

(ii) each lender;

(5) any gaming facility licensee manager or operator;

(6) any direct and indirect parent entity of a gaming facility applicant or licensee, including any holding company;

(7) any entity having a beneficial or proprietary interest of five percent or more in a gaming facility applicant or licensee;

(8) any other person or entity that has a business association of any kind with the gaming facility applicant or licensee; and

(9) any other person or entity that the commission may designate as a qualifier.

(l) *Temporary service provider* means a vendor, a vendor's agents, servants and employees engaged by a gaming facility licensee to perform temporary services at a gaming facility for no more than 30 days in any 12-month period.

(m) *Vendor registrant* means any vendor that offers goods and services to a gaming facility applicant or licensee that is not a casino vendor or an ancillary casino vendor.

Text of proposed rule and any required statements and analyses may be obtained from: Heather McArn, New York State Gaming Commission, One Broadway Center, 6th Floor, Schenectady, NY 12305, (212) 383-2657, email: heather.mcarn@gaming.ny.gov

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

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

Regulatory Impact Statement

1. **STATUTORY AUTHORITY:** Racing, Pari-Mutuel Wagering and Breeding Law ("Racing Law") section 104(19) grants authority to the Gaming Commission ("Commission") to promulgate rules and regulations that it deems necessary to carry out its responsibilities. Racing Law section 1307(1) grants rule making authority to the Commission to implement, administer and enforce the provisions of Racing Law Article 13.

2. **LEGISLATIVE OBJECTIVES:** This rule making carries out the legislative objectives of the above-referenced statutes.

3. **NEEDS AND BENEFITS:** This rule making is necessary to establish gaming facility licensing requirements to govern the commercial casino licensing process, thereby enabling the Commission to implement Article 13 of the Racing Law and help New York State to capitalize on the economic development potential of legalized gambling, create thousands of well-paying jobs and increase revenue to the State. In addition this rule making is necessary to promote public confidence and trust in the credibility and integrity of casino gambling in New York State.

Section 5300.1 sets forth the definitions applicable to proposed Part 5301 governing gaming facility licensing and proposed Parts 5303 through 5307 governing the licensing and registration of gaming facility employees and vendors.

Subchapter B of the Division of Gaming Regulations would be titled Casino Gaming.

4. COSTS:

(a) Costs to the regulated parties for the implementation of and continu-

ing compliance with these rules: The rule sets forth definitions for specific terms used throughout Parts 5301 and 5303 through 5307 of the New York State Gaming Commission Rules and Regulations, Chapter IV, Subchapter B. The rule will not impose any additional costs on the regulated parties.

(b) Costs to the regulating agency, the State, and local governments for the implementation of and continued administration of the rule: The rule sets forth definitions for specific terms used throughout Parts 5301 and 5303 through 5307 of the New York State Gaming Commission Rules and Regulations, Chapter IV, Subchapter B. The rule will not impose any additional costs on the regulatory agency, the State or local governments.

(c) The information, including the source or sources of such information, and methodology upon which the cost estimate is based: None.

5. **LOCAL GOVERNMENT MANDATES:** The rule does not impose any mandatory program, service, duty, or responsibility upon local government.

6. **PAPERWORK:** The rule is not expected to impose any significant paperwork or reporting requirements for regulated entities.

7. **DUPLICATION:** The rule does not duplicate, overlap or conflict with any existing State or federal requirements.

8. **ALTERNATIVES:** The Commission created the rule to define specific terms used throughout Parts 5301 and 5303 through 5307 of the New York State Gaming Commission Rules and Regulations, Chapter IV, Subchapter B. Therefore, no alternatives were considered.

9. **FEDERAL STANDARDS:** There are no federal standards applicable to the rule. It is purely a matter of New York State law.

10. **COMPLIANCE SCHEDULE:** The Commission anticipates that affected parties will be able to achieve compliance with the rule upon adoption.

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

This rule will not have any adverse impact on small businesses, local governments, jobs or rural areas. The rule sets forth the definitions applicable to proposed Part 5301 governing gaming facility licensing and proposed Parts 5303 through 5307 governing the licensing and registration of gaming facility employees and vendors. This rule does not impact local governments or small businesses as it is not expected that any local government or small business will hold a gaming facility license.

This rule imposes no adverse impact on rural areas. This rule applies uniformly throughout the state.

This rule will have no impact on job opportunities.

This rule will not adversely impact small businesses, local governments, jobs, or rural areas.

Accordingly, a full Regulatory Flexibility Analysis, Rural Area Flexibility Analysis, and Job Impact Statement are not required and have not been prepared.

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Process For and Form of Gaming Facility License Application

I.D. No. SGC-29-15-00013-P

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

Proposed Action: Addition of Part 5301 to Title 9 NYCRR.

Statutory authority: Racing, Pari-Mutuel Wagering and Breeding Law, sections 104(19), 1305(2), 1306(1), 1307(2), 1311(1), 1312(2), 1313(1), 1315(3), 1316(8), 1317(1) and 1318(1)

Subject: Process for and form of gaming facility license application.

Purpose: To govern the gaming facility license application, the process for determining suitability and award of a license.

Substance of proposed rule (Full text is posted at the following State website: www.gaming.ny.gov): This addition of Part 5301 of Subtitle T of Title 9 NYCRR will add new Sections 5301.1 through 5301.10 to allow the New York State Gaming Commission ("Commission") to prescribe the form of the application for applicants seeking a gaming facility license, the process for determining the suitability of a gaming facility license applicant and the procedure for awarding a gaming facility license.

Sections 5301.1 and 5301.2 set forth the form of gaming facility applications and the information required of applicants, consistent with the substance of Part 5300 of Subchapter B of Chapter IV of the Commission's regulations, which was promulgated as emergency rule making. Section 5301.3 sets forth regulations on the submission of the application fee required by Section 1316(8) of the Racing Law. Section 5301.4 sets forth a Commission waiver process, by which the Commission has the discretion to waive licensing requirement for certain persons or entities, decreasing the burden on regulated parties when warranted. Examples

include qualified institutional investors and passive investors, persons holding less than five percent of the voting securities of a company, a lender in the ordinary course with no ability to control or influence the affairs of the gaming facility applicant or licensee, and others. Section 5301.5 guides applicants on the requirements of suitability determinations by referring to applicable statutory provisions. Section 5301.6 sets forth procedures for the Commission's consideration of licensing determination, referring to applicable statutory provisions where appropriate. Section 5301.7 sets forth the form and content of the gaming facility license and related requirements. Section 5301.8 establishes that the license award is deemed to have occurred upon a public determination by the Commission to issue a license to an applicant, shall be for an initial 10-year period and shall be renewable thereafter for a period of 10 years. Section 5301.9 sets forth certain post-licensure conditions, referencing other regulations and statutory provisions where appropriate. Section 5301.10 sets forth requirements that an applicant or licensee notify the Commission of material changes to commitments and development plans, material debt transactions and changes in investors, financial sources and others, and establishes Commission approval processes. The section also sets forth regulations for Commission monitoring of project construction to help ensure that the benefits of commercial gaming are achieved in a timely manner.

Text of proposed rule and any required statements and analyses may be obtained from: Heather McArn, New York State Gaming Commission, One Broadway Center, 6th Floor, Schenectady, NY 12305, (212) 383-2657, email: heather.mcarn@gaming.ny.gov

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

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

Regulatory Impact Statement

1. STATUTORY AUTHORITY: Racing, Pari-Mutuel Wagering and Breeding Law ("Racing Law") section 104(19) grants authority to the Gaming Commission ("Commission") to promulgate rules and regulations that it deems necessary to carry out its responsibilities. Racing Law section 1307(1) grants rule making authority to the Commission to implement, administer and enforce the provisions of Racing Law Article 13.

Racing Law section 1306(1) and section 1312(1) prescribe that the Gaming Facility Location Board ("Board"), which is established by the Commission, shall issue a request for applications ("RFA") for applicants seeking a license to develop and operate gaming facilities in New York State. On March 31, 2014, the Board issued a RFA. On February 27, 2015, the Board issued a second RFA. The gaming facility applications were governed by Part 5300 of Subchapter B of Chapter IV of the Commission's regulations. Part 5300 was promulgated as emergency rule making.

Racing Law section 1307(2) prescribes that the Commission regulate, among other things, the method and forms of the application for gaming licenses; the methods, procedures and form for delivery of information concerning any person's family, habits, character, associates, criminal record, business activities, and financial affairs; the procedures for the fingerprinting of an applicant; the manner and method of the collection of payments of fees; and the grounds and procedures for the revocation or suspension of a gaming facility license.

Racing Law section 1313(1) provides that the Commission prescribe the initial form of the application for gaming licenses.

Racing Law section 1316(8) authorizes the Commission to collect an application fee.

Upon receipt of an application, Racing Law section 1317(1) authorizes the Commission to cause to be commenced an investigation into the applicant's suitability.

Racing Law section 1316 mandates the Commission review the application to confirm it meets certain minimum license thresholds. Racing Law section 1318(1) requires the Commission deny a gaming facility license to any applicant it determines disqualified.

Racing Law section 1311(1) authorizes the Commission to award up to four gaming licenses and requires licensees to commence gaming operations no more than 24 months following license award.

Racing Law section 1315 requires applicants who are awarded a gaming facility license to deposit 10 percent of the total proposed investment and to pay a gaming facility license fee. Racing Law section 1315(3) authorizes the Commission to assess a fine of up to \$50 million on a gaming facility licensee who does not commence gaming operations within 24 months of a license award.

Racing Law section 1311(1) prescribes that the Commission determine the renewal term of a gaming facility license.

2. LEGISLATIVE OBJECTIVES: This rule making carries out the legislative objectives and implements the requirements of the above-referenced statutes.

3. NEEDS AND BENEFITS: This rule making is necessary to establish gaming facility licensing requirements to govern the commercial casino

licensing process, thereby enabling the Commission to implement Article 13 of the Racing Law and help New York State to capitalize on the economic development potential of legalized gambling, create thousands of well-paying jobs and increase revenue to the State. In addition this rule making is necessary to promote public confidence and trust in the credibility and integrity of casino gambling in New York State.

Sections 5301.1 and 5301.2 set forth the form of gaming facility applications and the information required of applicants, consistent with the substance of Part 5300 of Subchapter B of Chapter IV of the Commission's regulations, which was promulgated as emergency rule making.

Section 5301.3 sets forth regulations on the submission of the application fee required by Section 1316(8) of the Racing Law.

Section 5301.4 sets forth a Commission waiver process, by which the Commission has the discretion to waive licensing requirements for certain persons or entities, decreasing the burden on regulated parties when warranted. Examples include qualified institutional investors and passive investors, persons holding less than five percent of the voting securities of a company, a lender in the ordinary course with no ability to control or influence the affairs of the gaming facility applicant or licensee, and others.

Section 5301.5 guides applicants on the requirements of suitability determinations by referring to applicable statutory provisions.

Section 5301.6 sets forth procedures for the Commission's consideration of licensing determination, referring to applicable statutory provisions where appropriate.

Section 5301.7 sets forth the form and content of the gaming facility license and related requirements.

Section 5301.8 establishes that the license award is deemed to have occurred upon a public determination by the Commission to issue a license to an applicant, shall be for an initial 10-year period and shall be renewable thereafter for a period of 10 years.

Section 5301.9 sets forth certain post-licensure conditions, referencing other regulations and statutory provisions where appropriate.

Section 5301.10 sets forth requirements that an applicant or licensee notify the Commission of material changes to commitments and development plans, material debt transactions and changes in investors, financial sources and others, and establishes Commission approval processes. The section also sets forth regulations for Commission monitoring of project construction to help ensure that the benefits of commercial gaming are achieved in a timely manner.

4. COSTS:

(a) Costs to the regulated parties for the implementation of and continuing compliance with these rules: Those parties who apply for a gaming facility license will bear some costs. There is an application fee of \$1 million prescribed by Racing Law section 1316(8) to defray the costs of processing the application and investigating the applicant. In addition, those parties who are awarded a gaming facility license will be required, pursuant to Racing Law sections 1315(1) and (4), to deposit 10 percent of the total proposed investment and to pay a gaming facility license fee. In addition, those parties awarded a gaming facility license who do not begin gaming operations within 24 months of the award may be assessed a fine of up to \$50 million, as prescribed by Racing Law section 1315(3).

(b) Costs to the regulating agency, the State, and local governments for the implementation of and continued administration of the rule: These rules will impose some costs on the division of state police and the Commission for reviewing gaming facility applications, investigating applicants and issuing licenses, however it is anticipated that a gaming facility applicant's payment of the \$1 million application fee prescribed by Racing Law section 1316(8) will offset such costs. These rules will not impose any additional costs on local governments.

(c) The information, including the source or sources of such information, and methodology upon which the cost analysis is based: The cost estimates are based on the Commission's experience regulating racing and gaming activities within the State.

5. LOCAL GOVERNMENT MANDATES: These rules impose a responsibility on local governments to issue approvals and permits as may be required for the construction and commencement of gaming facility operations within 24 months of license award.

6. PAPERWORK: These rules are not expected to impose any significant paperwork requirements for gaming facility applicants and licensees other than the paperwork necessary for the application submission and the licensee reporting requirements.

7. DUPLICATION: These rules do not duplicate, overlap or conflict with any existing State or federal requirements.

8. ALTERNATIVES: The Commission is required to create these rules under Racing Law section 1307(2) and section 1311(1). Therefore, no alternatives were considered.

9. FEDERAL STANDARDS: There are no federal standards applicable to the licensing of gaming facilities in New York. It is purely a matter of New York State law.

10. COMPLIANCE SCHEDULE: The Commission anticipates that the affected parties will be able to achieve compliance with these rules upon adoption.

Regulatory Flexibility Analysis

1. EFFECT OF RULE: These rules will allow for the application, investigation, selection and licensure of gaming facility applicants. In addition these rules will require gaming facility licensees to construct their gaming facility within 24 months of license award. Host local governments will be affected by these rules. Small businesses will not be affected by these rules.

2. COMPLIANCE REQUIREMENTS: There are no new compliance requirements imposed on host local governments or small businesses as a result of these rules.

3. PROFESSIONAL SERVICES: No new or additional professional services are required in order to comply with these rules.

4. COMPLIANCE COSTS: Host local governments may experience an increase in costs associated with the issuance of approvals and permits which may be required for the construction and opening of the gaming facility.

5. ECONOMIC AND TECHNOLOGICAL FEASIBILITY: These rules will not impose any technological costs on small businesses or local governments.

6. MINIMIZING ADVERSE IMPACT: These rules require applicants to provide studies and reports by independent experts regarding the impacts of the proposed gaming facilities on local government services, small businesses, traffic, environment, tourism, and unemployment, among other things. These rules also require applicants to provide plans for mitigating these potential impacts.

7. SMALL BUSINESS AND LOCAL GOVERNMENT PARTICIPATION: Small businesses and host local governments will have the opportunity to participate in the rule making process during the public comment period which will commence when these rules are formally proposed.

Rural Area Flexibility Analysis

Several of the development zone regions authorized to host a licensed gaming facility, as contemplated by Racing, Pari-Mutuel Wagering and Breeding Law section 1310, are located within "rural areas" as that term is defined in Executive Law section 481(7). The decision to locate a licensed gaming facility in a rural area will not have an adverse economic impact. These rules have the potential to boost economic development within rural areas. Accordingly, a rural flexibility analysis is not required and one has not been prepared.

Job Impact Statement

1. NATURE OF IMPACT: The Commission has determined that these rules will not have a substantial adverse impact on jobs or employment opportunities. To the contrary, these rules are intended to create thousands of well-paying jobs.

2. CATEGORIES AND NUMBERS AFFECTED: It is anticipated that up to 4 gaming facilities, as contemplated by Racing, Pari-Mutuel Wagering and Breeding Law Article 13, would employ more than 4,000 people. In addition, the construction of the gaming facilities will generate many new jobs. It is anticipated that employment in surrounding communities will also increase in order to service the influx of gaming facility patrons.

3. REGIONS OF ADVERSE IMPACT: The Commission does not anticipate regions of the State to suffer a disproportionate adverse impact in regard to jobs or employment opportunities.

4. MINIMIZING ADVERSE IMPACT: These rules do not create any unnecessary adverse impact on existing jobs. A positive impact on jobs and employment is anticipated.

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Minority- and Women-Owned Business and Workforce Diversity Plan Requirements for Gaming Facility Licensees

I.D. No. SGC-29-15-00014-P

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

Proposed Action: Addition of Parts 5311-5312 to Title 9 NYCRR.

Statutory authority: Racing, Pari-Mutuel Wagering and Breeding Law, sections 104(19), 1307(1), 1316(10), 1320(3)(d) and (f)

Subject: Minority- and women-owned business and workforce diversity plan requirements for gaming facility licensees.

Purpose: To ensure gaming facility licensees construct and operate their projects in a manner that assures diversity of opportunity.

Substance of proposed rule (Full text is posted at the following State website: www.gaming.ny.gov): This addition of Parts 5311-5312 of Subtitle T of Title 9 NYCRR will add new Sections 5311.1 through 5311.8 and 5312.1 through 5312.5 to allow the New York State Gaming Commission ("Commission") to prescribe rules that require each gaming facility licensee to establish, implement and comply with a utilization plan for minority- and women-owned business enterprises in the construction and operation of its gaming facility and a workforce diversity plan for ensuring a diverse workplace, equal employment opportunity and employee advancement. The proposed rules mandate a procedure for the Commission to review and approve such plans in consultation with New York State Empire State Development Corporation (ESD).

Section 5311.1 sets forth the purpose and scope of the rule which is to ensure that gaming facility licensees construct their gaming facility and conduct all aspects of their operations in a manner that assures diversity of opportunity. Section 5311.2 sets forth the definitions used throughout Part 5311. Section 5311.3 describes the utilization plan that gaming facility licensees must submit to the Commission for approval and annual review. In the utilization plan, the gaming facility licensee sets forth specific goals for each type of contracted work and specific minority- and women-owned business enterprises that the licensee intends to contract or subcontract with to meet the goals. Section 5311.4 requires the inclusion of specific language in procurement solicitations and contracts for gaming facility capital projects that promote and encourage maximum feasible MWBE participation. All such procurement contracts must be submitted to the commission and approved by the division of minority and women's business development in the department of economic development in advance of execution. In addition, it requires gaming facility licensees to submit monthly or quarterly reports to the Commission regarding implementation of its utilization plan. Section 5311.5 describes the good-faith effort documentation a gaming facility licensee must submit to the Commission when it cannot attain a goal established in the utilization plan. Section 5311.6 describes the additional MWBE documentation the Commission may require when it finds that a gaming facility licensee's good-faith effort documentation is deficient. If a gaming facility licensee cannot rectify a deficient utilization plan, it may request a waiver of MWBE compliance under Section 5311.7. The Commission and ESD will review a gaming facility licensee's waiver request, deficient utilization plan and good-faith effort documentation to determine whether the waiver should be granted. Section 5311.7 describes the penalty the Commission may impose when it determines that the gaming facility licensee has failed to satisfy MWBE goals outlined in the utilization plan, failed to make a good-faith effort to achieve the goals or failed to prepare and file accurate and timely utilization plan reports.

Section 5312.1 sets forth the policy behind the rule which is to ensure that each gaming facility licensee maintains a diverse workplace and provides an opportunity of employment for all residents. Section 5312.2 describes the workforce diversity plan that a gaming facility licensee must submit to the Commission for annual review and approval. Section 5312.3 details a gaming facility licensee's annual self-assessment review and additional reporting requirements. Section 5312.4 describes how the Commission will determine whether a gaming facility licensee is compliant with the goals outlined in the workforce diversity plan. Section 5312.5 describes the sanctions the Commission may impose upon a gaming facility licensee when it determines that the licensee failed to satisfy its workforce diversity plan, failed to make a good-faith effort to achieve the goals in the plan, failed to improve its efforts or where the licensee failed to prepare and file accurate and timely reports.

Text of proposed rule and any required statements and analyses may be obtained from: Heather McArn, New York State Gaming Commission, One Broadway Center, 6th Floor, Schenectady, NY 12305, (212) 383-2657, email: heather.mcarn@gaming.ny.gov

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

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

Regulatory Impact Statement

1. STATUTORY AUTHORITY: Racing, Pari-Mutuel Wagering and Breeding Law ("Racing Law") section 104(19) grants authority to the Gaming Commission ("Commission") to promulgate rules and regulations that it deems necessary to carry out its responsibilities. Racing Law section 1307(1) authorizes the Commission to adopt regulations that it deems necessary to protect the public interest in carrying out the provisions of Racing Law Article 13.

Racing Law section 1316(10) prescribes that gaming facility license applicants formulate and abide by an affirmative action program of equal opportunity with specific goals for the utilization of minorities, women and veterans on construction jobs.

Racing Law section 1320(3)(d) and (f) prescribe that gaming facility license applicants be considered for licensure based, in part, on proposed

workforce enhancement factors for the gaming facility including plans to establish, fund and maintain human resource hiring and training practices that promote the development of a skilled and diverse workforce, plans to provide access to promotion opportunities through a workforce training program, and plans to implement a workforce development plan that includes, among other things, specific goals for the utilization of minorities, women and veterans on construction jobs.

2. **LEGISLATIVE OBJECTIVES:** This rule making carries out the legislative objectives of the above-referenced statutes.

3. **NEEDS AND BENEFITS:** The proposed rules establish obligations for gaming facility licensees to construct and operate their projects in a manner that assures diversity of opportunity. The proposed rules set forth a procedure by which the Commission, in consultation with New York State Empire State Development Corporation (ESD), will review and approve a gaming facility licensee's MWBE goals and utilization and workforce diversity plans, waivers from any such goals and plans, and hold gaming facility licensees and their contractors accountable to the purposes of the program.

Section 5311.1 sets forth the purpose and scope of the Part referencing applicable statutory and regulatory provisions where appropriate.

Section 5311.2 sets forth the definitions used throughout Part 5311.

Section 5311.3 sets forth the utilization plan that a gaming facility licensee must submit for approval and annual review.

Section 5311.4 establishes approvals for gaming facility capital project contracts and procurements and other quarterly reporting requirements.

Section 5311.5 sets forth the good-faith effort documentation a gaming facility licensee must submit when it cannot attain a goal established in the utilization plan.

Section 5311.6 establishes the additional MWBE documentation that may be required when it a gaming facility licensee's good-faith effort documentation is deficient.

Section 5311.7 sets forth the requirements for a waiver of compliance request when a gaming facility licensee submits deficient MWBE documentation.

Section 5311.8 sets forth the penalty that may be imposed when a gaming facility licensee has failed to satisfy MWBE goals.

Section 5312.1 sets forth the policy and purpose of the Part.

Section 5312.2 sets forth the requirements of the workforce diversity plan that a gaming facility licensee must submit for annual review and approval.

Section 5312.3 sets forth the workforce diversity plan annual self-assessment review and additional reporting requirements.

Section 5312.4 establishes monitoring requirements for the workforce diversity plan.

Section 5312.5 sets forth the penalty imposed upon a gaming facility licensee when it is determined that the licensee failed to satisfy its workforce diversity plan goals.

4. COSTS:

(a) Costs to the regulated parties for the implementation of and continuing compliance with the rule: Gaming facility licensees who fail to make a good-faith effort to attain established minority- and women-owned business enterprise goals will be subject to a fine not to exceed the value of the opportunity lost by the minority- and women-owned business by the Commission. Gaming facility licensees who fail to achieve workforce diversity plan goals may be subject to a penalty as set forth in Racing, Wagering Pari-Mutuel and Breeding Law section 116 and Article 13 by the Commission.

(b) Costs to the regulating agency, the State, and local governments for the implementation of and continued administration of the rule: The rules will impose costs on the Commission and ESD associated with reviewing and approving a gaming facility licensee's MWBE and workforce diversity goals, plans and results.

(c) The information, including the source or sources of such information, and methodology upon which the cost analysis is based: The cost estimates are based on the Commission's experience regulating racing and gaming activities within the State.

5. **LOCAL GOVERNMENT MANDATES:** There are no local government mandates associated with these rules.

6. **PAPERWORK:** These rules impose paperwork burdens on gaming facility licensees to establish and submit annually a utilization plan listing each minority- and women-owned business enterprise that the licensee intends to use in the performance and operation of the gaming facility. Additionally, gaming facility licensees must establish and submit annually a workforce diversity plan that details a licensee's commitment to ensuring a diverse workplace.

7. **DUPLICATION:** These rules do not duplicate, overlap or conflict with any existing State or federal requirements.

8. **ALTERNATIVES:** The Commission is required to create these rules under Racing Law section 1307(1)(a). Therefore, no alternatives were considered.

9. **FEDERAL STANDARDS:** There are no federal standards applicable to the licensing of gaming facilities in New York; it is purely a matter of New York State law.

10. **COMPLIANCE SCHEDULE:** The Commission anticipates that the affected parties will be able to achieve compliance with these rules upon adoption.

Regulatory Flexibility Analysis

These rules are intended to promote and encourage participation by minority- and women-owned business enterprises in the construction and operation of gaming facilities as well as in gaming facility contracting opportunities throughout New York State. These rules are also intended to ensure that gaming facilities maintain a diverse workplace and provide employment opportunities. These rules do not impose any adverse economic impact, reporting, record-keeping or other compliance requirements on small businesses or local governments. To the contrary, these rules will increase the number of minority- and women-owned businesses, including small businesses, able to access gaming facility contracting opportunities throughout New York State. Accordingly, a regulatory flexibility analysis for small businesses and local governments is not required and one has not been prepared.

Rural Area Flexibility Analysis

Several of the development zone regions authorized to host a licensed gaming facility, as contemplated by Racing, Pari-Mutuel Wagering and Breeding Law section 1310, are located within "rural areas" as that term is defined in Executive Law section 481(7). The decision to locate a licensed gaming facility in a rural area will not have an adverse economic impact. These rules have the potential to boost economic development within rural areas. Accordingly, a rural flexibility analysis is not required and one has not been prepared.

Job Impact Statement

1. **NATURE OF IMPACT:** The Commission has determined that these rules will not have a substantial adverse impact on jobs and employment opportunities. To the contrary, these rules are intended to promote and encourage participation by minority- and women-owned business enterprises in the construction and operation of the gaming facility as well as in gaming facility contracting opportunities throughout New York State. These rules are also intended to ensure that gaming facilities maintain a diverse workplace and provide employment opportunities.

2. **CATEGORIES AND NUMBERS AFFECTED:** It is anticipated that up to 4 gaming facilities, as contemplated by Racing, Pari-Mutuel Wagering and Breeding Law Article 13, would employ more than 4,000 people. In addition, the construction of the gaming facilities will generate many additional new jobs. It is anticipated that employment in surrounding communities will also increase in order to service the influx of gaming facility patrons.

3. **REGIONS OF ADVERSE IMPACT:** The Commission does not anticipate regions of the State to suffer a disproportionate adverse impact in regard to jobs or employment opportunities.

4. **MINIMIZING ADVERSE IMPACT:** These rules do not create any unnecessary adverse impact on existing jobs. A positive impact on jobs and employment is anticipated.

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Licensing and Registration of Gaming Facility Employees and Vendors

I.D. No. SGC-29-15-00015-P

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

Proposed Action: Addition of Parts 5303 through 5307 to Title 9 NYCRR.

Statutory authority: Racing, Pari-Mutuel Wagering and Breeding Law, sections 104(19), 1307(1), (2), 1322, 1323, 1324, 1325, 1326 and 1327

Subject: Licensing and registration of gaming facility employees and vendors.

Purpose: To govern the licensing and registration of gaming facility employees and vendors.

Substance of proposed rule (Full text is posted at the following State website: www.gaming.ny.gov/): This addition to Subtitle T of Title 9 NYCRR will add new Parts 5303, 5304, 5305, 5306 and 5307 to allow the New York Gaming Commission ("Commission") to prescribe the form and process for the issuance of licenses and registrations to gaming facility employees and vendors.

Sections 5303.1 through 5303.10 sets forth general identification and

technical requirements by which gaming facility employees and vendors can establish their qualifications for licensure and registration, including fingerprinting and photographing, minimum age, and eligibility to work in the United States.

Section 5303.11 sets forth the background investigation requirement for applicants, licensees and registrants and any affiliate, intermediary, subsidiary or holding company of such applicants, licensees, and registrants.

Section 5303.13 guides applicants on criteria by which the Commission may disqualify an applicant, licensee or registrant and deny a license or registration by referring to applicable statutory provisions.

Section 5303.14 sets forth regulations on the fees payable in connection with employee and vendor licenses and registrations.

Section 5303.15 sets forth a re-applicant process for applicants, licensees and registrants whose applications are denied and for those licensees and registrants whose license or registration is suspended or revoked.

Section 5303.16 sets forth disciplinary action the Commission may take in connection with a licensee's or registrant's violation of the Racing Law or the regulations.

Section 5303.17 restricts wagering by casino key employees and gaming employees as required by section 1336 of the Racing Law.

Part 5304 defines and sets forth requirements, standards and procedures for the licensing of casino key employees.

Part 5305 defines and sets forth requirements, standards and procedures for the registration of gaming employees.

Part 5306 defines and sets forth requirements, standards and procedures for the registration of non-gaming employees.

Part 5307 defines and sets forth requirements, standards and procedures for the licensing and registration of casino vendors, ancillary casino vendors, and vendor registrants.

Text of proposed rule and any required statements and analyses may be obtained from: Heather McArn, New York State Gaming Commission, One Broadway Center, 6th Floor, Schenectady, NY 12305, (212) 383-2657, email: heather.mcarn@gaming.ny.gov

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

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

Regulatory Impact Statement

1. **STATUTORY AUTHORITY:** Racing, Pari-Mutuel Wagering and Breeding Law ("Racing Law") section 104(19) grants authority to the Gaming Commission ("Commission") to promulgate rules and regulations that it deems necessary to carry out its responsibilities. Racing Law section 1307(1) grants rule making authority to the Commission to implement, administer and enforce the provisions of Racing Law Article 13.

Racing Law section 1307(2) prescribes that the Commission regulate, among other things: the methods and forms of application and registration that any applicant or registrant shall follow and complete; the methods, procedures, and form for delivery of information concerning any person's family, habits, character, associates, criminal record, business activities and financial affairs; the procedures for the fingerprinting of an employee of a licensee, or registrant; the manner and method of collection of payments of fees; and the grounds and procedures for the revocation or suspension of licenses and registrations.

Racing Law section 1322 requires the Commission to regulate the form by which applicants, licensees and registrants provide information pertaining to their qualifications for licensure or registration.

Racing Law section 1323 requires the Commission to regulate the procedures for photographing and fingerprinting applicants, licensees and registrants for identification and investigation purposes.

Racing Law section 1324 requires the Commission to regulate the method and form of registration that a gaming employee shall follow and complete, and the form for delivery of information pertaining to a gaming employee's qualifications for registration.

Racing Law section 1325 requires the Commission to establish by regulation appropriate fees to be paid upon the filing of the required applications.

Racing Law section 1326 requires the Commission to establish by regulation the time period during which a casino vendor may conduct business transactions with a gaming facility applicant or licensee prior to the casino vendor receiving a license. Racing Law section 1326 also requires the Commission to regulate the method and form of vendor registration.

Racing Law section 1327 requires the Commission to establish by regulation appropriate fees to be imposed on vendor registrants.

2. **LEGISLATIVE OBJECTIVES:** This rule making carries out the legislative objectives of the above-referenced statutes.

3. **NEEDS AND BENEFITS:** This rule making is necessary to establish gaming facility employee and vendor licensing and registration require-

ments, thereby enabling the Commission to implement Article 13 of the Racing Law and help New York State to capitalize on the economic development potential of legalized gambling, create thousands of well-paying jobs, and increase revenue to the State. In addition this rule making is necessary to promote public confidence and trust in the credibility and integrity of casino gambling in New York State.

Sections 5303.1 through 5303.10 set forth general identification and technical requirements by which gaming facility employees and vendors can establish their qualification for licensure and registration.

Section 5303.11 sets forth the background investigation requirement for applicants, licensees and registrants and any affiliate, intermediary, subsidiary or holding company of such applicants, licensees and registrants.

Section 5303.13 guides applicants on criteria by which the Commission may disqualify an applicant, licensee or registrant and deny a license or registration by referring to applicable statutory provisions.

Section 5303.14 sets forth regulations on the fees payable in connection with employee and vendor licenses and registrations.

Section 5303.15 sets forth a re-application process for applicants, licensees and registrants whose applications are denied and for those licensees and registrants whose license or registration is suspended or revoked.

Section 5303.16 sets forth disciplinary action the Commission may take in connection with a licensee's or registrant's violation of the Racing Law or the regulations.

Section 5303.17 restricts wagering by casino key employees and gaming employees as required by section 1336 of the Racing Law.

Part 5304 defines and sets forth requirements, standards and procedures for the licensing of casino key employees.

Part 5305 defines and sets forth requirements, standards and procedures for the registration of gaming employees.

Part 5306 defines and sets forth requirements, standards and procedures for the registration of non-gaming employees.

Part 5307 defines and sets forth requirements, standards and procedures for the licensing and registration of casino vendors, ancillary casino vendors, and vendor registrants.

4. COSTS:

(a) Costs to the regulated parties for the implementation of and continuing compliance with these rules: The costs of gaming facility employee application and license fees will be borne by the gaming facility seeking to employ such persons. Vendors who apply for a vendor license or registration will bear the costs of vendor application and license fees.

(b) Costs to the regulating agency, the State, and local governments for the implementation of and continued administration of the rule: The rules will impose some costs on the division of state police and the Commission for reviewing gaming facility employee and vendor applications, investigating applicants, and issuing licenses and registrations, however it is anticipated that the gaming facility and vendor payments of the application and license fees will offset such costs. The rules will not impose any additional costs on local governments.

(c) The information, including the source or sources of such information, and methodology upon which the cost estimate is based: The costs associated with licensing and registering gaming facility employees and vendors will be based on hourly rates for the division of state police to conduct background investigations and on the Commission's administrative cost to process and issue such licenses and registrations. These costs will vary depending on the individual employee or vendor applicant and thus no estimate of cost is available.

5. **LOCAL GOVERNMENT MANDATES:** These rules do not impose any mandatory program, service, duty, or responsibility upon local government because the licensing and registration of gaming facility employees and vendors is strictly a matter of State law.

6. **PAPERWORK:** These rules are not expected to impose any significant paperwork requirements for gaming facility employee and vendor applicants other than the paperwork necessary for the application submission and investigation.

7. **DUPLICATION:** The rules do not duplicate, overlap or conflict with any existing State or federal requirements.

8. **ALTERNATIVES:** The Commission is required to create these rules under Racing Law section 1307(2) and sections 1322 through 1327. Therefore, no alternatives were considered.

9. **FEDERAL STANDARDS:** There are no federal standards applicable to the licensing or registration of gaming employees and vendors in New York. It is purely a matter of New York State law.

10. **COMPLIANCE SCHEDULE:** The Commission anticipates that affected parties will be able to achieve compliance with these rules upon adoption.

Regulatory Flexibility Analysis

1. **EFFECT OF RULE:** These rules provide for the licensure and registration of gaming facility employees and vendors. Small business

vendors seeking to be licensed or registered will be impacted by these rules. Local government will not be affected by these rules.

2. COMPLIANCE REQUIREMENTS: These rules require participating small business vendors to apply for licensure or registration with the Commission.

3. PROFESSIONAL SERVICES: No new or additional professional services are required in order to comply with these rules.

4. COMPLIANCE COSTS: Participating small business vendors need to apply for licensure or registration and will incur costs associated with application and license fees.

5. ECONOMIC AND TECHNOLOGICAL FEASIBILITY: These rules will not impose any technological costs on small businesses or local government.

6. MINIMIZING ADVERSE IMPACT: These rules do not impose adverse impacts on small businesses or local government.

7. SMALL BUSINESS AND LOCAL GOVERNMENT PARTICIPATION: Small businesses and host local governments will have the opportunity to participate in the rule making process during the public comment period which will commence when these rules are formally proposed.

Rural Area Flexibility Analysis

Several of the development zone regions authorized to host a licensed gaming facility, as contemplated by Racing, pari-Mutuel Wagering and Breeding Law section 1310, are located within "rural areas" as that term is defined in Executive Law section 481(7). The decision to locate a licensed gaming facility in a rural area will not have an adverse economic impact. These rules have the potential to boost economic development within rural areas. Accordingly, a rural flexibility analysis is not required and one has not been prepared.

Job Impact Statement

1. NATURE OF IMPACT: The Commission has determined that these rules will not have a substantial adverse impact on jobs and employment opportunities. To the contrary, these rules are intended to create thousands of well-paying jobs.

2. CATEGORIES AND NUMBERS AFFECTED: It is anticipated that up to 4 gaming facilities, as contemplated by Racing, Pari-Mutual Wagering and Breeding Law Article 13, would employ more than 4,000 people. In addition, the construction of the gaming facilities will generate many new jobs. It is anticipated that employment in the surrounding communities will also increase to service the influx of gaming facility patrons.

3. REGIONS OF ADVERSE IMPACT: The Commission does not anticipate regions of the state to suffer a disproportionate adverse impact in regards to jobs or employment opportunities.

4. MINIMIZING ADVERSE IMPACT: These rules do not create any unnecessary adverse impact on existing jobs. A positive impact on jobs and employment is anticipated.

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

New York Lottery Draw Game Rules, Including Rules Implementing Changes to Powerball Lottery Game

I.D. No. SGC-29-15-00026-P

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

Proposed Action: Amendment of sections 5004.9(a), 5007.2(a)(15), 5007.13, 5007.15(a)(14), 5007.16(a)(14), 5.009.2 and 5010.2 of Title 9 NYCRR.

Statutory authority: Racing, Pari-Mutuel Wagering and Breeding Law, section 104; Tax Law, sections 1601, 1604, 1612 and 1617

Subject: New York Lottery draw game rules, including rules implementing changes to Powerball lottery game.

Purpose: Implement nationwide changes to Powerball multi-state lottery game; make "Quick Pick" definition consistent for all draw games.

Text of proposed rule: PART 5004

Draw Games

§ 5004.9. General definitions, qualifications, restrictions, validations and rules applying to Lottery Draw games.

(a) * * *

(7) [Random selection option (commonly referred to as Quick Pick, Easy Pick, or a similar term) means the option given to players to have the game character(s) to be played randomly selected by computer. The random selection option is initiated by the terminal operator and may be used to select all the game character(s) required for the game or to complete a bet in which fewer than the full complement of game charac-

ter(s) have been chosen. When the random selection option is used, the bet will be entered by computer in the next scheduled drawing and the numbers to be played will be randomly selected by computer. If a player using the random selection option specifies such player's choice of draw date(s), then only the remaining bet data variables will be selected by computer.] *Quick Pick means a method in which some or all character selections are determined at random by the computer system at the time of purchase. If a player communicates some character selections orally or by play slip, any remaining character selections may be determined by Quick Pick.*

* * *

(9) Draw game ticket or bet ticket means the ticket generated by the computer terminal based on input received from the player's play card, [random selected] *quick pick* option or manual entry. Bet tickets may be purchased only from licensed sales agents as previously defined herein. The bet ticket is the only valid receipt for a bet placed. Players should, while still at the point of purchase, verify the game and number selections on the bet ticket.

PART 5007
Multi-Jurisdictional Lottery Games

* * *

§ 5007.2. Mega Millions definitions.

(a) The following definitions shall apply to Mega Millions.

* * *

(15) Quick pick [means a player option in which Mega Millions number selections are determined at random by the computer system at the time of purchase] *has the meaning set forth in paragraph (7) of subdivision (a) of section 5004.9 of this Subchapter.*

* * *

§ 5007.13. Powerball.

(a) Purpose.

(1) The purpose of the Powerball Game (also referred to as Powerball) is the generation of revenue for education in New York State through the operation of a specially-designed multi-state lottery game that will award prizes to holders of tickets matching specified combinations of numbers randomly selected in regularly scheduled drawings.

(2) During each Powerball drawing, six Powerball winning numbers will be selected from two fields of numbers in the following manner: five winning numbers from a field of one through [59] 69, and one winning number from a field of one through [35] 26.

(b) Definitions. The following definitions apply to Powerball:

* * *

(2) Quick Pick [means a player option in which Powerball number selections are determined at random by the computer system at the time of purchase] *has the meaning set forth in paragraph (7) of subdivision (a) of section 5004.9 of this Subchapter.*

(3) Powerball Play Area means the area of the play slip, also known as a panel that contains two sets of numbered spaces to be marked by a player, the first set containing [59] 69 spaces, numbered one through [59] 69 and the second set containing [35] 26 spaces, numbered one through [35] 26.

* * *

(5) Powerball Winning numbers means the six numbers, the first five from a field of [59] 69 numbers and the last one from a field of [35] 26 numbers, randomly selected at each drawing, which shall be used to determine winning plays shown on a game ticket.

* * *

(c) Game Description.

(1) Powerball is a five out of [59] 69 plus one out of [35] 26 computerized lottery game that pays the jackpot prize, at the election of the player made in accordance with this section or by a default election made in accordance with this section, either on an annuitized pari-mutuel basis or as a lump sum payment of the total cash held for this prize pool on a pari-mutuel basis. Except as provided in this section, all other prizes are paid on a fixed lump sum basis. To play Powerball, a player may select five different numbers, from one through [59] 69 and one additional number from one through [35] 26. The additional number may be the same as one of the first five numbers selected by a player. A player may select a set of five numbers and one additional number by communicating the six numbers to a lottery sales agent, or by marking six numbered spaces in any one panel on a play slip and submitting the play slip to an agent or by requesting quick pick from an agent. An agent will then issue a ticket containing the selected set or sets of numbers, each of which constitutes a game play.

* * *

(h) Prize Pool, Prize Structure and Probability of Winning.

(3) Expected Prize Payout Percentages. The Jackpot Prize shall be determined on a pari-mutuel basis. Except as provided in this section, all other prizes shall be paid as fixed lump sum prizes with the following expected prize payout percentages:

Prize Pool Percentage	Prize Payment	Allocated to Prize
Number of Matches Per Play		
All five of first set plus one of second set.	Jackpot prize	[63.9511] 68.0131%
All five of first set and none of second set.	\$1,000,000	[19.4038] 8.5558%
[Any four of first set plus one of second set.]	[\$10,000]	[1.5409%]
<i>Any four of first set plus one of second set.</i>	\$50,000	5.4757%
Any four of first set and none of second set.	\$100	[0.5239] 0.2738%
Any three of first set plus one of second set.	\$100	[0.8167] 0.6899%
Any three of first set and none of second set.	\$7	[1.9437] 1.2074%
Any two of first set plus one of second set.	\$7	[0.9909] 0.9981%
Any one of first set plus one of second set.	\$4	[3.6097] 0.3489%
None of first set plus one of second set.	\$4	[7.2194] 10.4373%

(6) Probability of Winning. The following table sets forth the probability of winning and the probable distribution of winners in and among each prize category based upon the total number of possible combinations in Powerball.

Number of Matches Per Ticket	Probability Distribution		
	Winners	[Probability] Odds 1 in	[Probable/Set] Prize Amount
All five of first set plus one of second set.	1	[1:175,223,510.0000] 292,201,338.0000	Jackpot prize
All five of first set and none of second set.	[38] 25	[1:5,153,632.6471] 11,688,053.5200	\$1,000,000
Any four of first set plus one of second set.	[270] 320	[1:648,975.9630] 913,129.1813	[\$10,000] \$50,000
Any four of first set and none of second set.	[9,180] 8,000	[1:19,087.5283] 36,525.1673	\$100
Any three of first set plus one of second set.	[14,310] 20,160	[1:12,244.8295] 14,494.1140	\$100
Any three of first set and none of second set.	[486,540] 504,000	[1:360.1420] 579.7646	\$7
Any two of first set plus one of second set.	[248,040] 416,640	[1:706.4325] 701.3281	\$7
Any one of first set plus one of second set.	[1,581,255] 3,176,880	[1:110.8129] 91.9775	\$4
None of first set plus one of second set.	[3,162,510] 7,624,512	[1:55.4065] 38.3239	[\$3] \$4
Overall	[5,502,140] 11,750,538	[1:31.8464] 24.8671	

§ 5007.15. Cash 4 Life.

(a) Definitions. The following definitions apply to the Cash 4 Life:

(14) Quick pick [means a player option in which Cash 4 Life number selections are determined at random by the computer system at the time of

purchase] *has the meaning set forth in paragraph (7) of subdivision (a) of section 5004.9 of this Subchapter.*

§ 5007.16. Monopoly™ Millionaires' Club™.

(a) Definitions. The following definitions apply to the Monopoly Millionaires' Club:

(14) Quick pick [means a method in which some or all Monopoly Millionaires' Club number selections are determined at random by the computer system at the time of purchase] *has the meaning set forth in paragraph (7) of subdivision (a) of section 5004.9 of this Subchapter.* Quick pick is a player option in the Monopoly Millionaires' Club game for selection of up to five number selections ranging from one through 52, but the number ranging from one through 28, representing a Monopoly property, must be selected by quick pick.

PART 5009
New York's Numbers

§ 5009.2. Game Description.

New York's Numbers game shall determine winners from tickets by matching a permutation or segment of a three-digit number from 000 to and including 999, randomly drawn at a regularly scheduled daily drawing. Correctly matching the three-digit number or designated permutation thereof shall entitle the ticket holder to one of those prizes as described below:

(e) To place a bet, a purchaser communicates the desired bet data (day, amount, bet type and bet number selections) to an agent, who will issue a bet ticket. If desired, a purchaser may use the [random number] *quick pick* option [(commonly referred to as "quick pick," "easy pick," or a similar term)] for deciding bet number selections. When the [random number] *quick pick* option is used, the bet will be entered by computer in the next scheduled drawing as a straight bet in the amount of 50 cents and the numbers to be played will be randomly selected by computer. A purchaser using the [random number] *quick pick* option may specify such purchaser's own choice of drawing date (s), bet type or bet amount. The agent enters the bet into a secure computer system via a computer terminal. Upon acceptance of and payment for the ticket issued by the agent, the transaction shall become binding and final.

PART 5010
Win-4

§ 5010.2. Game description.

Win-4 game shall determine winners from tickets matching a permutation of a four-digit number from 0000 to and including 9999 randomly drawn at a regularly scheduled drawing conducted by the Lottery as described in section 5010.4 of this Part. Correctly matching the winning four-digit number drawn, or a designated permutation thereof shall entitle the ticket holder to one of the prizes described in subdivision (c) of this section.

(e) To place a bet, a purchaser communicates the desired bet data (day, amount, bet type and bet number selections) to a game agent, who will issue a bet ticket. If desired, a purchaser may use the [random number] *quick pick* option [(commonly referred to as "quick pick," "easy pick," or a similar term)] for deciding bet number selections. When the [random number] *quick pick* option is used, the bet will be entered by computer in the next scheduled drawing as a straight bet in the amount of 50 cents and the numbers to be played will be randomly selected by computer. A purchaser using the [random number] *quick pick* option may specify such purchaser's own choice of drawing date (s), bet type or bet number. The agent enters the bet into a secure computer system via a computer terminal. Upon acceptance of and payment for the ticket issued by the agent, the transaction shall become binding and final.

Text of proposed rule and any required statements and analyses may be obtained from: Kristen Buckley, New York State Gaming Commission, 1 Broadway Center, PO Box 7500, Schenectady, NY 12301-7500, (518) 388-3407, email: gamingrules@gaming.ny.gov

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

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

Regulatory Impact Statement

1. STATUTORY AUTHORITY: The New York State Gaming Commission ("Commission") is authorized to promulgate the proposed rules by Tax Law Sections 1601, 1604, 1612(a) and 1617 and by Racing, Pari-

Mutuel Wagering and Breeding Law (“Racing Law”) Sections 103(2), 104(1) and 104(19).

Tax Law Section 1601 describes the purpose of Article 34 of the Tax Law, also known as the New York State Lottery for Education Law, as being to establish a lottery operated by the State, the net proceeds of which are applied exclusively to aid to education. Tax Law Section 1604 authorizes the promulgation of rules governing the establishment and operation of such lottery. Tax Law Section 1612(a) describes the distribution of revenues for a joint, multi-jurisdiction, and out-of-state lottery and Section 1617 authorizes the Commission’s Director of the Lottery Division to enter into an agreement with a government-authorized group of one or more jurisdictions for the operation and administration of such a lottery.

Racing Law Section 103(2) mandates that the Commission operate and administer the state lottery for education, as prescribed by Article 34 of the Tax Law. Racing Law Section 104(1) grants the Commission general jurisdiction over all gaming activities within the State. Racing Law Section 104(19) authorizes the Commission to promulgate any rules it deems necessary to carry out its responsibilities.

2. LEGISLATIVE OBJECTIVES: To permit the State’s continued participation in the Powerball multi-jurisdiction lottery game and to implement changes to the game that are expected to generate more revenue for education.

3. NEEDS AND BENEFITS: Powerball is a multi-state lottery game that New York offers pursuant to an agreement among various state lotteries, as authorized by Tax Law Sections 1617, 1612(a) and 1604. The consortium of State lotteries that participate in Powerball and the Multi-State Lottery Association (“MUSL”) that administers Powerball, have approved and adopted amendments to the game intended to be effective nationwide with sales effective on October 4, 2015 for the drawing on October 7, 2015. Consortium participants are required to comply with official Powerball game rules, as amended. The proposed rulemaking incorporates amendments necessary for New York’s continued participation in the Powerball game. In addition, these amendments are expected to increase ticket sales and generate more revenue for education.

Powerball awards prizes to holders of tickets matching specified combinations of numbers randomly selected in regularly scheduled drawings. Players select five numbers from one set and one number from a second set. The proposed rules are intended to increase the odds of winning any prize, while also allowing jackpot prize amounts to grow larger by decreasing the odds of winning a top prize. This would be accomplished by increasing the size of the first set of numbers from which a player chooses (from 59 to 69), while decreasing the size of the second set of numbers (from 35 to 26). The proposed rules would also change the percentage amount of a prize pool allocated to each prize level and would increase the set prize amount for the third-level prize from \$10,000 to \$50,000.

The proposed draw games rules would amend the “quick pick” definition applicable to all lottery draw games, including Powerball. The revised definition would clarify the various methods a player can use to determine character selections when purchasing a ticket for a draw game; namely that a player can communicate a partial subset of the required character selections orally or through a play slip and have the computer system supply, through random choice, the remaining selections.

Without the proposed rules, the Commission would need to remove the Powerball game from its portfolio of offerings and aid to education would be negatively affected. Last fiscal year just over \$300 million in Lottery sales were from the Powerball game. This was the lowest amount in three fiscal years. This change to the Powerball matrix is predicted to increase the average overall jackpot throughout the year and increase sales in New York and aid to education from this product.

4. COSTS:

(a) Costs to regulated parties for the implementation and continuing compliance with the rule: None.

(b) Costs to the regulating agency, the State, and local governments for the implementation and continued administration of the rule: No additional operating costs are anticipated as a result of the proposed rules, since current funds reserved for administrative expenses of operating lottery games are expected to be sufficient.

(c) The information, including the source or sources of such information, and methodology upon which the cost estimate is based: The cost estimates are based on the New York Lottery’s experience regulating lottery games for more than 40 years.

5. LOCAL GOVERNMENT MANDATE: There are no local government mandates associated with the proposed rules.

6. PAPERWORK: The proposed rules impose no changes in paperwork requirements. Game information will be issued by the New York Lottery for public convenience on the Lottery’s website and through point of sale advertising materials at retailer locations.

7. DUPLICATION: The proposed regulations do not duplicate any existing State or federal requirements of the same or similar subject matter.

8. ALTERNATIVES: Without the amended rules, the New York Lottery would need to remove the game from its portfolio of offerings and aid to education would be negatively affected.

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

10. COMPLIANCE SCHEDULE: The proposed rules will become effective upon publication of a Notice of Adoption in the State Register.

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

The proposed rules changes do not require a Regulatory Flexibility Analysis, Rural Area Flexibility Analysis or Job Impact Statement. There will be no adverse impact on small businesses, local governments, rural areas or jobs.

The proposed rules would permit New York’s continued participation in the Powerball multi-jurisdiction lottery game and implement changes to the game that are expected to generate more revenue for education.

The proposed rules will not impose any adverse economic impacts or reporting, recordkeeping or other compliance requirements on small businesses, local governments, rural areas or employment opportunities.

Division of Housing and Community Renewal

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Give PHAs Greater Discretion in Establishing Standards for Admission and Continued Occupancy in State-Aided Housing Projects

I.D. No. HCR-29-15-00002-P

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

Proposed Action: Repeal of section 1627-7.2 and addition of new section 1627-7.2 to Title 9 NYCRR.

Statutory authority: Public Housing Law, sections 14(1) and 19

Subject: Give PHAs greater discretion in establishing standards for admission and continued occupancy in State-aided housing projects.

Purpose: To eliminate outmoded standards of eligibility for State-aided public housing projects.

Text of proposed rule: Section 1627-7.2 of 9 NYCRR is repealed and a new section 1627-7.2 of 9 NYCRR is added as follows:

Standard for admission or continued occupancy.

a) *In addition to income eligibility, an authority may establish standards for use in approving eligibility for admission or continued occupancy of a household in any authority project. Such standards shall include that the household will not, or does not, constitute:*

1) *a detriment to the health or safety of its neighbors or the community;*

2) *a source of danger to the peaceful occupation of the other tenants;*

3) *a source of danger or cause of damage to residents, personnel, property or premises of the authority; or*

4) *such other lawful and non-discriminatory eligibility or continued occupancy criteria as may be established by the authority.*

b) *An authority may admit or continue the tenancy of a household which might otherwise be ineligible under subdivision a of this section due to behavior that does not result in a criminal conviction if:*

1) *the person responsible for the prohibited action demonstrates rehabilitation or good conduct, demonstrated by, among other things, completion of a credible rehabilitation program;*

2) *the household demonstrates to the authority’s satisfaction that the person is no longer engaging in drug or alcohol-related activity, if the behavior stemmed from the use or abuse of drugs or alcohol in a way that interfered with the health, safety, or right to peaceful enjoyment of the premises by other residents; or*

3) *the household member(s) determined to have engaged in the behavior will not reside in the unit. If the member is a minor, the authority may consider individual circumstances including the advice of Juvenile Court officials.*

c) *In determining a household’s eligibility for admission or continued occupancy, an authority may give consideration to a household member’s*

criminal convictions that involved physical violence to persons or property or that adversely affected the health, safety and welfare of other people. The authority may not reject an applicant or remove a tenant based solely on that fact that a household member has such a conviction(s) but must conduct an individualized assessment of each household member who has such convictions, taking into account:

- 1) the time which has elapsed since the criminal conviction(s);
- 2) the age of the person at the time of the conviction(s);
- 3) the seriousness of the conviction(s);
- 4) any information produced by the household member, or produced on his or her behalf, in regard to rehabilitation and good conduct, including, but not limited to, evidence of completion of treatment, rehabilitative programming, history of employment and tenancy, volunteer or community activity, and letters of reference from employers, landlords, community members or others who could speak to the person's conduct since the conviction; and
- 5) where termination of continued occupancy is considered, the effects that termination of occupancy would have on household members who do not have convictions.

If, after conducting this assessment, the authority determines that the household is not eligible for tenancy, it must be able to articulate its reasoning with specificity. The authority shall communicate its decision to the household, together with the reasons for its determination.

d) Notwithstanding subdivision (c) of this section, household members with the following convictions shall be ineligible for occupancy in an authority project:

1) Convictions that lead to lifetime registration in a State Sex Offender Registration Program. Provided however, if such lifetime registration requirement is removed, the underlying convictions will be assessed in accordance with subdivision (c) of this section.

2) Convictions for the manufacture or production of Methamphetamine on premises of assisted housing (including privately owned units occupied by Section 8 Voucher Program participants).

Text of proposed rule and any required statements and analyses may be obtained from: Mark C. Colon, Deputy Counsel, New York State Division of Housing and Community Renewal, 25 Beaver Street - 7th Floor, New York, New York 10004, (212) 480-6727, email: Mark.Colon@nysdcr.org

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

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

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 14(1)(a) of the New York State Public Housing Law ("PHL") authorizes the Division of Housing and Community Renewal ("DHCR") to formulate regulations in relation to public housing authorities and their functions. Section 19 of the PHL gives DHCR the authority to promulgate, amend and repeal rules and regulations to effectuate its powers and duties.

2. LEGISLATIVE OBJECTIVE:

The New York State Legislature, by the enactment of the Public Housing Law, authorized the creation of low-rent housing accommodations through the creation of local public housing authorities as it found that there was not an adequate supply of safe and sanitary dwelling accommodations for persons and families of low income. DHCR's proposed regulation which covers State-aided public housing projects created by housing authorities is consistent with the legislative intent of the PHL as it eliminates outmoded standards of eligibility which may restrict admission or continued occupancy of such persons and families for such housing units.

3. NEEDS AND BENEFITS:

The standards for admission and continued occupancy in State-aided public housing projects were promulgated in 1968 and last amended in 1993. These standards are not reflective of the past twenty-two years of statutory modifications and case law incorporating more up to date fair housing criteria and policy. The proposed regulation takes that into account and also reflects the longstanding experience of housing authorities and gives them greater discretion to utilize affirmative marketing and the admission criteria that are used by private developers. The proposed regulation also incorporates the most recent thinking on the barriers to re-entry experienced by people with criminal convictions, as stated in the June 17, 2011 letter from the U.S. Department of Housing and Urban Development (HUD) to public housing agency directors. That letter clarified HUD's policy relating to criminal history and encouraged more flexible, reasonable admissions policies for people re-entering communities following incarceration.

4. COSTS:

The cost of creating admission and continued occupancy standards and

complying with the proposed regulation will be limited. The proposed regulation only applies to seventeen New York State-aided housing projects; none of them located in New York City. Most of these authorities have federally-aided projects in addition to State-aided projects.

5. LOCAL GOVERNMENT MANDATES:

The proposed regulation will vest State-aided public housing authorities with greater discretion in establishing standards. As public housing authorities must already engage in tenant screening and implementation of admission policies, there is no additional local government mandate imposed by the proposed regulation.

6. PAPERWORK:

As the housing authorities already engage in the process of tenant selection there is no significant increase in paperwork contemplated by this proposed regulation.

7. DUPLICATION:

There is no known duplication of State or federal requirements.

8. ALTERNATIVES:

Given the outmoded language of the existing regulation, DHCR had no alternative but to amend this provision. The 1993 amendment which set forth standards with respect to eviction based on certain specific crimes needed to be changed to create a standard that allows a more individualized and fact based assessment of eligibility for admission and continued occupancy.

9. FEDERAL STANDARDS:

The proposed regulation does not exceed any known minimum federal standards.

10. COMPLIANCE SCHEDULE:

It is not anticipated that regulated parties will require any significant additional time to comply with the proposed regulation. DHCR may administratively extend such compliance period as may be necessary.

Regulatory Flexibility Analysis

1. EFFECT OF RULE:

This proposed regulation affects seventeen New York State-aided public housing projects; all are located outside New York City.

2. COMPLIANCE REQUIREMENTS:

There are no requirements imposed on small businesses by the proposed regulation. The affected public housing authorities may establish standards for admission and continued occupancy for such projects.

3. PROFESSIONAL SERVICES:

The proposed regulation may require some initial help from lawyers and housing managers in reviewing any new criteria but housing authorities have such staff available and DHCR will aid them as necessary.

4. COMPLIANCE COSTS:

There is no indication that the proposed regulation will impose any significant initial costs upon small businesses or on local government as implementation of eligibility standards is already required.

5. ECONOMIC AND TECHNOLOGICAL FEASIBILITY:

Compliance with the rule is expected to be feasible for local government both economically and technologically.

6. MINIMIZING ADVERSE IMPACT:

The proposed regulation has limited impact on local government and none upon small businesses but the changes are needed to appropriately enforce a statute designed to protect public health, safety and welfare.

7. SMALL BUSINESS AND LOCAL GOVERNMENT PARTICIPATION:

In addition to specific DHCR reach out, the local governmental units involved are public housing authorities with which DHCR, due to its statutory, regulatory and contractual relationship, maintains an ongoing supervisory role, familiarity with their issues and concerns, and a relationship that is interactive and ongoing with respect to operations and admissions.

Rural Area Flexibility Analysis

The proposed regulation will not impose any adverse impact on rural areas or reporting, record keeping or other compliance requirements on public or private entities in rural areas. As it was evident from the proposed regulation that it would not impose any adverse impact or compliance requirements, no further measures were needed to ascertain that fact and none were taken. Accordingly, a Rural Area Flexibility Analysis is not required.

Job Impact Statement

The proposed regulation eliminates outmoded standards of eligibility for admission and continued occupancy in State-aided public housing projects. As it is readily apparent from the subject matter of the proposed regulation that it will have no impact on jobs and employment opportunities, a Job Impact Statement is not required.

New York State Joint Commission on Public Ethics

NOTICE OF ADOPTION

Outside Activities Regulations

I.D. No. JPE-16-15-00003-A

Filing No. 607

Filing Date: 2015-07-07

Effective Date: 2015-07-22

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

Action taken: Repeal of Part 932; and addition of new Part 932 to Title 19 NYCRR.

Statutory authority: Executive Law, section 94(9)(c) and (17)(a)

Subject: Outside activities regulations.

Purpose: To provide guidance and approval procedures for outside activities by State government employees and officials.

Text of final rule: PART 932 OUTSIDE ACTIVITY RESTRICTIONS AND APPROVAL PROCEDURES

932.1 Purpose of Regulations.

The purpose of these regulations is to effectuate the conflicts of interests provisions of the Public Officers Law and to provide an approval procedure for outside activities by Policy Makers, heads of State Agencies, and Statewide Elected Officials.

932.2 Definitions.

(a) Approving Authority, for a Policy Maker, shall mean (i) the head of a State Agency employing such Policy Maker; (ii) the appropriate designee of the head of such State Agency; (iii) the individual or body that has the authority to appoint such Policy Maker to a position; or (iv) the appropriate designee of such individual or body.

(b) Commission shall mean the New York State Joint Commission on Public Ethics and, where applicable, its predecessor agencies.

(c) Compensation shall mean the financial consideration received in exchange for services rendered, e.g., wages, salaries, benefits, professional fees, royalties, bonuses, or commissions on sales. Compensation shall also include income received from any business venture, whether or not incorporated, that is owned or controlled by an individual who is subject to this Part. Notwithstanding the foregoing, income received from transactions involving such individual's own securities, personal property, or real estate is not included in the term Compensation.

(d) Outside Activity Approval Form shall mean a form designated by the Commission as the Outside Activity Approval Form and available on the Commission's website.

(e) Party shall mean (i) any organization which at the last preceding election for governor of the State of New York polled at least fifty thousand votes for its candidate for governor; or (ii) the national political entity affiliated with such organization.

(f) Party Committee shall mean any State committee, county committee, and such other committee (including national committee) as the rules of the Party may allow.

(g) Policy Maker shall mean an officer, employee, director, commissioner, or member of a State Agency (other than a multi-state authority) who has been determined to hold a policy-making position pursuant to Public Officers Law § 73-a(1)(c).

(h) Political Organization shall mean any organization that is affiliated with, or subsidiary to, a Party. The term does not include campaign or fundraising committees.

(i) State Agency shall mean any State department, or division, board, commission, or bureau of any State department, any public benefit corporation, public authority, or commission at least one of whose members is appointed by the Governor. State Agency shall also include the State University of New York or the City University of New York, including all their constituent units except (1) community colleges of the State University of New York and (2) the independent institutions operating statutory or contract colleges on behalf of the State.

(j) Statewide Elected Official shall mean the Governor, Lieutenant Governor, Attorney General, or Comptroller of the State of New York.

932.3 General Standard for All Persons Subject to Public Officers Law § 74.

No individual who is subject to Public Officers Law § 74, shall engage

in any outside activity which interferes or substantially conflicts with the proper and effective discharge of such individual's official State duties or responsibilities.

932.4 Restrictions on Certain Political Activities.

(a) No head of a State Agency, Statewide Elected Official, or Policy Maker (regardless of whether the person serves on an unpaid or per diem basis) shall serve as an officer, director, or board member of any Party or Political Organization.

(b) No head of a State Agency, Statewide Elected Official, or Policy Maker (regardless of whether the person serves on an unpaid or per diem basis) shall serve as a member, officer, director, board member, or district leader of any Party Committee.

(c) Nothing in this section shall prohibit a head of a State Agency, Statewide Elected Official, or Policy Maker from serving as a delegate to a State or national Party convention.

932.5 Required Prior Approval for Salaried Policy Makers, Heads of State Agencies, and Statewide Elected Officials.

(a) A Policy Maker who serves the State on other than an unpaid or per diem basis, shall obtain the following approvals prior to engaging in the activities listed below:

Outside Activity	Required Approvals / Actions
A job, employment (including public employment), or business venture that generates, or is expected to generate, between \$1,000 and \$5,000 in Compensation annually	Approving Authority must approve
A job, employment (including public employment), or business venture that generates, or is expected to generate, more than \$5,000 in Compensation annually	Approving Authority and the Commission must approve
Holding elected or appointed public office (regardless of Compensation) as an outside activity	Approving Authority and the Commission must approve
Serving as a director or officer of a for-profit entity (regardless of Compensation)	Approving Authority and the Commission must approve
Serving as a director or officer of a not-for-profit entity	Approval not required, but must notify Approving Authority in writing prior to commencing service
Compensation is \$0 - \$999 annually	Approving Authority must approve
Compensation is between \$1,000 and \$5,000 annually	Approving Authority and the Commission must approve
Compensation is more than \$5,000 annually	Approving Authority and the Commission must approve

(b) A head of a State Agency or a Statewide Elected Official shall obtain approval from the Commission prior to engaging in the outside activities listed in Section 932.5(a).

932.6 Approval Procedures.

(a) A Policy Maker who requires approval pursuant to Part 932.5(a) from his Approving Authority only, shall submit to the Approving Authority a written approval request prior to commencing the outside activity.

(1) The Approving Authority shall make its determination based on its interpretation of whether the proposed outside activity is in accordance with the applicable provisions of the Public Officers Law, Commission Advisory Opinions, pertinent State Agency policies, procedures, or regulations governing employee conduct, and such other factors as the Approving Authority may deem appropriate.

(b) A Policy Maker who also requires Commission approval pursuant to Part 932.5(a) shall submit to the Commission a request on the Outside Activity Approval Form. The form must be completed in full, including signatures from the individual and the Approving Authority. The Commission will not consider requests without a completed Outside Activity Approval Form.

(c) A head of a State Agency or Statewide Elected Official who requires Commission approval pursuant to Part 932.5(b) shall submit to the Commission a request on the Outside Activity Approval Form. The Commission will not consider requests without a completed Outside Activity Approval Form.

(d) With respect to outside activity requests that require Commission approval, the Commission shall make its determination based on its inter-

pretation of whether the proposed outside activity is in accordance with the applicable provisions of the Public Officers Law, Commission Advisory Opinions, regulations, and policies. The Commission may require additional information as it deems appropriate.

932.7 Previously Approved Outside Activity: Annual Disclosure and Material Changes.

(a) Once an outside activity has been approved pursuant to Part 932.6 it shall remain effective unless and until there is a material change in the individual's State responsibilities or in the outside activity, at which point the individual must submit a new request for approval in accordance with Parts 932.5 and 932.6.

(b) On an annual basis, an individual who has received approval for an outside activity pursuant to Part 932.6, or has otherwise disclosed the not-for-profit board service pursuant to Part 932.5, must inform, in writing, his Approving Authority (or, in the case of a head of a State Agency or a Statewide Elected Official, that State Agency's ethics officer or other designated individual) if the individual is still engaged in the outside activity for which approval was granted. The Approving Authority (or, in the case of a head of a State Agency or a Statewide Elected Official, that State Agency's ethics officer or other designated individual) shall determine the time and manner in which such annual disclosure is to be made.

932.8 Enforcement.

In addition to any penalty contained in any other provision of law, an individual's performance of an outside activity that is in violation of Public Officers Law § 73 or § 74 may subject him to a civil penalty or other Commission action. Nothing herein shall limit or prohibit the State Agency, Approving Authority, or other appropriate entity from taking disciplinary action with respect to violations of this Part or the Public Officers Law, including a fine, suspension without pay, or removal from office or employment in the manner provided by law, regulation, or collective bargaining agreement.

932.9 Codes of Ethics for Uncompensated and Per Diem Directors, Members and Officers.

The boards or councils whose officers or members are subject to § 73-a of the Public Officers Law and are not subject to § 73 of such law by virtue of their uncompensated or per diem compensation status and the commissions, public authorities, and public benefit corporations whose member or directors are subject to § 73-a of the Public Officers Law and are not subject to § 73 by virtue of their uncompensated or per diem compensation status shall adopt a code of ethical conduct covering conflicts of interest and business and professional activities, including outside activities, of such directors, members, or officers both during and after service with such boards, councils, commissions, public authorities, and public benefit corporations. Such codes of ethical conduct shall be filed with the Commission.

932.10 Agencies Permitted More Restrictive Rules.

Nothing contained in this Part shall prohibit any State Agency from adopting or implementing its own rules, regulations, or procedures with regard to outside activities that are more restrictive than the requirements of this Part.

Final rule as compared with last published rule: Nonsubstantive changes were made in sections 932.3, 932.6 and 932.7(b).

Text of rule and any required statements and analyses may be obtained from: Carol Quinn, Associate Counsel, Joint Commission on Public Ethics, 540 Broadway, Albany, NY 12207, (518) 408-3976, email: carol.quinn@jcope.ny.gov

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

A Revised Regulatory Impact Statement, Regulatory Flexibility Analysis, Rural Area Flexibility Analysis and Job Impact Statement are not submitted with this Notice of Adoption because the revisions made to the proposed rule were not substantive and do not necessitate revision of the previously published Regulatory Impact Statement, Regulatory Flexibility Analysis, Rural Area Flexibility Analysis and Job Impact Statement.

Initial Review of Rule

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

Assessment of Public Comment

The Commission received public comments from six entities. One entity provided comments that were premised on a misinterpretation and misunderstanding of both the current regulations and the proposed amended regulations. Accordingly, the Commission declined to make any changes based on these comments.

Another entity provided four comments. The first comment suggested that the proposed Regulations specify whether the approval requirement for elected or appointed public office as an outside activity applies to non-partisan positions. The Commission believes the proposed amended

regulations are clear that the requirements apply to all elected or appointed public offices. The second comment suggested requiring the approval of the Approving Authority with respect to service as a Director or Officer of a not-for-profit entity as opposed to requiring that the individual only provide notice of such service to the Approving Authority. The Commission considers the requirement of notice to the Approving Authority of such service to be sufficient to implement the purposes of the Public Officers Law, but also notes that individual agencies have the authority to impose requirements stricter than those in the proposed Regulations. The third comment suggested that proposed Part 932.6(a)(2) could be misinterpreted as creating a right to appeal to JCOPE from Approving Authority decisions with respect to outside activities that are subject to Approving Authority approval only. The Commission agrees that the proposed language may create some ambiguity. Consequently, this subsection has been removed in the final version of the rule. The fourth comment suggested clarification of which entities are subject to the requirement of Part 932.9. The Commission considers the proposed Regulations clear on this point.

Another entity provided two comments. The first comment recommended a requirement of notification to the Commission when an Approving Authority approves an outside activity with compensation between \$1,000 and \$5,000. The Commission believes that such notification would not, on balance, provide a sufficient benefit in light of the administrative burden. The current requirement that Commission approval is only needed when annual compensation exceeds \$4,000 (changed to \$5,000 in the proposed amended regulations) has been in place for over two decades and has proven its effectiveness. The Commission has determined that these Regulations should maintain the existing regulatory structure. The second comment recommended retaining the previous Part 932.6, which stated that any person may report a possible violation of the Part, and the Commission has authority to investigate such a report. The Commission omitted this language because there is no question or ambiguity that the Commission retains the authority to receive complaints and investigate alleged violations of the Public Officers Law and its attendant regulations.

The fourth entity provided two comments. The first comment objected to the requirement of proposed Part 932.5 that policy makers provide written notice to the Approving Authority of income between \$0 and \$999 for service as a Director or Officer of a not-for-profit entity, on the grounds that this may "chill" persons' participation in certain groups. The Commission is sensitive to this concern, but does not believe that the proposed amended regulations will, in fact, have any such impact. The second comment argued that the outside activity reporting requirements are overly burdensome. The Commission rejects this point, and notes that the proposed Regulations maintain, to a large degree, the existing regulatory regime which has been in place for more than two decades and which has not been the subject of any widespread complaints with respect to the burden it places on individuals or agencies.

The fifth entity provided three comments. The first comment argued that the proposed Regulations should allow an Approving Authority to disapprove an outside activity generating income between \$0 and \$999 for service as a Director or Officer of a not-for-profit entity. The Commission notes that individual agencies have the authority to impose requirements stricter than those in the proposed Regulations. The second comment approved the proposed Regulations' establishment of the requirement of annual reporting of previously reported and approved outside activities. The third comment suggested a modification to the proposed Part 932.3 "General Standard for all Persons Subject to Public Officers Law § 74". The Commission considers the proposed Part 932.3 to be sufficiently clear.

The sixth entity provided five comments. The first comment suggested that the term "outside activity" be more clearly defined in the proposed Regulations and it noted that some of the entity's employees engage in activity through private entities as part of their State service, suggesting that such activity should not be regarded as an "outside activity." The Commission does not believe that the term "outside activity" is in need of any additional clarification. The term has been used for more than two decades in the existing regulations and there has not been any widespread call for its further refinement. The Commission also notes that all personal and professional activities, which are distinct from their official positions, may have the possibility of presenting conflicts of interest. Thus, the Commission considers the reporting and approval requirements for all outside activities to be necessary to effect the purposes of Public Officers Law § 74. The second comment suggested that the requirement of Commission approval of outside activities be eliminated entirely or that the threshold for Commission approval is increased to outside activities expected to generate "at least \$30,000" in compensation. The Commission rejected this comment as it would, in essence, eliminate one of the fundamental roles the Commission plays in ensuring compliance with Public Officers Law § 74 by policy makers with respect to their outside employment. The third comment objected to the proposed Regulations' requirement of no-

tice to the Approving Authority of income between \$0 and \$999 for service as a Director or Officer of a not-for-profit entity. Again, the Commission is sensitive to this concern, but does not believe that the proposed amended regulations will, in fact, have any discernable negative impact. The fourth comment expressed concern that the requirement of Commission approval of outside activities could cause undue delay and that the regulations contain a specified time period in which the Commission must make a determination on granting approval. The Commission notes that the average time to respond to a request for an approval of an outside activity is less than 5 business days. Again, there has been no widespread concern expressed concerning the timeliness of the Commission's response to such requests. The fifth comment requested an improved definition of "honoraria." Honoraria are not a subject of the proposed Regulations, and the Commission rejected this comment.

Public Service Commission

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

A Benefit-Cost Framework Will be Adopted to Guide Utility Proposals Within the Context of REV and Related Proceedings

I.D. No. PSC-29-15-00016-P

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

Proposed Action: The Commission is considering adopting a benefit-cost analysis framework to provide guidance for future filings in the Reforming the Energy Vision proceeding.

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

Subject: A benefit-cost framework will be adopted to guide utility proposals within the context of REV and related proceedings.

Purpose: To develop a method for valuing resources that will further REV objectives.

Substance of proposed rule: The Commission is considering whether to adopt, modify, or reject, in whole or in part, guidance parameters set forth in the "Staff White Paper on Benefit-Cost Analysis" filed by the Staff of the New York State Department of Public Service on July 1, 2015 in the Commission's Reforming the Energy Vision proceeding, Case 14-M-0101. In particular, the Commission is considering adopting a benefit-cost analysis framework to be used in considering utility proposals within the context of the REV proceeding and related proceedings.

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

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

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

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

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

(14-M-0101SP12)

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Notification Concerning Tax Refunds

I.D. No. PSC-29-15-00017-P

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

Proposed Action: The PSC is considering Verizon New York Inc.'s petition seeking the retention of a portion of a property tax refund received from the City of New York in relation to its regulated, intrastate New York operations for the 2014-2015 tax years.

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

Subject: Notification concerning tax refunds.

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

Substance of proposed rule: The Commission is considering whether to approve or reject, in whole or in part, Verizon New York Inc.'s request to retain the portion of a \$1,689,776 property tax refund received from the City of New York, associated with the 2014-2015 tax year that is allocable to Verizon's regulated, intrastate New York operations and any other related actions. Verizon proposes to retain such tax refund in accordance with earlier Commission Orders involving previous Verizon tax refunds.

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

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-C-0383SP1)

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Approval of Ratemaking Related to Amendment of a Certificate of Public Convenience and Necessity

I.D. No. PSC-29-15-00018-P

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

Proposed Action: The Commission is considering whether to approve, reject, or modify the ratemaking aspects of a petition filed by St. Lawrence Gas Company, Inc. (SLG) to amend a certificate of public convenience and necessity.

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

Subject: Approval of ratemaking related to amendment of a certificate of public convenience and necessity.

Purpose: To approve or reject the ratemaking aspects of SLG's petition to amend its certificate of public convenience and necessity.

Substance of proposed rule: The Public Service Commission is considering whether to approve, reject, or modify, in whole or in part, a petition by St. Lawrence Gas Company, Inc. (SLG) seeking authorization to amend a certificate of public convenience and necessity (CPCN). An Order issued by the Commission on February 17, 2011 authorized SLG to construct a 48-mile natural gas transmission line through Franklin and St. Lawrence Counties and granted a CPCN approving the exercise of gas franchises and the construction of about 50 miles of associated distribution lines and service lines to deliver gas in the communities of Winthrop, Brasher Falls, and North Lawrence, in St. Lawrence County, and Moira, North Bangor, Brushton, Malone, Burke, and Chateaugay, in Franklin County. As a result of unforeseen circumstances occurring during construction, construction costs substantially exceed the costs assumed in the original feasibility analysis. While a CPCN amendment is a license, the change in rates and charges is a rule. The Commission is considering a revised economic feasibility analysis, so as to increase and prolong the new customers' five-year temporary surcharge authorized in the February 2011 CPCN (as amended in July 2012) to a development period of seven years. In addition, the Commission is considering a contribution in aid of construction surcharge to be applied during the seven-year development period. The Commission will also consider all other related matters.

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

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

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

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

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

(10-G-0295SP1)

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

Whether to Waive the Requirement that the Customer Have Telecommunications Service in Place 30 Days Prior to July 1, 2015

I.D. No. PSC-29-15-00020-P

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

Proposed Action: The Commission is considering whether to grant, deny or modify, in whole or in part the petition of Energy Technology Savings, Inc. for a limited waiver of provisions of Rider S and U of Con Edison’s electric tariff related to eligibility requirements.

Statutory authority: Public Service Law, sections 4, 65 and 66

Subject: Whether to waive the requirement that the customer have telecommunications service in place 30 days prior to July 1, 2015.

Purpose: To waive the requirement that the customer have telecommunications service in place 30 days prior to July 1, 2015.

Substance of proposed rule: The Public Service Commission is considering whether to grant, deny or modify, in whole or part, the petition of Energy Technology Savings, Inc. (ETS) for a limited waiver of certain provisions of Riders S and U of Consolidated Edison Company of New York, Inc. (Con Edison or the Company) contained in Tariff PSC No. 10–Electricity pursuant to Rule 3.5 of the Commission’s rules (16 NYCRR § 3.5). ETS seeks waiver of the requirement that, to participate in Con Edison demand reduction programs in Riders S and U, customers must have had telecommunications service for their meters in place 30 days prior to July 1, 2015, where the customer’s interval meter was installed timely and the meter stored all interval metering data from June 1, 2015 forward, and telecommunications service is in place prior to June 30, 2015. The Commission may address other matters related to the petition.

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

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

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

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

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

(15-E-0362SP1)

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

Whether to Permit the Use of Various Instrument Transformer Equipment Corporation Current and Voltage Transformers in New York

I.D. No. PSC-29-15-00021-P

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

Proposed Action: The Commission is considering whether to grant, reject or modify the petition of Instrument Transformer Equipment Corporation for approval to use various current and voltage instrument grade transformers in New York State.

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

Subject: Whether to permit the use of various Instrument Transformer Equipment Corporation current and voltage transformers in New York.

Purpose: Pursuant to 16 NYCRR Parts 92 and 93, the commission must approve the use of the ITEC current and voltage transformers.

Substance of proposed rule: The Public Service Commission is considering whether to grant, deny or modify, in whole or part, the petition filed by Instrument Transformer Equipment Corporation (ITEC) for approval to use various ITEC current and voltage instrument grade transformers in commercial and substation applications, and any other related matters.

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

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

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

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

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

(15-E-0303SP1)

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

Notice of Intent to Submeter Electricity

I.D. No. PSC-29-15-00022-P

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

Proposed Action: The Public Service Commission is considering whether to grant, deny or modify, in whole or part, the Notice of Intent to submeter electricity filed by 92nd and 3rd Associates, LLC, for the premises located at 205 East 92nd Street, New York, New York.

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

Subject: Notice of Intent to Submeter electricity.

Purpose: To consider the request of 92nd and 3rd Associates, LLC to submeter electricity at 205 East 92nd Street, New York, New York.

Substance of proposed rule: The Public Service Commission is considering whether to grant, deny or modify, in whole or part, the Notice of Intent filed by 92nd and 3rd Associates, LLC, to submeter electricity at 205 East 92nd Street, New York, New York, located in the territory of Consolidated Edison Company of New York, Inc., and to take other actions necessary to address the Notice of Intent.

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

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

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

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

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

(15-E-0378SP1)

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

Notice of Intent to Submeter Electricity

I.D. No. PSC-29-15-00023-P

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

Proposed Action: The Public Service Commission is considering whether to grant, deny or modify, in whole or part, the Notice of Intent to submeter electricity filed by Bridge Land Hudson LLC, for the premise located at 261 Hudson Street, New York, New York.

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

Subject: Notice of Intent to Submeter electricity.

Purpose: To consider the request of Bridge Land Hudson LLC to submeter electricity at 261 Hudson Street, New York, New York.

Substance of proposed rule: The Public Service Commission is considering whether to grant, deny or modify, in whole or part, the Notice of Intent filed by Bridge Land Hudson LLC, to submeter electricity at 261 Hudson Street, New York, New York, located in the territory of Consolidated Edison Company of New York, Inc., and to take other actions necessary to address the Notice of Intent.

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

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

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

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

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

(15-E-0379SP1)

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Approval of Assets

I.D. No. PSC-29-15-00024-P

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

Proposed Action: The Commission is considering whether to approve, reject, or modify a petition filed by New York American Water Company, Inc. for an Agreement of Sale for Spring Glen Lake Water Company, LLC to Acquire 100% of the Assets of Spring Glen Lake.

Statutory authority: Public Service Law, section 89-h

Subject: Approval of assets.

Purpose: To approve or reject New York American Water Company, Inc's. agreement of sale.

Substance of proposed rule: The Public Service Commission is considering whether to approve, deny, or modify, in whole or in part, a petition by New York American Water Company, Inc. (f/k/a Long Island Water Corporation) seeking authorization to purchase 100% of the assets of Spring Glen Lake Water Company, LLC. Additionally, the Commission will consider moving Spring Glen Lake customers to the Long Island District tariff rates which should result in monthly metered water bills for Spring Glen Lake customers. The Commission shall also consider all other related matters.

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

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

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

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

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

(15-W-0375SP1)

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Joint Petition for Authority to Transfer Real Property Located at 624 West 132nd Street, New York, NY

I.D. No. PSC-29-15-00025-P

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

Proposed Action: The Commission is considering whether to grant, modify or reject, in whole or in part, a joint petition filed by Consolidated Edison Company of New York, Inc. to transfer real property located at 624 West 132nd Street, New York, NY.

Statutory authority: Public Service Law, section 70

Subject: Joint Petition for authority to transfer real property located at 624 West 132nd Street, New York, NY.

Purpose: Whether to authorize the proposed transfer of real property located at 624 West 132nd Street, New York, NY.

Substance of proposed rule: The Public Service Commission is considering whether to grant, deny or modify, in whole or part, the joint petition of Consolidated Edison Company of New York, Inc. (Con Edison) and the Trustees of Columbia University in the City of New York (Columbia) for authority to transfer from Con Edison to Columbia real property located at 624 West 132nd Street, New York, New York, identified as Block 1998, Lot 49 (Property). The terms and conditions under which Con Edison has agreed to transfer the Property are contained in an Exchange Agreement dated July 15, 2013, as amended. Presently, the Property houses four cooling plants for its transmission system (Cooling Station). According to the joint petitioners, the Property is in the center of a 17-acre area that Columbia is redeveloping for research, instructional, university housing, and retail purposes. This area is known as the Manhattanville Mixed Use Development Project. Under an Exchange Agreement, Columbia would construct, at its expense estimated at \$37 million, a new cooling station at one of three nearby locations to replace the Cooling Station. In addition, Columbia would pay Con Edison \$2.4 million for the real property, which would be escalated by 2.75% per year from the date of the Exchange Agreement and the closing of the transaction. After Columbia designates one of the three locations for the replacement cooling station, should Con Edison determine that it is no longer in need of the replacement cooling station, the Exchange Agreement requires that the joint petitioners obtain new appraisals for the Property. The Commission may address other matters related to the joint petition and the Exchange Agreement.

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

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

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

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

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

(15-M-0386SP1)

State University of New York

EMERGENCY RULE MAKING

State Basic Financial Assistance for Operating Expenses of Community Colleges Under the Program of SUNY and CUNY

I.D. No. SUN-29-15-00005-E

Filing No. 606

Filing Date: 2015-07-07

Effective Date: 2015-07-07

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

Action taken: Amendment of section 602.8(c) of Title 8 NYCRR.

Statutory authority: Education Law, sections 355(1)(c) and 6304(1)(b); L. 2014, ch. 53

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

Specific reasons underlying the finding of necessity: The State University of New York finds that immediate adoption of amendments to the Code of Standards and Procedures for the Administration and Operation of Community Colleges (the Code) is necessary for the preservation of the general welfare and that compliance with the requirements of subdivision 1 Section 202 of the State Administrative Procedures Act would be contrary to the public interest. The 2015-2016 Education, Labor and Social Services Budget Bill (the Budget) requires amendments to the existing funding formula for State financial assistance for operating expenses of community colleges of the State and City Universities of New York. The funding formula is to be developed jointly with the City University of New York, subject to the approval of the Director of the Budget. Amendments to the Code on an emergency basis for the 2015-2016 fiscal year are necessary to:

1. provide timely State operating assistance to public community colleges of the State and City Universities of New York;

2. obtain the necessary revenue to maintain essential staffing levels, program quality, and accessibility. Compliance with the provision of subdivision 1 of Section 202(6) of the State Administrative Procedures Act would not be contrary to the public interest. The requirements of subdivision (1) of Section 202(6) of SAPA would not allow implementation of the State fiscal assistance provided in the Budget Bill in time for the 2015-2016 community college fiscal year.

Subject: State basic financial assistance for operating expenses of community colleges under the program of SUNY and CUNY.

Purpose: Modify limitations formula for basic State financial assistance for operating expenses and conform to Education Law and Budget Bill.

Text of emergency rule: Subdivision (c) of section 602.8 of said Title 8 is amended to read as follows, subject to the approval of the Director of the Budget (brackets denote old material to be deleted; underlining denote new material to be added):

(c) Basic State financial assistance.

(1) Full opportunity colleges. The basic State financial assistance for community colleges, implementing approved full opportunity programs, shall be the lowest of the following:

(i) two-fifths (40%) of the net operating budget of the college, or campus of a multiple campus college, as approved by the State University trustees;

(ii) two-fifths (40%) of the net operating costs of the college, or campus of a multiple campus college; or

(iii) for the current college fiscal year the total of the following:

(a) the budgeted or actual number (whichever is less) of full-time equivalent students enrolled in programs eligible for State financial assistance multiplied by [\$2,497] \$2,597; and

(b) up to one-half (50%) of rental costs for physical space.

(2) Non-full opportunity colleges. The basic State financial assistance for community colleges not implementing approved full opportunity programs shall be the lowest of the following:

(i) one-third (33%) of the net operating budget of the college, or campus of a multiple campus college, as approved by the State University trustees;

(ii) one-third (33%) of the net operating costs of the college, or campus of a multiple campus college; or

(iii) for the college fiscal year current, the total of the following:

(a) the budgeted or actual number (whichever is less) of full-time equivalent students enrolled in programs eligible for State financial assistance multiplied by [\$2,081] \$2,165; and

(b) up to one-half (50%) of rental cost for physical space.

(3) Notwithstanding the provisions of paragraphs (1) and (2) of this subdivision, a community college or a new campus of a multiple campus community college in the process of formation shall be eligible for basic State financial assistance in the amount of one-third of the net operating budget or one-third of the net operating costs, whichever is the lesser, for those colleges not implementing an approved full opportunity program plan, or two-fifths of the net operating budget or two-fifths of the net operating costs, whichever is the lesser, for those colleges implementing an approved full opportunity program, during the organization year and the first two fiscal years in which students are enrolled.

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 October 4, 2015.

Text of rule and any required statements and analyses may be obtained from: Lisa S. Campo, State University of New York, State University Plaza, Albany, New York 12246, (518) 320-1400, email: Lisa.Campo@SUNY.edu

Regulatory Impact Statement

This is a technical amendment to implement the provisions of the 2015-2016 Budget Bill. The amendment provides for the provision of State financial assistance for operating expenses of community colleges operating under the program of the State University of New York and the City University of New York.

Regulatory Flexibility Analysis

This is a technical amendment to implement the provisions of the 2015-2016 Budget Bill. The amendment provides for the provision of State financial assistance for operating expenses of community colleges operating under the program of the State University of New York and the City University of New York. It will have no impact on small businesses and local governments.

Rural Area Flexibility Analysis

This is a technical amendment to implement the provisions of the 2015-2016 Budget Bill. The amendment provides for the provision of State financial assistance for operating expenses of community colleges operating under the program of the State University of New York and the City University of New York. This rule making will have no impact on rural areas or the recordkeeping or other compliance requirements on public or private entities in rural areas.

Job Impact Statement

No job impact statement is submitted with this notice because the adoption of this rule does not impose any adverse economic impact on existing jobs, employment opportunities, or self-employment. This rule making governs the financing of community colleges operating under the program of the State University and will not have any adverse impact on the number of jobs or employment opportunities in the state.

EMERGENCY/PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

State University of New York Tuition and Fees Schedule

I.D. No. SUN-29-15-00003-EP

Filing No. 605

Filing Date: 2015-07-07

Effective Date: 2015-07-07

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

Proposed Action: Amendment of section 302.1(b) of Title 8 NYCRR.

Statutory authority: Education Law, section 355(2)(b) and (h)

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

Specific reasons underlying the finding of necessity: Amendment of these regulations needs to proceed on an emergency basis because tuition increases are intended to be effective for the Fall 2015 semester. Billing for these new tuition rates occurs during the summer of 2015; therefore, notice of the new rates needs to occur as soon as possible.

Subject: State University of New York Tuition and Fees Schedule.

Purpose: To amend the Tuition and Fees Schedule to increase tuition for students in all programs in the State University of New York.

Text of emergency/proposed rule: Section 302.1. Tuition and fees at State-operated units of State University.

(b) Tuition charges as listed in the following table for categories of students, terms and programs, and as modified, amplified or explained in footnotes 1 through [9] 10 are effective with the [2014] 2015 fall term and thereafter.

	Charge per Semester		Charge per Semester credit hour ¹ Special Students	
	New York State residents	Out-of-State residents	New York State residents	Out-of-State residents
(1) Students enrolled in degree-granting undergraduate programs leading to an associate degree and non-degree granting programs of at least one regular academic term in duration which have been approved as eligible for Tuition Assistance Program Awards	[\$3,085] \$3,235	[\$7,910] \$8,160 ² \$4,870 ² [\$5,170 ³] 5,420 ³ 5,430 ⁴ \$5,320 ⁴ ⁵ [\$7,660 ⁵] \$8,160 ⁶	[\$257] \$270 [\$257 ⁶] \$270 ⁷	[\$659] \$680 \$406 ² [\$431 ³] \$452 ³ \$453 ⁴ \$443 ⁴ ⁵ [\$638 ⁵] \$680 ⁶ [\$257 ⁶] \$270 ⁷
(2) Students enrolled in degree-granting undergraduate programs leading to a baccalaureate degree and non-degree granting programs of at least one regular academic term in duration which have been approved as eligible for Tuition Assistance Program Awards	[\$3,085] \$3,235	[\$7,910] \$8,160 [\$9,795 ⁷] \$10,775 ⁸ [\$8,905 ⁸] \$9,795 ⁹ [\$4,630 ⁹] \$4,855 ¹⁰	[\$257] \$270	[\$659] \$680 [\$816 ⁷] \$898 ⁸ [\$742 ⁸] \$816 ⁹ [\$386 ⁹] \$405 ¹⁰
(3) Students enrolled in graduate programs (other than Masters of Business Administration, Architecture, Social Work or Physician Assistant) leading to a Master's, Doctor's or equivalent degree	[\$5,185] \$5,435	[\$10,095] \$11,105 [\$7,780 ⁹] \$8,155 ¹⁰	[\$432] \$453	[\$841] \$925 [\$648 ⁹] \$680 ¹⁰
(4) Students enrolled in a graduate program leading to a Masters of Business Administration (MBA)	[\$6,610] \$7,205	[\$11,085] \$12,195	[\$551] \$600	[\$924] \$1,016
(5) Students enrolled in a graduate program leading to a Masters of Architecture	[\$5,960] \$6,495	[\$10,095] \$11,105	[\$497] \$541	[\$841] \$925
(6) Students enrolled in a graduate program leading to a Masters of Social Work	[\$5,940] \$6,475	[\$10,095] \$11,105	[\$495] \$540	[\$841] \$925

(7) Students enrolled in the professional program of pharmacy	[\$11,870] \$12,220	[\$23,015] \$23,365	[\$989] \$1,018	[\$1,918] \$1,947
(8) Students enrolled in the professional program of law	[\$11,975] \$12,335	[\$20,920] \$21,340	[\$998] \$1,028	[\$1,743] \$1,778
(9) Students enrolled in the professional program of medicine	[\$17,545] \$19,125	[\$30,125] \$31,630	[\$1,462] \$1,594	[\$2,510] \$2,636
(10) Students enrolled in the professional program of dentistry	[\$15,120] \$16,480	\$31,475	[\$1,260] \$1,373	\$2,623
(11) Students enrolled in the professional programs of physical therapy [and doctor of nursing practice]	[\$10,655] \$11,615	[\$19,490] \$20,465	[\$888] \$968	[\$1,624] \$1,705
(12) Students enrolled in the professional program of optometry	[\$12,040] \$13,125	[\$21,870] \$23,400	[\$1,003] \$1,094	[\$1,823] \$1,950
(13) Students enrolled in the professional program of physician assistant	[\$5,900] \$6,430	[\$12,005] \$14,405	[\$492] \$536	[\$1,000] \$1,200
(14) Students enrolled in the professional programs of doctor of nursing practice	\$11,615	\$21,440	\$968	\$1,787

¹ The Chancellor shall determine the equivalent of a credit hour.

² In accordance with Chapter 309 of the Laws of 1996, and enabling action by the Board of Trustees, the Colleges of Technology at Alfred, Canton, Cobleskill, Delhi and Morrisville are authorized to charge a lower rate for non-resident students enrolled in degree-granting programs leading to an associate degree or in non-degree granting programs. This reduced rate does not apply to those students in degree-granting programs leading to a baccalaureate degree. Alfred is authorized to charge the rate noted effective with the fall [2014] 2015 term.

³ In accordance with Chapter 309 of the Laws of 1996, and enabling action by the Board of Trustees, the Colleges of Technology at Alfred, Canton, Cobleskill, Delhi and Morrisville are authorized to charge a lower rate for non-resident students enrolled in degree-granting programs leading to an associate degree or in non-degree granting programs. This reduced rate does not apply to those students enrolled in degree-granting programs leading to a baccalaureate degree. [Canton and] Delhi [are] is authorized to charge the rate noted effective with the fall [2014] 2015 term.

⁴ In accordance with Chapter 309 of the Laws of 1996, and enabling action by the Board of Trustees, the Colleges of Technology at Alfred, Canton, Cobleskill, Delhi and Morrisville are authorized to charge [this] a lower rate for non-resident students enrolled in degree-granting programs leading to an associate degree or in non-degree granting programs. This reduced rate does not apply to those students enrolled in degree-granting programs leading to a baccalaureate degree. [Morrisville] Canton is authorized to charge the rate noted effective with the fall [2014] 2015 term.

⁵ In accordance with Chapter 309 of the Laws of 1996, and enabling action by the Board of Trustees, the Colleges of Technology at Alfred, Canton, Cobleskill, Delhi and Morrisville are authorized to charge a lower rate for non-resident students enrolled in degree-granting programs leading to an associate degree or in non-degree granting programs. This reduced rate does not apply to those students enrolled in degree-granting programs leading to a baccalaureate degree. [Cobleskill] Morrisville is authorized to charge the rate noted effective with the fall [2014] 2015 term.

⁶ In accordance with Chapter 309 of the Laws of 1996, and enabling action by the Board of Trustees, the Colleges of Technology at Alfred,

Canton, Cobleskill, Delhi and Morrisville are authorized to charge [this] a lower rate for [special students (part-time)] *non-resident students* enrolled in degree-granting programs leading to an associate degree or in non-degree granting programs[, and taking classes at off-campus locations or during the summer or winter intercessions]. This reduced rate does not apply to those students enrolled in degree-granting programs leading to a baccalaureate degree. *Cobleskill is authorized to charge the rate noted effective with the fall 2015 term.*

⁷ In accordance with [the NY-SUNY 2020 Challenge Grant Program Act, the University Centers at Buffalo and Stony Brook are authorized to charge this rate for non-resident undergraduate students.] *Chapter 309 of the Laws of 1996, and enabling action by the Board of Trustees, the Colleges of Technology at Alfred, Canton, Cobleskill, Delhi and Morrisville are authorized to charge this lower rate for special students (part-time) enrolled in degree-granting programs leading to an associate degree or in non-degree granting programs, and taking classes at off-campus locations or during the summer or winter intercessions. This reduced rate does not apply to those students enrolled in degree-granting programs leading to a baccalaureate degree.*

⁸ In accordance with the NY-SUNY 2020 Challenge Grant Program Act, the University Centers at [Binghamton and Albany] *Buffalo and Stony Brook* are authorized to charge this rate for non-resident undergraduate students.

⁹ [As authorized by the Board of Trustees (2010-081), Maritime College is authorized to charge up to this rate for non-resident students from states considered to be in-region (Alabama, Connecticut, Delaware, Florida, Georgia, Louisiana, Mississippi, Maryland, New Jersey, North Carolina, Pennsylvania, Rhode Island, South Carolina, Virginia, and Washington D.C.).] *In accordance with the NY-SUNY 2020 Challenge Grant Program Act, the University Centers at Binghamton and Albany are authorized to charge this rate for non-resident undergraduate students.*

¹⁰ *As authorized by the Board of Trustees (2010-081), Maritime College is authorized to charge up to this rate for non-resident students from states considered to be in-region (Alabama, Connecticut, Delaware, Florida, Georgia, Louisiana, Mississippi, Maryland, New Jersey, North Carolina, Pennsylvania, Rhode Island, South Carolina, Virginia, and Washington D.C.).*

This notice is intended: to serve as both a notice of emergency adoption and a notice of proposed rule making. The emergency rule will expire October 4, 2015.

Text of rule and any required statements and analyses may be obtained from: Lisa S. Campo, State University of New York, State University Plaza, S-325, 353 Broadway, Albany, NY, (518) 320-1400, email: Lisa.Campo@SUNY.edu

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

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

Regulatory Impact Statement

1. Statutory Authority: Education Law, Sections 355(2)(b) and 355(2)(h). Section 355(2)(b) authorizes the State University Trustees to make and amend rules and regulations for the governance of the State University and institutions therein. Section 355(2)(h) authorizes the State University Trustees to regulate the admission of students, tuition charges and other fees and charges, curricula and all other matters pertaining to the operation and administration of each State-operated institution of the University.

2. Legislative Objectives: The present measure will provide essential financial support for the operations of the State University of New York, in accordance with the NY-SUNY 2020 Challenge Grant Program Act, Chapter 260, Laws of 2011.

3. Needs and Benefits: The present measure establishes a series of tuition increases in the degree programs of the State University of New York, as more fully described in the attached table.

Even with the recommended increases, the tuition charged at the State-operated campuses of State University of New York is still competitive when compared to peer institutions in other university systems.

The tuition rates were last increased in the Fall 2014.

4. Costs: Students enrolled in these programs of the State University of New York will be required to pay additional tuition ranging from \$300 per year for resident undergraduate and associate degrees to \$4,800 for non-resident students enrolled in the Physicians' Assistant graduate master's program. In setting the new tuition schedule, the State University has examined its appropriation levels, the prevailing tuition rates charged by other public universities and the status of various State and Federal student financial aid programs.

5. Local Government Mandates: There are no local government mandates. The amendment does not affect students enrolled in the community colleges operating under the program of the State University of New York.

6. Paperwork: No parties will experience any new reporting responsibilities. State University of New York publications and documents containing notices regarding costs of attendance will need to be revised to reflect these changes.

7. Duplication: None.

8. Alternatives: Delays in tuition increases as well as higher increases were considered, however, there is no acceptable alternative to the proposed increases. The revenue from these tuition increases is necessary in order for the University to maintain quality of instruction and essential services to students, especially given the high cost professional programs.

9. Federal Standards: None.

10. Compliance Schedule: The amendment to the tuition schedule will go into effect for the Fall 2015 semester.

See Appendix in the back of this issue.

Regulatory Flexibility Analysis

No regulatory flexibility analysis is submitted with this notice because the proposed rule does not impose any requirements on small businesses and local governments. This proposed rule making will not impose any adverse economic impact on small businesses and local governments or impose any reporting, recordkeeping or other compliance requirements on small businesses and local governments.

Rural Area Flexibility Analysis

No rural area flexibility analysis is submitted with this notice because the proposed rule does not impose any requirements on rural areas. The rule will not impose any adverse economic impact on rural areas or impose any reporting, recordkeeping, professional services or other compliance requirements on rural areas.

Job Impact Statement

No job impact statement is submitted with this notice because the proposed rule does not impose any adverse economic impact on existing jobs, employment opportunities, or self-employment. This regulation governs tuition charges for State University of New York and will not have any adverse impact on the number of jobs or employment.

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

State Basic Financial Assistance for Operating Expenses of Community Colleges Under the Program of SUNY and CUNY

I.D. No. SUN-29-15-00004-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 602.8(c) of Title 8 NYCRR.

Statutory authority: Education Law, sections 355(1)(c) and 6304(1)(b); L. 2014, ch. 53

Subject: State basic financial assistance for operating expenses of community colleges under the program of SUNY and CUNY.

Purpose: To modify limitations formula for basic State Financial assistance and conform to the Education Law and the 2014-15 Budget Bill.

Text of proposed rule: Subdivision (c) of section 602.8 of said Title 8 is amended to read as follows, subject to the approval of the Director of the Budget (brackets denote old material to be deleted; underlining denote new material to be added):

(c) Basic State financial assistance.

(1) Full opportunity colleges. The basic State financial assistance for community colleges, implementing approved full opportunity programs, shall be the lowest of the following:

(i) two-fifths (40%) of the net operating budget of the college, or campus of a multiple campus college, as approved by the State University trustees;

(ii) two-fifths (40%) of the net operating costs of the college, or campus of a multiple campus college; or

(iii) for the current college fiscal year the total of the following:

(a) the budgeted or actual number (whichever is less) of full-time equivalent students enrolled in programs eligible for State financial assistance multiplied by [\$2,497] \$2,597; and

(b) up to one-half (50%) of rental costs for physical space.

(2) Non-full opportunity colleges. The basic State financial assistance for community colleges not implementing approved full opportunity programs shall be the lowest of the following:

(i) one-third (33%) of the net operating budget of the college, or campus of a multiple campus college, as approved by the State University trustees;

(ii) one-third (33%) of the net operating costs of the college, or campus of a multiple campus college; or

(iii) for the college fiscal year current, the total of the following:

(a) the budgeted or actual number (whichever is less) of full-time equivalent students enrolled in programs eligible for State financial assistance multiplied by [\$2,081] \$2,165; and

(b) up to one-half (50%) of rental cost for physical space.

(3) Notwithstanding the provisions of paragraphs (1) and (2) of this subdivision, a community college or a new campus of a multiple campus community college in the process of formation shall be eligible for basic State financial assistance in the amount of one-third of the net operating budget or one-third of the net operating costs, whichever is the lesser, for those colleges not implementing an approved full opportunity program plan, or two-fifths of the net operating budget or two-fifths of the net operating costs, whichever is the lesser, for those colleges implementing an approved full opportunity program, during the organization year and the first two fiscal years in which students are enrolled.

Text of proposed rule and any required statements and analyses may be obtained from: Lisa S. Campo, State University of New York, State University Plaza, Albany, NY 12246, (518) 320-1400, email: Lisa.Campo@SUNY.edu

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

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

Consensus Rule Making Determination

The State University of New York has determined that no person is likely to object to this rule as written because it provides timely State operating assistance to public community colleges of the State and City Universities of New York and adopts amendments to the tuition regulations for community colleges under the program of the State University of New York for the 2015-2016 fiscal year.

Job Impact Statement

No job impact statement is submitted with this notice because the adoption of this rule does not impose any adverse economic impact on existing jobs, employment opportunities, or self-employment. This rule making governs the financing of community colleges operating under the program of the State University and will not have any adverse impact on the number of jobs or employment opportunities in the state.

Department of Taxation and Finance

NOTICE OF ADOPTION

City of New York Withholding Tables and Other Methods

I.D. No. TAF-17-15-00010-A

Filing No. 608

Filing Date: 2015-07-07

Effective Date: 2015-07-22

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

Action taken: Amendment of Appendix 10-C of 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); L. 2015, ch. 59, part B

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

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

Text or summary was published in the April 29, 2015 issue of the Register, I.D. No. TAF-17-15-00010-EP.

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

Text of rule and any required statements and analyses may be obtained from: Kathleen D. O'Connell, Department of Taxation and Finance, Office of Counsel, Building 9, W.A. Harriman Campus, Albany, NY 12227, (518) 530-4153, email: tax.regulations@tax.ny.gov

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.