RULE MAKING ACTIVITIES

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

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

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

Department of Agriculture and Markets

NOTICE OF ADOPTION

Incorporation by Reference of the 2013 Edition of the Grade A Pasteurized Milk Ordinance (''PMO'')

I.D. No. AAM-05-15-00002-A
Filing No. 462
Filing Date: 2015-06-05
Effective Date: 2015-06-24

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

Action taken: Amendment of section 2.1 of Title 1 NYCRR.

Statutory authority: Agriculture and Markets Law, sections 16, 18, 46, 46-a, 50-k, 71-a, 71-n and 214.6

Subject: Incorporation by reference of the 2013 edition of the Grade A Pasteurized Milk Ordinance (''PMO'').

Purpose: To require certain producers, processors and manufacturers of milk and milk products to comply with the 2013 edition of the PMO.

Text of final rule: Paragraph (1) of subdivision (b) of section 2.1 of 1 NYCRR is amended to read as follows:

(1) The sanitation provisions of this Part shall not apply to dairy farms or dairy farmers, or to milk plants and persons who operate milk plants, that have a sanitation compliance rating of 90 or better, as set forth in the latest Sanitation Compliance and Enforcement Ratings of interstate milk shippers list (IMS List), except as set forth in paragraph (2) of this subdivision. Dairy farms and dairy farmers, and milk plants and persons who operate milk plants, that have such a sanitation compliance rating shall comply with the sanitation requirements set forth in the Grade A Pasteurized Milk Ordinance, [2011] *2013* edition, published by the United States Department of Health and Human Services, Washington, DC (PMO) except to the extent that any provision of the PMO is in conflict with a provision of State and/or Federal law and except as provided in paragraph (2) of this subdivision. A copy of the PMO is available for public inspection at the Division of Milk Control and Dairy Services, Department of Agriculture and Markets, 10B Airline Drive, Albany, NY 12235, and at the Department of State, [41 State Street] *99 Washington Avenue*, Albany, NY 12231.

Subdivision (c) of section 2.1 of 1 NYCRR is amended to read as follows:

(c) Every term used in subdivision (b) of this section that is defined in the Grade A Pasteurized Milk Ordinance, [2011] *2013* edition, shall have the meaning ascribed to such term therein.

Final rule as compared with last published rule: Nonsubstantive changes were made in section 2.1(b)(1).

Text of rule and any required statements and analyses may be obtained from: Casey McCue, Director, Division of Milk Control, NYS Dept. of Agriculture and Markets, 10B Airline Drive, Albany, NY 12235, (518) 457-1772, email: Casey.McCue@agriculture.ny.gov

Revised Job Impact Statement

The express terms of the proposed rule were changed to provide that a copy of the 2013 edition of the Pasteurized Milk Ordinance, incorporated by reference in 1 NYCRR section 2.1(b)(1), is available at the Department of State's current address, i.e., 99 Washington Avenue, Albany, New York 12231. As such, the change made to the last published rule does not necessitate that the previously published statement in lieu of job impact statement be revised.

Assessment of Public Comment

The agency received no public comment.

Office of Children and Family Services

PROPOSED RULE MAKING
NO HEARING(S) SCHEDULED

Expansion of the Business Enterprise Program Priority in Accordance with Chapter 532 of the Laws of 2010

I.D. No. CFS-25-15-00004-P

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

Proposed Action: Amendment of sections 729.1, 729.2(b), (e), 729.18, 729.19 and 729.20(b) of Title 18 NYCRR.

Statutory authority: Social Services Law, sections 20, 34 and 38; Unconsolidated Law, section 8714-a

Subject: Expansion of the Business Enterprise Program priority in accordance with chapter 532 of the Laws of 2010.

Purpose: To allow the Business Enterprise Program to expand opportunities for employment of blind and visually impaired individuals.

Substance of proposed rule (Full text is posted at the following State website:http://ocfs.ny.gov): Amendment of 18 NYCRR Part 729

Section 729.1 of Title 18 is amended pursuant to Chapter 532 of the

Laws of 2010 to include buildings which house an authority, agency or entity whose board of directors or executives are appointed by the Governor, or any airport located in the State of New York, as potential locations at which the Commission is authorized to establish a Business Enterprise Program vending facility.

Paragraph (b) of Section 729.2 is amended to include the reference to Chapter 532 of the Laws of 2010.

Paragraph (e) of Section 729.2 is amended to expand the definition of "Instrumentality of the State" to include all authorities and airports located in the State of New York.

Section 729.18 is amended to clarify the Commission's procedures to establish new locations for the operation of vending facilities. The section is retitled "Vending facility operating agreements with Licensees." Protections against discrimination for vending facility patrons are expanded. Paragraphs (a) through (c) of this section are deleted and moved to Section 729.19.

Section 729.19 is amended to eliminate the minimum population requirement in State buildings for the Commission to exercise its priority. Prior exemptions for the State University of New York, New York State Thruway Authority and the Department of Corrections and Community Supervision are also eliminated. Paragraphs (a) through (c) of 729.18 have been moved to this section for clarity, and other paragraphs in the existing regulations are reordered.

New paragraph 729.19(f) is added, to provide factors to be examined in determining if a particular location is feasible for the operation of a vending facility. Information the Commission will consider in determining if the location would be adverse to the interests of the state is also set forth.

Section 729.19 is further amended to require agencies, authorities and other entities covered by Chapter 532 of the Laws of 2010 to annually designate a contact to communicate with the Commission regarding Business Enterprise Program matters.

Section 729.20(b) is amended to condition a blind licensee's receipt of income from vending machines adjacent to the vending facility operated by that blind licensee upon the scope of the vending facility permit as well as whether the receipt of such income by the blind licensee would be adverse to the interests of the state.

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

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:

Social Services Law (SSL) § 20(3) authorizes the New York State Office of Children and Family Services (OCFS) to supervise local social services departments and to establish rules, regulations and policies to carry out these duties.

SSL § 20(3)(d) authorizes OCFS to establish rules, regulations and policies to carry out its powers and duties under this chapter.

SSL § 38 provides statutory authority to the New York State Commission for the Blind (NYSCB), under the supervision and control of the Commissioner of OCFS.

Unconsolidated Laws § 8714-a provides statutory authority for the establishment of the Business Enterprise Program (BEP) and authorizes NYSCB to promulgate regulations necessary to carry out the program.

2. Legislative objectives:

These proposed regulations serve the legislative objective of creating additional business opportunities for people who are legally blind, pursuant to Chapter 693 of the Laws of 1992, as amended by Chapter 532 of the Laws of 2010.

3. Needs and benefits:

NYSCB's BEP is charged with creating business opportunities for people who are legally blind. It is the mission of NYSCB and the BEP to provide business opportunities to legally blind persons- a segment of New York State's population that traditionally experiences a high rate of unemployment.

The proposed regulatory amendments expand the priority of the BEP to establish vending facilities on State-owned and other property, by removing a population requirement in State buildings as well as including authorities and airports as locations subject to the BEP's priority. They also eliminate prior exemptions for vending facilities located on property controlled by the State University of New York, Thruway Authority and the Department of Corrections and Community Supervision, and thus increase the number of potential BEP sites.

As the number of persons in State office and other buildings has decreased, the number of business opportunities for legally blind individuals has also decreased, and BEP vending facilities became less profitable. These amendments will allow the BEP to establish vending facilities in a greater array of locations, and thus potentially enhance business opportunities for licensed blind vendors.

4. Costs:

The initial start-up of a BEP Vending facility typically costs approximately $190,000 and includes all construction, permits, fixtures and coolers in addition to adaptive technologies such as talking cash registers. BEP Program's current goal is to open one new location each year, as sites are identified. All expenses associated with developing new vending locations are funded entirely with Federal Basic Support Vocational Rehabilitation grant award. Ample Federal funds are readily available and have been set aside specifically to develop employment opportunities for the blind.

The average annual revenue from a vending facility is approximately $40,000. Of that, 20% of all revenue after this first $18,000 is put into the Vending fund to provide benefits and support to blind vendors. This amounts to each vending facility contributing on average $4,400 per year toward benefits for the group. The revenue generated by vending facilities, and thereby the contribution towards benefits, varies greatly based on the profitability of the location. The additional locations made available by the changes in law for 2010 are significantly different than those currently available. If these facilities are in larger, high traffic areas, they will increase net vending revenues, thereby moving the BEP program closer to being self-sustaining.

More definitive fiscal effects of this legislation would be dependent on the pacing of facility deployment and the revenue derived from each facility. NYSCB indicates that future studies related to the feasibility of various new facility roll-outs will provide more detailed background.

The introduction of BEP facilities at SUNY campuses and other municipal buildings will take revenue currently received by these state agencies and direct it to the blind licensee operating the new BEP vending location. This regulatory change requires that assessments be done to ensure that the aforementioned loss of revenue caused by each new location is not adverse to the interest of the State.

5. Local government mandates:

The proposed amendment does not impose any mandates upon local governments.

6. Paperwork:

The proposed amendment requires no additional paperwork.

7. Duplication:

The proposed regulation does not duplicate other state or federal requirements, because the federal regulations at 35 CFR § 395.4 require the NYSCB to promulgate rules and regulations to govern the general operation of the BEP program. Furthermore, where the federal regulations govern the state licensing agency (NYSCB), these proposed regulations govern the operations of the BEP program as they relate to licensed blind managers, the vending facilities and host agencies.

8. Alternatives:

The regulatory amendment is necessary to implement Chapter 532 of the Laws of 2010, which amended Unconsolidated Laws § 8714-a to create the potential for additional business opportunities within the BEP program for people who are legally blind. OCFS considered issuing policy guidance within existing regulatory authority, but believes these regulatory amendments are necessary to promote best practices, achieve consistent operations and compliance, and facilitate the development of new BEP business opportunities for licensed blind vendors.

9. Federal standards:

The proposed regulations do not exceed and are not in conflict with the federal standards.

10. Compliance schedule:

The proposed regulation will take effect upon enactment. OCFS anticipates that it will provide implementation guidance to affected entities.

Regulatory Flexibility Analysis

1. Effect of rule:

The proposed amendments to 18 NYCRR Part 729 expand the priority of the NYS Commission for the Blind ("Commission") Business Enterprise Program (BEP) by removing the minimum population requirement for the Commission to exercise its priority in State buildings, including State Authorities, and Airports. Previous exemptions to this priority for the State University of New York (SUNY), the New York State Thruway Authority, and the Department of Corrections, now the Department of Corrections and Community Services, are eliminated.

These amendments incorporate the objectives of creating additional business opportunities for people who are legally blind, pursuant to chapter 693 of the Laws of 1992, as amended by chapter 532 of the Laws of 2010.

These amendments do not affect the 85 small businesses that are currently operating in the BEP. There is no impact upon local governmental units.

2. Compliance requirements:

This proposal imposes no new compliance requirements for small businesses or local governments.

3. Professional services:

No additional professional services are needed by small businesses or local governments to implement the proposed amendments.

4. Compliance costs:

There are no new compliance costs for small businesses and local governments imposed by the regulatory proposal.

5. Economic and technological feasibility:

Any affected small business or local government is anticipated to have the economic and technological ability to comply with the regulatory proposal.

6. Minimizing adverse impact:

The proposal is not anticipated to have any adverse impact upon small businesses and local governments.

7. Small business and local government participation:

Since there is no adverse impact expected, we did not consult with local governments or small businesses.

Rural Area Flexibility Analysis

1. Types and estimated numbers of rural areas:

The proposed regulations have the potential to affect rural areas throughout the State, where correctional facilities, State University of New York colleges and universities, and New York State Thruway facilities are located, by facilitating the establishment of additional vending facilities to be operated by licensed blind managers at those locations. Currently, there are several such locations in rural areas in New York State. The proposed regulations could also lead to the development of vending routes in rural areas, which are traditionally underserved. This regulatory proposal could increase business opportunities afforded to legally blind individuals in rural areas.

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

Any new businesses created by the implementation of these regulations would be held to the same standard of reporting, recordkeeping and other compliance requirements, and professional services as existing BEP businesses. There are no new reporting, recordkeeping and other compliance requirements, or professional services required by this regulatory proposal.

3. Costs:

The proposal imposes no new costs upon rural areas.

4. Minimizing adverse impact:

The proposal has no adverse impact.

5. Rural area participation:

Because there is no adverse impact on rural areas, there has not been participation by rural areas in promulgating these proposed regulations.

Job Impact Statement

Chapter 532 of the Laws of 2010 expanded the priority of the Commission for the Blind, Business Enterprise Program (BEP), to provide snack, food, vending and other services in state owned and leased properties. It is apparent from the nature and purpose of the regulatory proposal that it will not have a substantial adverse impact on jobs and employment opportunities. The proposed regulatory amendments are anticipated to create additional business opportunities for legally blind New York State residents and may result in additional federally funded staff positions within the BEP, and thus may have a positive impact on jobs and employment opportunities.

PROPOSED RULE MAKING
NO HEARING(S) SCHEDULED

To Eliminate the Use of Restraint Solely to Prevent Property Damage in Residential Facilities for Children

I.D. No. CFS-25-15-00005-P

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

Proposed Action: Amendment of section 441.17 of Title 18 NYCRR.

Statutory authority: Social Services Law, sections 20(3)(d) and 34(3)(f)

Subject: To eliminate the use of restraint solely to prevent property damage in residential facilities for children.

Purpose: To eliminate the use of restraint solely to prevent property damage in residential facilities for children.

Text of proposed rule: Paragraph (2) of subdivision (a) of section 441.17 is amended to read as follows:

(2) Acute physical behavior means only that behavior which clearly indicates the intent to inflict physical injury upon oneself or others or to [destroy property] *otherwise jeopardize the safety of any person*.

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

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:

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

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

Section 462 of the SSL authorizes OCFS to promulgate regulations concerning standards for the care and treatment of children in residential facilities under the jurisdiction of OCFS.

2. Legislative objectives:

The proposed change to the regulations governing restraint of children in residential care in facilities licensed by OCFS is necessary in order to further the legislative objective that children in such residential facilities be safe and afforded appropriate care.

3. Needs and benefits:

The proposed change to the regulations governing restraint of children in residential care in facilities licensed by OCFS would revise the provision that defines the circumstances under which restraints could be employed. Currently, the regulations permit the use of restraint when a child's behavior shows an intent to inflict physical injury on him or herself or others, or to destroy property. The proposed change would eliminate the ability to use restraint where the child's behavior shows an intent to destroy property, and replace it with permission to use restraint where the child's behavior shows an intent to otherwise jeopardize the safety of any person.

This change is necessary because the use of a restraint is a significant and potentially dangerous intervention, and should be used only when absolutely necessary. When the regulation at issue was originally written decades ago, the use of restraint to protect property was generally accepted. That view has changed, and the current prevailing view in the child welfare field is that restraint should be used only when necessary to prevent injury or danger to the child or another person. The proposed change would reflect that evolution of approach.

It is important to note that, where the child's destruction of property results in injury or danger of injury to the child or others, restraint could still be used to prevent that result. The crisis management systems used in facilities that hold operating certificates from OCFS have long prohibited the use of restraint solely to prevent property damage, so the proposed change to the regulations will not cause a change in practice.

4. Costs:

The proposed regulatory changes are not expected to have an adverse fiscal impact on the authorized agencies operating residential facilities for children or on the social services districts. Because the crisis management systems used in facilities that hold operating certificates from OCFS have long prohibited the use of restraint solely to prevent property damage, the proposed change to the regulations will not cause a change in practice and will not result in any change in costs to the residential facilities that would be affected by the change.

5. Local government mandates:

The proposed regulations will not impose any additional mandates on social services districts. Because the crisis management systems used in facilities that hold operating certificates from OCFS have long prohibited the use of restraint solely to prevent property damage, the elimination of the authority to use restraint to avoid property damage would not change practice in such facilities. Only a few social services districts operate such facilities, and no new mandates would be imposed on them.

6. Paperwork:

The proposed regulations would impose no new paperwork requirements.

7. Duplication:

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

8. Alternatives:

The alternative to removing the authority to restrain children in residential care to prevent property damage would be to continue to allow such authority. In many cases, the activity that results in the danger of property damage would also endanger the child or other persons, so the change would not actually affect many situations. Where the only danger in the child's activity would be property damage, the potentially dangerous option of restraining the child should no longer be available, so maintaining

that option is not consistent with providing the best protection of the safety of children and staff.

9. Federal standards:

The regulatory amendments do not conflict with any federal standards.

10. Compliance schedule:

The proposed rule would be effective upon adoption.

Regulatory Flexibility Analysis

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

Social services districts and voluntary authorized agencies contracting with such social services districts to provide foster care services to children will be affected by the proposed regulations. There are 58 social services districts in New York and approximately 160 voluntary authorized agencies.

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

Authorized agencies are currently required to submit their agency's restraint policy to OCFS at least once every two years. The proposed changes to the restraint regulations would not change the frequency or content of the reporting requirement or create any new requirements.

3. Costs:

The proposed regulatory changes would not impose additional costs on regulated parties.

4. Economic and technological feasibility:

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

5. Minimizing adverse impact:

The proposed changes to the regulations addressing when a child in residential care may be restrained would eliminate the threat of property damage as a basis for doing a restraint, but in practice the authorized agencies already refrain from using restraints purely to avoid property damage, so the change should have minimal impact.

6. Small business and local government participation:

Potential changes to the regulations governing use of restraints have been discussed on a number of occasions with representatives of social services districts, authorized agencies, and the Council of Family and Child Caring Agencies. Drafts of earlier versions of proposed changes were shared with them for review and comment. Their input was incorporated into the proposed regulations.

Rural Area Flexibility Analysis

1. Types and estimated number of rural areas:

Social services districts in rural areas and voluntary authorized agencies contracting with such social services districts to provide foster care services to children will be affected by the proposed regulations. There are 44 social services districts in rural areas and approximately 100 authorized agencies in rural areas.

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

Authorized agencies are currently required to submit their agency's restraint policy to OCFS at least once every two years. The proposed changes to the restraint regulations would not change the frequency or content of the reporting requirement or create any new requirements.

3. Costs:

The proposed regulatory changes would not impose additional costs on regulated parties.

4. Minimizing adverse impact:

The proposed changes to the regulations addressing when a child in residential care may be restrained would eliminate the threat of property damage as a basis for doing a restraint, but in practice the authorized agencies already refrain from using restraints purely to avoid property damage, so the change should have minimal impact.

5. Rural area participation:

Potential changes to the regulations governing use of restraints have been discussed on a number of occasions with representatives of social services districts, authorized agencies, including those that serve rural communities, and the Council of Family and Child Caring Agencies. Drafts of earlier versions of proposed changes were shared with them for review and comment. Their input was incorporated into the proposed regulations.

Job Impact Statement

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

Department of Civil Service

ERRATUM

A Notice of Adoption, I.D. No. CVS-20-14-00003-A, pertaining to Jurisdictional Classification, published in the June 3, 2015 issue of the *State Register* inadvertently failed to include an assessment of written comments received on the proposed rule. The Department of Civil Service apologizes for any inconvenience this may have caused. The Assessment of Public Comment is published below in its entirety:

Assessment of Public Comment

At a public meeting held on April 8, 2014, the New York State Civil Service Commission amended Appendix 2 to 4 NYCCR by approving the placement of 230 positions of Empire Fellow in the non-competitive jurisdictional class. Following publication of the Notice of Proposed Rule Making, a public comment in opposition to the proposed rule amendment, dated June 30, 2014, was received from the New York State Public Employees Federation, AFL-CIO, (PEF).

Article V, section 6 of the State Constitution requires that appointments in the classified service of the State shall be "made according to merit and fitness, to be ascertained, as far as practicable, by examination which, as far as practicable, shall be competitive…" The Legislature has defined a number of exceptions where competitive examination in not practicable, such as contained in Civil Service Law section 42, which authorizes the filling of positions in the non-competitive jurisdictional class. Non-competitive class positions typically require candidates to meet minimum qualifications consisting of academic credentials or training and/or relevant work experience.

Empire Fellow positions are two-year term-limited appointments for highly skilled professionals who possess a bachelor's degree or higher with three years of professional work experience and who demonstrate leadership capacity and a desire to make a significant contribution to enhancing New York State government operations. The Empire Fellows undertake special projects as assigned and report directly to State agency executive management or serve in the Office of Governor. Empire Fellows may be cycled through several different assignments during their fellowships and take part in a structured graduate-style training program focusing on areas of public administration/management including human resources, budgeting and community engagement/press relations.

PEF asserts that Fellows perform duties analogous to promotion-level competitive class positions such as Environmental Analyst 3 and Program Operations Specialist 5. PEF also claims, that based upon unverified anecdotal evidence, two Fellows had performed the same duties as competitive Senior Attorneys.

After review of the public comment, the State Civil Service Commission has determined to adopt the amendment as originally proposed. Commission decisions in such matters are based upon information provided by the appointing authority (here, the State Office of General Services), as well as comments from professional staff of the Department of Civil Service Divisions of Classification and Compensation and Staffing Services. Department staff advised the Commission that Fellows will work on highly sensitive and cross-functional matters for agency heads and the Executive Chamber. The variety and nature of these projects are not amenable to competitive examinations, which may be limited to specific career-oriented test rubrics.

The promotion-level competitive class titles cited in PEF's comment reference certain analytical and policy development duties in narrow fields, but these titles remain fundamentally distinct from the role of the Fellows program, which is intended to introduce and cultivate future generalist managers and leaders from outside of State service. As such, Fellows must enter State government at a relatively high level, rather than progressing through a competitive career ladder of successive promotion examinations. Further, the Fellows serve two-year term appointments and do not expect and cannot obtain tenure that ordinarily accompanies a permanent appointment from an eligible list established after a competitive examination.

Therefore, the unique and varied duties, high-level reporting relationships of the positions, along with the personal characteristics required of successful candidates and the limited nature of the appointments, render competitive examination impracticable for Empire Fellow positions. Candidates' merit and fitness can be properly assessed through a non-competitive evaluation, which includes established

minimum qualifications and a rigorous selection process featuring individualized resume reviews. Accordingly, the Commission continues to find that the Empire Fellow positions belong in the non-competitive jurisdictional class and the subject amendment to Appendix 2 of 4 NYCRR has been approved for final adoption.

Division of Criminal Justice Services

NOTICE OF ADOPTION

Statement of Purpose for Medical and Physical Fitness Standards and Procedures for Police Officer Candidates

I.D. No. CJS-13-15-00023-A
Filing No. 460
Filing Date: 2015-06-04
Effective Date: 2015-06-24

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

Action taken: Amendment of section 6000.2(b) of Title 9 NYCRR.

Statutory authority: Executive Law, sections 837(13) and 840(2)

Subject: Statement of purpose for medical and physical fitness standards and procedures for police officer candidates.

Purpose: To clarify the purpose for the physical fitness standards for police officer candidates.

Text or summary was published in the April 1, 2015 issue of the Register, I.D. No. CJS-13-15-00023-P.

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

Text of rule and any required statements and analyses may be obtained from: Rosemarie Hewig, Esq., Division of Criminal Justice Services, 80 South Swan Street, Albany, New York 12210, (518) 457-2409, email: Rosemarie.hewig@dcjs.ny.gov

Assessment of Public Comment
The agency received no public comment.

Department of Economic Development

EMERGENCY RULE MAKING

START-UP NY Program

I.D. No. EDV-25-15-00002-E
Filing No. 452
Filing Date: 2015-06-03
Effective Date: 2015-06-03

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

Action taken: Addition of Part 220 to Title 5 NYCRR.

Statutory authority: Economic Development Law, art. 21; sections 435-36; L. 2013, ch. 68

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

Specific reasons underlying the finding of necessity: On June 24, 2013, Governor Andrew Cuomo signed into law the SUNY Tax-free Areas to Revitalize and Transform UPstate New York (START-UP NY) program, which offers an array of tax benefits to eligible businesses and their employees that locate in facilities affiliated with New York universities and colleges. The START-UP NY program will leverage these tax benefits to attract innovative start-ups and high tech industries to New York so as to create jobs and promote economic development.

Regulatory action is required to implement the START-UP NY program. The legislation creating the START-UP NY program delegated to the Department of Economic Development the establishment of procedures for the implementation and execution of the START-UP NY program. Without regulatory action by the Department of Economic Development, procedures will not be in place to accept applications from institutions of higher learning desiring to create Tax-Free Areas, or businesses wishing to participate in the START-UP NY program.

Adoption of this rule will enable the State to begin accepting applications from businesses to participate in the START-UP NY program, and represent a step towards the realization of the strategic objectives of the START-UP NY program: attracting and retaining cutting-edge start-up companies, and positioning New York as a global leader in high tech industries.

Subject: START-UP NY Program.

Purpose: Establish procedures for the implementation and execution of START-UP NY.

Substance of emergency rule: START-UP NY is a new program designed to stimulate economic development and promote employment of New Yorkers through the creation of tax-free areas that bring together educational institutions, innovative companies, and entrepreneurial investment.

1) The regulation defines key terms, including: "business in the formative stage," "campus," "competitor," "high tech business," "net new job," "new business," and "underutilized property."

2) The regulation establishes that the Commissioner shall review and approve plans from State University of New York (SUNY) colleges, City University of New York (CUNY) colleges, and community colleges seeking designation of Tax-Free NY Areas, and report on important aspects of the START-UP NY program, including eligible space for use as Tax-Free Areas and the number of employees eligible for personal income tax benefits.

3) The regulation creates the START-UP NY Approval Board, composed of three members appointed by the Governor, Speaker of the Assembly and Temporary President of the Senate, respectively. The START-UP NY Approval Board reviews and approves plans for the creation of Tax-Free NY Areas submitted by private universities and colleges, as well as certain plans from SUNY colleges, CUNY colleges, and community colleges, and designates Strategic State Assets affiliated with eligible New York colleges or universities. START-UP NY Approval Board members may designate representatives to act on their behalf during their absence. START-UP NY Approval Board members must remain disinterested, and recuse themselves where appropriate.

4) The regulation establishes eligibility criteria for Tax-Free Areas. Eligibility of vacant land and space varies based on whether it is affiliated with a SUNY college, CUNY college, community college, or private college, and whether the land or space in question is located upstate, downstate, or in New York City. The regulation prohibits any allocation of land or space that would result in the closure or relocation of any program or service associated with a university or college that serves students, faculty, or staff.

5) The regulation establishes eligibility requirements for businesses to participate in the START-UP program, and enumerates excluded industries. To be eligible, a business must: be a new business to the State at the time of its application, subject to exceptions for NYS incubators, businesses restoring previously relocated jobs, and businesses the Commissioner has determined will create net new jobs; comply with applicable worker protection, environmental, and tax laws; align with the academic mission of the sponsoring institution (the Sponsor); demonstrate that it will create net new jobs in its first year of operation; and not be engaged in the same line of business that it conducted at any time within the last five years in New York without the approval of the Commissioner. Businesses locating downstate must be in the formative stages of development, or engaged in a high tech business. To remain eligible, the business must, at a minimum, maintain net new jobs and the average number of jobs that existed with the business immediately before entering the program.

6) The regulation describes the application process for approval of a Tax-Free Area. An eligible institution may submit a plan to the Commissioner identifying land or space to be designated as a Tax-Free Area. This plan must: identify precisely the location of the applicable land or space; describe business activities to be conducted on the land or space; establish that the business activities in question align with the mission of the institution; indicate how the business would generate positive community and economic benefits; summarize the Sponsor's procedures for attracting businesses; include a copy of the institution's conflict of interest guidelines; attest that the proposed Tax-Free Area will not jeopardize or conflict with any existing tax-exempt bonds used to finance the Sponsor; and certify that the Sponsor has not relocated or eliminated programs serving students, faculty, or staff to create the vacant land. Applications by private institutions require approval by both the Commissioner and START-UP NY Approval Board. The START-UP NY Approval Board is to approve

applications so as to ensure balance among rural, urban and suburban areas throughout the state.

7) A sponsor applying to create a Tax-Free Area must provide a copy of its plan to the chief executive officer of any municipality in which the proposed Tax-Free Area is located, local economic development entities, the applicable university or college faculty senate, union representatives and the campus student government. Where the plan includes land or space outside of the campus boundaries of the university or college, the institution must consult with the chief executive officer of any municipality in which the proposed Tax-Free Area is to be located, and give preference to underutilized properties identified through this consultation. The Commissioner may enter onto any land or space identified in a plan, or audit any information supporting a plan application, as part of his or her duties in administering the START-UP program.

8) The regulation provides that amendments to approved plans may be made at any time through the same procedures as such plans were originally approved. Amendments that would violate the terms of a lease between a sponsor and a business in a Tax-Free Area will not be approved. Sponsors may amend their plans to reallocate vacant land or space in the case that a business, located in a Tax-Free Area, is disqualified from the program but elects to remain on the property.

9) The regulation describes application and eligibility requirements for businesses to participate in the START-UP program. Businesses are to submit applications to sponsoring universities and colleges by 12/31/20. An applicant must: (1) authorize the Department of Labor (DOL) and Department of Taxation and Finance (DTF) to share the applicant's tax information with the Department of Economic Development (DED); (2) allow DED to monitor the applicant's compliance with the START-UP program; (3) provide to DED, upon request, information related to its business organization, tax returns, investment plans, development strategy, and non-competition with any businesses in the community but outside of the Tax-Free Area; (4) certify efforts to ascertain that the business would not compete with another business in the same community but outside the Tax-Free Area, including an affidavit that notice regarding the application was published in a daily publication no fewer than five consecutive days; (5) include a statement of performance benchmarks as to new jobs to be created through the applicant's participation in START-UP; (6) provide a statement of consequences for non-conformance with the performance benchmarks, including proportional recovery of tax benefits when the business fails to meet job creation benchmarks in up to three years of a ten-year plan, and removal from the program for failure to meet job creation benchmarks in at least four years of a ten-year plan; (7) identify information submitted to DED that the business deems confidential, proprietary, or a trade secret. Sponsors forward applications deemed to meet eligibility requirements to the Commissioner for further review. The Commissioner shall reject any application that does not satisfy the START-UP program eligibility requirements or purpose, and provide written notice of the rejection to the Sponsor. The Commissioner may approve an application anytime after receipt; if the Commissioner approves the application, the business applicant is deemed accepted into the START-UP NY Program and can locate to the Sponsor's Tax-Free NY Area. Applications not rejected will be deemed accepted after sixty days. The Commissioner is to provide documentation of acceptance to successful applicants.

10) The regulation allows a business to amend a successful application at any time in accordance with the procedure of its original application. No amendment will be approved that would contain terms in conflict with a lease between a business and a SUNY college when the lease was included in the original application.

11) The regulation permits a business that has been rejected from the START-UP program to locate within a Tax-Free Area without being eligible for START-UP program benefits, or to reapply within sixty days via a written request identifying the reasons for rejection and offering verified factual information addressing the reasoning of the rejection. Failure to reapply within sixty days waives the applicant's right to resubmit. Upon receipt of a timely resubmission, the Commissioner may use any resources to assess the claim, and must notify the applicant of his or her determination within sixty days. Disapproval of a reapplication is final and non-appealable.

12) With respect to audits, the regulation requires businesses to provide access to DED, DTF, and DOL to all records relating to facilities located in Tax-Free Areas at a business location within the State during normal business hours. DED, DTF, and DOL are to take reasonable steps to prevent public disclosure of information pursuant to Section 87 of the Public Officers Law where the business has timely informed the appropriate officials, the records in question have been properly identified, and the request is reasonable.

13) The regulation provides for the removal of a business from the program under a variety of circumstances, including violation of New York law, material misrepresentation of facts in its application to the START-UP program, or relocation from a Tax-Free Area. Upon removing a business from the START-UP program, the Commissioner is to notify the business and its Sponsor of the decision in writing. This removal notice provides the basis for the removal decision, the effective removal date, and the means by which the affected business may appeal the removal decision. A business shall be deemed served three days after notice is sent. Following a final decision, or waiver of the right to appeal by the business, DED is to forward a copy of the removal notice to DTF, and the business is not to receive further tax benefits under the START-UP program.

14) To appeal removal from the START-UP program, a business must send written notice of appeal to the Commissioner within thirty days from the mailing of the removal notice. The notice of appeal must contain specific factual information and all legal arguments that form the basis of the appeal. The appeal is to be adjudicated in the first instance by an appeal officer who, in reaching his or her decision, may seek information from outside sources, or require the parties to provide more information. The appeal officer is to prepare a report and make recommendations to the Commissioner. The Commissioner shall render a final decision based upon the appeal officer's report, and provide reasons for any findings of fact or law that conflict with those of the appeal officer.

15) With regard to disclosure authorization, businesses applying to participate in the START-UP program authorize the Commissioner to disclose any information contained in their application, including the projected new jobs to be created.

16) In order to assess business performance under the START-UP program, the Commissioner may require participating businesses to submit annual reports within thirty days at the end of their taxable year describing the businesses' continued satisfaction of eligibility requirements, jobs data, an accounting of wages paid to employees in net new jobs, and any other information the Commissioner may require. The Commissioner shall prepare annual reports on the START-UP program for the Governor and publication on the DED website, beginning April 1, 2015. Information contained in businesses' annual reports may be published in these reports or otherwise disseminated.

17) The Freedom of Information Law is applicable to the START-UP program, subject to disclosure waivers to protect certain proprietary information submitted in support of an application to the START-UP program.

18) All businesses must keep relevant records throughout their participation in the START-UP program, plus three years. DED has the right to inspect all such documents upon reasonable notice.

19) If the Commissioner determines that a business has acted fraudulently in connection with its participation in the START-UP program, the business shall be immediately terminated from the program, subject to criminal penalties, and liable for taxes that would have been levied against the business during the current year.

20) The regulation requires participating universities and colleges to maintain a conflict of interest policy relevant to issues that may arise during the START-UP program, and to report violations of said policies to the Commissioner for publication.

This notice is intended to serve only as an emergency adoption, to be valid for 90 days or less. This rule expires August 31, 2015.

Text of rule and any required statements and analyses may be obtained from: Phillip Harmonick, New York State Department of Economic Development, 625 Broadway, Albany, New York 12207, (518) 292-5112, email: pharmonick@esd.ny.gov

Regulatory Impact Statement

STATUTORY AUTHORITY:

Chapter 68 of the Laws of 2013 requires the Commissioner of Economic Development to promulgate rules and regulations to establish procedures for the implementation and execution of the SUNY Tax-free Areas to Revitalize and Transform UPstate New York program (START-UP NY). These procedures include, but are not limited to, the application processes for both academic institutions wishing to create Tax-Free NY Areas and businesses wishing to participate in the START-UP NY program, standards for evaluating applications, and any other provisions the Commissioner deems necessary and appropriate.

LEGISLATIVE OBJECTIVES:

The proposed rule is in accord with the public policy objectives the New York State Legislature sought to advance by enacting the START-UP NY program, which provides an incentive to businesses to locate critical high-tech industries in New York State as opposed to other competitive markets in the U.S. and abroad. It is the public policy of the State to establish Tax-Free Areas affiliated with New York universities and colleges, and to afford significant tax benefits to businesses, and the employees of those businesses, that locate within these Tax-Free Areas. The tax benefits are designed to attract and retain innovative start-ups and high-tech industries, and secure for New York the economic activity they generate. The proposed rule helps to further such objectives by establishing the application process for the program, clarifying the nature of eligible busi-

nesses and facilities, and describing key provisions of the START-UP NY program.

NEEDS AND BENEFITS:

The emergency rule is necessary in order to implement the statute contained in Article 21 of the Economic Development Law, creating the START-UP NY program. The statute directs the Commissioner of Economic Development to establish procedures for the implementation and execution of the START-UP NY program.

Upstate New York has faced longstanding economic challenges due in part to the departure of major business actors from the region. This divestment from upstate New York has left the economic potential of the region unrealized, and left many upstate New Yorkers unemployed.

START-UP NY will promote economic development and job creation in New York, particularly the upstate region, through tax benefits conditioned on locating business facilities in Tax-Free NY Areas. Attracting start-ups and high-tech industries is critical to restoring the economy of upstate New York, and to positioning the state as a whole to be competitive in a globalized economy. These goals cannot be achieved without first establishing procedures by which to admit businesses into the START-UP NY program.

The proposed regulation establishes procedures and standards for the implementation of the START-UP program, especially rules for the creation of Tax-Free NY Areas, application procedures for the admission of businesses into the program, and eligibility requirements for continued receipt of START-UP NY benefits for admitted businesses. These rules allow for the prompt and efficient commencement of the START-UP NY program, ensure accountability of business participants, and promote the general welfare of New Yorkers.

COSTS:

I. Costs to private regulated parties (the business applicants): None. The proposed regulation will not impose any additional costs to eligible business applicants.

II. Costs to the regulating agency for the implementation and continued administration of the rule: None.

III. Costs to the State government: None.

IV. Costs to local governments: None.

LOCAL GOVERNMENT MANDATES:

The rule establishes certain property tax benefits for businesses locating in Tax-Free NY Areas that may impact local governments. However, as described in the accompanying statement in lieu of a regulatory flexibility analysis for small businesses and local governments, the program is expected to have a net-positive impact on local government.

PAPERWORK:

The rule establishes application and eligibility requirements for Tax-Free NY Areas proposed by universities and colleges, and participating businesses. These regulations establish paperwork burdens that include materials to be submitted as part of applications, documents that must be submitted to maintain eligibility, and information that must be retained for auditing purposes.

DUPLICATION:

The proposed rule will create a new section of the existing regulations of the Commissioner of Economic Development, Part 220 of 5 NYCRR. Accordingly, there is no risk of duplication in the adoption of the proposed rule.

ALTERNATIVES:

No alternatives were considered in regard to creating a new regulation in response to the statutory requirement. The regulation implements the statutory requirements of the START-UP NY program regarding the application process for creation of Tax-Free NY Areas and certification as an eligible business. This action is necessary in order to clarify program participation requirements and is required by the legislation establishing the START-UP NY program.

FEDERAL STANDARDS:

There are no federal standards applicable to the START-UP NY program; it is purely a State program that offers tax benefits to eligible businesses and their employees. Therefore, the proposed rule does not exceed any federal standard.

COMPLIANCE SCHEDULE:

The affected State agency (Department of Economic Development) and the business applicants will be able to achieve compliance with the regulation as soon as it is implemented.

Regulatory Flexibility Analysis

Participation in the START-UP NY program is entirely at the discretion of qualifying business that may choose to locate in Tax-Free NY Areas. Neither statute nor the proposed regulations impose any obligation on any business entity to participate in the program. Rather than impose burdens on small business, the program is designed to provide substantial tax benefits to start-up businesses locating in New York, while providing protections to existing businesses against the threat of tax-privileged start-up companies locating in the same community. Local governments may not be able to collect tax revenues from businesses locating in certain Tax-Free NY Areas. However, the regulation is expected to have a net-positive impact on local governments in light of the substantial economic activity associated with businesses locating their facilities in these communities.

Because it is evident from the nature of the proposed rule that it will have a net-positive impact on small businesses and local government, no further affirmative steps were needed to ascertain that fact and none were taken. Accordingly, a regulatory flexibility analysis for small businesses and local government is not required and one has not been prepared.

Rural Area Flexibility Analysis

The START-UP NY program is open to participation from any business that meets the eligibility requirements, and is organized as a corporation, partnership, limited liability company, or sole proprietorship. A business's decision to locate its facilities in a Tax-Free NY Area associated with a rural university or college would be no impediment to participation; in fact, START-UP NY allocates space for Tax-Free NY Areas specifically to the upstate region which contains many of New York's rural areas. Furthermore, START-UP NY specifically calls for the balanced allocation of space for Tax-Free NY Areas between eligible rural, urban, and suburban areas in the state. Thus, the regulation will not have a substantial adverse economic impact on rural areas, and instead has the potential to generate significant economic activity in upstate rural areas designated as Tax-Free NY Areas. Accordingly, a rural flexibility analysis is not required and one has not been prepared.

Job Impact Statement

The regulation establishes procedures and standards for the administration of the START-UP NY program. START-UP NY creates tax-free areas designed to attract innovative start-ups and high-tech industries to New York so as to stimulate economic activity and create jobs. The regulation will not have a substantial adverse impact on jobs and employment opportunities; rather, the program is focused on creating jobs. Because it is evident from the nature of the rulemaking that it will have either no impact or a positive impact on job and employment opportunities, no further affirmative steps were needed to ascertain that fact and none were taken. Accordingly, a job impact statement is not required and one has not been prepared.

Department of Financial Services

NOTICE OF ADOPTION

Regulation of the Conduct of Virtual Currency Businesses

I.D. No. DFS-29-14-00015-A

Filing No. 505

Filing Date: 2015-06-10

Effective Date: 2015-06-24

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

Action taken: Addition of Part 200 to Title 23 NYCRR.

Statutory authority: Financial Services Law, sections 102, 104, 201, 202, 206, 301, 302, 303, 304-a, 305, 306, 309, 404 and 408; Banking Law, sections 10, 14, 36, 37, 39, 40, 44, 44-a, 78, 128, 225-a, 600, 601-a and 601-b; and Executive Law, section 63

Subject: Regulation of the conduct of virtual currency businesses.

Purpose: Regulate retail-facing virtual currency business activity in order to protect New York consumers and users and ensure the safety and soundness of New York licensed providers of virtual currency products and services.

Substance of final rule: The following is a summary of the proposed regulation:

Section 200.1, "Introduction," sets forth the statutory authority for the rule.

Section 200.2, "Definitions," defines terms used throughout the proposed regulation. Most significantly this Section defines "virtual currency" and "virtual currency business activity" and specifies conduct that is not covered by the proposed regulation.

Section 200.3, "License," prohibits any Person from engaging in virtual currency business activity without a license.

Section 200.4, "Application," sets forth the information to be included

in a prospective licensee's application and provides for the granting of a conditional license, in certain circumstances.

Section 200.5, "Application fees," requires applicants to pay an application fee of $5000.00 to the Department of Financial Services (the "Department") and provides that licensees may need to pay fees for the processing of additional applications related to the license.

Section 200.6, "Action by superintendent," provides for the superintendent to approve or deny an application and, if approved, to suspend or revoke a license on specified grounds after a hearing.

Section 200.7, "Compliance," requires licensees to comply with all applicable federal and state law, designate a compliance officer, and maintain and enforce various written compliance policies.

Section 200.8, "Capital requirements," requires that licensees maintain minimum amounts of capital as determined by the superintendent based on a number of factors.

Section 200.9, "Custody and protection of customer assets," requires licensees to establish a bond or trust account for the benefit of their customers, requires licensees to hold virtual currency in the same type and amount as any virtual currency owed by the licensee, and prohibits licensees from encumbering customer assets.

Section 200.10, "Material change to business," requires licensees to seek prior approval by written application to introduce a materially new, or materially change an existing, product or service.

Section 200.11, "Change of control; mergers and acquisitions," requires licensees to seek prior approval by written application before executing a change of control or merger or acquisition.

Section 200.12, "Books and records," requires licensees to maintain certain records pertaining to each transaction and make such records available to the Department upon request.

Section 200.13, "Examinations," requires licensees to permit the superintendent to examine the licensee, including the licensee's books and records, at least once every two years and to make special investigations as deemed necessary by the superintendent.

Section 200.14, "Reports and financial disclosures," requires licensees to file quarterly financial statements and audited annual financial statements, to make special reports upon request, and to notify the Department upon discovery of any breach of law or upon a proposed change to the methodology used to calculate the value of virtual currency in fiat currency.

Section 200.15, "Anti-money laundering program," requires licensees to establish and implement an anti-money laundering program, which includes customer identification and transaction monitoring, to maintain records, and to make reports as required by applicable federal anti-money laundering law.

Section 200.16, "Cyber security program," requires licensees to design a cyber security program and written policy, designate a chief information security officer, make reports, and conduct audits.

Section 200.17, "Business continuity and disaster recovery," requires licensees to establish and maintain a written business continuity and disaster recovery plan to address disruptions to normal business operations.

Section 200.18, "Advertising and marketing," requires licensees to display a legend regarding its licensure by the Department, maintain all advertising and marketing materials, comply with all applicable federal and state disclosure requirements, and not make any false or misleading representations or omissions.

Section 200.19, "Consumer protection," requires licensees to disclose material risks and terms and conditions to customers and to establish an anti-fraud policy.

Section 200.20, "Complaints," requires licensees to disclose the licensee's and the Department's contact information and other information pertaining to the resolution of complaints.

Section 200.21, "Transitional period," requires Persons already engaged in virtual currency business activity to apply for a license with the Department within 45 days of the effective date of the regulation.

Section 200.22, "Severability," states that in the event a specific provision of the regulation is adjudged invalid, such judgment will not impair the validity of the remainder of the regulation.

Final rule as compared with last published rule: Nonsubstantive changes were made in sections 200.2, 200.10, 200.11, 200.13, 200.14, 200.15 and 200.19.

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

Text of rule and any required statements and analyses may be obtained from: Dana Syracuse - Office of General Counsel, New York State Department of Financial Services, 1 State Street, New York, NY 10004, (212) 709-1663, email: VCLicenseQuestions@dfs.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 is not required because the revisions to the proposed regulation do not change the substance or conclusions set forth in 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 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 New York State Department of Financial Services (the "Department") initially released proposed rule 23 NYCRR 200 in July 2014 and received over 3700 comments to that proposed rulemaking from virtual currency businesses, other financial services businesses, merchants, retailers, researchers, academics, policy centers, governmental agencies, and private individuals. Every comment was processed and considered by the Department and in February 2015 the Department issued a revised proposed rule 23 NYCRR 200, which incorporated a number of substantial changes made in response to those comments. In response to that revised proposed rulemaking the Department received more than 30 substantive comments from many of the same commenters. Many commenters addressed more than one provision of the proposed regulation, and several requested specific changes. The Department has processed and considered every comment and has made several clarifications to the regulation. This summary is intended to provide an overview of the categories of comments received by the Department, the clarifications the Department has made to the proposed regulation in response to those comments, and, where applicable, the reasons for not making additional changes or clarifications.

The Department received comments concerning the potentially broad applicability of the exemption provided to gift card programs. In response, the Department now uses the term "Prepaid Card" instead of "Gift Card" and amended the definition of that term to clarify that the exemption only applies to cards that are issued and redeemable for fiat currency. (Section 200.2)

Some commenters have expressed concern that licensees should not be required to seek approval from the Department prior to making changes to their business or introducing new products. Commenters have stated that this requirement is burdensome and may deter innovation by not allowing licensees to offer new products without prior approval and would require approval for even minor releases of new products or software. The Department has clarified the regulation to state that prior approval is only needed where a licensee is offering a materially new product, service or activity or is making a material change to an existing product service or activity for which it is already licensed. (Section 200.10)

Several commenters have stated that the 10% threshold for creating a presumption of a change of control should be raised as it could present an obstacle to fundraising and may impair a licensee's ability to attract new funding and new board members. The Department has considered this comment and has determined that the 10% threshold is appropriate and consistent with the threshold for other entities regulated by the Department. The Department has, however, added clarifying language stating that no person shall be deemed to control another person solely by reason of his or her being an officer or director of the licensee. (Section 200.11)

Some commenters have stated that virtual currency companies should not be subject to anti-money laundering and know your customer requirements. The Department has not made any changes in response to these comments. Any entity engaged in a virtual currency business activity, including those that provide hosted wallet services, should be subject to anti-money laundering and know your customer requirements. (Section 200.15)

Several commenters have expressed concern that the regulation creates a new state level requirement that calls for licensees to report when they are involved in a virtual currency transaction or series of transactions that exceeds a US Dollar value of $10,000. While no such federal requirement currently exists for virtual currency to virtual currency transactions, the Department believes that this is an important element of a sound anti-money laundering policy and therefore did not remove this provision. It is noted that entities must currently file a Currency Transaction Report with FinCEN when they are involved in cash transactions exceeding $10,000. This provision of the regulation is intended to capture instances where the transaction is not in fiat currency but in virtual currency. In addition, the regulation has been revised to clarify that licensees must only file such reports with the Department if they are not already required to do so under federal law. (Section 200.15)

A number of other comments concerned the misconception that the Department will require licensees to file duplicative Suspicious Activity Reports ("SAR") with both FinCEN and the Department. The Department has clarified the regulation to state that licensees must only make a separate filing with the Department concerning suspicious activity when they

are not already subject to SAR requirements under federal law. (Section 200.15)

The Department has also received comments stating that the proposed regulation infringes on privacy rights of consumers and presents First Amendment concerns. The Department disagrees with this comment and notes that the regulation as promulgated is not aimed at regulating the expressive aspects of virtual currency, but rather is seeking to regulate virtual currency financial services or products that pose a risk to consumers and the marketplace. The Department has a strong interest in ensuring that any licensees engaged in virtual currency business activity have robust anti-money laundering, cyber security, and consumer protection policies and procedures in place.

The Department also received several comments similar to those received during the previous comment period stating that virtual currency should be regulated under existing money transmission law or not at all. The Department has extensively considered the need to regulate virtual currency business activity and the appropriate way to do so, and it has concluded that a new regulation under the Financial Services Law is necessary to protect New York consumers and users of virtual currency-related services.

The Department has also received comments requesting a safe harbor for smaller entities whereby smaller companies that do not meet certain thresholds would not be required to meet some or all of the requirements set forth in the regulation. Many of these comments are similar to those received during the previous comment period. The Department has considered these comments and has determined that the provision for a conditional license acts as an appropriate on ramp for smaller entities while being able to ensure that licensees have appropriate safeguards in place. (200.4)

Department of Health

EMERGENCY RULE MAKING

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

I.D. No. HLT-25-15-00003-E

Filing No. 459

Filing Date: 2015-06-04

Effective Date: 2015-06-04

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

sessments, except in unusual circumstances including, but not limited to, the need to resolve any outstanding questions regarding the level, amount or duration of services to be authorized.

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

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

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

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

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

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

Subparagraph (iii) of paragraph (2) of subdivision (d) of section 505.28 is amended, and new subparagraphs (iv) and (v) of such paragraph are added, to read as follows:

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

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

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

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

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

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

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

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

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

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

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

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

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

This notice is intended to serve only as a notice of emergency adoption. This agency intends to adopt this emergency rule as a permanent rule and will publish a notice of proposed rule making in the *State Register* at some future date. The emergency rule will expire September 1, 2015.

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

Regulatory Impact Statement

Statutory Authority:

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

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

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

Legislative Objectives:

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

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

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

Needs and Benefits:

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

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

The Legislature has nullified this regulatory exception. The regulations conform the Department's personal care services regulations to the new

State law. They repeal the regulatory exception that permitted social services districts to authorize up to 12 hours of Level I services per week, capping such authorizations at no more than eight hours per week.

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

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

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

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

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

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

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

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

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

Costs to Regulated Parties:

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

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

Costs to State Government:

The regulations impose no additional costs on State government.

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

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

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

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

Costs to Local Government:

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

Costs to the Department of Health:

There will be no additional costs to the Department.

Local Government Mandates:

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

Paperwork:

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

Duplication:

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

Alternatives:

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

Federal Standards:

This rule does not exceed any minimum federal standards.

Compliance Schedule:

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

Regulatory Flexibility Analysis

Effect of Rule:

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

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

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

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

Compliance Requirements:

Social services districts currently assess whether Medicaid recipients are eligible for personal care services and the CDPAP. When 24 hour continuous care is indicated, districts are currently required to refer such cases to the local professional director or designee for final determination. The regulations would require districts to refer additional continuous care cases to the local professional director or designee; namely, those cases in which continuous care for more than 16 hours a day is indicated would also be referred to the local professional director or designee. The local professional director or designee would be required to consult with the recipient's treating physician before approving continuous care for more than 16 hours per day.

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

Professional Services:

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

Compliance Costs:

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

Economic and Technological Feasibility:

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

Minimizing Adverse Impact:

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

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

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

Small Business and Local Government Participation:

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

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

Cure Period:

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

Rural Area Flexibility Analysis

Types and Estimated Numbers of Rural Areas:

Rural areas are defined as counties with populations less than 200,000 and, for counties with populations greater than 200,000, include towns with population densities of 150 persons or less per square mile. In 2010, only 6% of all continuous care cases resided in the counties listed below. Currently there are 34 organizations which maintain contracts with local districts to provide consumer directed environmental and nutritional support functions, and 50 individual licensed home care services agencies which maintain contracts with local districts to provide Level I personal care services, within the following 43 counties having populations of less than 200,000:

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

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

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

Costs:

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

Minimizing Adverse Impact:

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

Rural Area Participation:

Individuals and organizations from rural areas have the opportunity to provide input into the redesign of New York State's Medicaid program. The Medicaid Redesign Team (MRT) is tasked by Governor Cuomo to find ways to reduce costs and increase quality and efficiency in the Medicaid program for the 2011-12 Fiscal Year. As part of its work, the

MRT sought and continues to seek ideas from the public at large, as well as experts in health care delivery and insurance, the health care workforce, economics, business, consumer rights and other relevant areas. The MRT conducted regional public hearings across the State to solicit ideas from the public on ways to reduce costs and improve the quality of the Medicaid program. Additionally, a web page was established, providing a vehicle for all individuals and organizations to provide ideas, comments and recommendations.

Job Impact Statement

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

Office of Mental Health

EMERGENCY/PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

PROS; Medical Assistance Payment Outpatient Programs; Medical Assistance Payment for Comprehensive Psychiatric Emergency Programs (CPEP)

I.D. No. OMH-25-15-00006-EP

Filing No. 482

Filing Date: 2015-06-08

Effective Date: 2015-06-08

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

Proposed Action: Amendment of Parts 512, 588 and 591 of Title 14 NYCRR.

Statutory authority: Mental Hygiene Law, sections 7.09, 31.04, 43.02(a) and (c); Social Services Law, sections 364 and 364-a; L. 2014, ch. 60

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

Specific reasons underlying the finding of necessity: This rule making increases the Medicaid fees paid to certain OMH-licensed programs consistent with the 2014-15 and 2015-16 enacted State budgets and the COLA provided as per Chapter 60 of the Laws of 2014. Consistent with Part I of Chapter 60 of the Laws of 2014, such fee increases are applied to reimbursable costs to support salary increases and salary-related fringe benefit increases. The fee increases shall be effective as of April 1, 2015, for the following programs: Personalized Recovery Oriented Services (PROS); Day Treatment Programs serving children; Continuing Day Treatment (CDT) Programs licensed solely under Article 31 of the Mental Hygiene Law, as well as CDT Programs licensed pursuant to Article 28 of the Public Health Law and Article 31 of the Mental Hygiene Law; Intensive Psychiatric Rehabilitation Treatment (IPRT); Partial Hospitalization; and Comprehensive Psychiatric Emergency Programs (CPEP). Providers of mental health services will benefit from the retroactive fee increases, as this increased funding for direct care staff should facilitate their ability to recruit and retain staff to provide quality services to persons with mental illness. For these reasons, this rule is being adopted on an emergency basis until such time as it has been formally adopted through the SAPA rule promulgation process.

Subject: PROS; Medical Assistance Payment Outpatient Programs; Medical Assistance Payment for Comprehensive Psychiatric Emergency Programs (CPEP).

Purpose: To increase Medicaid fees paid to certain OMH-licensed programs consistent with enacted State Budgets and chapter 60 of Laws of 2014.

Text of emergency/proposed rule: 1. Subdivision (e) of section 512.12 of Title 14 NYCRR is amended to read as follows:

(e) Effective [July 1, 2012] *April 1, 2015*, the monthly base rate and component add-on schedules for PROS programs are as follows:

(1) Comprehensive PROS programs:

(i) for programs operated in the Downstate Region:

Monthly Base Rate*						Component Add-On		
Pre-Adm	Level 1 2-12 Units	Level 2 13-27 Units	Level 3 28-43 Units	Level 4 44-60 Units	Level 5 61+ Units	IR	ORS	CT
[$153] *$153.37*	[$235] *$235.57*	[$553] *$554.35*	[$789] *$790.93*	[$886] *$868.11*	[$998] *$1,000.44*	[$414] *$415.39*	[$355] *$355.88*	[$279] *$279.68*

(ii) for programs operated in the Upstate Region:

Monthly Base Rate*						Component Add-On		
Pre-Adm	Level 1 2-12 Units	Level 2 13-27 Units	Level 3 28-43 Units	Level 4 44-60 Units	Level 5 61+ Units	IR	ORS	CT
[$140] *$140.35*	[$214] *$214.53*	[$503] *$504.24*	[$718] *$719.77*	[$786] *$787.94*	[$908] *$910.24*	[$377] *$377.55*	[$324] *$324.80*	[$254] *$254.63*

* The Monthly Base Rate is determined by the total PROS units associated with a single PROS participant and his or her collateral(s) in a given month.

(2) Limited license PROS programs:

(i) for programs operated in the Downstate Region:

Reimbursement Category	Monthly Fee
Intensive Rehabilitation	[$474] *$475.16*
Ongoing Rehabilitation and Support	[$391] *$391.95*

(ii) for programs operated in the Upstate Region:

Reimbursement Category	Monthly Fee
Intensive Rehabilitation	[$431] *$432.06*
Ongoing Rehabilitation and Support	[$355] *$355.88*

2. Paragraph (4) of subdivision (b) of section 512.20 of Title 14 NYCRR is amended to read as follows:

(4) If two or three of the identified CRS services are delivered off site to target population members in a calendar month, programs will be reimbursed at the base rate plus [$135] *$135.33* (upstate) or [$150] *$150.37* (downstate)*, effective April 1, 2015*. If four or more of the identified CRS services are delivered off site to target population members in a calendar month, programs will be reimbursed at the base rate plus [$270] *$270.67* (upstate) or [$300] *$300.73* (downstate)*, effective April 1, 2015*.

3. Paragraph (4) of subdivision (a) of section 588.13 of Title 14 NYCRR is amended to read as follows:

(4) Reimbursement under the medical assistance program for non-state operated continuing day treatment programs licensed solely pursuant to article 31 of the Mental Hygiene Law, and Part 587 of this Title for services provided on or after [April 1, 2011] *April 1, 2015*, shall be in accordance with the following fee schedule. The reimbursement for any regular visit shall be based upon the cumulative number of program hours provided in a calendar month to an individual recipient, excluding time spent in meals, adding two hours for each half-day visit and four hours for each full-day visit. Collateral, group collateral pre-admission and crisis visits will be reimbursed at the half-day rate for program hours 1-40 regardless of the cumulative total of hours for regular visits in that month. Collateral, group collateral, pre-admission and crisis visits shall not be included in the calculation of the cumulative total hours in the program for a recipient. When the program hours of any single visit include more than one rate, the provider of service shall be reimbursed at the rate that applies to the first hour of such visit. Regular visits shall be reimbursed on the basis of program attendance and service provision as set forth in section 588.7 of this Part. The rates of reimbursement are as follows:

(i) For programs operated in Bronx, Kings, New York, Queens, Richmond, Nassau, Suffolk, Putnam, Rockland and Westchester counties:

Program hours 1—40	[$62.01] *$62.07* full day (4 hours)
Program hours 1—40	[$31.01] *$31.04* half day (2 hours)
Program hours 41—64	[$46.51] *$46.56* full day (4 hours)
Program hours 41—64	[$23.26] *$23.28* half day (2 hours)
Program hours 65+	[$34.27] *$34.30* full day (4 hours)

Program hours 65+	[$17.14] *$17.16* half day (2 hours)
Collateral	[$31.01] *$31.04*
Group Collateral	[$31.01] *$31.04*
Crisis	[$31.01] *$31.04*
Pre-Admission	[$31.01] *$31.04*

(ii) For programs operated in Allegany, Cattaraugus, Chautauqua, Chemung, Erie, Genesee, Livingston, Monroe, Niagara, Ontario, Orleans, Schuyler, Seneca, Steuben, Tompkins, Wayne, Wyoming and Yates counties:

Program hours 1—40	[$55.81] *$55.92* full day (4 hours)
Program hours 1—40	[$27.91] *$27.96* half day (2 hours)
Program hours 41—64	[$46.51] *$46.60* full day (4 hours)
Program hours 41—64	[$23.26] *$23.60* half day (2 hours)
Program hours 65+	[$34.27] *$34.34* full day (4 hours)
Program hours 65+	[$17.14] *$17.17* half day (2 hours)
Collateral	[$27.91] *$27.96*
Group Collateral	[$27.91] *$27.96*
Crisis	[$27.91] *$27.96*
Pre-Admission	[$27.91] *$27.96*

(iii) For programs operated in Broome, Cayuga, Chenango, Clinton, Cortland, Delaware, Essex, Franklin, Fulton, Hamilton, Herkimer, Jefferson, Lewis, Madison, Montgomery, Oneida, Onondaga, Oswego, Otsego, St. Lawrence, Tioga, Albany, Columbia, Dutchess, Greene, Orange, Rensselaer, Saratoga, Schenectady, Schoharie, Sullivan, Ulster, Warren and Washington counties:

Program hours 1—40	[$54.78] *$54.92* full day (4 hours)
Program hours 1—40	[$27.40] *$27.47* half day (2 hours)
Program hours 41—64	[$46.51] *$46.63* full day (4 hours)
Program hours 41—64	[$23.26] *$23.32* half day (2 hours)
Program hours 65+	[$34.27] *$34.36* full day (4 hours)
Program hours 65+	[$17.14] *$17.19* half day (2 hours)
Collateral	[$27.40] *$27.47*
Group Collateral	[$27.40] *$27.47*
Crisis	[$27.40] *$27.47*
Pre-Admission	[$27.40] *$27.47*

4. Paragraph (1) of subdivision (b) of section 588.13 of Title 14 NYCRR is amended to read as follows:

(b) Reimbursement under the medical assistance program for non-State operated continuing day treatment programs licensed pursuant to article 31 of the Mental Hygiene Law and operated by agencies licensed pursuant to article 28 of the Public Health Law, and Part 587 of this Title shall be in accordance with the following fee schedule:

(1) For services provided on or after [April 1, 2011] *April 1, 2015*, the reimbursement for any regular visit shall be based upon the cumulative number of program hours provided in a calendar month for an individual recipient, excluding time spent in meals, adding two hours for each half-day visit and four hours for each full-day visit. Collateral, group-collateral, pre-admission and crisis visits will be reimbursed at the half-day rate for program hours 1-40 regardless of the cumulative total of hours for regular visits in that month. Collateral, group collateral, pre-admission and crisis visits shall not be included in the calculation of the cumulative total hours in the program for a recipient. When the program hours of any single visit include more than one rate, the provider of service shall be reimbursed at the rate that applies to the first hour of such visit. Regular visits shall be reimbursed on the basis of program attendance and program provision as set forth in section 588.7 of this Part. The rates of reimbursement are as follows:

Program hours 1—40	[$62.01] *$62.16* full day (4 hours)
Program hours 1—40	[$41.55] *$41.65* half day (2 hours)
Program hours 41+	[$46.51] *$46.62* full day (4 hours)
Program hours 41+	[$31.16] *$31.23* half day (2 hours)
Collateral	[$41.55] *$41.65*
Group Collateral	[$41.55] *$41.65*
Crisis	[$41.55] *$41.65*
Pre-Admission	[$41.55] *$41.65*

5. Subdivisions (c), (e) and (f) of section 588.13 of Title 14 NYCRR are amended to read as follows:

(c) Effective [October 1, 2013] *April 1, 2015*, reimbursement under the medical assistance program for day treatment programs serving children licensed solely pursuant to article 31 of the Mental Hygiene Law, and Part 587 of this Title shall be in accordance with the following fee schedule.

(1) For programs operated in Bronx, Kings, New York, Queens and Richmond Counties:

Full day	at least 5 hours	[$98.26] *$98.36*
Half day	at least 3 hours	[49.14] *49.19*
Brief day	at least 1 hour	[32.76] *32.79*
Collateral	at least 30 minutes	[32.76] *32.79*
Home	at least 30 minutes	[98.26] *98.36*
Crisis	at least 30 minutes	[98.26] *98.36*
Preadmission - full day	at least 5 hours	[98.26] *98.36*
Preadmission - half day	at least 3 hours	[49.14] *49.19*

(2) For programs operated in other than Bronx, Kings, New York, Queens and Richmond Counties:

Full day	at least 5 hours	[$94.99] *$95.08*
Half day	at least 3 hours	[47.49] *47.54*
Brief day	at least 1 hour	[31.61] *31.64*
Collateral	at least 30 minutes	[31.61] *31.64*
Home	at least 30 minutes	[94.99] *95.08*
Crisis	at least 30 minutes	[94.99] *95.08*
Preadmission - full day	at least 5 hours	[94.99] *95.08*
Preadmission - half day	at least 3 hours	[47.49] *47.54*

(e) Effective [July 1, 2012] *April 1, 2015*, reimbursement under the medical assistance program for regular, collateral and crisis visits to all non-State operated partial hospitalization programs licensed pursuant to article 31 of the Mental Hygiene Law and Part 587 of this Title shall be in accordance with the following fee schedule:

(1) For programs located in Nassau and Suffolk Counties, the fee shall be [$29.08] *$29.10* for each service hour.

(2) For programs located in New York City, the fee shall be [$38.18] *$38.22* for each service hour.

(3) For programs located in the counties in the region of New York State designated by the Office of Mental Health as the Hudson River Region, the fee shall be $32.10 for each service hour.

(4) For programs located in the counties in the region of New York State designated by the Office of Mental Health as the Central Region, the fee shall be [$22.02] *$22.12* for each service hour.

(5) For programs located in the counties in the region of New York State designated by the Office of Mental Health as the Western Region, the fee shall be $27.28 for each service hour.

(f) Effective [April 1, 2011] *April 1, 2015*, reimbursement under the medical assistance program for on-site and off-site visits for all non-State operated intensive psychiatric rehabilitation treatment programs licensed pursuant to article 31 of the Mental Hygiene Law and Part 587 of this Title shall be at [$24.92] *$24.97* for each service hour.

6. Section 591.5 of Title 14 NYCRR is amended to read as follows:

Effective [July 1, 2012] *April 1, 2015*, reimbursement for comprehen-

sive psychiatric emergency programs under the medical assistance program shall be in accordance with the following fee schedule:

Brief emergency visit	[$ 181.00] *$181.77*
Full emergency visit	[1,060.00] *1,064.50*
Crisis outreach service visit	[1,060.00] *1,064.50*
Interim crisis service visit	[1,060.00] *1,064.50*

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 September 5, 2015.

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

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: Sections 7.09 and 31.04 of the Mental Hygiene Law give the Commissioner of the Office of Mental Health the power and responsibility to adopt regulations that are necessary and proper to implement matters under his or her jurisdiction.

Subdivision (a) of section 43.02 of the Mental Hygiene Law provides that payments under the Medical Assistance Program for outpatient services at facilities licensed by the Office of Mental Health shall be at rates certified by the Commissioner of Mental Health and approved by the Director of the Budget.

Subdivision (c) of section 43.02 of the Mental Hygiene Law gives the Commissioner of the Office of Mental Health the authority to adopt rules and regulations relating to methodologies used in establishment of schedules and rates for payment.

Sections 364 and 364-a of the Social Services Law give the Office of Mental Health responsibility for establishing and maintaining standards for care and services eligible for Medicaid reimbursement in facilities under its jurisdiction, in accordance with cooperative arrangements with the Department of Health.

Part I of Chapter 60 of the Laws of 2014 provides authorization for the Commissioner of Mental Health to provide funding to support an increase in annual salary and salary-related fringe benefits for eligible staff at not-for-profit providers.

2. Legislative Objectives: Articles 7 and 31 of the Mental Hygiene Law reflect the Commissioner's authority to establish regulations regarding mental health programs. The amendments to 14 NYCRR Parts 512, 588 and 591 are consistent with the goals and objectives of the Medicaid program to ensure that individuals with serious mental illness receive effective services to address their illness and that providers receive adequate reimbursement to pay for such care.

3. Needs and Benefits: This rule making increases the Medicaid fees paid to certain OMH-licensed programs consistent with the 2014-15 and 2015-16 enacted State budgets and the COLA provided in Chapter 60 of the Laws of 2014. As per Part I of Chapter 60 of the Laws of 2014, such fee increases are applied to reimbursable costs to support salary increases and salary-related fringe benefit increases. This increased funding for direct care staff will facilitate a provider's ability to recruit and retain staff and provide quality services to persons with mental illness. The fee increases shall be effective as of April 1, 2015, for the following programs: Personalized Recovery Oriented Services (PROS); Day Treatment Programs serving children; Continuing Day Treatment (CDT) Programs licensed solely under Article 31 of the Mental Hygiene Law, as well as CDT Programs licensed pursuant to Article 28 of the Public Health Law and Article 31 of the Mental Hygiene Law; Intensive Psychiatric Rehabilitation Treatment (IPRT); Partial Hospitalization; and Comprehensive Psychiatric Emergency Programs (CPEP). As per Chapter 60 of the Laws of 2014, the Office of Mental Health shall use the Consolidated Fiscal Reporting (CFR) manual as a reference to implement these increases for the appropriate titles.

4. Costs:

a) Costs to regulated parties: There are no costs to regulated parties as a result of this rule making.

b) Costs to local government: There are no costs to local government as a result of this rule making.

c) Costs to State: The cost breakdown by program is as follows:

PROS - $228,766 gross Medicaid, of which $114,383 is State share;

Day Treatment - $27,960 gross Medicaid, of which $13,980 is State share;

CDT (Article 31) - $17,738 gross Medicaid, of which $8,869 is State share;

CDT (Article 31 and Public Health Law Article 28) - $18,250 gross Medicaid, of which $9,125 is State share;

IPRT - $2,204 gross Medicaid, of which $1,102 is State share;

Partial Hospitalization - $4,050 gross Medicaid, of which $2,025 is State share;

CPEP - $76,672 gross Medicaid, of which $38,336 is State share.

The funds necessary for these fee increases were included in the enacted 2015-2016 State budget.

5. Local Government Mandates: These regulatory amendments will not involve or result in any additional imposition of duties or responsibilities upon county, city, town, village, school, or fire districts.

6. Paperwork: Consistent with Chapter 60 of the Laws of 2014, providers or local governmental units are required to develop a plan of implementation to ensure that the funding increases are only utilized for providing salary increases to eligible staff. Each provider or local governmental unit must submit a written certification attesting to how the funding was used and each provider must also submit a resolution from their governing body attesting that the funding received shall be solely used to support salary and salary-related fringe benefit increases for eligible staff in conformity with the standards issued by the Office of Mental Health.

7. Duplication: These regulatory amendments do not duplicate existing State or federal requirements.

8. Alternatives: No alternatives were considered, as the only alternative would have been to not increase the Medicaid fees to implement the COLA. Doing so would have been contrary to the enacted State Budget.

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

10. Compliance Schedule: This rule will be effective upon adoption.

Regulatory Flexibility Analysis

The amendments to 14 NYCRR Parts 512, 588 and 591 increase the Medicaid fees paid to certain OMH-licensed programs, which is consistent with the 2014-15 and 2015-16 enacted State Budgets and Chapter 60 of the Laws of 2014. As there will be no adverse economic impact on small businesses or local governments as a result of these amendments, a regulatory flexibility analysis is not submitted with this notice.

Rural Area Flexibility Analysis

The amendments to 14 NYCRR Parts 512, 588 and 591 increase the Medicaid fees paid to certain OMH-licensed programs, which is consistent with the 2014-15 and 2015-16 enacted State Budgets and Chapter 60 of the Laws of 2014. The proposed rule will not impose any adverse economic impact on rural areas; therefore, a Rural Area Flexibility Analysis is not submitted with this notice.

Job Impact Statement

A Job Impact Statement for these amendments is not being submitted with this rule making. The amendments to 14 NYCRR Parts 512, 588 and 591 increase the Medicaid fees paid to certain OMH-licensed programs, which is consistent with the 2014-15 and 2015-16 enacted State Budgets and Chapter 60 of the Laws of 2014. It is apparent from the nature and purpose of the rule that it will not have an impact on jobs and employment opportunities.

Public Service Commission

PROPOSED RULE MAKING
NO HEARING(S) SCHEDULED

Waiver of Certain Commission Requirements Related to Blocking Caller ID for Emergency Services

I.D. No. PSC-25-15-00007-P

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

Proposed Action: The Commission is considering Chevrah Hatzalah Volunteer Ambulance Corps, Inc. requests for a limited waiver to allow unblocking call ID for calls to its emergency services telephone.

Statutory authority: Public Service Law, sections 91 and 96

Subject: Waiver of certain Commission requirements related to blocking caller ID for emergency services.

Purpose: To allow a non-profit entity acting as an emergency service the ability to receive unblocked caller ID numbers.

Substance of proposed rule: The Commission is considering whether to approve or reject, in whole or in part, a request by Chevrah Hatzalah Volunteer Ambulance Corps, Inc. for limited waiver to allow unblocking Caller ID information for calls to its emergency services telephone number. The Commission may grant, deny, modify, or take additional action as necessary.

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-0304SP1)

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Notice of Intent to Submeter Electricity

I.D. No. PSC-25-15-00008-P

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

Proposed Action: The Public Service Commission is considering whether to grant, deny or modify, in whole or part, the Notice of Intent to submeter electricity filed by 165 E Residences, LLC, for the premises located at 165 East 66th 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 165 E 66 Residences, LLC to submeter electricity at 165 East 66th 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 165 E 66 Residences, LLC, to submeter electricity at 165 East 66th 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-0240SP1)

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Waiver of a Commission Policy on Test Years in Rate Cases

I.D. No. PSC-25-15-00009-P

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

Proposed Action: The Commission is considering whether to grant, reject or modify the petition of St. Lawrence Gas Company, Inc. for a waiver of the Commission's rules regarding the 150 day requirement for filing a rate case.

Statutory authority: Public Service Law, sections 66, 89-c and 92

Subject: Waiver of a Commission policy on test years in rate cases.

Purpose: Whether to grant the waiver of the Commission's 150 day requirement.

Substance of proposed rule: In its Statement of Policy on Test Periods in Major Rate Proceedings (issued November 23, 1977), the Commission required that all major rate cases be filed no more than 150 days after the end of the utility's test year. In a letter filed on May 27, 2015, the St. Lawrence Gas Company, Inc. requested a waiver of the policy requirement for its impending rate filing, which the Company anticipates will be made within 180 days from the end of its test year. The Commission is considering whether to grant, deny or modify the request and may consider 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-G-0313SP1)

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Notice of Intent to Submeter Electricity

I.D. No. PSC-25-15-00010-P

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

Proposed Action: The Public Service Commission is considering whether to grant, deny or modify, in whole or part, the Notice of Intent to submeter electricity filed by 250 West Street Condominium, for the premises located at 250 West 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 250 West Street Condominium to submeter electricity at 250 West 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 250 West Street Condominium, to submeter electricity at 250 West 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-0287SP1)

Department of State

EMERGENCY RULE MAKING

Orders to Remedy Violation(s) of the Uniform Code Issued Under Article 18 of the Executive Law

I.D. No. DOS-04-15-00004-E
Filing No. 463
Filing Date: 2015-06-05
Effective Date: 2015-06-05

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

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

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

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

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

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

Prior to the initial emergency adoption of this rule, the regulations adopted by the Department of State pursuant to Executive Law § 381(1) did not fix a time within which a person served with an order to remedy must comply with that order. In most cases, the local government that issued an order to remedy determined a "reasonable time" within which compliance with the order would be required.

This rule adds a new section 1203.5 to 19 NYCRR Part 1203. Section 1203.5 provides that the time within which compliance with an order to remedy any condition found to exist in, on, or about any building in violation of the Uniform Code shall be fixed at thirty (30) days following the date of the order. Initial adoption of this rule on an emergency basis was necessary in light of a decision issued by the New York State Supreme Court, Appellate Term, Second Department, 9th and 10th Judicial Districts. In People v. Plateau Associates, LLC, the Court held that in the absence of a Department of State regulation fixing the time within which compliance with an order to remedy is required, a party served with such an order could not be charged under Executive Law § 382(2) for failure to comply with such order within the time fixed by regulation for such compliance. The Court rejected the argument that the local government that issued the order to remedy should be permitted to determine the "reasonable time" within which compliance with the order to remedy would be required.

The Plateau Associates decision may result in local courts deciding not to subject a person who is served with an order to remedy, and who fails to comply within the time specified in such order, to the penalties contemplated by Executive Law § 382(2). Such a conclusion could jeopardize the effectiveness of orders to remedy and limit the ability of local governments to enforce the Uniform Code.

The Department of State found that the initial emergency adoption of this rule was necessary for the preservation of the general welfare and public safety because the absence of a regulation fixing the time within which full compliance with an order to remedy is required may, under the precedent established by the Plateau Associates decision, cause courts to refuse to impose the penalties contemplated by Executive Law § 382(2). This, in turn, would seriously diminish the effectiveness of orders to remedy, resulting in inadequate enforcement of the Uniform Code, thereby potentially subjecting the people of this State to the real and present dangers to public health and safety posed by fire, as identified by the State Legislature in Executive Law § 371(1)(d). The initial adoption of this rule on an emergency basis was necessary to halt such an undesirable result at the earliest possible date.

The current emergency adoption of this rule will expire on June 8, 2015. The Department of State finds that re-adoption of this rule on an emergency basis is necessary for the preservation of the general welfare and public safety because allowing this rule to expire would result in there being no regulation fixing the time for compliance with an order to remedy, which, under the precedent established by the Plateau Associates decision, may cause courts to refuse to impose the penalties contemplated by Executive Law § 382(2).

Subject: Orders to remedy violation(s) of the Uniform Code issued under article 18 of the Executive Law.

Purpose: To fix the time to comply with an order to remedy violation(s) of the Uniform Code.

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

1203.1 Introduction.

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

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

1203.5 Compliance with an order to remedy.

(a) Section 381 of the Executive Law provides for the administration and enforcement of the Uniform Code and authorizes the promulgation of this Part to establish minimum standards for such administration and enforcement. In addition, subdivision 2 of section 382 of the Executive Law provides, in part, that any person, having been served, either personally or by registered or certified mail, with an order to remedy any condition found to exist in, on, or about any building in violation of the Uniform Code, who shall fail to comply with such order within the time fixed by the regulations promulgated by the Secretary of State pursuant to subdivision 1 of section 381 of the Executive Law, such time period to be stated in the order, shall be punishable by a fine of not more than one thousand dollars per day of violation, or imprisonment not exceeding one year, or both. For the purposes of subdivision 2 of section 382 of the Executive Law, the time within which compliance with an order to remedy is required is hereby fixed at thirty (30) days following the date of the order to remedy.

(b) When a city, village, town, or county, charged under subdivision 2 of section 381 of the Executive Law with administration and enforcement of the Uniform Code, or a state agency accountable under subdivision (d) of section 1201.2 of this Title for administration and enforcement of the Uniform Code, or the Secretary of State acting under Part 1202 of this Title, issues an order to remedy any condition found to exist in, on, or about any building in violation of the Uniform Code, such order to remedy shall set forth the date of the order, the date by which compliance must be completed, and shall include a statement substantially similar to the following:

"NOTICE: Full compliance with this order to remedy is required by _____ [specify date], which is thirty (30) days after the date of this order. If the person or entity served with this order to remedy fails to comply in full with this order to remedy within the thirty (30) day period, that person or entity will be subject to a fine of not more than $1,000 per day of violation, or imprisonment not exceeding one year, or both."

(c) An order to remedy a condition found to exist in, on, or about any building in violation of the Uniform Code shall be served personally or by certified or registered mail within five (5) days of the date of the order.

(d) Nothing in this section shall be construed as prohibiting any city, village, town, county, state agency or the Secretary of State from providing in an order to remedy that the person or entity served with such order must begin to remedy the violation(s) described in the order immediately, or within some other period of time which is specified in the order and which may be less than thirty (30) days; must thereafter continue diligently to remedy such violation(s) until each such violation is fully remedied; and must in any event fully remedy all such violation(s) within thirty (30) days of the date of such order.

(e) Nothing in this section shall be construed as limiting the authority of any city, village, town, county, state agency or the Secretary of State to employ any other means of enforcing the Uniform Code and/or Energy Code, including, but not limited to:

(1) issuing notices of violation;

(2) issuing appearance tickets;

(3) commencing and prosecuting an appropriate action or proceeding pursuant to that part of subdivision 2 of section 382 of the Executive Law that provides that any owner, builder, architect, tenant, contractor, subcontractor, construction superintendent or their agents or any other

person taking part or assisting in the "construction" (as defined in subdivision 4 of section 372 of the Executive Law) of any building who shall knowingly violate any of the applicable provisions of the Uniform Code or any lawful order of a city, village, town, county, state agency or the Secretary of State made thereunder regarding standards for construction, maintenance, or fire protection equipment and systems, shall be subject to a fine of not more than one thousand dollars per day of violation, or imprisonment not exceeding one year, or both;

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

(5) issuing stop work orders;

(6) revoking or suspending building permits; revoking or suspending certificates of occupancy; or

(7) commencing and prosecuting an appropriate action or proceeding to impose such criminal and/or civil sanctions as may be provided in applicable local laws, ordinances, rules or regulations.

This notice is intended to serve only as a notice of emergency adoption. This agency intends to adopt the provisions of this emergency rule as a permanent rule, having previously submitted to the Department of State a notice of proposed rule making, I.D. No. DOS-04-15-00004-EP, Issue of January 28, 2015. The emergency rule will expire August 3, 2015.

Text of rule and any required statements and analyses may be obtained from: Mark Blanke, Department of State, One Commerce Plaza, 99 Washington Ave., Albany, NY 12231-0001, (518) 474-4073, email: Mark.Blanke@dos.ny.gov

Regulatory Impact Statement

1. STATUTORY AUTHORITY AND LEGISLATIVE OBJECTIVES

Executive Law § 381(1) provides that the Secretary of State shall promulgate rules and regulations prescribing minimum standards for administration and enforcement of the Uniform Fire Prevention and Building Code (Uniform Code).

Executive Law section 383(2) provides, in part, that "(a)ny person, having been served, either personally or by registered or certified mail, with an order to remedy any condition found to exist in, on, or about any building in violation of the [Uniform Code], who shall fail to comply with such order within the time fixed by the regulations promulgated by the secretary pursuant to [Executive Law § 381(1)], such time period to be stated in the order, . . . shall be punishable by a fine of not more than one thousand dollars per day of violation, or imprisonment not exceeding one year, or both."

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

2. NEEDS AND BENEFITS

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

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

Prior to the initial emergency adoption of this rule, the regulations adopted by the Department of State (DOS) pursuant to Executive Law § 381(1) contained no provision fixing the time for compliance with an order to remedy. DOS understands that a local government issuing an order to remedy would, in most cases, determine a reasonable time within which compliance with the order would be required. However, the recent case of People v. Plateau Associates, LLC, the Appellate Term for the Second Department, 9th and 10th Judicial Districts, held that in the absence of a DOS regulation fixing the time within which compliance with an order to remedy is required, the party served with such an order could not be charged under Executive Law § 382(2). The Court rejected the argument that the local government that issued the order to remedy should be permitted to determine the "reasonable time" within which compliance with the order to remedy would be required.

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

3. COSTS

Costs to Regulated Parties

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

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

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

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

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

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

This rule requires a local government (or DOS in those instances where it enforces the Uniform Code) to include in each order to remedy a notice substantially similar to the following: "NOTICE: Full compliance with this order to remedy is required by _____ [specify date], which is thirty (30) days after the date of this order. If the person or entity served with this order to remedy fails to comply in full with this order to remedy within the thirty (30) day period, that person or entity will be subject to a fine of not more than $1,000 per day of violation, or imprisonment not exceeding one year, or both."

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

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

negligible. In addition, code enforcement personnel are required by existing law to receive 24 hours of in-service training each year, and DOS anticipates that training on the requirements of the new this rule can be provided within the already required annual in-service training.

The annual or on-going compliance costs for local governments that enforce the Uniform Code (and by DOS in those instances where it enforces the Uniform Code) will include the costs associated with tracking service of orders to remedy to assure that service is made within the five day time limit established by this rule. However, DOS anticipates that a local government will be able to fulfill these obligations using its existing code enforcement personnel, at little or no additional cost to the local government. Further, local governments are authorized by existing law to charge fees to defray the cost of their code enforcement activities.

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

4. PAPERWORK

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

5. LOCAL GOVERNMENT MANDATES

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

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

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

6. DUPLICATION

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

7. ALTERNATIVES

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

8. FEDERAL STANDARDS

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

9. COMPLIANCE SCHEDULE

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

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[1] This rule also amends section 1203.1 of Title 19 of the NYCRR to include a reference to and definition of the term "Energy Code."

Regulatory Flexibility Analysis

1. EFFECT OF RULE.

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

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

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

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

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

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

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

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

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

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

3. COMPLIANCE COSTS.

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

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

The initial costs to be incurred by local governments that enforce the Uniform Code will include (1) the cost of modifying their order to remedy forms to include the notice required by this rule and (2) the cost of training their code enforcement personnel on the requirements of this rule. However, the Department of State anticipates that the cost of modifying a local government's order to remedy form to include the notice required by this rule will be negligible. In addition, code enforcement personnel are required by existing law to receive 24 hours of in-service training each year, and the Department of State anticipates that training on the requirements of the new this rule can be provided within the already required annual in-service training.

The annual or on-going compliance costs for local governments that enforce the Uniform Code will include the costs associated with tracking service of orders to remedy to assure that service is made within the five day time limit established by this rule. However, the Department of State anticipates that a local government will be able to fulfill these obligations using its existing code enforcement personnel, at little or no additional cost to the local government. Further, local governments are authorized by existing law to charge fees to defray the cost of their code enforcement activities.

4. ECONOMIC AND TECHNOLOGICAL FEASIBILITY.

It is economically and technologically feasible for regulated parties to comply with the rule. No substantial capital expenditures are imposed and no new technology need be developed for compliance.

The Department of State anticipates that local governments will be able to comply with this rule using their existing code enforcement personnel.

5. MINIMIZING ADVERSE IMPACT.

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

Approaches such as establishing different compliance or reporting requirements or timetables that take into account the resources available to small businesses and local governments and/or providing exemptions from coverage by the rule, or any part thereof, for small businesses and local governments were not considered because doing so is not authorized by the statute and would endanger the public safety and general welfare.

6. SMALL BUSINESS AND LOCAL GOVERNMENT PARTICIPATION.

The Department of State gave small businesses and local governments an opportunity to participate in this rule making by posting a notice regarding this rule on the Department of State's website and by publishing a notice regarding this rule in Building New York, a monthly electronic news bulletin covering topics related to the Uniform Code and the construction industry that is prepared by the Department of State and is currently distributed to approximately 10,000 subscribers, including local governments, design professionals and others involved in all aspects of the construction industry.

7. FOR RULES THAT EITHER ESTABLISH OR MODIFY A VIOLATION OR PENALTIES ASSOCIATED WITH A VIOLATION.

The applicable statute (Executive Law § 382(2)) establishes a violation (viz., failure to comply with an order to remedy) and establishes penalties associated with such violation (viz., a fine of not more than one thousand dollars per day of violation, or imprisonment not exceeding one year, or both). While this rule will relate to the violation and penalty established by Executive Law § 382(2) in the sense that this rule will fix the time within which compliance with an order to remedy is required, this rule will not directly establish or modify a violation and this rule will not directly establish or modify penalties associated with a violation. Therefore, for the purposes of Chapter 524 of the Laws of 2011 and subdivision 1-a of section 202-b of the State Administrative Procedure Act, this rule is not required to include a cure period or other opportunity for ameliorative action, the successful completion of which will prevent the imposition of penalties on the party or parties subject to enforcement. It should be noted, however, that this rule will, in effect, include a cure period or other opportunity for ameliorative action in the sense that this rule will provide that a person served with an order to remedy will have at least 30 days to comply with the order before the statutory penalties can be imposed.

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[1] This rule also amends section 1203.1 of Title 19 of the NYCRR to include a reference to and definition of the term "energy code."

Rural Area Flexibility Analysis

1. TYPES AND ESTIMATED NUMBERS OF RURAL AREAS.

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

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

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

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

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

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

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

New section 1203.5 requires a local government that issues an order to remedy to include in the order a notice stating (1) that full compliance with the order within thirty (30) days of the date of the order is required and (2) that in the event the person served with the order to remedy fails to comply in full with the order within the thirty (30) day period, such person will be subject to the penalties prescribed by Executive Law § 382(2), viz., a fine of not more than $1,000 per day of violation, or imprisonment not exceeding one year, or both. Local governments (including local governments in rural areas) will be required to modify their order to remedy forms to include this notice.

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

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

3. COSTS.

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

The initial costs to be incurred by local governments (including local governments in rural areas) will include (1) the cost of modifying their order to remedy forms to include the notice required by this rule and (2) the cost of training their code enforcement personnel on the requirements of this rule. However, the Department of State anticipates that the cost of modifying a local government's order to remedy form to include the notice required by this rule will be negligible. In addition, code enforcement personnel are required by existing law to receive 24 hours of in-service training each year, and the Department of State anticipates that training on the requirements of the new this rule can be provided within the already required annual in-service training.

The annual or on-going compliance costs for local governments (including local governments in rural areas) will include the costs associated with tracking service of orders to remedy to assure that service is made within the five day time limit established by this rule. However, the Department of State anticipates that a local government will be able to fulfill these obligations using its existing code enforcement personnel, at little or no additional cost to the local government. Further, local governments are authorized by existing law to charge fees to defray the cost of their code enforcement activities.

4. MINIMIZING ADVERSE IMPACT.

This rule was designed to minimize any adverse impact on all areas of the State, including rural areas, by: (1) fixing the time within which compliance with an order to remedy is required at 30 days from the date of

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

Establishing different compliance requirements for public and private sector interests in rural areas and/or providing exemptions from coverage by the rule for public and private sector interests in rural areas was not considered because doing so is not authorized by the statute and would endanger the public safety and general welfare.

5. RURAL AREA PARTICIPATION.

The Department of State notified interested parties throughout the State, including interested parties in rural areas, of the proposed adoption of this rule by means of notices posted on the Department's website and published in Building New York, a monthly electronic news bulletin covering topics related to the Uniform Code/Energy Code and the construction industry which is prepared by the Department of State and which is currently distributed to approximately 10,000 subscribers, including local governments, design professionals and others involved in all aspects of the construction industry.

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[1] This rule also amends section 1203.1 of Title 19 of the NYCRR to include a reference to and definition of the term "energy code."

Job Impact Statement

The Department of State has concluded after reviewing the nature and purpose of the rule that it will not have a substantial adverse impact on jobs and employment opportunities in New York.

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

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

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

Assessment of Public Comment

The Department received approximately fifteen comments on the emergency / proposed rule making. Those submitting comment included local government code enforcement officials, code compliance managers at New York State agencies, design professionals (architects), and individuals who did not identify any office or affiliation.

A number of comments raised concerns about fixing the time within which a party must comply with an Order to Remedy at 30 days. Some argued that such time period is too long for certain violations of the Uniform Fire Prevention and Building Code (Uniform Code) which might be characterized as life threatening or likely to cause physical harm. Others argued that a 30 day time period is insufficient to address what may be described as design issues which would require a longer time frame for correction. Some comments suggested that a range of time periods for compliance be established or that the deadline for correction of a code violation be left to the discretion of the local code enforcement officer.

The comments also raised concerns about service of Orders to Remedy and the requirement that such Orders be served personally or by registered or certified mail. It was noted that it is not unusual for several weeks to pass before receiving from the U.S. Postal Service documentation regarding the delivery, or a refusal to accept delivery, of registered or certified mail.

In addition, other comments appeared to proceed from a conclusion that all notices or directives to regulated parties concerning code violations would hereafter be subject to the directives of the new section to be added by this rule (19 NYCRR section 1203.5). For example, some comments included extended discussion regarding Notices of Violation and Appearance Tickets, enforcement mechanisms which differ from an Order to Remedy, the particular and exclusive subject of this emergency / proposed rule making. Nothing in this emergency / proposed rule making addresses the manner of service of a Notice of Violation or Appearance Ticket, or the time within which a response to a Notice of Violation or Appearance Ticket is required.

Lastly, State agency comments raised questions about the applicability of the new section 1203.5 to State agency administration and enforcement of the Uniform Code. Among the issues raised is whether the provisions of 19 NYCRR 1203.5 are inconsistent with provisions of 19 NYCRR Part 1204, the regulation which applies to administration and enforcement of the Uniform Code by State agencies with regard to buildings, premises, and equipment in the custody of a State agency.

The Department's preliminary response is that some clarifying revisions to the rule text may be appropriate to address the many questions and issues raised. It appears that many of those who have submitted comment have not understood that the text being added to 19 NYCRR Part 1203 by this rule is subject to directives and specifics set forth in subdivision 2 of Executive Law § 382, the existing statute which (1) provides for service of Orders to Remedy violations of the Uniform Code either personally, or by registered or certified mail; (2) references a time fixed by regulations adopted by the Secretary of State as the time within which compliance with the Order to Remedy must be achieved; and (3) provides that a person who is served (personally or by registered or certified mail) with an Order to Remedy and who fails to comply with such Order within the time fixed by regulations adopted by the Secretary of State shall become subject to particular penalties specified by the statute.

Additional time is needed, however, for the Department of State to complete an analysis of the interplay of 19 NYCRR Parts 1201, 1203, and 1204, the existing regulations pertaining to administration and enforcement of the Uniform Code by either local government or State agencies. Thereafter, the Department will be better able to determine exactly what changes, if any, need to be made to section 1203.5 so as to clarify for those who administer and enforce the Uniform Code the intent and proper application of the new regulatory text. Consequently, the rule is being readopted without change to assure that a regulation fixing the time for compliance with an order to remedy will remain in effect until the time when a Notice of Adoption for a permanent rule is published.

Department of Transportation

NOTICE OF ADOPTION

Use of Rest Areas (Section 156.3) and Renumbering of Section 820.14 to 820.13 (Incorporation by Reference Provisions)

I.D. No. TRN-11-15-00014-A
Filing No. 485
Filing Date: 2015-06-09
Effective Date: 2015-06-24

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

Action taken: Amendment of section 156.3(c); and renumbering of section 820.14 to 820.13 of Title 17 NYCRR.

Statutory authority: Transportation Law, section 14(18); Vehicle and Traffic Law, section 1626

Subject: Use of rest areas (section 156.3) and renumbering of section 820.14 to 820.13 (incorporation by reference provisions).

Purpose: To update applicable regulations in 17 NYCRR 156.3(c) and to re-sequence one section of 17 NYCRR Part 820.

Text of final rule: 17 NYCRR 156.3(c) is amended as follows:

(c) Parking of vehicles for longer than three hours during the hours of darkness is not permitted in any rest or parking area or scenic overlook; provided, however, that a commercial motor vehicle, as defined in section

820.1 [819.1] of this Title [or a motor bus as defined in section 723.1(f)] of this Title, may, except as provided otherwise by the Department of *Transportation* [Transportaion] by the posting of signs, remain motionless at such an area for up to *ten* [eight] hours [during the hours of darkness] if the commercial vehicle driver is present and is required to use this period as off duty or sleeper berth time to allow rest in accordance with Federal or State motor carrier safety hours of service regulations.

17 NYCRR 820.14 is amended to read as follows:

Section 820.[14] *13*. Incorporation by reference.

The provisions of the Code of Federal Regulations which have been incorporated by reference in this Part have been filed in the Office of the Secretary of State of the State of New York, the publication so filed being the booklets entitled: Title 49 Code of Federal Regulations Parts 100 to 177, Parts 178 to 199 and Parts 200 to 299 and Parts 300 to 399, revised as of October 1, 2013, published by the Office of the Federal Register, National Archives and Records Administration, as a special edition of the Federal Register. The regulations incorporated by reference may be examined at the Office of the Department of State, One Commerce Plaza, 99 Washington Avenue, Albany, NY 12231-0001, at the law libraries of the New York State Supreme Court, the Legislative Library, the New York State Department of Transportation, Office of Counsel or Motor Carrier Compliance Bureau, 50 Wolf Road, Albany, NY 12232. They may also be purchased from the Superintendent of Documents, Government Printing Office, Washington, DC 20402. Copies of the Code of Federal Regulations are also available at many public libraries and bar association libraries.

Final rule as compared with last published rule: Nonsubstantive changes were made in section 820.13.

Text of rule and any required statements and analyses may be obtained from: David E. Winans, Associate Counsel, New York State Department of Transportation, 50 Wolf Road, 6th Floor, Albany, NY 12232, (518) 457-2411, email: david.winans@dot.ny.gov

Revised Job Impact Statement

Changes made to the last published rule do not necessitate revision of the previously published JIS. In the Notice of Proposed Rulemaking published in the State Register on 3/18/2015, there were a few typographical errors related to the sequencing of parts in the volumes of 49 CFR incorporated by reference in 17 NYCRR 820.13. Those typographical errors have been corrected.

Assessment of Public Comment

The agency received no public comment.

NOTICE OF ADOPTION

Safe Operation of Commercial Motor Vehicles by Motor Carriers and Drivers

I.D. No. TRN-11-15-00015-A

Filing No. 486

Filing Date: 2015-06-09

Effective Date: 2015-06-24

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

Action taken: Repeal of sections 820.0 through 820.13; and addition of new sections 820.0 through 820.12 to Title 17 NYCRR.

Statutory authority: Transportation Law, sections 14(18), 14-f(1), 138, 140(2) and art. 9-A; Vehicle and Traffic Law, sections 509-x, 509-y and art. 19-B

Subject: Safe operation of commercial motor vehicles by motor carriers and drivers.

Purpose: To update applicable regulations in 17 NYCRR Part 820, originally added 12/12/2004.

Substance of final rule: 17 NYCRR Part 820 contains requirements applicable to commercial motor carriers and drivers operating in New York State. The regulations provide notice of federal motor carrier regulations incorporated by reference. The incorporated federal regulations are 49 CFR Part 390 relating to general applicability and definitions (section 820.1; see full text for language excepting section 820.2 from the definition of commercial motor vehicle in 820.1(c)), 49 CFR Parts 382 and 383 relating to license standards and drug/alcohol testing (section 820.2), 49 CFR Part 391 relating to driver qualifications (section 820.3), 49 CFR Part 392 relating to operation of commercial motor vehicles (section 820.4), 49 CFR Part 393 relating to parts and accessories necessary for safe operation (section 820.5), 49 CFR Part 395 relating to hours of service for drivers of commercial motor vehicles (section 820.6), 49 CFR Part 396 relating to repair and maintenance of commercial motor vehicles (section 820.7), and various sections and parts of 49 CFR (see text at URL https://www.dot.ny.gov/divisions/operating/osss/truck/regulations for full listing) relating to transportation of hazardous materials (section 820.8).

Existing regulations on farm plate vehicle safety requirements (section 820.9) are repealed. The regulation on the investigation of motor carrier files (formerly section 820.10 and renumbered to section 820.9) is amended to add cross-references to New York State Vehicle & Traffic Law Article 19-A and Transportation Law Article 9-B. The regulation on exemptions (formerly section 820.12 and renumbered to section 820.11) is amended to reflect amendments to Transportation Law section 214. The regulation on the inspection of motor vehicles in operation (formerly section 820.13 and renumbered to section 820.12) is amended to reflect a generic reference to forms that will be used. The regulation on incorporation by reference (formerly section 820.14 and renumbered to section 820.13) is amended to reflect the new section number.

The repeal of section 820.9 and other references to vehicles that are exempt from the regulations were necessitated by amendments to Transportation Law section 214 with which the amended regulations are to be made consistent.

Final rule as compared with last published rule: Nonsubstantive changes were made in section 820.1(c).

Text of rule and any required statements and analyses may be obtained from: David E. Winans, Associate Counsel, New York State Department of Transportation, 50 Wolf Road, 6th Floor, Albany, NY 12232, (518) 457-2411, email: david.winans@dot.ny.gov

Revised Job Impact Statement

Changes made to the last published rule do not necessitate revision of the previously published JIS. A few words of text have been added to section 820.1(c), which defines commercial motor vehicle for the purposes of Part 820, in order to clarify that section 820.2 is excepted from said definition, otherwise applicable to the other sections in this part.

Assessment of Public Comment

The agency received no public comment.