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.

Battery Park City Authority

PROPOSED RULE MAKING
NO HEARING(S) SCHEDULED

Proposed Action is the Amendment of the Rules and Regulations of Battery Park City Parks

I.D. No. BPA-11-15-00018-P

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

Proposed Action: Amendment of Part 9003 of Title 21 NYCRR.

Statutory authority: Public Authorities Law, sections 1970, 1971 and 1974-c(2)(d)

Subject: Proposed action is the amendment of the rules and regulations of Battery Park City parks.

Purpose: To remain consistent with the rules of other parks in New York City and to incorporate activities previously not addressed.

Text of proposed rule: Section 9003.7(e) is added as follows:

(e) No person shall use a metal detector in any park except under a permit issued by ParksCorp or BPCA.

Section 9003.11 is amended as follows:

No person, except a police officer or other peace officer, shall bring into or have in his possession in any park, any firearms, slingshots, firecrackers, missile propelling instruments, *air rifles, air pistols, paintball guns,* or explosives, including any substance, compound, or mixture having properties or such a character that alone or in combination with other substances, compounds, mixtures, propel missiles, explode or decompose to produce flames, combustion, noise or noxious or dangerous odors*, except as specifically permitted by ParksCorp or BPCA*. Nothing in this section shall be construed to prohibit the proper use of [cigarette lighters,] matches or of charcoal lighter fluid in proper containers in picnic grills where permissible pursuant to the provisions of these rules.

Section 9003.12 is amended as follows:

(a) No person shall within any park molest, chase, wound, trap, hunt, shoot, throw [missiles] *objects* at, kill*,* or remove [or have in his possession] any [undomesticated] animal *or have in his possession any undomesticated animal*, or any significant portion of the remains of any [undomesticated] animal, or any nest, [or the young of any undomesticated animal] or the eggs of any [undomesticated animal] *amphibian, reptile or bird*; or knowingly buy, receive, have in his possession, sell or give away any such [undomesticated] animal or egg taken from or killed within any park.

(b) No person shall feed animals in any park except where specifically authorized by ParksCorp. ParksCorp may also designate certain areas where all feeding of animals is prohibited. It is a violation of this section to feed animals in any area where such feeding is prohibited.

Section 9003.14 is amended as follows:

No person owning or being custodian or having control of any animal shall cause or allow such animal to be unleashed in any park, except under the express terms of a permit granted by ParksCorp. *or within designated animal run areas*. Any such animal found at large may be seized and impounded. Properly licensed dogs and cats, restrained by a leash not exceeding six feet in length may be brought into the parks, except in no event are dogs or other animals be allowed to enter any playground, park building, dog free zone or any other area where they are prohibited by ParksCorp. Nothing in this section shall be construed to prohibit [seeing eye or hearing ear dogs in these areas] *persons with disabilities from bringing into such areas service animals, including guide dogs, signal dogs, or other animals individually trained to do work or perform acts for the benefit of an individual with a disability, including but not limited to guiding individuals with impaired vision, alerting individuals with impaired hearing to intruders or sound, providing minimal protection or rescue work, pulling a wheelchair, or fetching dropped items. Nothing herein shall limit the rights of persons with disabilities under City, State, and Federal law*.

Section 9003.17 is amended as follows:

It is prohibited for any person to engage in disorderly behavior in any park. Any person in any park, including any park street, shall be guilty of disorderly behavior who:

Sections (a) through (j) of Section 9003.17 remain unchanged.

Section 9003.18 is amended as follows:

It is prohibited for any person to engage in loitering for illegal purposes in any park. Any person in any park, including any park street, shall be guilty of loitering who:

(a) loiters or remains in a park for the purpose of engaging, or soliciting another person to engage in sexual activity; or

(b) loiters or remains in any park with one or more persons for the purpose of unlawfully using, possessing, distributing, selling or soliciting *marijuana or* a controlled substance, as defined in section 220.00 of the New York State Penal Law.

Section 9003.23(a) is amended as follows:

(a) No person shall engage in any commercial activity or commercial speech in any park, including any park street, except pursuant to a permit issued under section 9003.[25]*31* and/or section 9003.[26]*32* of this Part.

New Sections 9003.25, 9003.26, 9003.27, 9003.28, 9003.29 and 9003.30 are added as follows and Sections 9003.25, et seq. of 21 NYCRR are renumbered as Sections 9003.31, et seq.

Section 9003.25. Urination and Defecation in Parks.

No person shall urinate or defecate in any park, or in or upon any park building, monument or structure, except in a facility which is specifically designed for such purpose.

Section 9003.26. Unlawful Exposure.

It shall be a violation of these rules to appear in public on property under the jurisdiction of ParksCorp in such a manner that one's genitalia are unclothed or exposed.

Section 9003.27. Smoking.

Smoking is prohibited in all public areas within any park, except as may be designated by ParksCorp or BPCA.

Section 9003.28. Marijuana; controlled substances.

No person shall bring, possess, distribute, sell, solicit or consume marijuana or any controlled substance, as defined in § 220.00 of the New York State Penal Law, in any park or other park property or facility.

Section 9003.29. Unlawful Distribution of Products and Materials.

No person shall engage in the non-commercial distribution of products and/or material (other than printed or similarly expressive material) without a permit issued by ParksCorp or BPCA. A permit shall be issued only upon ParksCorp's or BPCA's determination that said distribution will be conducted in a manner consistent with the public's use and enjoyment of the park or park facility in question. In making this determination, ParksCorp or BPCA will consider the nature of the product or material; whether the product or material is compatible with customary park uses; whether the product or material is intended to be used in the park or park facility; the age of the targeted audience for the product or material; and whether the area in the park or park facility where the distribution will take place is appropriate for such distribution, considering, e.g., its proximity to areas designed for children, quiet zones or other areas designed for activities not compatible with such distribution. In connection with the foregoing, ParksCorp may consult with parental or other groups that are involved with the park or park facility where a permit for distribution is requested. ParksCorp or BPCA may also impose conditions upon the distribution of products and materials consistent with the concerns reflected by the factors listed above. Products and/or materials may be distributed only upon an indication of interest by the recipient, and only from a fixed location specified in the permit.

Section 9003.30. Geocaching; Treasure Hunting Games.

Geocaching or other treasure hunting games, activities, devices, logbooks, trinkets, or other materials, are not allowed within any park except as may be expressly permitted by ParksCorp.

Former Section 9003.30, which has been renumbered as Section 9003.36 pursuant to these amendments, is amended as follows:

Alcoholic beverages[; controlled substances]

(a) No person shall bring, possess, distribute, sell, solicit or consume alcoholic beverages [or unlawfully bring, possess, distribute, sell, solicit or consume any controlled substance, as defined in section 220.00 of the New York State Penal Law], in any park, including any park street, playground, or other park property or facility, except [in the case of alcoholic beverages,] where specifically permitted by the ParksCorp or BPCA and applicable law.

Former Section 9003.33, which has been renumbered as Section 9003.39 pursuant to these amendments, is amended as follows:

(a) Any person bringing a bicycle, *scooter, skateboard,* roller skates or roller blades into any park shall obey all park signs pertaining to the use of such bicycles, *scooters,* roller skates, skateboard or roller blades. No bicycle, *scooter,* roller skates, skateboard or roller blades shall be ridden, skated, operated or otherwise used on the grass, or on the upper level of the esplanade, or between the rail and the immediately adjacent benches of the esplanade, or in any sitting or play area, or playground. Bicycles, *scooters,* roller skates, skateboards and roller blades may be ridden, skated, operated and used in the parks, but only at the times, and in the areas, specifically designated by ParksCorp. No person shall ride, skate, operate or use a bicycle, *scooter,* roller skates, skateboard or roller blades in a reckless manner. Skateboards or *scooters* shall not be skated or operated or used on park property, fixtures or equipment in a manner likely to cause damage or injury to persons or property.

(b) Persons operating or using bicycles, *scooters, skateboards,* roller skates or roller blades shall yield to pedestrians in any part of the parks.

(c) It is prohibited for any person to ride or operate a bicycle to carry more persons at one time than the number for which it is designed and equipped, except that children may be carried in seats securely attached to a bicycle. It is prohibited for any person riding a bicycle to attach himself or his bicycle to the outside of any motor vehicle being operated in any park.

Former Section 9003.41, which has been renumbered as Section 9003.47 pursuant to these amendments, is amended as follows:

No person shall store or leave personal belongings unattended within or adjacent to any park. *Personal property left unattended within any park in violation of this section is subject to removal by ParksCorp. ParksCorp will give notice to the owner of the property prior to such removal if the identity of and an address for such person are reasonably ascertainable. The cost of the removal and storage of such property will be charged to the owner and must be paid prior to release of the property. Any personal property that is unclaimed after 30 days will be deemed to be abandoned and will be turned over to the police property clerk for disposal pursuant to law.*

Section 9003.47, which has been renumbered as Section 9003.53 pursuant to these amendments, is amended as follows:

Any violation of these rules, [but only to the extent that these rules are consistent with] *provided such violation would also violate any of the provisions of the Administrative Code of the City of New York or* the rules and regulations in effect for [all] *the* parks of the City of New York, shall be a misdemeanor triable in a court with competent jurisdiction and punishable by not more than 90 days imprisonment or by a fine of not more than $1,000, or by both in accordance with section 533(a)(9) of chapter 21 of the New York City Charter, and the violator of these rules shall also be subject to criminal prosecution and civil penalties as permitted by law and the penalties imposed pursuant to section 202(d) and (e) of the New York Not-for-Profit Corporation Law.

Text of proposed rule and any required statements and analyses may be obtained from: Susie Kim, Battery Park City Authority, 200 Liberty Street, 24th Floor, New York, New York 10281, (212) 417-4144, email: Susie.Kim@bpca.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

Regulatory Impact Statement

STATUTORY AUTHORITY:

Battery Park City Authority ("BPCA") was created as a public benefit corporation pursuant to New York Public Authorities Law § 1973. BPCA is authorized to adopt, amend or rescind rules and regulations appropriate to carry out its corporate purposes pursuant to New York Public Authorities Law § 1974-c (2)(d). BPCA's corporate purposes are set forth in New York Public Authorities Law § 1971.

LEGISLATIVE OBJECTIVES:

BPCA was created in 1968 as a public benefit corporation with the purpose of creating a mixed commercial and residential community in Battery Park City with adequate utilities systems and civic and public facilities such as schools, open public spaces, recreational and cultural facilities. Rules and Regulations for parks in Battery Park City ("BPC Parks") were adopted in 1992. Since that time, activities within BPC Parks have changed. Further, the New York City Department of Parks and Recreation has updated some of their rules and regulations. In an effort to remain consistent with other parks in New York City and to address activities previously not addressed, BPCA seeks at this time to amend and update BPC Parks Rules and Regulations to (1) adopt a smoking ban, (2) further regulate the conduct of the public, (3) enhance and provide for the safety, well-being and enjoyment of each individual who may use BPC Parks, and (4) assure equality of opportunity in the use and enjoyment of BPC Parks.

NEEDS AND BENEFITS:

The proposed action is the amendment of Rules and Regulations for BPC Parks. The most significant change proposed is the prohibition on smoking in BPC Parks, consistent with the smoking ban approved by the New York City Council and Mayor Michael Bloomberg that went into effect in May 2011. The City thoroughly researched the issue and learned that problems associated with smoking outdoors have been studied and documented through measuring outdoor tobacco smoke, the effects of exposure to second-hand smoke, and the amount of litter such behavior generates. On December 31, 2014, a New York appeals court upheld the New York State Office of Parks, Recreation and Historic Preservation's ban on smoking in New York State parks, finding that such office had the statutory authority to ban smoking, thus allowing all patrons to enjoy the fresh air and natural beauty of its outdoor facilities.

At this time, BPC Parks are almost alone in New York City in failing to prohibit smoking. As such, there may be an incentive for smokers to come to BPC Parks to smoke and, in the process, increase litter and the health risks to other park patrons, thereby diminishing the enjoyment of others in the BPC Parks. In order to be consistent with the other parks in New York City and many other parks across the United States, and to protect both public health and the enjoyment offered by BPC Parks, BPCA seeks to amend its regulations to prohibit smoking in BPC Parks.

COSTS:

No additional costs are anticipated in connection with the adoption of the proposed rules and regulations.

LOCAL GOVERNMENT MANDATES:

Not applicable.

PAPERWORK:

Because BPC Parks are presently operational, no new forms or paperwork will be required in connection with these rules and regulations. The type of paperwork presently utilized consists primarily of permit/special event applications.

DUPLICATION:

The proposed rules and regulations will not overlap with other state requirements. The proposed rules and regulations do not conflict with any applicable federal standards.

ALTERNATIVES:

There were no significant alternatives to the proposed rules and regulations.

FEDERAL STANDARDS:
The proposed rules and regulations do not conflict with any applicable federal standards.
COMPLIANCE SCHEDULE:
Immediate.

Regulatory Flexibility Analysis

A Regulatory Flexibility Analysis is not submitted with this proposed regulation because, as is evident from the nature of the proposed amendments, they will have no adverse economic impact or reporting, recordkeeping or other compliance requirements on small businesses or local governments. The amendments, which are modeled after existing rules for parks in New York City, outline permitted and prohibited uses and activities within parks in Battery Park City.

Rural Area Flexibility Analysis

A Rural Area Flexibility Analysis is not submitted with this proposed regulation because, as is evident from the nature of the proposed amendments, and the fact that the area is located in an urban setting, i.e., the parks located in the approximately 92 acres of land located on the west side of lower Manhattan, they will have no adverse economic impact on rural areas or reporting, recordkeeping, or other compliance requirements on public or private entities in rural areas. The amendments, which are modeled after existing rules for parks in New York City, outline permitted and prohibited uses and activities within parks in Battery Park City.

Job Impact Statement

A Job Impact Statement is not submitted with this proposed regulation because, as is evident from the nature of the proposed amendments, they will have no adverse impact on job opportunities or job development. The amendments, which are modeled after existing rules for parks in New York City, outline permitted and prohibited uses and activities within parks in Battery Park City.

Office of Children and Family Services

PROPOSED RULE MAKING
NO HEARING(S) SCHEDULED

Implementation of the Federal Preventing Sex Trafficking and Strengthening Families Act (P.L. 113-183)

I.D. No. CFS-11-15-00011-P

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

Proposed Action: Amendment of sections 428.3, 428.5, 428.6, 428.9, 430.11, 430.12, 431.8, 441.25, 443.2 and 443.3 of Title 18 NYCRR.

Statutory authority: Social Services Law, sections 20 and 34

Subject: Implementation of the federal Preventing Sex Trafficking and Strengthening Families Act (P.L. 113-183).

Purpose: Implementation of the federal Preventing Sex Trafficking and Strengthening Families Act (P.L. 113-183).

Substance of proposed rule (Full text is posted at the following State website:http://www.ocfs.ny.gov): The proposed addition of 18 NYCRR 428.3(i) and amendment to 18 NYCRR 430.12(c)(2)(i)(a) would require that the Family Assessment and Service Plan be developed in consultation with a child in foster care who is 14 years of age or older, and at the option of the child, with up to two members of the "case planning team" who are chosen by the child and who are neither the child's foster parent(s), case manager, case planner nor caseworker. The agency with case management responsibility would have the ability to reject an individual selected by the child to be on the case planning team if there is good cause to believe that the individual would not act in the child's best interests. One individual selected by the child could be designated as the child's advisor and could advocate with respect to the application of reasonable and prudent parenting.

The proposed amendments to 18 NYCRR 428.5(c) and 428.9(c) would address the P.L. 113-183 requirements to what the agency must document for submission at each permanency hearing where APPLA is the requested permanency planning goal. This includes a demonstration of intensive, ongoing and unsuccessful efforts to secure an alternative permanency plan to APPLA.

The proposed amendment to 18 NYCRR 428.6(c) would require that a case plan for a child in foster care who is 14 years or older include a document that describes the rights of the child concerning such matters as education, documents and the "right to stay safe and avoid exploitation". In addition, the case plan must contain an acknowledgment executed by the child that the child was provided with a copy of the rights and that the rights were explained to the child. Also for a child in foster care who has attained 14 years of age, the case plan must include a written description of the programs and services which will help the child prepare for the transition from foster care to successful adulthood.

The proposed amendment to 18 NYCRR 428.9(b)(1) would require that each child in foster care 14 years of age or older be a participant in their case consultation, as well as the two members of the case planning team that were chosen by the child, if applicable.

The proposed amendment to 18 NYCRR 430.11(c)(4) would expand the relative identification and notification requirements involving a child removed from home to include all parents of a sibling of the child where such parent has legal custody of such sibling.

The proposed amendments to 18 NYCRR 430.12(c)(2)(i)(d) would address the requirement that the child's service plan address the steps taken by the authorized agency to see that the child's foster parents or child care facility are following the reasonable and prudent parent standard and to ascertain whether the child has regular, ongoing opportunities to engage in age or developmentally appropriate activities, including consulting with the child.

The proposed amendment of 18 NYCRR 430.12(f)(1)(i) would raise the age for establishing the permanency goal of another planned living arrangement (APPLA) from 14 to 16 years of age.

The proposed amendment to 18 NYCRR 430.12(k) would change the age at which the child receives a copy of any consumer report on them from ages 16 and over to ages 14 and over. The child must continue to receive these reports until the child is discharged from foster care.

The proposed amendment to 18 NYCRR 430.12(1) would add additional documents to the medical and educational records that children in foster care are required to receive when they are discharged from foster care. The regulation would apply to children who have been in foster care for six or more months and who are leaving foster care by reason of attaining the age of 18 years or older. Agencies would be required to provide each youth exiting foster care at age 18 or older with an official or certified copy of their United Sates birth certificate, social security card, medical records, health insurance information and state issued ID card (or driver's license), if eligible to receive such documentation.

The proposed amendments to 18 NYCRR 431.8(b)(3) and 431.8(h) would address protocols for locating and responding to children who run away from foster care; including determining and documenting in the child's case record the primary reasons that contributed to the child running away or otherwise being absent without consent, and responding to those factors in the child's current and subsequent foster care placements. Upon return to care, the child would also have to be screened for sex trafficking as defined in Federal law. In addition, the proposed regulations would implement the requirement that agencies report the absence immediately, and in no case later than 24 hours after receiving information on missing or abducted children or youth, to the law enforcement authorities for entry in to the National Crime Information Center (NCIC) database of the Federal Bureau of Investigation, and to the National Center for Missing and Exploited Children (NMEC). This standard would apply to all children in foster care and to children for whom the social services district has an open services case or supervisory responsibility, which includes children who have not been removed from their home.

The proposed amendment to 18 NYCRR 431.8(3)(iii) would implement the requirement that an agency who receives information that a child in foster care or whom the social services district has an open services case or supervisory responsibility of, has been identified as a sex trafficking victim, as defined by applicable federal law, must immediately and in no case later than 24 hours after receiving the information report the child to law enforcement.

The proposed addition of 18 NYCRR 441.25 would address the new reasonable and prudent parent standard requirements that must be applied by foster parents and child care facility staff. They include the knowledge and skills relating to the reasonable and prudent parent standard for the participation of the foster child in age or developmentally appropriate activities. The proposed regulation would require that each child care facility have on-site presence of at least one person who is designated to be the caregiver authorized to apply the reasonable and prudent standard to decisions involving the foster child's participation in these activities.

The proposed amendment to 18 NYCRR 443.2(e)(1) reflects the training requirement of the reasonable and prudent parent standard for foster parents. The training must include knowledge and skills relating to the child's developmental stages of cognitive, emotional, physical and behavioral capabilities and the skills relating to decision making.

The proposed amendment to 18 NYCRR 443.3(b)(1) would add to the agreement a foster parent must execute to include the foster parent will apply the reasonable and prudent parent standard referenced in the new 18 NYCRR 441.25.

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

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.

2. Legislative objectives:

The proposed regulations would implement Federal statutory changes to Title IV-E of the Social Security Act (SSA) due to the enactment of the Preventing Sex Trafficking and Strengthening Families Act (P.L. 113-183) on September 29, 2014. The Act's intent is to prevent child sex trafficking and to improve the lives of youth in foster care. In addition to adding requirements regarding the identification, documentation, and response to child sex trafficking victims, or those at risk of becoming victims, within the child welfare system, this law affects many different areas of child welfare; including empowering children age 14 and older in the development of their own case plan and transition plan for a successful adulthood, encouraging the placement of children in foster care with siblings, improving another planned permanent living arrangement as a permanency option locating and responding to children who run away from foster care, and supporting normalcy for children in foster care and congregate care.

OCFS is the single state agency responsible for the administration of the Title IV-E foster care, adoption assistance and kinship guardianship assistance programs in New York, along with local departments of social services. The Act's amendments to Title IV-E of the SSA require amendments to New York's Title IV-E State Plan. OCFS is responsible for the preparation and submission of Title IV-E State Plan amendments.

3. Needs and benefits:

The proposed regulations would implement P.L. 113-183 by making conforming changes to New York State regulations. The amendments are necessary for New York to continue to have a compliant Title IV-E State Plan which is a condition for New York to receive federal funding for foster care, adoption assistance and the administration of those programs. New York State through an amendment to its Title IV-E State Plan will have to demonstrate to the federal Department of Health and Human Services that it has implemented the various provisions of the Act by the effective date of the individual provisions. The provisions addressed by the proposed regulations must be in effect by September 29, 2015 in order for New York to continue to have a compliant Title IV-E State Plan.

The proposed regulations will enhance permanency of children in foster care by expanding the involvement of the children in permanency planning and in the preparation for final discharge.

4. Costs:

Approximately $571 million of Title IV-E funding is at risk if New York State fails to comply with the new requirements of the federal Preventing Sex Trafficking and Strengthening Families Act.

An estimated State operation cost of approximately $1.6 million in personal and non-personal services is anticipated for the implementation of the proposed regulations to comply with the federal Act. This estimate covers the cost of:

- Modifications to CONNECTIONS, Data Warehouse Database, and the Juvenile Justice Information System (JJIS).
- Additional personnel for the Bureau of Research, and Bureau of Policy Analysis needed to implement the necessary changes including mandated federal reporting requirements.
- Modifying existing training materials and the creation of new training tools and modules.

An estimated $5.6 million in statewide expenditures could be realized by the local departments of social services to implement the requirements of the Preventing Sex Trafficking and Strengthening Families Act. This includes, but is not limited to:

- Additional data entry needs due to federally mandated reporting requirements.
- Providing consumer reports to youth in foster care, age 14 and 15, and resolving any inaccuracies in the reports.
- Providing youth age 18 years and older, who are being discharged to their own care and who have been in foster care for at least six months, with either a driver's license or non-driver's identification card; and
- The cost associated with the implementation of reasonable and prudent parent standard due to the increase in activity participation by children and youth in foster care.

The costs identified for local departments of social services would be supported out of the Foster Care Block Grant.

5. Local government mandates:

As mandated by federal law, the proposed regulations would impose additional mandates on social services districts. The proposed regulations would expand the content of the training of certified and approved foster parents on how to apply the reasonable and prudent parent standard to decisions involving the child's participation in age or developmentally appropriate activities. The proposed regulation would expand current standards relating to children in foster care who are absent from their placement without permission. The social services district or voluntary authorized agency would be required to complete a screening of the child upon return to determine if the child is a possible sex trafficking victim. In addition, social services districts or voluntary authorized agencies would be required to notify law enforcement authorities immediately, and in no case later than 24 hours of receiving information that a child in the placement, care or supervision of the social services district is missing, and/or identified as being a sex trafficking victim, as defined by applicable federal law. Children who are missing must be entered by law enforcement into the National Crime Information Center database of the Federal Bureau of Investigation and the social services district or voluntary authorized agency must make a report to the National Center for Missing and Exploited Children.

Within 30 days of the removal of a child from his or her home, the social services district would be expressly required to notify all parents of a sibling of the child where such parent has legal custody of such sibling. When a child, 16 or older, has a permanency goal of APPLA the agency with case planning responsibility would be required to demonstrate the intensive, ongoing and unsuccessful efforts to secure an alternative permanency plan. The child's permanency plan would have to address the steps taken by the agency to see that the child's foster parents or child care facility are following the reasonable and prudent parent standard and to ascertain whether the child has regular, ongoing opportunities to engage in age or developmentally appropriate activities. In addition, the agency would be required to provide to any child in foster care who is 14 years of age or older a document that describes the rights of the child concerning such matters as education, documents and the "right to stay safe and avoid exploitation", and document receipt of such list in the child's case record. Also, for a child in foster care who has attained 14 years of age, the case plan must include a written description of the programs and services which will help the child prepare for the transition from foster care to successful adulthood. Social services districts would be required to provide all children in foster care upon attaining the age of 14 with a copy of any consumer reports on them and continue to provide them until the child is discharged from foster care. When a youth who has been in foster care for six or more months and exits foster care because of attaining age 18 or older, the agency would be required to provide the youth with an official or certified copy of their United State birth certificate, social security card, Medical records, health insurance information and state issued ID card (or driver's license), if the child is eligible to receive such documents.

6. Paperwork:

The requirements imposed by the proposed regulations will be recorded in CONNECTIONS.

7. Duplication:

The proposed regulations do not duplicate other state or federal requirements.

8. Alternatives:

No alternative approaches to implementing the changes to regulation were considered. These amendments are proposed to implement the Federal law P.L. 113-183.

9. Federal standards:

The proposed regulations comply with applicable federal standards. Implementation is required for New York to maintain compliance with federal Title IV-E standards. Failure to do so would jeopardize continued receipt of federal funding for foster care, adoption assistance and kinship guardianship assistance.

10. Compliance schedule:

Compliance with the proposed regulations would begin immediately upon final adoption.

Regulatory Flexibility Analysis

1. Effect on Small Businesses and Local Governments:

These proposed regulations will have an impact upon social service districts and authorized voluntary agencies. In New York State there are approximately 58 social service districts and 83 voluntary authorized agencies.

2. Compliance Requirements:

The proposed regulations would implement Federal statutory changes due to the enactment of the Preventing Sex Trafficking and Strengthening Families Act (P.L. 113-183) on September 29, 2014. The Act added a number of Title IV-E State Plan requirements that must be implemented in a timely for New York to maintain a compliant Title IV-E State Plan which is a condition for New York to receive federal funds for foster care and adoption assistance. The Act's intent is to prevent child sex trafficking and to improve the lives of youth in foster care. In addition to adding requirements regarding the identification, documentation, and response to child sex trafficking victims, or those at risk of becoming victims, within the child welfare system, this law affects many different areas of child welfare; including empowering children age 14 and older in the development of their own case plan and transition plan for a successful adulthood, further encouraging the placement of children in foster care with siblings, improving another planned permanent living arrangement as a permanency option, locating and responding to children who run away from foster care, and supporting normalcy for children in foster care and congregate care.

The proposed amendments to 18 NYCRR 428.3(i) and 430.12(c)(2)(i)(a) would require that the Family Assessment and Service Plan be developed in consultation with a child in foster care who is 14 years of age or older, and at the option of the child, with up to two members of the "case planning team" who are chosen by the child and who are neither the child's foster parent(s), case manager, case planner nor caseworker. The agency with case management responsibility would have the ability to reject an individual selected by the child to be on the case planning team if there is good cause to believe that the individual would not act in the child's best interests. One individual selected by the child could be designated as the child's advisor and could advocate with respect to the application of reasonable and prudent parenting. In addition, 18 NYCRR 428.9(b)(1) would be amended to address participation by each child in foster care 14 years of age or older in their case consultation, as well as the two members of the case planning team that were chosen by the child, if applicable.

The proposed amendment to 18 NYCRR 428.6(c) would implement the requirement that a case plan for a child in foster care who is 14 years or older include a document that describes the rights of the child concerning such matters as education, documents and the "right to stay safe and avoid exploitation". In addition, the case plan would have to contain an acknowledgment executed by the child that the child was provided with a copy of the rights and that the rights were explained to the child. Also for a child in foster care who has attained 14 years of age, the case plan must include a written description of the programs and services which will help the child prepare for the transition from foster care to successful adulthood.

The proposed amendments to 18 NYCRR 430.11(c)(4) would expressly expand the relative identification and notification requirements involving a child removed from home to include all parents of a sibling of the child where such parent has legal custody of such sibling.

P.L. 113-183 amended section 475(C)(i) of the Social Security Act to eliminate another planned living arrangement (APPLA) for youth in foster care under the age of 16. The proposed amendment to 18 NYCRR 430.12(f)(1)(i) would raise the age for the permanency planning goal of APPLA from 14 to 16. In addition, the proposed amendments to 18 NYCRR 428.5(c) and 428.9(c) would address P.L. 113-183 requirements to what the agency must document for submission at each permanency hearing where APPLA is the requested permanency plan. This would include a demonstration of intensive, ongoing and unsuccessful efforts to secure an alternative permanency plan to APPLA. Also, the proposed addition of 18 NYCRR 430.12 (c)(2)(i)(d) would address the requirement that the child's service plan address the steps taken by the authorized agency to see that the child's foster parents or child care facility are following the reasonable and prudent parent standard and to ascertain whether the child has regular, ongoing opportunities to engage in age or developmentally appropriate activities, including consulting with the child.

P.L. 113-183 requires that each child upon attaining the age 14 receive a copy of any consumer reports on the child and continue to receive them until they are discharged from foster care. The proposed amendment to 18 NYCRR 430.12(k) would change the age at which the child receives these report from ages 16 and over to ages 14 and over.

The proposed amendment to 18 NYCRR 430.12(1) would add additional documents to those that children in foster care are required to receive when they leave foster care. The proposed regulation would apply to children who have been in foster care for six or more months and who are leaving foster care by reason of attaining 18 years of age or older. Agencies would be required to provide such foster youth with an official or certified copy of their United States birth certificate, social security card, medical records, health insurance information and state issued ID card (or driver's license).

The proposed amendments to 18 NYCRR 431.8(b)(3) and 431.8(h) would address the requirement that states develop protocols for locating and responding to children who run away from foster care; including determining and documenting in the child's case record the primary reasons that contributed to the child running away or otherwise being absent without consent, and responding to those factors in the child's current and subsequent foster care placements. Upon return to care, the child would be screened for sex trafficking as defined in Federal law. In addition, agencies would be required to notify law enforcement authorities immediately, and in no case later than 24 hours of receiving information that a child in the placement, care or supervision of the local district is missing or abducted, and/or identified as being a sex trafficking victim, as defined by applicable federal law. Children who are missing or abducted must be entered by law enforcement in to the National Crime Information Center database of the Federal Bureau of Investigation and the agency must make a report to the National Center for Missing and Exploited Children.

The proposed amendment to 18 NYCRR 441.25 would address the new reasonable and prudent parenting standard requirements. P.L. 113-183 requires that foster parents and child care facility staff apply the prudent and reasonable parent standard for children in care. The requirements would include knowledge and skills relating to the child's developmental stages of cognitive, emotional, physical and behavioral capabilities and the skills relating to decision making. The proposed regulation requires that each child care facility must have on-site presence of at least one person who is designated to be the caregiver authorized to apply the reasonable and prudent standard to decisions involving the child's participation in these activities.

The proposed amendment to 18 NYCRR 443.2(e)(1) addresses the training requirements for each certified and approved foster parent in the prudent and reasonable parent standard.

The proposed amendment to 18 NYCRR 443.3(b)(1) would add to the agreement a foster parent must execute to include the foster parent will apply the reasonable and prudent parent standard as referenced in the proposed 18 NYCRR 441.25.

3. Professional Services:

These proposed regulations do not create the need for additional professional services.

4. Compliance Costs:

Approximately $571 million of Title IV-E funding is at risk if New York State fails to comply with the new requirements of the federal Preventing Sex Trafficking and Strengthening Families Act.

An estimated $5.6 million in statewide expenditures could be realized by the local departments of social services for requirements of the Preventing Sex Trafficking and Strengthening Families Act. This includes, but is not limited to:

- Additional data entry needs due to federally mandated reporting requirements.
- Providing consumer reports to youth in foster care, age 14 and 15, and resolving any inaccuracies in the reports.
- Providing youth age 18 years and older, who are being discharged to their own care and who have been in foster care for at least six months, with either a driver's license or non-driver's identification card; and
- The cost associated with the implementation of reasonable and prudent parent standard due to the increase in activity participation by children and youth in foster care.

The costs identified for local departments of social services would be supported out of the Foster Care Block Grant.

5. Economic and Technological Feasibility:

These proposed regulations would not have an adverse economic impact on social service districts, and would not require the hiring of additional staff. However, modifications to technology would be required as a result of the changes, which would be supported in the CONNECTIONS system.

6. Minimizing Adverse Impact:

It is not anticipated that the proposed regulations will result in an adverse impact on local government agencies or small businesses.

7. Small Business and Local Government Participation:

The proposed regulations regulation imposed on New York by federal law. The Office of Children and Family Services (OCFS) proposes to discuss the federal law and its implications at the January, 2015 Winter Meeting of the New York Public Welfare Association. In addition, OCFS will address any comments or feedback from small businesses and/or local governments during the public comment period.

8. For Rules That Either Establish or Modify a Violation or Penalties:

These proposed regulations do not establish or modify a violation or penalty.

Rural Area Flexibility Analysis

1. Types and estimated number of rural areas:

The proposed regulations will affect the 44 social services districts and approximately 35 voluntary authorized agencies that are in rural areas.

2. Reporting, recordkeeping and other compliance requirements:

The proposed regulations would implement Federal statutory changes due to the enactment of the Preventing Sex Trafficking and Strengthening Families Act (P.L. 113-183) and would change existing reporting and recordkeeping requirements.

The proposed amendment to 18 NYCRR 428.6(c) would implement the requirement that a case plan for a child in foster care who is 14 years or older include a document that describes the rights of the child concerning such matters as education, documents and the "right to stay safe and avoid exploitation". In addition, the case plan must contain an acknowledgment executed by the child that the child was provided with a copy of the rights and that the rights were explained to the child. Also for a child in foster care who has attained 14 years of age, the case plan must include a written description of the programs and services which will help the child prepare for the transition from foster care to successful adulthood.

The proposed amendment to 18 NYCRR 430.11(c)(4) would expand the relative identification and notification requirements involving a child removed from home to include all parents of a sibling of the child where such parent has legal custody of such sibling.

P.L. 113-183 amended section 475(C)(i) of the Social Security Act, to eliminate another planned living arrangement (APPLA) for youth in foster care under the age of 16. The proposed amendment to 18 NYCRR 430.12(f)(1)(i) would raise the age for APPLA from 14 to 16. In addition, the proposed amendments to 18 NYCRR 428.5(c) and 428.9(c) would address the P.L. 113-183 requirements to what the agency must document for submission at each permanency hearing where APPLA is the requested permanency planning goal. This includes a demonstration of intensive, ongoing and unsuccessful efforts to secure an alternative permanency plan to APPLA. Also, the addition of 18 NYCRR 430.12(c)(2)(i)(d) would address the requirement that the child's service plan address the steps taken by the authorized agency that the child's foster parents or child care facility are following the reasonable and prudent parent standard and to ascertain whether the child has regular, ongoing opportunities to engage in age or developmentally appropriate activities, including consulting with the child.

P.L. 113-183 also requires that each child upon attaining the age 14 receive a copy of any consumer reports on the child and continue to receive them until they are discharged from foster care. The proposed amendment to 18 NYCRR 430.12k) would change the age at which the child receives these report from ages 16 and over to ages 14 and over.

The proposed amendment to 18 NYCRR 430.12(1) would add additional documents that children in foster care are required to receive when they leave foster care. The proposed regulation would apply to children who have been in foster care for six or more months and who are leaving foster care by reason of attaining 18 years of age or older. Agencies would be required to provide such youth with an official or certified copy of their United States birth certificate, social security card, medical records, health insurance information and state issued ID card (or driver's license), if eligible to receive such documentation.

The proposed amendments to 18 NYCRR 431.8(b)(3) and 431.8(h) would address the requirement that states develop protocols for locating and responding to children who run away from foster care; including determining and documenting in the child's case record the primary reasons that contributed to the child running away or otherwise being absent without consent, and responding to those factors in the child's current and subsequent foster care placements. Upon return to care, the child also must be screened for sex trafficking as defined in Federal law In addition, agencies would be required to notify law enforcement authorities immediately, and in no case later than 24 hours of receiving information that a child in the placement, care or supervision of the local district is missing or abducted, and/or identified as being a sex trafficking victim, as defined by applicable federal law. Children who are missing or abducted must be entered by law enforcement in to the National Crime Information Center database of the Federal Bureau of Investigation and the agency must make a report to the National Center for Missing and Exploited Children.

3. Costs:

Approximately $571 million of Title IV-E funding is at risk if New York State fails to comply with the new requirements of the federal Preventing Sex Trafficking and Strengthening Families Act.

An estimated State operation cost of approximately $1.6 million in personal and non-personal services are anticipated for the implementation of the proposed regulations to comply with the federal Act. This estimate covers the cost of:

- Modifications to CONNECTIONS, Data Warehouse Database, and the Juvenile Justice Information System (JJIS).
- Additional personnel for the OCFS Bureau of Research, and Bureau of Policy Analysis needed to implement the necessary changes, including mandated federal reporting requirements.
- Modifying existing training materials and the creation of new training tools and modules.

An estimated $5.6 million in statewide expenditures could be realized by the local departments of social services for requirements of the Preventing Sex Trafficking and Strengthening Families Act. This includes, but is not limited to:

- Additional data entry needs due to federally mandated reporting requirements.
- Providing consumer reports to youth in foster care, age 14 and 15, and resolving any inaccuracies in the reports.
- Providing youth age 18 years and older, who are being discharged to their own care and who have been in foster care for at least six months, with either a driver's license or non-driver's identification card; and
- The cost associated with the implementation of reasonable and prudent parent standard due to the increase in activity participation by children and youth in foster care.

The costs identified for local departments of social services would be supported out of the Foster Care Block Grant.

4. Minimizing adverse impact:

It is not anticipated that the proposed regulations will result in an adverse impact on social service districts or small businesses that are in rural areas.

5. Rural area participation:

The proposed regulations reflect standards imposed on New York by federal law, P.L. 113-183. The Office of Children and Family Services (OCFS) proposes to discuss the federal law and it implications at the January, 2015 Winter Meeting of the New York Public Welfare Association. In addition, OCFS will address any comments or feedback from small businesses and/or local governments during the public comment period.

Job Impact Statement

The proposed amendments to regulation will not have a negative impact on jobs or employment opportunities in either public or private child welfare agencies. A full job impact statement has not been prepared for the proposed regulations as it is assumed that the proposed regulations will not result in the loss of any jobs.

Department of Civil Service

PROPOSED RULE MAKING
NO HEARING(S) SCHEDULED

Jurisdictional Classification

I.D. No. CVS-11-15-00002-P

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

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

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

Subject: Jurisdictional Classification.

Purpose: To classify a position in the exempt class.

Text of proposed rule: Amend Appendix 1 of the Rules for the Classified Service, listing positions in the exempt class, in the Department of Corrections and Community Supervision, by increasing the number of positions of Deputy Counsel from 2 to 3.

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

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

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

Regulatory Impact Statement

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

Regulatory Flexibility Analysis

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

Rural Area Flexibility Analysis

A rural area flexibility analysis is not submitted with this notice because this rule is subject to a consolidated rural area flexibility analysis that was

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

Job Impact Statement

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

PROPOSED RULE MAKING
NO HEARING(S) SCHEDULED

Jurisdictional Classification

I.D. No. CVS-11-15-00003-P

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

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

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

Subject: Jurisdictional Classification.

Purpose: To classify a position in the exempt class.

Text of proposed rule: Amend Appendix 1 of the Rules for the Classified Service, listing positions in the exempt class, in the Executive Department under the subheading "Office of General Services," by adding thereto the position of Director Internal Audit.

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

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

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

Regulatory Impact Statement

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

Regulatory Flexibility Analysis

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

Rural Area Flexibility Analysis

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

Job Impact Statement

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

PROPOSED RULE MAKING
NO HEARING(S) SCHEDULED

Jurisdictional Classification

I.D. No. CVS-11-15-00004-P

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

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

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

Subject: Jurisdictional Classification.

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

Text of proposed rule: Amend Appendix 2 of the Rules for the Classified Service, listing positions in the non-competitive class, in the Executive Department under the subheading "Office of Information Technology Services," by adding thereto the position of Agency Emergency Management Coordinator (ITS) (1).

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

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

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

Regulatory Impact Statement

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

Regulatory Flexibility Analysis

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

Rural Area Flexibility Analysis

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

Job Impact Statement

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

PROPOSED RULE MAKING
NO HEARING(S) SCHEDULED

Jurisdictional Classification

I.D. No. CVS-11-15-00005-P

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

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

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

Subject: Jurisdictional Classification.

Purpose: To classify positions in the exempt class.

Text of proposed rule: Amend Appendix 1 of the Rules for the Classified Service, listing positions in the exempt class, in the Executive Department under the subheading "State Board of Elections," by increasing the number of positions of Investigative Auditor from 10 to 14.

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

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

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

Regulatory Impact Statement

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

Regulatory Flexibility Analysis

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

Rural Area Flexibility Analysis

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

Job Impact Statement

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

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

PROPOSED RULE MAKING
NO HEARING(S) SCHEDULED

Jurisdictional Classification

I.D. No. CVS-11-15-00006-P

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

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

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

Subject: Jurisdictional Classification.

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

Text of proposed rule: Amend Appendix 1 of the Rules for the Classified Service, listing positions in the exempt class, in the Department of Law, by decreasing the number of positions of Confidential File Clerk from 4 to 3 and Confidential Stenographer from 11 to 3 and by increasing the number of positions of Investigator from 168 to 176.

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

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

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

Regulatory Impact Statement

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

Regulatory Flexibility Analysis

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

Rural Area Flexibility Analysis

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

Job Impact Statement

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

PROPOSED RULE MAKING
NO HEARING(S) SCHEDULED

Jurisdictional Classification

I.D. No. CVS-11-15-00007-P

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

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

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

Subject: Jurisdictional Classification.

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

Text of proposed rule: Amend Appendix 2 of the Rules for the Classified Service, listing positions in the non-competitive class, in the Department of Labor under the subheading "State Insurance Fund," by deleting therefrom the position øAffirmative Action Administrator 3 (1) and by adding thereto the position øAffirmative Action Administrator 4 (1).

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

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

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

Regulatory Impact Statement

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

Regulatory Flexibility Analysis

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

Rural Area Flexibility Analysis

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

Job Impact Statement

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

PROPOSED RULE MAKING
NO HEARING(S) SCHEDULED

Jurisdictional Classification

I.D. No. CVS-11-15-00008-P

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

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

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

Subject: Jurisdictional Classification.

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

Text of proposed rule: Amend Appendix 2 of the Rules for the Classified Service, listing positions in the non-competitive class, in the Department of Mental Hygiene under the subheading "Office of Mental Health," by increasing the number of positions of øMental Health Program Manager 1 from 5 to 6.

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

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

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

Regulatory Impact Statement

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

Regulatory Flexibility Analysis

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

Rural Area Flexibility Analysis

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

Job Impact Statement

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

PROPOSED RULE MAKING
NO HEARING(S) SCHEDULED

Jurisdictional Classification

I.D. No. CVS-11-15-00009-P

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

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

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

Subject: Jurisdictional Classification.

Purpose: To delete a position from and classify positions in the non-competitive class.

Text of proposed rule: Amend Appendix 2 of the Rules for the Classified Service, listing positions in the non-competitive class, in the Executive Department under the subheading "Justice Center for the Protection of People with Special Needs," by decreasing the number of positions of Internal Investigator 1 (OPWDD) from 19 to 18 and by increasing the number of positions of øInternal Investigator 2 (Justice Center) from 46 to 60 and øSupervising Investigator (Justice Center) from 11 to 16.

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

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

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

Regulatory Impact Statement

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

Regulatory Flexibility Analysis

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

Rural Area Flexibility Analysis

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

Job Impact Statement

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

PROPOSED RULE MAKING
NO HEARING(S) SCHEDULED

Jurisdictional Classification

I.D. No. CVS-11-15-00010-P

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

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

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

Subject: Jurisdictional Classification.

Purpose: To delete subheadings and positions from and classify positions in the non-competitive class.

Text of proposed rule: Amend Appendix 2 of the Rules for the Classified Service, listing positions in the non-competitive class, in the Department of Mental Hygiene, by deleting therefrom the positions of øAssistant Commissioner (Various Specialties) (9), øAssociate Commissioner (Various Specialties) (2), Dietetic Intern, Psychiatrist (Research) 2 and Youth Program Supervisor; in the Department of Mental Hygiene, by deleting therefrom the subheading "Institutions," and the positions of Assistant Music Supervisor, Dental Technician, øDeputy Director of Developmental Disabilities Research Institute (1), øDirector of each hospital, school or institute, Institution Retail Store Clerk (Part time), Mental Hygiene Halfway House Aide 1, Mental Hygiene Halfway House Aide 2, Mental Hygiene Special Adolescent Treatment Assistant (15), Pathologist (Research) 2 (1), Printer, Psychiatrist (Research) 1, Psychiatrist (Research) 2, Psychiatrist (Research) 3 and Senior Electronics Laboratory Engineer (1) Rockland State Hospital, (1) New York Psychiatric Institute; in the Department of Mental Hygiene under the subheading "Office of Alcoholism and Substance Abuse Services," by deleting therefrom the positions of øChief of Substance Abuse Program Planning (1), øDeputy Director for Substance Abuse Contract Management (1), øMedical Director, Alcoholism Treatment Center, Senior Substance Abuse Aide and Substance Abuse Aide; in the Department of Mental Hygiene under the subheading "Office of Mental Health," by deleting therefrom the positions of øDirector, Bureau of Inspection and Certification (1) and øDirector for Quality Assurance (Medical); in the Department of Mental Hygiene under the subheading "Office for People with Developmental Disabilities," by deleting therefrom the positions of øDirector of Affirmative Action Programs 5 (1), øDirector, Consent Decree Office (1) and Laboratory Equipment Designer (1) (Until first vacated after January 13, 1987); in the Department of Mental Hygiene, by deleting therefrom the subheading "New York State Developmental Disabilities Planning Council," and the positions of øDevelopmental Disabilities Program Planner 2 (3) and øSupervising Developmental Disabilities Program Planner (1); in the Department of Mental Hygiene under the subheading "Office of Mental Health," by adding thereto the positions of øDirector of each hospital, school or institute, Institution Retail Store Clerk (Part-time), Mental Hygiene Halfway House Aide 1, Mental Hygiene Halfway House Aide 2, Mental Hygiene Special Adolescent Treatment Assistant (1), Pathologist 2 (Research) (1), Printer, Psychiatrist 1 (Research), Psychiatrist 2 (Research) and Psychiatrist 3 (Research); and, in the Department of Mental Hygiene under the subheading "Office for People with Developmental Disabilities," by adding thereto the positions of Dental Technician, øDeputy Director Developmental Disabilities Research Institute (1), øDevelopmental Disabilities Program Planner 2 (3), øDirector of each hospital, school or institute, Institution Retail Store Clerk (Part-time), øSupervising Developmental Disabilities Program Planner (1) and Youth Program Supervisor.

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

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

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

Regulatory Impact Statement

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

Regulatory Flexibility Analysis

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

Rural Area Flexibility Analysis

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

Job Impact Statement

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

Education Department

NOTICE OF EXPIRATION

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

Hearings on Charges of Tenured School Employees

I.D. No.	Proposed	Expiration Date
EDU-08-14-00020-P	February 26, 2014	February 26, 2015

Department of Health

EMERGENCY RULE MAKING

Rate Rationalization—Intermediate Care Facilities for Persons With Developmental Disabilities

I.D. No. HLT-28-14-00015-E
Filing No. 145
Filing Date: 2015-02-27
Effective Date: 2015-02-27

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

Action taken: Amendment of Subpart 86-11 of Title 10 NYCRR.

Statutory authority: Public Health Law, section 201

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

Specific reasons underlying the finding of necessity: The emergency adoption of these amendments is necessary to protect the health, safety, and welfare of individuals receiving services in the OPWDD system.

The amendments are necessary to properly implement a new rate methodology for Intermediate Care Facilities for Persons with Developmental Disabilities (ICFs/DD).

On July 1, 2014, OPWDD and the Department of Health (DOH) implemented a new reimbursement methodology for ICFs/DD, which complements existing OPWDD requirements concerning this program, to satisfy commitments included in OPWDD's transformation agreement with the federal Centers for Medicare and Medicaid Services (CMS).

After July 1, CMS informed OPWDD and DOH that CMS would require changes in reimbursement for capital assets used in ICFs/DD. These changes are that capital costs for day habilitation property acquisitions must be depreciated over 25 years and that providers must submit information for each capital asset that is verified by an independent auditor and identifies the differences, by asset, between the amounts reported on the cost report and amounts that were approved by OPWDD. The emergency/proposed regulations are in response to these CMS requirements. The amendments change the depreciation period and reporting for capital costs.

In addition, the 2014-15 enacted budget included funding to support a 2% increase for direct support staff on January 1, 2015 and April 1, 2015, as well as a 2% increase for clinical staff on April 1, 2015 for eligible programs. This change to the methodology will increase rates for all providers of the eligible services.

The Department was not able to use the regular rulemaking process established by the State Administrative Procedure Act because there was not sufficient time to develop and promulgate regulations within the necessary timeframes. The State Administrative Procedure Act (SAPA) sets forth timeframes for the promulgation of regulations (including mandatory public comment period) and prohibits the adoption of rules containing substantive changes in the terms of proposed regulations. SAPA requires additional rulemaking activities to make substantive changes through the regular rulemaking process which delays the effective date. The only way to adopt the substantive amendments necessary to implement the rate-setting methodology in accordance with CMS mandates and State law is through the emergency rulemaking process.

If the Department did not promulgate these regulations on an emergency basis, the Department would fail to meet its commitment to CMS and would risk loss of the substantial federal funding that is contingent upon this commitment. The loss of this federal funding could jeopardize the health, safety, and welfare of individuals receiving services in the OPWDD system, as without it, individuals would be at risk of receiving services that are inadequate or insufficient in meeting their needs.

Subject: Rate Rationalization—Intermediate Care Facilities for Persons with Developmental Disabilities.

Purpose: To amend the new rate methodology effective July 1, 2014.

Substance of emergency rule: These emergency/proposed regulations amend the newly-adopted 10 NYCRR subpart 86-11 concerning the rate methodology for Intermediate Care Facilities for Persons with Developmental Disabilities (ICFs/DD). The amendments contain the methodology as described in the regulations adopted July 1, 2014 with changes required by the federal Centers for Medicare and Medicaid Services (CMS) subsequent to the adoption of those regulations. The amendments change reimbursement for capital assets used in ICFs/DD. The changes are:

1) The "capital component" sections were revised to require that capital costs must be depreciated over 25 years. The amendments require ICF/DD providers to submit a capital assets schedule to OPWDD as part of the annual cost report, to identify the differences, by asset, between the amount on the cost report and the amount approved by OPWDD, and to have an independent auditor apply procedures to verify the accuracy and completeness of the capital assets schedule.

2) The "capital component" section was revised to eliminate capital threshold schedules.

3) The amendments change the methodology to include funding for a 2% increase for direct support staff on January 1, 2015 and April 1, 2015, as well as a 2% increase for clinical staff on April 1, 2014 for eligible programs.

This notice is intended to serve only as a notice of emergency adoption. This agency intends to adopt the provisions of this emergency rule as a permanent rule, having previously submitted to the Department of State a notice of proposed rule making, I.D. No. HLT-28-14-00015-P, Issue of July 16, 2014. The emergency rule will expire April 27, 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) section 363-a and Public Health Law (PHL) section 201(1)(v) provide that the Department is the single state agency responsible for supervising the administration of the State's medical assistance ("Medicaid") program and for adopting such regulations, not inconsistent with law, as may be necessary to implement the State's Medicaid program. In addition, Part I of chapter 60 of the laws of 2014, which is part of the 2014-15 enacted budget, requires the Department to provide funding beginning January 1, 2015 to support a 2% increase in annual salary and salary-related fringe benefits for direct care staff, and also to provide funding beginning April 1, 2015 to support a 2% increase in annual salary and salary-related fringe benefits for direct care and clinical staff.

Legislative Objective:

These emergency/proposed amendments further the legislative objectives embodied in sections 363-a of the Social Services Law and section 201(1)(v) of the Public Health Law in Part I of chapter 60 of the laws of 2014. The emergency/proposed regulations amend the newly adopted methodology for reimbursement of Intermediate Care Facilities for Persons with Developmental Disabilities (ICFs/DD).

Needs and Benefits:

On July 1, 2014, OPWDD and the Department of Health (DOH) implemented a new reimbursement methodology for ICFs/DD to satisfy commitments included in OPWDD's transformation agreement with the federal Centers for Medicare and Medicaid Services (CMS).

After July 1, CMS informed OPWDD and DOH that CMS would require changes in reimbursement for ICF/DD capital assets. These changes are that capital costs for property acquisitions must be depreciated over 25 years; that the provider must submit a schedule that identifies the differences, by capital asset, between the amounts reported on the cost report and the amounts that were prior approved by OPWDD; and that an independent auditor apply procedures to verify the accuracy and completeness of the schedule. The amendments are in response to these CMS requirements.

These changes will bring the methodology into compliance with current CMS policies regarding depreciation of capital assets and provide information on capital costs required by CMS.

In addition, in recognition of the key role that direct support staff play in delivering services to persons with disabilities in New York State, the 2014-15 enacted budget included funding to support a 2% increase for direct support staff on January 1, 2015, and an additional 2% increase on April 1, 2015 for direct support staff, as well as a 2% increase for clinical staff beginning on April 1, 2015. OPWDD and DOH are revising the methodologies for affected residential and day habilitation programs to include funding to support these increases.

Costs:

Costs to the Agency and to the State and its local governments:

The amendments require OPWDD or DOH to give each provider a schedule identifying (for each capital asset for which OPWDD approved

the costs prior to July 1, 2014) total actual costs, reimbursable costs, total financing cost, allowable depreciation and interest for the remaining useful life, and allowable reimbursement for each year of the remaining useful life.

The new methodology and these accompanying amendments do not apply to the state as a provider of services.

There will be no savings or costs to local governments as a result of these regulations because pursuant to Social Services Law sections 365 and 368-a, either local governments incur no costs for these services or the State reimburses local governments for their share of the cost of Medicaid funded programs and services. In addition, even if the amendments lead to an increase in Medicaid expenditures in a particular county, these amendments will not have any fiscal impact on local governments, as the contribution of local governments to Medicaid has been capped. Chapter 58 of the Laws of 2005 places a cap on the local share of Medicaid costs and local governments are already paying for Medicaid at the capped level.

Costs to private regulated parties:

The emergency/proposed regulations will change the new reimbursement methodology for ICFs/DD. Application of the changes in the methodology may result in lower capital cost reimbursement per year, but full approved capital costs will be reimbursed over the 25 year depreciation period. In addition, providers will incur costs preparing capital assets schedules and having independent auditors apply procedures to verify the accuracy and completeness of the capital assets schedules.

Local Government Mandates:

There are no new requirements imposed by the rule on any county, city, town, village, school, fire or other special district.

Paperwork:

The amendments increase paperwork to be completed by providers. The amendments require providers to submit a capital assets schedule to OPWDD as part of the annual cost report, to identify the differences, by asset, between the amount on the cost report and the amount prior approved by OPWDD, and to have an independent auditor apply procedures to verify the accuracy and completeness of the capital assets schedule. In addition for the 2% compensation increase, each provider will have to submit an attestation, signed by members of the board of directors, stating how the provider will distribute the direct care and clinical compensation payments to its employees.

Duplication:

The emergency/proposed regulations do not duplicate any existing State or federal requirements that are applicable to services for persons with developmental disabilities.

Alternatives:

Since certain of the methodology changes in these amendments are required by CMS and others are mandated by State law, OPWDD and DOH did not consider any alternatives, because any alternatives would not be in compliance with recently articulated CMS policy and requirements.

Federal Standards:

The amendments do not exceed any minimum standards of the federal government for the same or similar subject areas.

Compliance Schedule:

DOH is adopting the amendments on an emergency basis effective January 1, 2015. DOH expects to finalize the amendments as soon as possible within the timeframes established by the State Administrative Procedure Act.

Regulatory Flexibility Analysis

Effect of Rule:

OPWDD and DOH have determined, through a review of the certified cost reports, that most services delivered in Intermediate Care Facilities for Persons with Developmental Disabilities (ICFs/DD) are provided by agencies that employ more than 100 people overall. However, some smaller agencies that employ fewer than 100 employees overall would be classified as small businesses. Currently, there are 108 ICF/DD providers. OPWDD and DOH are unable to estimate the portion of these providers that may be considered to be small businesses.

The proposed regulations amend the rate-setting methodology that was adopted in July 2014 in conformance with changes mandated by CMS after July 1, 2014.

After July 1, 2014, CMS informed OPWDD and DOH that it would require changes in reimbursement for ICF/DD capital assets. These changes are that capital costs for property acquisitions must be depreciated over 25 years; that the provider must submit a schedule that identifies the differences, by capital asset, between the amounts reported on the cost report and the amounts that were prior approved by OPWDD; and that an independent auditor apply procedures to verify the accuracy and completeness of the schedule. The amendments change the depreciation period and reporting requirements for capital costs. Application of the changes in the methodology for capital costs may result in lower reimbursement per year, but full approved capital costs will be reimbursed over the 25 year depreciation period.

In addition, the 2014-15 enacted budget included funding to support a 2% increase for direct support staff on January 1, 2015 and April 1, 2015, as well as a 2% increase for clinical staff on April 1, 2015 for eligible programs. This change to the methodology will increase rates for all providers of the eligible services.

Compliance Requirements:

The amendments require ICF/DD providers to submit a capital assets schedule to OPWDD as part of the annual cost report, to identify the differences, by asset, between the amount on the cost report and the amount prior approved by OPWDD, and to have an independent auditor apply procedures to verify the accuracy and completeness of the capital assets schedule. In addition, for the 2% compensation increase, each provider will be required to submit an attestation, signed by members of the board of directors, stating how the provider will distribute the direct care and clinical compensation payments to its employees.

Professional Services:

Additional professional services will be required as a result of these regulations. The amendments require independent auditors to apply procedures to verify the accuracy and completeness of the capital assets schedule. However, the regulations will not add to the professional service needs of local governments.

Compliance Costs:

The amendments require ICF/DD providers to submit a capital assets schedule to OPWDD as part of the annual cost report, to identify the differences, by asset, between the amount on the cost report and the amount prior approved by OPWDD, and to have an independent auditor apply procedures to verify the accuracy and completeness of the capital assets schedule. In addition, for the 2% compensation increase, each provider will be required to submit an attestation, signed by members of the board of directors, stating how the provider will distribute the direct care and clinical compensation payments to its employees.

Economic and Technological Feasibility:

The amendments do not impose on regulated parties the use of any new technological processes.

Minimizing Adverse Impact:

Since the methodology changes in these amendments are required by CMS, OPWDD and DOH did not consider any alternatives, because any alternatives would not be in compliance with recently articulated CMS policy and requirements.

The potential loss of federal funds that could result from noncompliance would have had far more serious consequences to providers than the minor decrease in annual reimbursement for capital costs that may result from this change.

For the 2% compensation increase, there is no adverse economic impact on providers. Each provider will need to submit an attestation, signed by members of the board of directors, stating how the provider will distribute the direct care and clinical compensation payments to its employees. However, the attestation is required by the enacted budget and is needed to ensure that the compensation increases are used for their intended purpose.

Small Business and Local Government Participation:

OPWDD and DOH met with representatives of providers to discuss this change in methodology at a meeting held on October 6, 2014, and met with them to discuss the 2% compensation increase on December 15. The New York State Association of Community and Residential Agencies (NYSACRA), which represent some providers that have fewer than 100 employees, were included in these meetings.

Rural Area Flexibility Analysis

Effect on Rural Areas:

Description of the types and estimation of the number of rural areas in which the rule will apply: OPWDD services are provided in every county in New York State. 43 counties have a population of less that 200,000: Allegany, Cattaraugus, Cayuga, Chautauqua, Chemung, Chenango, Clinton, Columbia, Cortland, Delaware, Essex, Franklin, Fulton, Genesee, Greene, Hamilton, Herkimer, Jefferson, Lewis, Livingston, Madison, Montgomery, Ontario, Orleans, Oswego, Otsego, Putnam, Rensselaer, St. Lawrence, Schenectady, Schoharie, Schuyler, Seneca, Steuben, Sullivan, Tioga, Tompkins, Ulster, Warren, Washington, Wayne, Wyoming and Yates. Additionally, 10 counties with certain townships have a population density of 150 persons or less per square mile: Albany, Broome, Dutchess, Erie, Monroe, Niagara, Oneida, Onondaga, Orange and Saratoga.

The proposed regulations amend the rate-setting methodology that was adopted in July 2014 in conformance with changes mandated by CMS after July 1, 2014.

After July 1, 2014, CMS informed OPWDD and DOH that CMS would require changes in reimbursement ICF/DD capital assets. These changes are that capital costs for property acquisitions must be depreciated over 25 years; that the provider must submit a schedule that identifies the differences, by capital asset, between the amounts reported on the cost report and the amounts that were approved by OPWDD; and that an independent

auditor apply procedures to verify the accuracy and completeness of the schedule. The amendments change the depreciation period and reporting for capital costs. Application of the changes in the methodology may result in lower reimbursement per year, but full approved capital costs will be reimbursed over the 25 year depreciation period.

In addition, the 2014-15 enacted budget included funding to support a 2% increase for direct support staff on January 1, 2015 and April 1, 2015, as well as a 2% increase for clinical staff on April 1, 2015 for eligible programs. This change to the methodology will increase rates for all providers of the eligible services.

Reporting, Recordkeeping and Other Compliance Requirements and Professional Services:

There will be additional reporting, recordkeeping, and professional services imposed by these amendments. The amendments require ICF/DD providers to submit a capital assets schedule to OPWDD as part of the annual cost report, to identify the differences, by asset, between the amount on the cost report and the amount prior approved by OPWDD, and to have an independent auditor apply procedures to verify the accuracy and completeness of the capital assets schedule. In addition, for the 2% compensation increase, each provider will be required to submit an attestation, signed by members of the board of directors, stating how the provider will distribute the direct care and clinical compensation payments to its employees.

The amendments will have no effect on local governments.

No additional professional services will be required as a result of these regulations and the regulations will not add to the professional service needs of local governments.

Costs:

The amendments require ICF/DD providers to submit a capital assets schedule to OPWDD as part of the annual cost report, to identify the differences, by asset, between the amount on the cost report and the amount prior approved by OPWDD, and to have an independent auditor apply procedures to verify the accuracy and completeness of the capital assets schedule. In addition, for the 2% compensation increase, each provider will be required to submit an attestation, signed by members of the board of directors, stating how the provider will distribute the direct care and clinical compensation payments to its employees.

Minimizing Adverse Impact:

Since the methodology change in this amendment is required by CMS, OPWDD and DOH did not consider any alternatives, because any alternatives would not be in compliance with recently articulated CMS policy and requirements.

The potential loss of federal funds that could result from noncompliance would have had far more serious consequences to providers than the minor decrease in annual reimbursement that results for capital costs that result from these changes.

For the 2% compensation increase, there is no adverse economic impact on providers. Each provider will need to submit an attestation, signed by members of the board of directors, stating how the provider will distribute the direct care and clinical compensation payments to its employees. However, the attestation is required by the enacted budget and is needed to ensure that the compensation increases are used for their intended purpose.

The Department has also reviewed and considered the approaches for minimizing adverse economic impact as suggested in section 202-b(1) of the State Administrative Procedure Act. The Department determined that the revision to reimbursement proposed in this amendment is the most optimal approach to instituting the necessary change in rate methodology while minimizing any adverse impact on providers.

Rural Area Participation:

Participation of public and private interests in rural areas: OPWDD and DOH met with representatives of providers to discuss the capital changes in new methodology October 6, 2014, and met with them to discuss the 2% compensation increase on December 15, 2014. The New York State Association of Community and Residential Agencies (NYSACRA), which represents some providers in rural areas, were included in these meetings.

Job Impact Statement

A Job Impact Statement is not being submitted for this emergency/proposed rulemaking because this rulemaking will not have a substantial adverse impact on jobs or employment opportunities.

The emergency/proposed regulations amend the rate-setting methodology that was adopted in July 2014 in conformance with changes mandated by CMS after July 1, 2014. In addition, the proposed regulations change the methodologies for rates and fees for the affected programs to provide funding to support a January 1, 2015 2% salary increase and an April 1, 2015 2% increase for direct support staff, as well as an April 1, 2015 2% increase for clinical staff for the affected residential and day programs, to include funding to support these increases.

All providers will experience an increase in funding as a result of the 2% compensation increase in these amendments. Application of the changes in the methodology may result in lower capital cost reimbursement per year, but full approved capital costs will be reimbursed over the 25 year depreciation period. The impact of additional recordkeeping associated with verification of those capital costs will be negligible.

The amendments are therefore expected to have no significant adverse impact on jobs and employment opportunities with providers.

Assessment of Public Comment

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

EMERGENCY RULE MAKING

Rate Rationalization for Community Residences/Individualized Residential Alternatives Habilitation and Day Habilitation

I.D. No. HLT-28-14-00016-E

Filing No. 144

Filing Date: 2015-02-27

Effective Date: 2015-02-27

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

Action taken: Amendment of Subpart 86-10 of Title 10 NYCRR.

Statutory authority: Public Health Law, section 201

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

Specific reasons underlying the finding of necessity: The emergency adoption of these amendments is necessary to protect the health, safety, and welfare of individuals receiving services in the OPWDD system.

The amendments are necessary to properly implement the rate methodology for residential habilitation provided in Individualized Residential Alternatives (IRAs) and Community Residences (CRs) and day habilitation services.

On July 1, 2014, OPWDD and the Department of Health (DOH) implemented a new reimbursement methodology for residential habilitation in IRAs/CRs and day habilitation, which complements existing OPWDD requirements concerning these programs, to satisfy commitments included in OPWDD's transformation agreement with the federal Centers for Medicare and Medicaid Services (CMS).

After July 1, CMS informed OPWDD and DOH that the State could not use SSI benefits in excess of the room and board costs to offset the Medicaid rate for residential habilitation, and that CMS would require changes in reimbursement for capital assets used in day habilitation programs. These changes are that capital costs for day habilitation property acquisitions must be depreciated over 25 years and that providers must submit information for each capital asset that is verified by an independent auditor and identifies the differences, by asset, between the amounts reported on the cost report and amounts that were approved by OPWDD.

The emergency/proposed regulations are in response to these CMS requirements. The regulations contain the methodology as described in the regulations adopted effective July 1, with changes to the SSI offset, day habilitation depreciation period and reporting for day habilitation capital costs, and with additional changes to the budget neutrality factor necessitated by the change in the SSI offset. The amendments also contain provisions to reimburse IRA and CR providers for July 1 through November 1, 2014 for the difference between the November 1 rate and the July 1 rate, if the November 1 rate is higher.

In addition, the 2014-15 enacted budget included funding to support a 2% increase for direct support staff on January 1, 2015 and April 1, 2015, as well as a 2% increase for clinical staff on April 1, 2015 for eligible programs. This change to the methodology will increase rates for all providers of the eligible services.

The Department was not able to use the regular rulemaking process established by the State Administrative Procedure Act because there was not sufficient time to develop and promulgate regulations within the necessary timeframes. The State Administrative Procedure Act (SAPA) sets forth timeframes for the promulgation of regulations (including mandatory public comment period) and prohibits the adoption of rules containing substantive changes in the terms of proposed regulations. SAPA requires additional rulemaking activities to make substantive changes through the regular rulemaking process which delays the effective date. The only way to adopt the substantive amendments necessary to implement the rate-setting methodology in accordance with CMS mandates and State law is through the emergency rulemaking process.

If the Department did not promulgate these regulations on an emer-

gency basis, the Department would fail to meet its commitment to CMS and would risk loss of the substantial federal funding that is contingent upon this commitment. The loss of this federal funding could jeopardize the health, safety, and welfare of individuals receiving services in the OPWDD system, as without it, individuals would be at risk of receiving services that are inadequate or insufficient in meeting their needs.

Subject: Rate Rationalization for Community Residences/Individualized Residential Alternatives Habilitation and Day Habilitation.

Purpose: To amend the new rate methodology effective July 1, 2014.

Substance of emergency rule: The emergency/proposed regulations amend the newly-adopted 10 NYCRR Subpart 86-10, concerning the rate methodology for Residential Habilitation delivered in IRAs and Community Residences and Day Habilitation. The amendments contain the methodology as described in the regulations adopted July 1, 2014 with changes required by the federal Centers for Medicare and Medicaid Services (CMS) subsequent to the adoption of those regulations. The amendments change the SSI offset with additional changes to the budget neutrality factor necessitated by the change in the SSI offset. The changes are:

1) A definition was added for "state supplement." The definition state supplement is the amount paid to a provider to cover room and board costs in excess of SSI/SNAP payments.

2) The "budget neutrality" formula was changed for Supervised and Supportive Individualized Residential Alternatives (IRAs) and Community Residences (CRs). The method for calculating the budget neutrality factor for the "state supplement" was adjusted.

3) The "capital component" sections were revised to eliminate capital threshold schedules and require that capital costs must be depreciated over 25 years. The amendments require day habilitation providers to submit a capital assets schedule to OPWDD as part of the annual cost report, to identify the differences, by asset, between the amount on the cost report and the amount approved by OPWDD, and to have an independent auditor apply procedures to verify the accuracy and completeness of the capital assets schedule.

4) The amendments also contain provisions to reimburse IRA and CR providers for July 1 through November 1, 2014 for the difference between the November 1, 2014 rate and the July 1, 2014 rate, if the November 1 rate is higher.

5) The amendments change the methodology to include funding for a 2% increase for direct support staff on January 1, 2015 and April 1, 2015, as well as a 2% increase for clinical staff on April 1, 2015 for eligible programs.

6) Several non-substantive technical corrections were added to correct reference errors and grammatical errors.

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. HLT-28-14-00016-P, Issue of July 16, 2014. The emergency rule will expire April 27, 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) section 363-a and Public Health Law (PHL) section 201(1)(v) provide that the Department is the single state agency responsible for supervising the administration of the State's medical assistance ("Medicaid") program and for adopting such regulations, not inconsistent with law, as may be necessary to implement the State's Medicaid program. In addition, Part I of chapter 60 of the laws of 2014, which is part of the 2014-15 enacted budget, requires the Department to provide funding beginning January 1, 2015 to support a 2% increase in annual salary and salary-related fringe benefits for direct care staff, and also to provide funding beginning April 1, 2015 to support a 2% increase in annual salary and salary-related fringe benefits for direct care and clinical staff.

Legislative Objective:

These emergency/proposed regulations further the legislative objectives embodied in section 363-a of the Social Services Law and section 201(1)(v) of the Public Health Law and in Part I of chapter 60 of the laws of 2014. The emergency/proposed regulations amend the newly adopted methodology for reimbursement of residential habilitation delivered in Individualized Residential Alternatives (IRAs) and Community Residences (CRs) and day habilitation services.

Needs and Benefits:

On July 1, 2014, OPWDD and the Department of Health (DOH) implemented a new reimbursement methodology for residential habilitation in IRAs/CRs and day habilitation, which complements existing OPWDD requirements concerning these programs, to satisfy commitments included in OPWDD's transformation agreement with the federal Centers for Medicare and Medicaid Services (CMS).

After July 1, CMS informed OPWDD and DOH that the State could not use SSI benefits in excess of the room and board costs to offset the Medicaid rate for residential habilitation, and that CMS would require changes in reimbursement for capital assets used in day habilitation programs. These changes are that capital costs for day habilitation property acquisitions must be depreciated over 25 years and that providers must submit information for each capital asset that is verified by an independent auditor and identifies the differences, by asset, between the amounts reported on the cost report and the amounts that were prior approved by OPWDD. The emergency/proposed amendments are in response to these CMS requirements. The amendments contain the methodology as described in the regulations adopted effective July 1, with changes to the SSI offset, day habilitation depreciation period and reporting for day habilitation capital costs, and with additional changes to the budget neutrality factor necessitated by the change in the SSI offset. In addition, the amendments contain provisions to reimburse IRA and CR providers for July 1 through November 1, 2014 for the difference between the November 1 rate and the July 1 rate, if the November 1 rate is higher. These amendments also make technical and clarifying changes to the regulations effective July 1, 2014.

These changes will increase reimbursement to providers, bring the methodology into compliance with current CMS policies regarding depreciation of capital assets and the treatment of individual benefits in HCBS waiver programs and provide information on capital costs required by CMS.

In addition, in recognition of the key role that direct support staff play in delivering services to persons with disabilities in New York State, the 2014-15 enacted budget included funding to support a 2% increase for direct support staff on January 1, 2015, and an additional 2% increase on April 1, 2015 for direct support staff, as well as a 2% increase for clinical staff beginning on April 1, 2015. OPWDD and the Department of Health (DOH) are revising the methodologies for affected residential and day habilitation programs to include funding to support these increases.

Costs:

Costs to the agency and to the State and its local governments:

The emergency/proposed regulations will result in additional State share Medicaid costs of approximately $34 million per year. The regulations also require OPWDD or DOH to give each provider a schedule identifying (for each capital asset for which OPWDD approved the costs prior to July 1, 2014) total actual costs, reimbursable costs, total financing cost, allowable depreciation and interest for the remaining useful life, and allowable reimbursement for each year of the remaining useful life.

The new methodology and the accompanying amendments do not apply to the state as a provider of services.

There will be no savings or costs to local governments as a result of these regulations because pursuant to Social Services Law sections 365 and 368-a, either local governments incur no costs for these services or the State reimburses local governments for their share of the cost of Medicaid funded programs and services. In addition, even if the amendments lead to an increase in Medicaid expenditures in a particular county, these amendments will not have any fiscal impact on local governments, as the contribution of local governments to Medicaid has been capped. Chapter 58 of the Laws of 2005 places a cap on the local share of Medicaid costs and local governments are already paying for Medicaid at the capped level.

Costs to private regulated parties:

The emergency/proposed regulations will amend the new reimbursement methodology for residential habilitation in IRAs/CRs and day habilitation. Application of the changes in the methodology for SSI and budget neutrality is expected to result in increased rates for all non-state operated providers. Overall reimbursement to providers will be increased by approximately $29 million from July 2014 through June 2015 due to this changes. Application of the changes in the methodology for capital cost to day habilitation may result in lower reimbursement per year, but full approved capital costs will be reimbursed over the 25 year amortization period.

Local Government Mandates:

There are no new requirements imposed by the rule on any county, city, town, village, school, fire or other special district.

Paperwork:

The emergency/proposed amendments increase paperwork to be completed by providers. The amendments require providers of day habilitation services to submit a capital assets schedule to OPWDD as part of the annual cost report, to identify the differences, by asset, between the amount on the cost report and the amount prior approved by OPWDD, and to have an independent auditor apply procedures to verify the accuracy and completeness of the capital assets schedule. In addition for the 2% compensation increase, each provider will have to submit an attestation, signed by members of the board of directors, stating how the provider will

distribute the direct care and clinical compensation payments to its employees.

Duplication:

The emergency/proposed regulations do not duplicate any existing State or federal requirements that are applicable to services for persons with developmental disabilities.

Alternatives:

Since certain of the methodology changes in these amendments are required by CMS and others are mandated by State law, OPWDD and DOH did not consider any alternatives, because any alternatives would not be in compliance with recently articulated CMS policy and requirements.

Federal Standards:

The emergency/proposed amendments do not exceed any minimum standards of the federal government for the same or similar subject areas.

Compliance Schedule:

DOH is adopting the amendments on an emergency basis effective January 1, 2015. DOH expects to finalize the amendments as soon as possible within the timeframes established by the State Administrative Procedure Act.

Regulatory Flexibility Analysis

Effect of Rule:

OPWDD and DOH have determined, through a review of the certified cost reports, that most residential habilitation services delivered in Individualized Residential Alternatives (IRAs) and Community Residences (CRs) and most day habilitation services are provided by agencies that employ more than 100 people overall. However, some smaller agencies that employ fewer than 100 employees overall would be classified as small businesses. Currently, there are 348 providers of residential habilitation services delivered in IRAs and CRs and day habilitation services. OPWDD and DOH are unable to estimate the portion of these providers that may be considered to be small businesses.

The proposed regulations amend the rate-setting methodology that was adopted in July 2014 in conformance with changes mandated by CMS after July 1, 2014.

After July 1, 2014, CMS informed OPWDD and DOH that the State could not use SSI benefits in excess of the room and board costs to offset the Medicaid rate for residential habilitation, and that CMS would require changes in reimbursement for capital assets used in day habilitation programs. These changes are that capital costs for day habilitation property acquisitions must be depreciated over 25 years; that providers must submit a schedule that identifies the differences, by capital asset, between the amounts reported on the cost report and the amounts that were approved by OPWDD; and that an independent auditor apply procedures to verify the accuracy and completeness of the schedule. The amendments contain the methodology as described in the regulations adopted in July 2014, with changes to the SSI offset, day habilitation depreciation period and reporting for day habilitation capital costs, and with additional changes to the budget neutrality factor necessitated by the change in the SSI offset. Application of the changes in the methodology regarding SSI offsets and budget neutrality is expected to result in increased rates for all providers, including providers that are small businesses. Overall reimbursement to providers will be increased by approximately $29 million for July 2014 through June 2015. Application of the changes in the methodology for capital costs to day habilitation may result in lower reimbursement per year, but full approved capital costs will be reimbursed over the 25 year amortization period.

The changes also include an amendment to reimburse IRA and CR providers, including providers that are small businesses, for the difference between the November 1 rate and the July 1 rate, if the November 1 rate is higher. These regulations also make technical and clarifying changes to the regulations effective July 1, 2014.

In addition, the 2014-15 enacted budget included funding to support a 2% increase for direct support staff on January 1, 2015 and April 1, 2015, as well as a 2% increase for clinical staff on April 1, 2015 for eligible programs. This change to the methodology will increase rates for all providers of the eligible services.

Compliance Requirements:

The amendments require providers of day habilitation services to submit a capital assets schedule to OPWDD as part of the annual cost report, to identify the differences, by asset, between the amount on the cost report and the amount prior approved by OPWDD, and to have an independent auditor apply procedures to verify the accuracy and completeness of the capital assets schedule. In addition, for the 2% compensation increase, each provider will be required to submit an attestation, signed by members of the board of directors, stating how the provider will distribute the direct care and clinical compensation payments to its employees.

Professional Services:

Additional professional services will be required as a result of these regulations. The amendments require providers of day habilitation services to verify the accuracy and completeness of the capital assets schedule. However, the regulations will not add to the professional service needs of local governments.

Compliance Costs:

The amendments require providers of day habilitation services to submit a capital assets schedule to OPWDD as part of the annual cost report, to identify differences, by asset, between the amount on the cost report and the amount prior approved by OPWDD, and to have an independent auditor apply procedures to verify the accuracy and completeness of the capital assets schedule. In addition, for the 2% compensation increase, each provider will be required to submit an attestation, signed by members of the board of directors, stating how the provider will distribute the direct care and clinical compensation payments to its employees.

Economic and Technological Feasibility:

The amendments do not impose on regulated parties the use of any technological processes.

Minimizing Adverse Impact:

Since the certain of the methodology changes in these amendments are required by CMS, OPWDD and DOH did not consider any alternatives, because any alternatives would not be in compliance with recently articulated CMS policy and requirements. The potential loss of federal funds that could result from non-compliance would have had far more serious consequences to providers than the minor decrease in yearly reimbursement for day habilitation costs that may result from these changes.

For the 2% compensation increase, there is no adverse economic impact on providers. Each provider will need to submit an attestation, signed by members of the board of directors, stating how the provider will distribute the direct care and clinical compensation payments to its employees. However, the attestation is required by the enacted budget and is needed to ensure that the compensation increases are used for their intended purpose.

The Department has also reviewed and considered the approaches for minimizing adverse economic impact as suggested in section 202-b(1) of the State Administrative Procedure Act. The Department determined that the revision to reimbursement proposed in this amendment is the most optimal approach to instituting the necessary change in rate methodology while minimizing any adverse impact on providers.

Small Business and Local Government Participation:

OPWDD and DOH met with representatives of providers to discuss the SSI offset changes in the new methodology (including provider concerns) on July 21, August 18, and September 15. OPWDD and DOH also met with representatives of providers to discuss the capital changes on October 6, 2014, and met with them to discuss the 2% compensation increase on December 15. The New York State Association of Community and Residential Agencies (NYSACRA), which represents some providers that have fewer than 100 employees, was included in these meetings.

Rural Area Flexibility Analysis

Effect on Rural Areas:

Description of the types and estimation of the number of rural areas in which the rule will apply: OPWDD services are provided in every county in New York State. 43 counties have a population of less than 200,000: Allegany, Cattaraugus, Cayuga, Chautauqua, Chemung, Chenango, Clinton, Columbia, Cortland, Delaware, Essex, Franklin, Fulton, Genesee, Greene, Hamilton, Herkimer, Jefferson, Lewis, Livingston, Madison, Montgomery, Ontario, Orleans, Oswego, Otsego, Putnam, Rensselaer, St. Lawrence, Schenectady, Schoharie, Schuyler, Seneca, Steuben, Sullivan, Tioga, Tompkins, Ulster, Warren, Washington, Wayne, Wyoming and Yates. Additionally, certain townships in 10 counties have a population density of 150 persons or less per square mile: Albany, Broome, Dutchess, Erie, Monroe, Niagara, Oneida, Onondaga, Orange and Saratoga.

The proposed regulations amend the rate-setting methodology that was adopted in July 2014 in conformance with changes mandated by CMS after July 1, 2014.

After July 1, 2014, CMS informed OPWDD and DOH that the State could not use SSI benefits in excess of the room and board costs to offset the Medicaid rate for residential habilitation, and that CMS would require changes in reimbursement for capital assets used in day habilitation programs. These changes are that capital costs for day habilitation property acquisitions must be depreciated over 25 years; that providers must submit a schedule that identifies the differences, by capital asset, between the amounts reported on the cost report and amounts that were approved by OPWDD; and that an independent auditor apply procedures to verify the accuracy and completeness of the schedule. The amendments contain the methodology as described in the regulations adopted in July 2014, with changes to the SSI offset, day habilitation depreciation period and reporting for day habilitation capital costs, and with additional changes to the budget neutrality factor necessitated by the change in the SSI offset. Application of the changes in the methodology regarding SSI offsets and budget neutrality is expected to result in increased rates for all providers,

including providers in rural areas. Overall reimbursement to providers will be increased by approximately $29 million for July 2014 through June 2015. Application of the changes in the methodology for capital costs to day habilitation may result in lower reimbursement per year, but full approved capital costs will be reimbursed over the 25 year depreciation period.

The changes also include an amendment to reimburse IRA and CR providers, including providers in rural areas, for the difference between the November 1 rate and the July 1 rate, if the November 1 rate is higher. These regulations also make technical and clarifying changes to the regulations effective July 1, 2014.

In addition, the 2014-15 enacted budget included funding to support a 2% increase for direct support staff on January 1, 2015 and April 1, 2015, as well as a 2% increase for clinical staff on April 1, 2015 for eligible programs. This change to the methodology will increase rates for all providers of the eligible services.

Reporting, Recordkeeping and Other Compliance Requirements and Professional Services:

There will be additional reporting, recordkeeping, and professional services imposed by these amendments. The amendments require providers of day habilitation services to submit a capital assets schedule to OPWDD as part of the annual cost report, to identify the differences, by asset, between the amount on the cost report and the amount prior approved by OPWDD, and to have an independent auditor apply procedures to verify the accuracy and completeness of the capital assets schedule. In addition, for the 2% compensation increase, each provider will be required to submit an attestation, signed by members of the board of directors, stating how the provider will distribute the direct care and clinical compensation payments to its employees.

The amendments will have no effect on local governments.

No additional professional services will be required as a result of these regulations and the regulations will not add to the professional service needs of local governments.

Costs:

The amendments require providers of day habilitation services to submit a capital assets schedule to OPWDD as part of the annual cost report, to identify the differences, by asset, between the amount on the cost report and the amount prior approved by OPWDD, and to have an independent auditor apply procedures to verify the accuracy and completeness of the capital assets schedule. In addition, for the 2% compensation increase, each provider will be required to submit an attestation, signed by members of the board of directors, stating how the provider will distribute the direct care and clinical compensation payments to its employees.

Minimizing Adverse Impact:

Since certain of the methodology changes in these amendments are required by CMS, OPWDD and DOH did not consider any alternatives, because any alternatives would not be in compliance with recently articulated CMS policy and requirements. The potential loss of federal funds that could result from non-compliance would have had far more serious consequences to providers than the minor decrease in annual reimbursement for day habilitation capital costs that may result from these changes.

For the 2% compensation increase, there is no adverse economic impact on providers. Each provider will need to submit an attestation, signed by members of the board of directors, stating how the provider will distribute the direct care and clinical compensation payments to its employees. However, the attestation is required by the enacted budget and is needed to ensure that the compensation increases are used for their intended purpose.

The Department has also reviewed and considered the approaches for minimizing adverse economic impact as suggested in section 202-b(1) of the State Administrative Procedure Act. The Department determined that the revision to reimbursement proposed in this amendment is the most optimal approach to instituting the necessary change in rate methodology while minimizing any adverse impact on providers.

Rural Area Participation:

Participation of public and private interests in rural areas: OPWDD and DOH met with representatives of providers to discuss the SSI offset changes in the new methodology (including provider concerns) on July 21, August 18, and September 15. OPWDD and DOH met with representatives of providers to discuss the capital changes on October 6, 2014, and met with them to discuss the 2% compensation increase on December 15, 2014. The NYS Association of Community and Residential Agencies (NYSACRA), which represents some providers in rural areas, was included in these meetings.

Job Impact Statement

A job impact statement is not being submitted for this emergency/proposed rulemaking because this rulemaking will not have a substantial adverse impact on jobs or employment opportunities.

The emergency/proposed regulations amend the rate-setting methodology that was adopted in July 2014 in conformance with changes mandated by CMS after July 1, 2014. In addition, the proposed regulations change the methodologies for rates and fees for the affected programs to provide funding to support a January 1, 2015 2% salary increase and an April 1, 2015 2% increase for direct support staff, as well as an April 1, 2015 2% increase for clinical staff for the affected residential and day programs, to include funding to support these increases.

All providers will experience an increase in funding as a result of the changes to the SSI offset, budget neutrality factor and 2% compensation increase in these amendments. Application of the changes in the methodology for capital costs to day habilitation may result in lower reimbursement per year, but full approved capital costs will be reimbursed over the 25 year depreciation period.

The amendments are therefore expected to have no significant adverse impact on jobs and employment opportunities with providers.

Assessment of Public Comment

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

PROPOSED RULE MAKING
NO HEARING(S) SCHEDULED

Standards for Individual Onsite Water Supply and Individual Onsite Wastewater Treatment Systems

I.D. No. HLT-11-15-00019-P

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

Proposed Action: Amendment of Part 75 of Title 10 NYCRR.

Statutory authority: Public Health Law, section 201(1)(l)

Subject: Standards for Individual Onsite Water Supply and Individual Onsite Wastewater Treatment Systems.

Purpose: Establishes minimum water quality standards for individual onsite water supply systems.

Text of proposed rule: Pursuant to the authority vested in the Commissioner of Health by Section 201(1)(l) of the Public Health Law, Part 75 and Appendix 75-A of Title 10 (Health) of the Official Compilation of Codes, Rules and Regulations of the State of New York are amended and a new Appendix 75-C is added to be effective upon publication of a Notice of Adoption in the New York State Register, to read as follows:

* * *

PART 75

STANDARDS FOR INDIVIDUAL *ONSITE* WATER SUPPLY AND INDIVIDUAL [SEWAGE] *ONSITE WASTEWATER* TREATMENT SYSTEMS

(Statutory authority: Public Health Law, Section 201(1)(l))

Section 75.1 Statement of purpose. The rules contained in this Part have been promulgated to protect the health and safety of those persons who must use an individual *onsite* water supply system, an individual [sewage] *onsite wastewater* treatment system, or both, when a municipal or communal system is not available.

75.2 Applicability and scope. This Part shall apply through the entire State of New York and shall represent minimum [requirements] *standards* for individual *onsite* water supply and for individual [sewage] *onsite wastewater* treatment systems.

75.3 Definitions. As used in this Part, the following words and phrases shall have the following meanings:

(a) Individual *onsite* water supply system means [a] *an onsite* water [supply] *system* intended to [supply one or more single parcels] *serve a single parcel* of land, [except when] *which is not* supplied by a public water supply as defined in Part 5 of this Title.

(b) Individual [sewage] *onsite wastewater* treatment system means [a] *an onsite* facility serving [one or more parcels] *a single parcel* of land [or residential household] and treating sewage or other liquid wastes for discharge into the groundwaters of the State [, except where a permit for such a facility is required under the applicable provisions of Article 17 of the Environmental Conservation Law].

(c) General waiver means a waiver that exempts any portion of the standards for individual *onsite* water supply and/or for individual [sewage] *onsite wastewater* treatment systems because of unique local conditions.

(d) Specific waiver means a waiver granted in an individual situation because of a hardship or other circumstance that makes it impractical to comply with a standard for individual *onsite* water supply or for individual [sewage] *onsite wastewater* treatment systems.

(e) Local waiver [is] *means* a waiver that allows the routine use of alternative-type [sewage] *wastewater* treatment system(s) by a municipality.

(f) Design professional means a person licensed to practice engineering or architecture in New York State by the State Education Department in accordance with Article 145 or Article 147 of Title VIII of the New York State Education Law, respectively, and who is currently registered with the New York State Education Department.

75.4 [Standards] *Minimum standards* for individual *onsite* water supply systems.

(a) Individual *onsite* water supply systems shall be designed[,] *and* constructed [and maintained] in accordance with the standards of the State Commissioner of Health as set forth in Appendix 5-B of this Title.

(b) All treatment devices for an individual *onsite* water supply must be designed, constructed[,] *and* installed [and maintained] in accordance with standards acceptable to the State Commissioner of Health as set forth in Appendix 75-B of this Title.

(c) The standards set forth in Appendix 75-C shall represent statewide water quality standards for individual onsite water supply systems. The State or county health department official having jurisdiction may require that individual onsite water supply systems be tested for compliance with the standards set forth in Appendix 75-C, and for such additional contaminants as such official determines are necessary or appropriate to protect public health.

75.5 [Standards] *Minimum standards* for individual [sewage] *onsite wastewater* treatment systems.

(a) Individual [sewage] *onsite wastewater* treatment systems shall be designed and constructed in accordance with the standards of the State Commissioner of Health as set forth in Appendix 75-A of this Title.

(b) Plans for the design of individual onsite wastewater treatment systems shall be prepared directly by or under the supervision of a design professional.

(c) Prior to construction of an individual onsite wastewater treatment system utilizing an alternative system pursuant to 10 NYCRR Appendix 75-A, plans for the design of the system shall be reviewed and approved by the State or county health department official having jurisdiction. A design professional shall supervise the construction of the alternative system and ensure that such construction conforms to the approved plans. After construction is completed, a design professional shall provide the State or county health department official having jurisdiction with a certification that the construction of the alternative system was supervised by a design professional and that such construction conforms to the approved plans.

* * *

APPENDIX 75-A

Subdivision (e) of Appendix 75-A.9 is repealed.

Subdivision (c) of Appendix 75-A.10 is repealed.

* * *

A new appendix 75-C is added as follows:

APPENDIX 75-C

INDIVIDUAL ONSITE WATER SUPPLY SYSTEMS – STATEWIDE WATER QUALITY STANDARDS

(Statutory Authority: Public Health Law, 201(1)(1))

TABLE 1

The standards in Table 1 shall not be exceeded:

Contaminant	*Standard (1)*
Coliform Bacteria	*Any positive result (2)*
Lead	*0.015 mg/l*
Nitrates	*10 mg/l as Nitrogen*
Nitrites	*1 mg/l as Nitrogen*
Turbidity	*5 NTU (3)*
Arsenic	*0.010 mg/l*

(1) mg/l means milligrams per liter (parts per million).

(2) A "positive" result means that coliform bacteria are present; a "negative" result means that coliform bacteria are absent or are not present.

(3) NTU means Nephelometric Turbidity Units.

TABLE 2

Exceeding the following standards may necessitate (1) installation and maintenance of water treatment devices, or (2) limited daily consumption of water by certain persons:

Contaminant	*Standard (1)*
Iron	*0.3 mg/l (2)*
Manganese	*0.3 mg/l (2)*
Iron plus manganese	*0.5 mg/l (2)*
Hardness	*150 mg/l as $CaCO_3$ (2)*
Alkalinity	*100 mg/l as $CaCO_3$ (2)*
pH	*6.5 – 8.5 (3)*
Sodium	*No designated limit (4)*

(1) mg/l means milligrams per liter (parts per million).

(2) If standards are exceeded options for treatment should be evaluated.

(3) If pH values are outside of this range (i.e., less than 6.5 or greater than 8.5) options for treatment should be evaluated.

(4) Water containing more than 20 mg/l of sodium should not be used for drinking by people on severely restricted sodium diets. Water containing more than 270 mg/l of sodium should not be used for drinking by people on moderately restricted sodium diets.

***

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

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

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

Regulatory Impact Statement

Statutory Authority:

Public Health Law (PHL) § 201(1)(1) authorizes the Department of Health (Department) to regulate the sanitary aspects of water supplies and sewage disposal systems, which includes individual onsite water supply systems and individual onsite wastewater treatment systems.

Legislative Objectives:

The legislative objective of PHL § 201(1)(l) is to ensure that the public health is protected by ensuring the safety and sanitation of individual onsite water supply systems and individual onsite wastewater treatment systems.

Needs and Benefits:

These amendments will protect public health by: updating certain terms to conform with nationally-recognized nomenclature; clarifying the standards and requirements for individual onsite wastewater treatment systems (also known as OWTS or septic systems); ensuring that plans for OWTS systems are prepared by a design professional; and establishing new minimum water quality standards for individual onsite water supply systems (also known as IWS systems).

These amendments retitle 10 NYCRR Part 75, currently "Standards for Individual Water Supply and Individual Sewage Treatment Systems", to "Standards for Individual Onsite Water Supply and Individual Onsite Wastewater Treatment Systems." The term "onsite" will be included throughout Part 75 and Appendix 75-C, in reference to IWS and OWTS systems. Further, consistent with Appendix 75-A, the term "wastewater" will replace the term "sewage" in Part 75, in reference to OWTS systems. These updates better reflect the conventional and nationally-recognized nomenclature for non-public water and wastewater systems.

The definitions of "individual onsite water supply system" and "individual onsite wastewater treatment system" are further amended to remove references to such systems possibly serving more than one parcel. This codifies a long-standing Department policy that these systems should serve only one property. Counties already apply this standard when reviewing these systems.

Additionally, Part 75 is amended to clarify the requirement that the design of an OWTS system be prepared by a design professional. This is already required pursuant to Articles 145 and 147 of the Education Law, pertaining to the professional standards for engineering and architecture, respectively. By ensuring that plans for OWTS systems are prepared and constructed by a design professional, these amendments will reduce premature OWTS failures.

Part 75 will be amended to require that, prior to construction, designs for OWTS systems that utilize "alternative systems", as described in Appendix 75-A, be reviewed and approved by the State or county health department official having jurisdiction. Further, after construction is completed, a design professional must provide the State or county health department official having jurisdiction with a certification that the construction of the alternative system was supervised by a design professional and that such construction conforms to the approved plans.

Appendix 75-A is amended to delete subdivision (e) of section A.9,

concerning Evaporation-Transpiration (ET) and Evapo-Transpiration Absorption (ETA) Systems. ET and ETA systems require very dry climates, and are therefore not suitable for use in New York State. For this reason, all references to such systems were intended to be removed as part of a 2010 amendment to Appendix 75-A. This amendment would remove this residual reference.

Similarly, Appendix 75-A is amended to delete subdivision (c) of section 75-A.10, concerning Engineered Systems. All references to engineered systems were also intended to be removed in the 2010 amendment, and this amendment would remove a residual reference. Unlike ET and ETA systems, however, engineered systems may still be approved pursuant to Appendix 75-A.11, which provides for specific waivers from the specified design standards under appropriate conditions.

Finally, proposed Appendix 75-C would create a statewide minimum standard for testing IWS system water quality. These regulations do not require that water be tested for compliance with these standards. Rather, counties may choose to require compliance, through their county sanitary codes.

In particular, proposed Appendix 75-C lists IWS water quality standards for: coliform bacteria, lead, nitrate, nitrite, turbidity, arsenic, iron, manganese, iron plus manganese, hardness, alkalinity, pH and sodium. The State or county health department official having jurisdiction may require testing for additional contaminants based on locally known or suspected water source contamination.

Several of the standards in the proposed Appendix 75-C are derived from preexisting standards. In the past, the Department of Health published a booklet entitled Rural Water Supply, which included water well construction standards and also the U.S. Housing and Urban Development (HUD) mortgage requirement relating to water quality testing parameters list (July 27, 1995). Rural Water Supply was replaced in November of 2005 with 10 NYCRR Appendix 5-B, "Standards for Water Wells" (a water well construction standard); however, Appendix 5-B did not include the HUD water quality testing standards of 1995. The water quality standards proposed in the new Appendix 75-C incorporates those prior standards. Additionally, an arsenic standard is included in Appendix 75-C, based on considerable public and private water system water quality testing data compiled from the past several years.

Costs:

Costs to Regulated Parties:

No additional costs will be incurred. These amendments clarify regulations and codify existing policies. With respect to the new IWS water quality standards, local health departments may choose whether to require testing to determine compliance. Several LHDs have already codified an IWS water quality minimum standard via county sanitary code or other county policy.

Costs to Local Government:

No additional costs will be incurred. These amendments clarify regulations and codify existing policies. With respect to the new IWS water quality standards, local health departments may choose whether to require testing to determine compliance. Several LHDs have already codified an IWS water quality minimum standard via county sanitary code or other county policy.

Costs to State Government:

There will be no additional costs to the State. The State will provide any necessary training or guidance using existing resources.

Local Government Mandates:

The proposed addition does not impose new program responsibilities on any county, city, town, village, school district, fire district or special district.

Paperwork:

No new reporting requirements are created by the proposal.

Duplication:

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

Alternatives:

One alternative to the proposed revisions is to take no action. With respect to water quality standards for IWS systems, county health departments could specify their own water quality standards. This amendment, however, will promote consistency by providing a statewide IWS water quality standard. Additionally, failing to amend Part 75 to clarify that designs for OWTS systems must be prepared by a design professional would mean that there would be a continued lack of awareness of this existing Education Law requirement, which could lead to increased OWTS failures.

Federal Standards:

No federal standards exist.

Compliance Schedule:

These regulations will be effective upon publication of a Notice of Adoption in the New York State Register.

Regulatory Flexibility Analysis

Effects on Small Business and Local Government:

No effect on small business and local government is anticipated.

With respect to local governments, no additional costs will be incurred. These amendments clarify regulations and codify existing policies. With respect to the new IWS water quality standards, local health departments may choose whether to require testing to determine compliance.

None of the changes apply directly to small businesses. Although it is possible that some small businesses are served by IWS systems, it remains the county's option whether to apply the minimum water quality standards to such systems.

Reporting and Recordkeeping:

No new reporting or recordkeeping requirements are created by this rule.

Professional Services:

No new professional services will be required by this rule.

Other Compliance Requirements:

There are no other compliance requirements mandated by this rule.

Costs:

Potential Costs to Homeowners:

There are no additional costs to homeowners mandated by this rule.

Potential Costs to Local Government:

There are no additional costs to local government mandated by this rule.

Economic and Technological Feasibility:

The proposed rule is economically and technologically feasible. With respect to the IWS water quality standards, as discussed, it is the county's option whether to require testing of such systems. Moreover, for many years, the Department's realty subdivision approval program has required similar testing, and there has been no indication that such testing is not feasible. Additionally, several LHDs have already codified an IWS water quality minimum standard via county sanitary code or other county policy.

Minimizing Adverse Economic Impact:

With respect to local governments, no additional costs will be incurred. These amendments clarify regulations and codify existing policies. With respect to the new IWS water quality standards, local health departments may choose whether to require testing to determine compliance. In fact, where counties do choose to require water quality testing for IWS systems, these regulations will have a positive economic impact by ensuring that drinking water from IWS systems meets certain standards.

Small Business and Local Government Participation:

During May and June of 2007, the Department surveyed county health departments to gather information regarding current individual water quality testing requirements. The survey also solicited recommendations for minimum testing requirements and a water quality minimum standard.

Survey results indicated that most county officials support the development of a residential water supply water quality minimum standard. Several counties already have codified a residential water quality minimum standard in their County Sanitary Code or by county policy. The Department studied and considered all survey responses when developing the proposed rule.

Rural Area Flexibility Analysis

Types and Estimated Number of Rural Areas:

In general, IWS and OWTS systems are used in rural and suburban areas that do not have access to public water distribution mains and sewers. Based upon information from the 1990 U.S. Census, populations in the upstate central New York/Finger Lakes counties, north-country/Adirondack counties, Catskill region counties, east-of-Hudson counties, and eastern Long Island are more likely to rely on IWS than other types of supplies.

Reporting and Recordkeeping:

No new reporting or recordkeeping requirements are created by this rule.

Professional Services:

No additional requirement for professional licensing, certification, or registration is required under the proposed rule.

Other Compliance Requirements:

There are no other compliance requirements mandated by this rule.

Costs:

Projected Costs of Compliance:

No additional costs will be incurred by this rule.

Potential Costs for End Users:

No additional costs will be incurred by this rule.

Potential Costs to Local Government:

There are no additional costs to local government mandated by this rule.

Minimizing Adverse Economic Impact on Rural Areas:

For those amendments that simply clarify or codify existing policy, no adverse economic impact is anticipated. With respect to the minimum water quality standards for IWS systems, because counties have the option of whether to require testing, there is not expected to be any adverse economic impact. Moreover, many counties have already adopted similar polices. In fact, where counties do choose to require water quality testing

for IWS systems, these regulations will have a positive economic impact by ensuring that drinking water from IWS systems meets certain standards.

Rural Area Participation:

During May and June of 2007, the Department surveyed county health departments to gather information regarding current individual water quality testing requirements. The survey also solicited recommendations for minimum testing requirements and a water quality minimum standard.

Survey results indicated that most county officials support the development of a residential water supply water quality minimum standard. Several counties already have codified a residential water quality minimum standard in their County Sanitary Code or by county policy. The Department studied and considered all survey responses when developing the proposed rule.

Job Impact Statement

The Department has determined that the rule will not have substantial adverse impact on jobs or employment opportunities. These amendments will protect public health by: updating certain terms to conform with nationally-recognized nomenclature; clarifying the standards and requirements for individual onsite wastewater treatment systems (also known as OWTS or septic systems); ensuring that plans for OWTS systems are prepared by a design professional; and by establishing new minimum water quality standards for individual onsite water supply systems (also known as IWS systems). These changes do not impact jobs or employment opportunities.

PROPOSED RULE MAKING
NO HEARING(S) SCHEDULED

School Immunization Requirements

I.D. No. HLT-11-15-00020-P

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

Proposed Action: Amendment of Subpart 66-1 of Title 10 NYCRR.

Statutory authority: Public Health Law, sections 2164 and 2168

Subject: School Immunization Requirements.

Purpose: Update regulations to ensure children entering grades kindergarten through 12 receive adequate number of required immunizations.

Substance of proposed rule (Full text is posted at the following State website: www.health.ny.gov): This proposal will amend Subpart 66-1 (School Immunization Requirements) to update regulations to ensure that children entering kindergarten through twelfth grade (or comparable age level grade equivalents) receive an adequate number of required immunizations, to incorporate the current Advisory Committee on Immunization Practices (ACIP) Recommended Schedules, to conform the regulations for the New York State Immunization Information System (NYSIIS) to statutory amendments, and to clarify acceptable certificates of immunization. The regulations would be effective July 1, 2015.

Proposed amendments to Section 66-1.1 provide that children entering eighth through twelfth grade in the 2015-2016 school year shall be deemed in compliance with all immunization requirements until graduation, if they had satisfied the immunization requirements in effect in regulation on June 30, 2014.

Proposed amendments to Section 66-1.1 provide that, children entering kindergarten through twelfth grade (excepting those children entering eighth through twelfth grade in the 2015-2016 school year) must have received, in accordance with ACIP minimum intervals and dosage recommendations:

- two doses of measles-containing vaccine, two doses of mumps-containing vaccine, and at least one dose of rubella-containing vaccine.
- five doses of diphtheria and tetanus toxoids and acellular pertussis vaccine (DTaP). If, however, the fourth dose of DTaP was given at forty-eight months of age or older, only four doses are required.
- four doses of poliomyelitis vaccine. If, however, the third dose was given at forty-eight months of age or older, only three doses are required.

Proposed amendments to Section 66-1.1 further provide that upon entry to sixth grade or a comparable age level grade equivalent, a child eleven years of age or older must receive a booster immunization containing tetanus and diphtheria toxoids and acellular pertussis vaccine.

The proposed amendments to Section 66-1.1 also update the regulation to incorporate the 2014 ACIP schedule -- the Advisory Committee on Immunization Practices Recommended Immunization Schedules for Persons Aged 0 Through 18 Years.

The amendments to Section 66-1.1 also provide that, students who are "in process" or following the ACIP "catch-up" schedule must follow the minimum intervals prescribed by the ACIP schedule. These proposed amendments do not address additional immunizations that may be required for school admission by the New York City Health Code.

Proposed amendments to Section 66-1.2 update the regulations to conform to changes in the NYSIIS statute (Public Health Law § 2168). The proposed amendments add colleges, professional and technical schools, and children's overnight and summer day camps as authorized users of NYSIIS and grant access to de-identified registry information for research purposes. Proposed amendments to Section 66-1.2 also permit the exchange of registry information with the Indian Health Service and tribal nations. Proposed amendments to Section 66-1.2 also remove two electronic reporting exemptions and remove the ability to request an extension on the required 14 day reporting period.

Proposed amendments to Section 66-1.6 clarify acceptable certificates of immunization. The proposed amendments provide that a certificate of immunization generally must be signed by a health practitioner licensed in New York State and that a record issued by NYSIIS, the Citywide Immunization Registry (CIR), an official immunization registry from another state, an electronic health record and/or an official record from a foreign nation may be accepted without a health practitioner's signature.

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

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

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

Regulatory Impact Statement

Statutory Authority:

The authority for school entry immunization requirements stems from Article 21, Title VI, Section 2164 of the Public Health law (PHL): Poliomyelitis and Other Diseases. PHL § 2164 mandates the vaccination of children as a condition of entry/attendance to school. PHL § 2164(10) authorizes the commissioner to promulgate regulations to effectuate the provisions and purposes of PHL § 2164. The authority for the statewide immunization information system stems from Article 21, Title VI, Section 2168 of the Public Health Law (PHL): Poliomyelitis and Other Diseases. PHL § 2168 establishes the New York State Immunization Information System (NYSIIS). PHL § 2168(13) authorizes the commissioner to promulgate regulations to effectuate the provisions of PHL § 2168.

Legislative Objectives:

The legislative objective of PHL § 2164 includes the protection of the health of residents of the state by assuring that children are immunized according to current recommendations before attending day care, pre-k, or school, to prevent the transmission of vaccine preventable disease and accompanying morbidity and mortality. The legislative objective of PHL § 2168 is to establish a comprehensive database of complete, accurate and secure immunization records.

Needs and Benefits:

The purpose of the proposed regulatory changes is to update the existing school immunization requirements to ensure that children receive complete series of measles, mumps and rubella (MMR), diphtheria, tetanus and acellular pertussis (DTaP), and poliomyelitis vaccines by kindergarten or school entry. The school immunization regulations were last updated for the 2014-2015 school year to require that children receive an age-appropriate number of doses of immunizations, as determined by the 2013 Advisory Committee on Immunization Practices (ACIP) Immunization Schedule.

During implementation of the regulatory changes for the 2014-2015 school year, several limitations to the existing regulations were identified, necessitating further amendments to the regulations for the 2015-2016 school year. Chief among these was the timing of the final doses of the MMR, DTaP, and poliomyelitis vaccine series. Prior to the regulatory changes for the 2014-2015 school year, students entering kindergarten through twelfth grade were required to receive two doses of measles-containing vaccine, or other acceptable evidence of immunity, regardless of age. Although ACIP statements on each of these vaccine series recommend completion of these series prior to kindergarten or school entry, the 2013 ACIP Immunization Schedule, which was incorporated by reference into the recently revised regulations, recommended administration of the final doses of each of these series at four to six years of age.[1-4] As a result, students were not required to receive the final dose until the end of the recommended age range – i.e., the child's seventh birthday. As nearly all students in kindergarten are less than seven years of age, the kindergarten requirement for measles-containing vaccine has effectively been reduced from two doses to one dose. Likewise, students cannot be required under the existing regulation to receive the final doses of DTaP and poliomyelitis vaccines until they reach seven years of age. This was an unanticipated byproduct of the incorporation by reference of the ACIP schedule which was not identified during the regulatory change process.

It is of the utmost public health importance that students entering kindergarten be maximally protected with complete MMR, DTaP and poliomyelitis vaccine series. The United States (U.S.) is currently experiencing a record number of measles cases. Nearly 600 measles cases were reported in the U.S. from January 1 through August 15, 2014 – the highest number of cases reported since measles elimination was documented in the U.S. in 2000.[5] This number includes a large measles outbreak in New York City (NYC) and additional measles cases in New York State (NYS) outside of NYC in 2014. An ongoing large measles outbreak in the Philippines has contributed to measles cases to the U.S., including four NYS and NYC cases with confirmed or suspected epidemiologic links to the Philippines this year. A recent edition of the Morbidity and Mortality Weekly Report (MMWR) provides details on measles cases and outbreaks in the U.S. in 2014 to date.[6]

Reported cases of pertussis are also increasing nationwide. California has declared a pertussis epidemic, with over 7500 cases, including elementary, middle, and high school outbreaks, reported from January 1, 2014 to August 18, 2014.[7] NYS experienced a record peak year of pertussis incidence in 2012, with 2,713 cases of pertussis reported outside of NYC, exceeding the last large NYS pertussis outbreak of 1,969 cases in 2004. As pertussis outbreaks occur cyclically and typically peak every three to five years, NYS could experience its next pertussis peak year as soon as 2015.

On May 5, 2014, the director-general of the World Health Organization (WHO) declared the international spread of poliomyelitis to be a public health emergency of international concern under the authority of the International Health Regulations. The WHO has designated four countries (Cameroon, Equatorial Guinea, Pakistan, and Syria) as ''exporting wild poliovirus'' and an additional six countries (Afghanistan, Ethiopia, Iraq, Israel, Nigeria, and Somalia) are designated as ''infected with wild poliovirus.''[8]Although poliomyelitis was declared eliminated from the U.S. in 1979, it remains crucial to maintain high rates of vaccination because poliomyelitis could be brought in to the U.S. from countries where poliovirus is circulating.

In contrast to the MMR, DTaP and poliomyelitis age-based immunization requirements, the regulatory amendments made for the 2014-2015 school year explicitly stated that children entering kindergarten must have received two doses of varicella vaccine or other acceptable evidence of varicella immunity. The proposed regulatory changes mirror the varicella language in the existing regulation to require completion of the poliomyelitis, MMR and DTaP vaccine series, or other acceptable evidence of immunity, for kindergarten and school entry. The move from age-based to kindergarten entry requirements will improve community immunity in schools against these vaccine preventable diseases and enhance the ability of schools to enforce immunization requirements.

In addition, the requirement for vaccine intervals to be consistent with the 2013 ACIP schedule has created significant problems for adolescent students, who received vaccine doses eight or more years ago, under standards of care that may have been appropriate at the time of vaccine administration, but may no longer be consistent with the 2013 ACIP schedule.

To ameliorate this situation, the proposed regulatory change allows those students entering eighth through twelfth grades (or comparable age level grade equivalents) only during the 2015-2016 school year to be in compliance with school immunization requirements until graduation if they had previously satisfied the school immunization requirements in effect in regulation on June 30, 2014. This change would exempt this cohort of students from the revised vaccine interval requirements established by the current ACIP schedule, but still require that such students be age-appropriately vaccinated under the prior school immunization requirements.

To improve the completeness and accuracy of NYSIIS data and to further assist educational institutions with locating up-to-date immunization histories for their students, two exemptions for electronic reporting to NYSIIS have been removed from the regulation. These exemptions were important when NYSIIS was first launched to assist with the initial training of providers. They are no longer needed as NYSIIS has been an active system for over six years. All NYS providers must report complete and timely immunization data to NYSIIS. In addition, to conform to changes in PHL § 2168, the regulations have been updated to add colleges, professional and technical schools, and children's overnight and summer day camps as authorized users of NYSIIS and to grant access to de-identified registry information for research purposes. The regulations have also been updated to permit the exchange of registry information with the Indian Health Service and tribal nations as also allowed by amendments to PHL § 2168.

Finally, the revised regulations clarify the requirements for acceptable certificates of immunization to allow records issued by NYSIIS, the Citywide Immunization Registry (CIR), or another state immunization registry, an electronic health record, and/or an official record from a foreign nation to be accepted without a health practitioner's signature. This change reflects the increasing usage of electronic health records and immunization registries.

Costs:

Costs to State Government including the Department of Health:

The proposed regulatory changes are not expected to result in substantial costs to state government, but instead will likely result in cost savings to the state. Routine childhood immunizations have been estimated to result in a cost savings of approximately $13.5 billion in direct costs and $68.8 billion in societal costs. The CDC estimates that every dollar spent on immunization saves at least ten dollars in aggregate societal costs.[9] Potential savings to Medicaid and other payers are also expected secondary to the prevention of cases of disease.

Costs to Local Governments:

The cost to local governments and school districts is difficult to estimate. School staff already collect immunization records and ensure that students comply with school entry requirements. The move from age-based to kindergarten entry requirements for MMR, DTaP and polio vaccines will only directly impact students four to six years of age as students seven years of age and older are already required to have these doses under existing regulation. While there will be initial work associated with ensuring that students in this age range meet the new kindergarten entry requirements, this change should reduce long-term administrative costs for school districts by markedly reducing the number of "in process" students that the school must monitor. In addition, exempting the cohort of students entering eighth through twelfth grades during the 2015 – 2016 school year from the vaccine interval requirements will significantly reduce immunization assessment work for school districts. The clarification of acceptable certificates of immunization should further reduce administrative costs to school districts associated with verifying that certificates of immunization meet regulatory requirements.

Costs to Private Regulated Parties:

It is difficult to determine what if any additional expenses may be incurred by these measures, however, costs are predicted to be minimal. Given that the revised school entry requirements are consistent with ACIP immunization recommendations, many medical practices already administer these vaccines to their patients prior to kindergarten entry.

Local Government Mandates:

The revised school entry regulations will not impose any additional mandates on local governments or school districts. NYS school districts are already required by PHL § 2164 to verify all students' immunization histories.

Paperwork:

The revised school entry regulations will not increase the normal amount of the State's paperwork. Because schools are already required to maintain student immunization records, there will be no increase in their paperwork.

Duplication:

No relevant rules or other legal requirements of the state and/or federal government exist that duplicate, overlap or conflict with this rule.

Alternatives:

No alternatives were considered given that other alternatives would only result in inconsistencies with national immunization policy and good medical practice.

Federal Standards:

In the United States, all school entry immunization laws are created by individual states. There is no federal standard with regard to school entry immunization regulations.

Compliance Schedule:

All affected children will be required to adhere to the proposed school entry regulations on and after July 1, 2015.

REFERENCES

1) Prevention of Measles, Rubella, Congenital Rubella Syndrome, and Mumps, 2013: Summary Recommendations of the Advisory Committee on Immunization Practices (ACIP). Centers for Disease Control and Prevention Morbidity and Mortality Weekly Report, 2013; 62(RR04); 1-34.

2) Pertussis Vaccination: Use of Acellular Pertussis Vaccines Among Infants and Young Children Recommendations of the Advisory Committee on Immunization Practices (ACIP). Centers for Disease Control and Prevention Morbidity and Mortality Weekly Report, 1997; 46(RR-7); 1-25.

3) Poliomyelitis Prevention in the United States: Updated Recommendations of the Advisory Committee on Immunization Practices (ACIP). Centers for Disease Control and Prevention Morbidity and Mortality Weekly Report, 2000; 49(RR05); 1-22.

4) Advisory Committee on Immunization Practices Recommended Immunization Schedule for Persons Aged 0 Through 18 Years – United States, 2013. Centers for Disease Control and Prevention Morbidity and Mortality Weekly Report, 2013; 62 (Suppl 1); 2-8.

5) Centers for Disease Control and Prevention. Measles Cases and Outbreaks. Accessed August 22, 2014. http://www.cdc.gov/measles/cases-outbreaks.html.

6) Measles – United States, January 1 – May 23, 2014. Centers for Disease Control and Prevention Morbidity and Mortality Weekly Report, 2014; 63(22); 496-499.

7) California Department of Public Health. Pertussis Summary Reports. Accessed August 22, 2014. http://www.cdph.ca.gov/programs/immunize/Pages/PertussisSummaryReports.aspx.

8) Interim CDC Guidance for Polio Vaccination for Travel to and from Countries Affected by Wild Poliovirus. Centers for Disease Control and Prevention Morbidity and Mortality Weekly Report, 2014; 63(27); 591-594.

9) Zhou F, Shefer A, Wenger J, Messonnier M, Wang LY, Lopez A, Moore M, Murphy TV, Cortese M, Rodewald L. Economic Evaluation of the Routine Childhood Immunization Program in the United States, 2009. Pediatrics. 2014; 133:1-9.

Regulatory Flexibility Analysis

Effect of Rule:

Any facility defined as a school pursuant to PHL § 2164 will be required to comply. Schools that are affected by this rule will include approximately: 5,498 public, private, or parochial child care centers, 9,338 day care agencies, 642 nursery schools, and 6,387 kindergartens, elementary, intermediate, or secondary class or school buildings.

Compliance Requirements:

All schools must document the immunization status of all students who are entering or attending their facility, including immunizations received, history of disease, serology performed, and/or medical or religious exemptions to said immunization(s).

The approximate number of students are as follows: 128,383 in public, private, or parochial child-caring centers, 187,752 in day care agencies, 39,312 in nursery schools, and 3,081,724 in kindergarten, elementary, intermediate, or secondary class or school buildings. However, because schools were already required to collect immunization information, the burden of compliance with this new rule is substantially minimized.

Professional Services:

Schools are already required to comply with immunization requirements for entering/attending students and therefore immunization record retrieval already occurs with necessary follow-up if applicable. It is not anticipated that schools will need to hire additional staff to meet this requirement.

Compliance Costs:

The cost to schools to meet the requirements of the proposed regulation is estimated to be minimal, because schools are already required to inspect vaccination records of all students and appropriate vaccination of the student body may result in cost savings. Specifically, it is anticipated that any costs incurred to check vaccination records will be offset by savings in direct medical costs by reducing vaccine preventable disease transmission among students, as well as savings in indirect costs associated with student and school staff absenteeism.

Economic and Technological Feasibility:

This proposal is economically and technologically feasible. Many schools currently have read-only access to retrieve immunization information from the New York State Immunization Information System (NYSIIS) for students outside of NYC, and the Citywide Immunization Registry (CIR) for students within NYC. Because schools have direct read-only access to the consolidated immunization record through NYSIIS or the CIR, they are able to efficiently identify children at risk for vaccine preventable diseases secondary to their under-immunization; this is critical during outbreak situations. In addition, access to this information simplifies assessment of immunization coverage as required for school entry/attendance.

No software needs to be purchased and no other fees are required to access the web-based systems. Using electronic tools for student record immunization queries also results in a significant cost savings when compared to the effort required to collect and analyze the volume of paper immunization histories provided by parents to the school.

Minimizing Adverse Impact:

Many, if not all schools already have mechanisms in place to verify immunization requirements.

Small Business and Local Government Participation:

The proposed regulatory changes were drafted in response to feedback from multiple stakeholders, including public and private schools, local health departments, and health care providers. In addition, New York City Department of Health and Mental Hygiene (NYC DOHMH) and New York State Education Department (NYSED) were solicited for comments on the regulations. The NYC DOHMH is a large local government jurisdiction representing nearly half of children in New York State and NYSED oversees prekindergarten through grade 12 programs in New York State. Both NYC DOHMH and NYSED expressed support for the proposed regulatory changes.

Rural Area Flexibility Analysis

Pursuant to section 202-bb of the State Administrative Procedure Act (SAPA), a rural area flexibility analysis is not required. These provisions apply uniformly throughout New York State, including all rural areas.

The proposed rule will not impose an adverse economic impact on rural facilities defined within PHL Articles 28, 36, or 40.

Job Impact Statement

A Job Impact Statement is not included in accordance with Section 201-a(2) of the State Administrative Procedure Act (SAPA), because it will not have a substantial adverse effect on jobs and employment opportunities.

Office of Mental Health

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Medical Assistance Rates of Payment for Residential Treatment Facilities for Children and Youth

I.D. No. OMH-11-15-00013-P

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

Proposed Action: This is a consensus rule making to amend Part 578 of Title 14 NYCRR.

Statutory authority: Mental Hygiene Law, sections 7.09 and 43.02

Subject: Medical Assistance Rates of Payment for Residential Treatment Facilities for Children and Youth.

Purpose: Amend date of trend factor elimination to December 31, 2014 instead of June 30, 2015.

Text of proposed rule: Paragraph (4) of subdivision (a) of Section 578.8 of Title 14 NYCRR is amended to read as follows:

(4) The allowable costs, as set forth in paragraph (1) of this subdivision, that meet the requirements stated in paragraphs (2) and (3) of this subdivision, shall be trended by the applicable Medicare inflation factor for hospitals and units excluded from the prospective payment system except for the rate periods effective July 1, 1996 through June 30, 1997, and July 1, 2009 through June 30, 2010, where the inflation factor used to trend costs will be limited to the inflation factor for the first year of the two-year period. No trend shall be applied to allowable costs for the rate period effective July 1, 2013 through June 30, 2014, and July 1, 2014 through [June 30, 2015] *December 31, 2014*.

Text of proposed 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: Sue.Watson@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.

Consensus Rule Making Determination

This proposal is filed as a Consensus rule on the grounds that it is non-controversial and makes a technical correction. No person is likely to object to this proposed rule since it provides fiscal relief to Residential Treatment Facilities for Children and Youth (RTF) by reinstating the trend factor for the 2014-15 Medicaid rate calculation.

Recently, the Office of Mental Health (OMH) promulgated a rule that eliminated the trend factor from the 2014-15 Medicaid rate calculation for RTFs, which are identified as a subclass of hospitals under Section 31.26 of the Mental Hygiene Law. This amendment was the result of an administrative action consistent with the 2014-15 enacted State Budget. Under existing regulations, the trend factor was eliminated for the entire fiscal year for RTFs, which is July 1, 2014 through June 30, 2015. With the implementation of funding increases for salary and salary-related fringe benefit costs for certain staff at not-for-profit providers, it has been determined that the most expeditious way of processing this funding increase for RTFs is to reinstate the trend factor calculation effective January 1, 2015. Therefore, this consensus rule serves to make a technical change to amend the date of the trend factor elimination.

Statutory Authority: Section 7.09 of the Mental Hygiene Law grants the Commissioner of Mental Health the authority and responsibility to adopt regulations that are necessary and proper to implement matters under his or her jurisdiction. Section 43.02 of the Mental Hygiene Law provides that

the Commissioner has the power to establish standards and methods for determining rates of payment made by government agencies pursuant to Title 11 of Article 5 of the Social Services Law for services provided by facilities, including residential treatment facilities for children and youth licensed by OMH. Pursuant to Part I of Chapter 60 of the Laws of 2014, Commissioners are authorized to provide funding to support an increase in annual salary and salary-related fringe benefits for eligible staff at not-for-profit providers. Where applicable, the funding will be applied to reimbursable costs or funding amounts to support such salary increases and salary-related fringe benefit increases that took effect on or after January 1, 2014.

Job Impact Statement

A Job Impact Statement is not submitted with this notice because the purpose of the amendment is to make a technical change to recently adopted provisions within 14 NYCRR Part 578. It is evident from the rule making that there will be no adverse impact on jobs and employment opportunities.

Department of Motor Vehicles

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Commercial Learner's Permits and Commercial Driver's Licenses

I.D. No. MTV-11-15-00017-P

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

Proposed Action: This is a consensus rule making to amend sections 3.1, 3.2, 3.3, 3.4, 3.5, 3.6 and 3.7 of Title 15 NYCRR.

Statutory authority: Vehicle and Traffic Law, sections 215(a), 410-c, 501(2)(c) and 508(4)

Subject: Commercial learner's permits and commercial driver's licenses.

Purpose: Conforms state licensing requirements to federal requirements.

Substance of proposed rule (Full text is posted at the following State website: www.dmv.ny.gov): Pursuant to the authority of the Commercial Motor Vehicle Safety Act of 1986, the Transportation Equity Act for the 21st Century and the Safe, Accountable, Flexible, Efficient Transportation Act: Legacy for Users, on May 9, 2011, the Federal Motor Carrier Safety Administration FMCSA) adopted a final rule concerning Commercial Learner's Permits (CLP) and Commercial Driver's Licenses (CDL). The final rule deals with the issuance of CLPs and CDLs, permit and license sanctions resulting from violations of the law, skills tests, and a broad range of other topics related to CLPs and CDLs. This primary purpose of this proposed rulemaking is to conform the license restrictions set forth in 15 NYCRR 3.2 to the federally mandated restrictions. Failure to make such revisions by July 8, 2015 could result in the withholding of up to $73 million in federal highway funding. The regulation includes the following provisions:

Incorporates federally mandated restrictions verbatim. For example, the "O" restriction formerly read "TRK/TRLR COMBI ONLY" and now reads "NO TRACTOR TRAILER CMV."

The DMV has re-lettered some of its current restrictions. For example, "AUTOMATIC TRANSMISSION" has been re-lettered as E1, so that E will read "NO MANUAL TRANSMISSION EQUIPPED CMV." The L1 and L2 "NO AIR BRAKES" restrictions are replaced the federally required L, "NO AIR BRAKES EQUIPPED CMV" restriction.

FMCSA advised the DMV in a 2009 audit that the F restriction must be designated as "OUTSIDE MIRRORS." Accordingly, the current F restriction is re-lettered as F1, "HEARING AID/FULL VIEW MIRROR."

Several of the amendments conform Part 3 to current procedures, delete referenced to obsolete procedures, and conform to other federal requirements in the above-mentioned rule.

It has been a longstanding State and federal requirement that no person shall apply for a CLP unless such person holds a class D license.

A person shall be issued a personal use endorsement (R) upon passage of a skills test in a recreational vehicle weighing over 26,000 pounds if such person has not passed a CDL skills test.

The proposal reflects current policy by eliminating the requirement that an affidavit of farm operation be submitted when applying for a farm endorsement.

The proposal makes clear that if a skills test is taken in a vehicle equipped with air over hydraulic brakes, a Z restriction (NOT FULL AIR BRAKE EQUIPPED CMV) must be placed on the CDL. Air over hydraulic brakes includes any braking system operating partially on the air brake and partially on the hydraulic brake principle.

In accordance with 49 CFR 383.7(a)(2)(v) and (b)(6), an application for a CLP or a CDL shall not be accepted unless the applicant presents acceptable proofs of United States citizenship or lawful permanent residency, as prescribed by the commissioner.

Section 3.7(a)(5)(iii) currently provides that the motorcycle road test shall be waived if the person is the holder of a New York State license and has successfully completed a course given by the Motorcycle Safety Foundation (MSF). In light of VTL section 410-a, the road test should also be waived if the holder of the NYS license passes a course that is comparable to that given by MSF.

The rule will take effect on June 4, 2015, except that section 3.6(a) shall take effect on July 8, 2015. The rule shall apply to licenses issued on or after June 4, 2015.

Text of proposed rule and any required statements and analyses may be obtained from: Heidi Bazicki, Department of Motor Vehicles, 6 Empire State Plaza, Rm. 522A, Albany, NY 12228, (518) 474-0871, email: heidi.bazicki@dmv.ny.gov

Data, views or arguments may be submitted to: Ida L. Traschen, Same as No. 9.

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

Consensus Rule Making Determination

Pursuant to the authority of the Commercial Motor Vehicle Safety Act of 1986, the Transportation Equity Act for the 21st Century and the Safe, Accountable, Flexible, Efficient Transportation Act: Legacy for Users, on May 9, 2011, the Federal Motor Carrier Safety Administration FMCSA) adopted a final rule concerning Commercial Learner's Permits (CLP) and Commercial Driver's Licenses (CDL). The final rule deals with the issuance of CLPs and CDLs, permit and license sanctions resulting from violations of the law, skills tests, and a broad range of other topics related to CLPs and CDLs. This primary purpose of this proposed rulemaking is to conform the license restrictions set forth in 15 NYCRR 3.2 to the federally mandated restrictions. Failure to make such revisions by July 8, 2015 could result in the withholding of up to $73 million in federal highway funding.

49 CFR 383.95 and 383.153 set forth the federally mandated restrictions that, where appropriate, will appear on a CLP or CDL document. Every state must adopt the federally mandated restrictions verbatim, and accordingly, they are incorporated in this proposed rulemaking. Many of the restrictions are reworded to conform to the federal language, but do not substantively change the restriction. For example, the "O" restriction formerly read "TRK/TRLR COMBI ONLY" and now reads "NO TRACTOR TRAILER CMV." Because the FMCSA desires uniformity across states, all states must adopt use the same letter for each restriction. Therefore, the DMV has re-lettered some of its current restrictions. For example, "AUTOMATIC TRANSMISSION" has been re-lettered as E1, so that E will read "NO MANUAL TRANSMISSION EQUIPPED CMV." The L1 and L2 "NO AIR BRAKES" restrictions are replaced the federally required L, "NO AIR BRAKES EQUIPPED CMV" restriction.

In addition, FMCSA advised the DMV in a 2009 audit that the F restriction must be designated as "OUTSIDE MIRRORS." Accordingly, the current F restriction is re-lettered as F1, "HEARING AID/FULL VIEW MIRROR."

The remainder of the regulatory amendments conform Part 3 to current procedures, delete referenced to obsolete procedures, and conform to other federal requirements in the above-mentioned rule. The key changes are set forth below:

It has been a longstanding State and federal requirement that no person shall apply for a CLP unless such person holds a class D license.

A person shall be issued a personal use endorsement (R) upon passage of a skills test in a recreational vehicle weighing over 26,000 pounds if such person has not passed a CDL skills test.

The proposal reflects current policy by eliminating the requirement that an affidavit of farm operation be submitted when applying for a farm endorsement.

The proposal makes clear that if a skills test is taken in a vehicle equipped with air over hydraulic brakes, a Z restriction (NOT FULL AIR BRAKE EQUIPPED CMV) must be placed on the CDL. Air over hydraulic brakes includes any braking system operating partially on the air brake and partially on the hydraulic brake principle.

In accordance with 49 CFR 383.7(a)(2)(v) and (b)(6), an application for a CLP or a CDL shall not be accepted unless the applicant presents acceptable proofs of United States citizenship or lawful permanent residency, as prescribed by the commissioner.

Section 3.7(a)(5)(iii) currently provides that the motorcycle road test

shall be waived if the person is the holder of a New York State license and has successfully completed a course given by the Motorcycle Safety Foundation (MSF). In light of VTL section 410-a, the road test should also be waived if the holder of the NYS license passes a course that is comparable to that given by MSF.

Upon adoption, the regulation will take effect on June 4, 2015, except that section 3.6(a) shall take effect on July 8, 2015. In addition, the requirements regarding restrictions and endorsements shall apply to original and renewal licenses issued on or after June 4, 2015.

This proposed rulemaking is being submitted as a consensus rule because it is necessary to conform to federal mandates, and it also reflects current policies and procedures.

Job Impact Statement

A Job Impact Statement is not submitted with this proposed rule because it creates no adverse impact on job development or job opportunities.

Power Authority of the State of New York

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Rates for the Sale of Power and Energy

I.D. No. PAS-11-15-00016-P

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

Proposed Action: Amend the current Net Metering Provisions of the Authority's Service Tariff Nos. 100 and 200 applicable to its New York City and Westchester County Governmental Customers, respectively.

Statutory authority: Public Authorities Law, sections 1005, 3rd undesignated paragraph and 1005(6)

Subject: Rates for the Sale of Power and Energy

Purpose: To improve the net metering services currently offered by the Authority to its New York City and Westchester Customers.

Substance of proposed rule: Pursuant to the State Administrative Procedure Act, the Power Authority of the State of New York (the "Authority") proposes to amend the Net Metering Provisions of Service Tariff No. 100 applicable to its New York City Governmental Customers and Service Tariff No. 200 applicable to its Westchester County Governmental Customers.

The Authority proposes to revise the current Net Metering Provisions of the Service Tariffs in order to improve the existing net metering services currently offered to these Customers.

Written comments on the proposed amendment will be accepted through May 2, 2015 at the address below. For further information, contact:

POWER AUTHORITY OF THE STATE OF NEW YORK
Karen Delince, Corporate Secretary
123 Main Street, 11-P
White Plains, New York 10601
(914) 390-8085
(914) 390-8040 (fax)
secretarys.office@nypa.gov

Text of proposed rule and any required statements and analyses may be obtained from: Karen Delince, Power Authority of the State of New York, 123 Main Street, 11-P, White Plains, NY 10601, (914) 390-8085, email: secretarys.office@nypa.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, 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.

Public Service Commission

NOTICE OF ADOPTION

Approval of the Transfer of Water Supply Assets

I.D. No. PSC-12-14-00007-A
Filing Date: 2015-02-27
Effective Date: 2015-02-27

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

Action taken: On 2/26/15, the PSC adopted an order approving the transfer of the Yellow Barn Water Company, Inc.'s water supply assets to the Town of Dryden.

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

Subject: Approval of the transfer of water supply assets.

Purpose: To approve the transfer of water supply assets.

Substance of final rule: The Commission, on February 26, 2015, adopted an order approving the transfer of the Yellow Barn Water Company, Inc.'s water supply assets to the Town of Dryden, subject to the terms and conditions set forth in the order.

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

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

Assessment of Public Comment

An assessment of public comment is not submitted with this notice because the rule is within the definition contained in section 102(2)(a)(ii) of the State Administrative Procedure Act.
(14-W-0080SA1)

NOTICE OF ADOPTION

Adoption of a Framework to Drive a Market-Based, Efficient, Clean, Reliable and Consumer-Oriented Industry

I.D. No. PSC-36-14-00008-A
Filing Date: 2015-02-26
Effective Date: 2015-02-26

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

Action taken: On 2/26/15, the PSC adopted an order establishing a regulatory policy framework and implementation plan in the Reforming the Energy Vision proceeding.

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

Subject: Adoption of a framework to drive a market-based, efficient, clean, reliable and consumer-oriented industry.

Purpose: To transform regulation of the electric industry by integrating distributed resources in the planning and operation of the grid.

Substance of final rule: The Commission, on February 26, 2015, adopted an order establishing a regulatory policy framework in the Reforming the Energy Vision proceeding to develop markets for distributed energy resources in order to empower customers, stimulate innovation, leverage customer contributions, improve efficiency, enhance reliability and resiliency, reduce carbon emissions and promote fuel and resource diversity. Pursuant to this Order, electric utilities will expand their responsibility to include Distributed System Platform functionality and thereby enable a market for new energy products and services, subject to the terms and conditions set forth in the order.

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

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

Assessment of Public Comment

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

(14-M-0101SA8)

NOTICE OF ADOPTION

Approval of the Minor Rate Filing of Dover Plains to Increase Its Annual Revenue by $18,356 or 17.8%

I.D. No. PSC-38-14-00019-A
Filing Date: 2015-02-26
Effective Date: 2015-02-26

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

Action taken: On 2/26/15, the PSC adopted an order approving the minor rate filing of the Dover Plains Water Company (Dover Plains) to increase its annual revenue by $18,356 or 17.8%.

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

Subject: Approval of the minor rate filing of Dover Plains to increase its annual revenue by $18,356 or 17.8%.

Purpose: To approve the minor rate filing of Dover Plains to increase its annual revenue by $18,356 or 17.8%.

Substance of final rule: The Commission, on February 26, 2015, adopted an order approving the minor rate filing of the Dover Plains Water Company to increase its annual operating revenues by $18,356 or 17.8%, as set forth in its new tariff schedule, P.S.C. No. 5 - Water, effective March 1, 2015, subject to the terms and conditions set forth in the order.

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

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

Assessment of Public Comment

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

(14-W-0378SA1)

NOTICE OF ADOPTION

Allowing the Modifications to the Electronic Data Interchange Standards

I.D. No. PSC-46-14-00012-A
Filing Date: 2015-03-02
Effective Date: 2015-03-02

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

Action taken: On 2/26/15, the PSC adopted an order approving the modifications to the Electronic Data Interchange (EDI) Standards proposed in the EDI Working Group's report.

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

Subject: Allowing the modifications to the Electronic Data Interchange Standards.

Purpose: To allow the modifications to the Electronic Data Interchange Standards.

Substance of final rule: The Commission, on February 26, 2015, adopted an order approving the modifications to the Electronic Data Interchange (EDI) Standards proposed in the EDI Working Group's report filed on October 23, 2014, subject to the terms and conditions set forth in the order.

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

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

Assessment of Public Comment

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

(98-M-0667SA60)

NOTICE OF ADOPTION

Adoption of the Installed Reserve Margin of 17.0%, Established by the NYSRC

I.D. No. PSC-52-14-00020-A
Filing Date: 2015-03-02
Effective Date: 2015-03-02

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

Action taken: On 2/26/15, the PSC adopted an Installed Reserve Margin established by the New York State Reliability Council (NYSRC) of 17.0%, for the New York Control Area, for the upcoming Capability Year beginning May 1, 2015, and ending April 30, 2016.

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

Subject: Adoption of the Installed Reserve Margin of 17.0%, established by the NYSRC.

Purpose: To adopt the Installed Reserve Margin of 17.0%, established by the NYSRC.

Substance of final rule: The Commission, on February 26, 2015, adopted an Installed Reserve Margin established by the New York State Reliability Council (NYSRC) of 17.0%, for the New York Control Area, for the upcoming Capability Year beginning May 1, 2015, and ending April 30, 2016, subject to the terms and conditions set forth in the order.

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

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

Assessment of Public Comment

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

(07-E-0088SA9)

NOTICE OF ADOPTION

Approval of the Pilot Community Choice Aggregation Program

I.D. No. PSC-01-15-00020-A
Filing Date: 2015-02-26
Effective Date: 2015-02-26

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

Action taken: On 2/26/15, the PSC adopted an order approving a petition by Sustainable Westchester to implement a Pilot Community Choice Aggregation Program within the County of Westchester.

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

Subject: Approval of the Pilot Community Choice Aggregation Program.

Purpose: To approve the Pilot Community Choice Aggregation Program.

Substance of final rule: The Commission, on February 26, 2015, adopted an order approving a petition by Sustainable Westchester to implement a Pilot Community Choice Aggregation Program within the County of Westchester, subject to the terms and conditions set forth in the order.

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

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

Assessment of Public Comment

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

(14-M-0564SA1)

PROPOSED RULE MAKING
NO HEARING(S) SCHEDULED

Utility Gas Energy Efficiency Programs, Targets, Budgets and Administration

I.D. No. PSC-11-15-00021-P

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

Proposed Action: The Commission is considering authorizing utility—administered gas energy efficiency programs for implementation beginning in 2016.

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

Subject: Utility gas energy efficiency programs, targets, budgets and administration.

Purpose: To encourage the conservation of natural gas.

Substance of proposed rule: The Public Service Commission is considering whether to adopt, modify, or reject, in whole or in part, potential modifications to the provision of utility-administered gas energy efficiency programs for implementation beginning in 2016 for Central Hudson Gas & Electric Corporation (Central Hudson), Consolidated Edison Company of New York, Inc. (Con Edison), The Brooklyn Union Gas Company d/b/a National Grid (KEDNY), KeySpan Gas East Corporation d/b/a National Grid (KEDLI), National Fuel Gas Distribution Corporation (NFG), New York State Electric & Gas Corporation (NYSEG), Niagara Mohawk Power Corporation d/b/a National Grid (Niagara Mohawk), Orange and Rockland Utilities, Inc. (O&R), and Rochester Gas and Electric Corporation (RG&E).

Among the matters being considered are:

1. The authorization of program renewal for the period beyond 2015.

2. For existing budgets and targets to be maintained for 2016, with utilities to annually propose budgets and metrics, as well as their program portfolio, on a three year rolling cycle, with approval of portfolio budgets and metrics as opposed to specific program by program approvals.

3. Designing new energy efficiency programs using market based approaches and market mechanisms that combine resource acquisition with third party activities to drive greater value for customers so that the utilities' post-2016 portfolio of energy efficiency programs will gradually evolve to align with Reforming the Energy Vision (REV) approaches and the market transformation focus of New York State Energy Research and Development Agency (NYSERDA) programs, and to achieve greater market-wide efficiency savings with less need for direct ratepayer support.

4. Utility programs to become more oriented toward demand reduction and to pursue where possible efficiency measures that produce demand reduction less expensive than total gas cost.

5. Incentivizing utilities to pursue new methods of achieving efficiency outcomes, under an approach that integrates utilities, NYSERDA, and market participants into a coherent strategy to increase penetration of efficient technologies, such that utility outcomes will not be limited to (Dth) savings directly attributable to utility rebates, but rather will be measured with reference to the overall success of the strategy.

6. Encouraging utilities to engage and leverage the efforts of third party providers, community organizations, local governments, and employers to increase the reach of programs.

7. Encouraging utilities to develop more innovative approaches to efficiency programs which may include rebates, but with enhanced value either through targeting to specific system needs, coordination with a larger market transformation plan, or deployment of technology, tools and information that not only achieve energy efficiency but can also facilitate customer load management.

8. Integrating efficiency programs into utilities' businesses with costs being recovered through rates like other ordinary components of the revenue requirement rather than funding programs through a surcharge.

9. Utilities, as a unified group, maintaining their own planning, evaluation, Technical Resource Manual, and benefit/cost analysis tools which should be uniform across the State to the extent possible.

10. While NYSERDA remains the default provider of low income programs, encouraging utilities to develop innovative programs to expand the reach of measures that include energy efficiency within low income communities, in concert with and not in competition with efforts of NYSERDA.

The Commission may adopt, reject or modify, in whole or in part, the relief proposed and may resolve related matters.

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

(07-M-0548SP81)

PROPOSED RULE MAKING
NO HEARING(S) SCHEDULED

Petition for Submetering of Electricity

I.D. No. PSC-11-15-00022-P

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

Proposed Action: The Public Service Commission is considering whether to grant, deny or modify, in whole or part, the petition filed by 160 Madison Ave LLC to submeter electricity at 160 Madison Avenue, 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: Petition for submetering of electricity.

Purpose: To consider the request of 160 Madison Ave LLC to submeter electricity at 160 Madison Avenue, 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 petition filed by 160 Madison Ave LLC to submeter electricity at 160 Madison Avenue, 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 petition.

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

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

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

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

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

(15-E-0078SP1)

PROPOSED RULE MAKING
NO HEARING(S) SCHEDULED

Petition for Submetering of Electricity

I.D. No. PSC-11-15-00023-P

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

Proposed Action: The Public Service Commission is considering whether to grant, deny or modify, in whole or part, the petition filed by Renaissance Corporation of Albany to submeter electricity at 100 Union Drive, Albany, 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: Petition for submetering of electricity.

Purpose: To consider the request of Renaissance Corporation of Albany to submeter electricity at 100 Union Drive, Albany, New York.

Substance of proposed rule: The Public Service Commission is considering whether to grant, deny or modify, in whole or part, the petition filed by Renaissance Corporation of Albany to submeter electricity at 100 Union

Drive, Albany, New York, located in the territory of Niagara Mohawk Power Corporation, and to take other actions necessary to address the petition.

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

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

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

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

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

(14-E-0217SP2)

PROPOSED RULE MAKING
NO HEARING(S) SCHEDULED

Notice of Intent to Submeter Electricity

I.D. No. PSC-11-15-00024-P

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

Proposed Action: The Public Service Commission is considering whether to grant, deny or modify, in whole or part, Island House Tenants Corps's Notice of Intent to submeter electricity at 551, 555, 575 Main Street, N.Y., NY, located in the territory of Con Edison of N.Y.

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

Subject: Notice of Intent to submeter electricity.

Purpose: To consider the request to submeter electricity at the Island House Apartments at 551, 555, 575 Main Street, N.Y., N.Y.

Substance of proposed rule: 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 Island House Tenants Corp. and IH Preservation Partners, LLC, at Island House Apartments located at 551, 555, 575 Main Street, New York, New York, located in the territory of Consolidated Edison Company, Inc., and to take other actions necessary to address the petition.

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

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

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

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

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

(15-E-0077SP1)

PROPOSED RULE MAKING
NO HEARING(S) SCHEDULED

LED Street Lighting

I.D. No. PSC-11-15-00025-P

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

Proposed Action: The Commission is considering a proposal filed by Central Hudson Gas & Electric Corporation to update Service Classification No. 8—Public Street and Highway Lighting to reflect the LED lighting additional option contained in P.S.C. No. 15 - Electricity.

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

Subject: LED Street Lighting.

Purpose: To update tariff leaves to reflect LED lighting options contained in P.S.C. No. 15 - Electricity.

Substance of proposed rule: The Public Service Commission is considering whether to approve, modify or reject, in whole or in part, a tariff filing by Central Hudson Gas & Electric Corporation (Central Hudson or the Company) to update Service Classification No. 8 – Public Street and Highway Lighting (SC 8) to reflect additional LED lighting options contained in P.S.C. No. 15 – Electricity. Central Hudson proposes to include an LED option under Rate A (Company owned and maintained) of SC 8 as opposed to solely offering energy only service for LED lighting under Rate C (customer owned and maintained) of the same service classification. The amendments have an effective date of July 1, 2015. The Commission may also consider other related matters.

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

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

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

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

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

(15-E-0126SP1)

Department of State

PROPOSED RULE MAKING
NO HEARING(S) SCHEDULED

Real Estate Brokers and Salespersons

I.D. No. DOS-11-15-00001-P

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

Proposed Action: This is a consensus rule making to amend sections 175.12, 175.20 175.24(a), 177.2, 179.1, 179.2(b) and 179.3(a) of Title 19 NYCRR.

Statutory authority: Real Property Law, section 442-k

Subject: Real estate brokers and salespersons.

Purpose: To update obsolete and outdated regulations.

Text of proposed rule: Section 175.12 of Title 19 NYCRR is amended to read as follows:

175.12 Delivering [duplicate original] *copy* of instrument

A real estate broker shall immediately deliver a [duplicate original] *copy* of any instrument to any party or parties executing the same, where such instrument has been prepared by such broker or under his supervision and where such instrument relates to the employment of the broker or to any matters pertaining to the consummation of a lease, or the purchase, sale or exchange of real property or any other type of real estate transaction in which he may participate as a broker.

Subdivision (b) of section 175.20 of Title 19 NYCRR is amended to read as follows:

(b) Every branch office shall be under the direct supervision of the broker to whom the license is issued, or a representative broker of a corporation or partnership holding such license. [A salesperson licensed as such for a period of not less than two years and who has successfully completed a course of study in real estate approved by the Secretary of State, may be permitted to operate such a branch office only under the direct supervision of the broker provided the names of such salesperson and supervising broker shall have been filed and recorded in the division of licenses of the Department of State.]

Subdivision (c) of section 175.20 of Title 19 NYCRR is repealed.

Subdivision (a) of section 175.24 of Title 19 NYCRR is amended to read as follows:

(a) [Residential property as used in this section shall not include condominiums or cooperatives but shall be limited to one, two or three family dwellings.] *Residential real property as used in this section shall mean real property used or occupied, or intended to be used or occupied, wholly or partly, as a home or residence of one or more persons improved by: (i) a one to four family dwelling or (ii) condominium or cooperative apartments but shall not refer to unimproved real property upon which such dwellings are to be constructed.*

Section 177.2 of Title 19 NYCRR is amended to read as follows:

177.2 Approved Entities

Continuing education real estate courses and offerings may be given by any college or university accredited by the Commissioner of Education of the State of New York or by a regional accrediting agency approved by said Commissioner of Education; public or private vocational schools; real estate boards; and real estate related professional societies and organizations. *Courses, including sales or technology, that increase the competency of the licensee as it relates to the real estate transaction shall be acceptable as meeting continuing education requirements subject to the restrictions set forth in paragraph (d) of this section.* No real estate course of study seeking approval may be affiliated with or controlled by a real estate broker, salesperson, firm or company or real estate franchise, or controlled by a subsidiary of any real estate broker or real estate franchise. The following types of instruction shall not be acceptable as meeting continuing education requirements:

(a) General training or education to prepare a student for passing a real estate broker's or salespersons' examination which is not part of an approved course under Part 176 of this Title;

(b) Offerings in mechanical office and business skills, such as typing, basis computer skills training, instructional navigation of the world wide web, instructional use of generic computer software, speed reading, memory improvement, report writing, personal motivation,, salesmanship and sales psychology; [and]

(c) Sales promotion meetings [.] *; and*

(d) Subjects that are not real estate related.

Section 179.1 of Title 19 NYCRR is amended to read as follows:

179.1 Qualifying experience

An applicant for licensure as a real estate broker must possess [one] *two* year*s* of full-time experience as a licensed real estate salesperson under the supervision of a licensed real estate broker or the equivalent full-time experience in general real estate business for a period of at least [two] *three* years.

Subdivision (b) of section 179.2 of Title 19 NYCRR is amended to read as follows:

(b) [1700] *3500* points shall equate to [a] *two* year*s* of full-time experience.

Subdivision (a) of section 179.3 of Title 19 NYCRR is amended to read as follows:

(a) Experience points shall be credited an applicant in accordance with the following schedule:

REAL ESTATE BROKER POINT SYSTEM FOR LICENSED SALESPERSON ACTIVITY ONLY

Category	Point Value
RESIDENTIAL SALES:	
1. Single Family, condo, co-op unit, multi- family (2 to 8-unit), farm (with residence, under 100 acres)	250
2. Exclusive listings	10
3. Open listings	1
4. Binders effected	25
5. Co-op unit transaction approved by seller and buyer that fails to win Board of Directors approval	100
RESIDENTIAL RENTALS:	
6. Rentals or subleases effected	25
7. Exclusive Listings	5
8. Open Listings	1
9. Property Management	
- Lease renewal	2
- Rent collections per tenant/per year	1
COMMERCIAL SALES:	
10. Taxpayer/*Storefront*	400
11. Office Building	400
12. Apartment Building (9 units or more)	400
13. Shopping Center	400
14. Factory/Industrial warehouse	400
15. Hotel/Motel	400
16. Transient garage/parking lot	400
17. Multi-unit commercial condominium	400
18. Urban commercial development site	400
19. Alternative sale type transaction	400
20. Single-tenant commercial condo	250
21. Listings	10
COMMERCIAL LEASING:	
22. New Lease-aggregate rental $1 to $200,000	150
23. New Lease-aggregate rental $200,000 to $1 million	250
24. New Lease-aggregate rental over $1 million	400
25. Renewal-aggregate renewal $1 to $200,000	75
26. Renewal-aggregate rental $200,000 to $1 million	125
27. Renewal-aggregate rental over $1 million	200
28. Listings	10
COMMERCIAL FINANCING:	
(includes residential properties of more than four units):	
29. $1 to $500,000	200
30. $500,000 to $5,000,000	300
31. Over $5,000,000	400
MISCELLANEOUS:	
32. Sale vacant lots, land (under 100 acres)	50
33. Sale vacant land (more than 100 acres)	150
34. Other must be fully explained. —	
TOTAL POINTS NEEDED:	[1750] *3500*

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

Consensus Rule Making Determination

It is unlikely that anybody will object to the proposed rule because it merely seeks to repeal obsolete regulations, conform existing regulations with non-discretionary statutory provisions and is otherwise non-controversial.

The rule proposes to amend 19 NYCRR 175.12, which currently requires licensees to provide duplicate originals of certain instruments signed by a party to a real estate transaction. Technology has advanced since the regulation was promulgated and licensees now utilize photocopies for reproducing transaction documents, as opposed to carbon paper. If adopted, the rule will maintain the regulatory intent that parties be copied on relevant documents, while eliminating the obsolete requirement that this copy be a duplicate original.

The rule also proposes to amend 19 NYCRR 175.20(b) and repeal 19 NYCRR 175.20(c). The regulation currently permits real estate salespersons to manage brokerage branch offices. Article 12-A of the Real Property Law has been amended to restrict management of branch offices to a 'branch office manager.' Pursuant to this statutory amendment, only associate real estate brokers may manage branch offices. Accordingly, 19 NYCRR 175.20(b) and (c) are obsolete and must be amended to conform to a non-discretionary statutory provision.

19 NYCRR 175.24(a) must also be amended to comport the regulation with a statutory amendment. The regulation currently defines 'residential property' as one, two or three family dwellings and expressly excludes condominium and cooperative apartments. Article 12-A of the Real Property Law has been amended to include condominium and cooperative apartments in the definition of 'residential property.' As such, 19 NYCRR 175.24(a) must be similarly amended.

19 NYCRR 177.2 provides guidance to schools and other providers on

the types of courses which will and will not be approved by the Department of State for continuing education credit. As the market and technology have evolved, licensees are increasingly relying on technology to assist with marketing and real estate transactions. The proposed revision to 19 NYCRR 177.2 will permit licensees to receive credit for continuing education classes, such as instruction in relevant technology, provided that the subjects are related to real estate.

Article 12-A of the Real Property Law has been amended to increase the qualifying experience required for licensure as a real estate broker or salesperson. Several regulations refer to the old experience requirements, which have been rendered obsolete by reason of the amendment to Article 12-A of the Real Property Law. 19 NYCRR sections 179.1, 179.2(b) and 179.3(a) must be amended to reflect current experience requirements.

Job Impact Statement

The Department of State has concluded that the proposed rule making will not adversely impact jobs and employment opportunities for real estate licensees. The proposed rule making merely repeals obsolete provisions, conforms existing regulations to non-discretionary statutory provisions and makes other amendments which are non-controversial, such as increasing topics permitted for continuing education and permitting the retention of photocopies of certain transaction documents rather than duplicate originals.

Office of Temporary and Disability Assistance

NOTICE OF ADOPTION

"Food Stamp Program" Renamed "Supplemental Nutrition Assistance Program" (SNAP); Food Assistance Program (FAP) Repealed; Certain Public Assistance Employment Program Reporting Requirements Modified

I.D. No. TDA-52-14-00001-A

Filing No. 146

Filing Date: 2015-03-03

Effective Date: 2015-03-18

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

Action taken: Amendment of sections 358-1.1, 358-1.2, 358-2.27, 381.2, 651.1, 651.2; and repeal of Part 388 of Title 18 NYCRR.

Statutory authority: 7 USC, ch. 51 and sections 2011 and 2013; Social Services Law, sections 20, 34, 95 and art. 5, title 9-B; L. 2003, ch. 360; L. 2005, ch. 57, part C; L. 2012, ch. 41.

Subject: "Food Stamp Program" renamed "Supplemental Nutrition Assistance Program" (SNAP); Food Assistance Program (FAP) repealed; certain public assistance employment program reporting requirements modified.

Purpose: To render subject State regulations consistent with cited statutory authority and chapter 360 of the Laws of 2003, part C of chapter 57 of the Laws of 2005, and chapter 41 of the Laws of 2012.

Text or summary was published in the December 31, 2014 issue of the Register, I.D. No. TDA-52-14-00001-P.

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

Text of rule and any required statements and analyses may be obtained from: Richard P. Rhodes, Jr., New York State Office of Temporary and Disability Assistance, 40 North Pearl Street, 16C, Albany, NY 12243-0001, (518) 486-7503, email: richard.rhodesjr@otda.ny.gov

Initial Review of Rule

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

Assessment of Public Comment

The agency received no public comment.

Department of Transportation

PROPOSED RULE MAKING
NO HEARING(S) SCHEDULED

Use of Rest Areas (Section 156.3) and Safe Operation of Commercial Motor Vehicles (Section 820.14)

I.D. No. TRN-11-15-00014-P

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

Proposed Action: This is a consensus rule making to amend sections 156.3(c) and 820.14 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 safe operation of commercial motor vehicles (section 820.14).

Purpose: To update applicable regulations in 17 NYCRR 156.3(c) and 820.14.

Text of proposed 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 185, Parts 186 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.

Text of proposed 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

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

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

Consensus Rule Making Determination

NYSDOT has determined that no person is likely to object to the amendment of 17 NYCRR 156.3(c) and the renumbering of 17 NYCRR 820.14 as herein proposed, the purposes of the amendments being non-controversial and not substantive changes to NYSDOT policy.

Job Impact Statement

1. Nature of impact: The proposed rule changes are for the purpose of updating the Department's regulations related to use of rest / parking areas and scenic overlooks in 17 NYCRR 156.3(c). The amendment to 17 NYCRR 820.14 is a renumbering to 17 NYCRR 820.13; no changes to the content of section 820.14 are being proposed. As such, the rule changes are not expected to have an impact on jobs.

2. Categories and numbers affected: The period of authorized use of rest / parking areas and scenic overlooks by commercial motor vehicle operators will increase from 8 hours to 10 hours under the proposed amendment to 17 NYCRR 156.3(c). The CFR regulations currently

incorporated by reference in 17 NYCRR 820.14 will be unchanged after the renumbering to 17 NYCRR 820.13.

3. Regions of adverse impact: No adverse impact on jobs in any particular region or regions is anticipated.

4. Minimizing adverse impact: The purpose of the subject regulations is the advancement of public safety; consequently, there are no adverse impacts expected.

PROPOSED RULE MAKING
NO HEARING(S) SCHEDULED

Safe Operation of Commercial Motor Vehicles by Motor Carriers and Drivers

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

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

Proposed Action: This is a consensus rule making to repeal sections 820.0, 820.1, 820.2, 820.3, 820.4, 820.5 820.6, 820.7, 820.8, 820.9, 820.10, 820.11, 820.12 and 820.13; add new sections 820.0, 820.1, 820.2, 820.3, 820.4, 820.5 820.6, 820.7, 820.8, 820.9, 820.10, 820.11 and 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, added 12/12/2004.

Substance of proposed rule (Full text is posted at the following State website:https://www.dot.ny.gov/divisions/operating/osss/truck/regulations): 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), 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.

Text of proposed 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

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

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

Consensus Rule Making Determination

The New York State Department of Transportation (NYSDOT) engages in commercial motor vehicle enforcement activities under the Motor Carrier Safety Assistance Program (MCSAP). MCSAP provides federal financial assistance to states in order to reduce the number and severity of accidents and hazardous materials incidents involving commercial motor vehicles. The FMCSA has adopted standards for commercial motor vehicles and drivers that apply to any vehicle being operated in interstate commerce. These regulations, which appear in Title 49 of the Code of Federal Regulations (CFR), have been incorporated by reference into the NYSDOT regulations in Title 17 NYCRR.

Some vehicles, and some vehicles being operated under certain circumstances, are exempt from motor carrier regulations under both federal regulations and under Transportation Law Section 214. The motor carrier regulations in Part 820 need to be updated to reflect the exemptions and the updated applicability.

NYSDOT has determined that no person is likely to object to the amendment of 17 NYCRR parts 820 as herein proposed, as the purpose of the rulemaking is to bring the Part into compliance with the law, as amended, and to update addresses of state agencies. This rulemaking does not represent a change in NYSDOT policy or practice.

Job Impact Statement

1. Nature of impact: The proposed rule changes are being advanced for the purpose of updating the Department's regulations related to safe operation of commercial motor vehicles. Most of the specific provisions are contained in the Code of Federal Regulations (CFR), several parts of which are incorporated by reference. The rule changes are not expected to have an impact on jobs, because the associated New York State Department of Transportation (NYSDOT) enforcement activity will be consistent with past practice.

2. Categories and numbers affected: NYSDOT participates in motor carrier enforcement with police agencies, and on its own initiative, performs inspections of vehicles and drivers and motor carrier compliance reviews. These reviews and inspections are performed using the standards that are found in the CFR regulations historically incorporated by reference in 17 NYCRR. Neither the frequency of inspections nor the basis for NYSDOT enforcement action is expected to change in any way.

3. Regions of adverse impact: Inspections and reviews are conducted pursuant to Department policy and there is no variance in the methodology across regions. No adverse impact on jobs in any particular region or regions is anticipated.

4. Minimizing adverse impact: The purpose of performing motor carrier enforcement activities is the advancement of public safety through verification of compliance with state law and regulation pertaining to motor carrier safety; consequently, there are no adverse impacts.