

RULE MAKING ACTIVITIES

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

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

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

Department of Civil Service

NOTICE OF EXPIRATION

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

Jurisdictional Classification

I.D. No.	Proposed	Expiration Date
CVS-44-14-00016-P	November 5, 2014	November 5, 2015

Department of Environmental Conservation

NOTICE OF ADOPTION

Greenhouse Gas and Zero Emission Vehicle (ZEV) Standards and Annual Publication of ZEV Credit Balance Information

I.D. No. ENV-27-15-00005-A

Filing No. 966

Filing Date: 2015-11-09

Effective Date: 30 days after filing

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

Action taken: Amendment of Parts 200 and 218 of Title 6 NYCRR.

Statutory authority: Environmental Conservation Law, sections 1-0101,

1-0303, 3-0301, 19-0103, 19-0105, 19-0107, 19-0301, 19-0303, 19-0305, 19-1101, 19-1103, 19-1105, 71-2103, 71-2105; and Federal Clean Air Act, section 177 (42 USC 7507)

Subject: Greenhouse gas and zero emission vehicle (ZEV) standards and annual publication of ZEV credit balance information.

Purpose: To incorporate California’s most recent greenhouse gas and ZEV program standards.

Text of final rule: Sections 200.1 through 200.8 remain unchanged.

Section 200.9, Table 1 (218-1.2(d) through 218-11.2) is repealed and replaced to read as follows:

218-1.2(d)	California Code of Regulations, Title 13, Section 1962 (2-13-10)	** ***
218-1.2(e)	California Code of Regulations, Title 13, Section 1962 (2-13-10)	** ***
218-1.2(f)	Clean Air Act 42 U.S.C. Section 7543 (1988) as amended by Pub. L. 101-549 (1990)	**
	Clean Air Act 42 U.S.C. Section 7507 (1988) as amended by Pub. L. 101-549 (1990)	**
218-1.2(g)	California Health and Safety Code, Section 39003 (1975)	** †
218-1.2(j)	California Code of Regulations, Title 13, Section 1900 (12-31-12)	** ***
218-1.2(l)	California Code of Regulations, Title 13, Section 1962 (2-13-10)	** ***
218-1.2(m)	California Vehicle Code, Section 165 (2013)	** †
218-1.2(n)	California Code of Regulations, Title 13, Section 1900 (12-31-12)	** ***
218-1.2(q)	California Code of Regulations, Title 13, Section 1962.1 (7-10-14)	** ***
218-1.2(w)	California Code of Regulations, Title 13, Section 1900 (12-31-12)	** ***
218-1.2(y)	California Code of Regulations, Title 13, Section 1900 (12-31-12)	** ***
218-1.2(z)	California Code of Regulations, Title 13, Section 1900 (12-31-12)	** ***
218-1.2(ab)	California Code of Regulations, Title 13, Section 1900 (12-31-12)	** ***
218-1.2(ac)	California Code of Regulations, Title 13, Section 1900 (12-31-12)	** ***
218-1.2(ad)	California Code of Regulations, Title 13, Section 1905 (7-3-96)	** ***
218-1.2(af)	California Code of Regulations, Title 13, Section 1900 (12-31-12)	** ***
218-1.2(aj)	California Code of Regulations, Title 13, Section 1962 (2-13-10)	** ***
218-1.2(ak)	California Code of Regulations, Title 13, Section 1960.5 (10-16-02)	** ***
218-1.2(ap)	California Code of Regulations, Title 13, Section 1900 (12-31-12)	** ***

218-1.2(aq)	California Code of Regulations, Title 13, Section 1900 (12-31-12)	** ***		California Code of Regulations, Title 13, Section 1960.1(g)(2) (12-31-12)	** ***
218-1.2(at)	40 CFR Section 86.1827-01 (2-26-07)	*	218-3.1	California Code of Regulations, Title 13, Section 1961(b)(1) (12-31-12)	** ***
218-1.2(az)	California Code of Regulations, Title 13, Section 2112 (8-7-12)	** ***		California Code of Regulations, Title 13, Section 1961.2 (12-31-12)	** ***
218-1.2(bc)	California Code of Regulations, Title 13, Section 1962 (2-13-10)	** ***	218-3.1(a)	California Code of Regulations, Title 13, Section 1960.1(g)(1) (12-31-12)	** ***
218-1.2(bd)	California Code of Regulations, Title 13, Section 1900 (12-31-12)	** ***		California Code of Regulations, Title 13, Section 1961.2 (12-31-12)	** ***
218-1.2(be)	California Code of Regulations, Title 13, Section 2035 (11-9-07)	** ***		California Code of Regulations, Title 13, Section 1960.1(g)(2) (12-31-12)	** ***
218-1.2(bf)	California Code of Regulations, Title 13, Section 2035 (11-9-07)	** ***	218-3.1(b)	California Code of Regulations, Title 13, Section 1961(b) (12-31-12)	** ***
218-1.2(bg)	California Code of Regulations, Title 13, Section 2035 (11-9-07)	** ***		California Code of Regulations, Title 13, Section 1961.2 (12-31-12)	** ***
218-1.2(bh)	California Code of Regulations, Title 13, Section 2035 (11-9-07)	** ***		California Code of Regulations, Title 13, Section 1962 (2-13-10)	** ***
218-1.2(bi)	California Code of Regulations, Title 13, Section 1900 (12-31-12)	** ***	218-4.1	California Code of Regulations, Title 13, Section 1962.1 (7-10-14)	** ***
	California Code of Regulations, Title 13, Section 1956.8 (10-7-06)	** ***		California Code of Regulations, Title 13, Section 1962.2 (7-10-14)	** ***
	California Code of Regulations, Title 13, Section 1956.9 (3-6-96)	** ***		California Code of Regulations, Title 13, Section 2061 (10-23-96)	** ***
	California Code of Regulations, Title 13, Section 1960.1 (12-31-12)	** ***	218-5.1(a)	California Code of Regulations, Title 13, Section 2062 (8-7-12)	** ***
	California Code of Regulations, Title 13, Section 1960.1.5 (9-30-91)	** ***		California Code of Regulations, Title 13, Section 2065 (12-4-03)	** ***
	California Code of Regulations, Title 13, Section 1960.5 (10-16-02)	** ***		California Code of Regulations, Title 13, Section 2065 (12-4-03)	** ***
	California Code of Regulations, Title 13, Section 1961 (12-31-12)	** ***	218-5.2(a)	California Code of Regulations, Title 13, Section 2109 (12-30-83)	** ***
	California Code of Regulations, Title 13, Section 1962 (2-13-10)	** ***		California Code of Regulations, Title 13, Section 2110 (11-27-99)	** ***
218-2.1(a)	California Code of Regulations, Title 13, Section 1962.1 (7-10-14)	** ***	218-5.2(b)(1)	California Code of Regulations, Title 13, Section 2106 (11-27-99)	** ***
	California Code of Regulations, Title 13, Section 1964 (2-23-90)	** ***	218-5.3(b)	California Code of Regulations, Title 13, Section 2101 (11-27-99)	** ***
	California Code of Regulations, Title 13, Section 1965 (8-7-12)	** ***	218-6.2	Clean Air Act 42 U.S.C. Section 7401 et seq. (1988) as amended by Pub. L. 101-549 (1990)	**
	California Code of Regulations, Title 13, Section 1968.1 (11-27-99)	** ***		218-7.2(c)(1)	California Code of Regulations, Title 13, Section 2222 (10-1-09)
	California Code of Regulations, Title 13, Section 1968.2 (8-7-12)	** ***		218-7.2(c)(2)	California Code of Regulations, Title 13, Section 2222 (10-1-09)
	California Code of Regulations, Title 13, Section 1976 (12-31-12)	** ***		218-7.3(a)(1)	California Code of Regulations, Title 13, Section 2221 (11-30-83)
	California Code of Regulations, Title 13, Section 1978 (8-7-12)	** ***			California Code of Regulations, Title 13, Section 2224 (8-16-90)
	California Code of Regulations, Title 13, Section 2047 (5-31-88)	** ***	218-7.3(a)(2)	California Code of Regulations, Title 13, Section 2224(a) (8-16-90)	** ***
	California Code of Regulations, Title 13, Section 2065 (12-4-03)	** ***		218-7.4(b)(3)(i)	California Code of Regulations, Title 13, Section 2222 (10-1-09)
	California Code of Regulations, Title 13, Section 2235 (8-8-12)	** ***		218-7.4(b)(3)(ii)	California Code of Regulations, Title 13, Section 2222 (10-1-09)
	Clean Air Act 42 U.S.C. Section 7521 (1988) as amended by Pub. L. 101-549 (1990)	**	218-7.5(b)	California Code of Regulations, Title 13, Section 2222 (10-1-09)	** ***
218-2.1(b)(5)	Clean Air Act 42 U.S.C. Section 7401 'et seq'. (1988) as amended by Pub. L. 101-549 (1990)	**	218-8.1(a)	California Code of Regulations, Title 13, Section 1961.1 (8-7-12)	** ***
218-2.1(b)(8)	California Health and Safety Code, Section 43656 (1975)	***	218-8.1(b)	California Code of Regulations, Title 13, Section 1961.1 (8-7-12)	** ***
218-2.1(d)	Clean Air Act 42 U.S.C. Section 7507 (1988) as amended by Pub. L. 101-549 (1990)	**	218-8.2	California Code of Regulations, Title 13, Section 1961.1 (8-7-12)	** ***
218-2.4	California Health and Safety Code, Section 43014 (1976)	** †		California Code of Regulations, Title 13, Section 1961.3 (12-31-12)	** ***

	California Code of Regulations, Title 13, Section 2145 (8-7-12)	**

	California Code of Regulations, Title 13, Section 2146 (11-27-99)	**

	California Code of Regulations, Title 13, Section 2147 (8-7-12)	**

	California Code of Regulations, Title 13, Section 2148 (11-27-99)	**

	California Code of Regulations, Title 13, Section 2149 (2-23-90)	**

218-11.1	California Code of Regulations, Title 13, Section 1965 (8-7-12)	**

218-11.2	California Code of Regulations, Title 13, Section 1965 (8-7-12)	**

Section 218-1 remains the same.

Section 218-2.1(a) is amended to read as follows:

(a) It is unlawful for any person to sell or register, offer for sale or lease, import, deliver, purchase, rent, lease, acquire or receive a 1993, 1994, 1996 or subsequent model-year, new or used motor vehicle, new motor vehicle engine or motor vehicle with a new motor vehicle engine in the State of New York which is not certified to California emission standards and meets all other applicable requirements of California Code of Regulations, title 13, sections 1956.8, 1956.9, 1960.1, 1960.1.5, 1960.5, 1961, 1962, 1962.1, 1964, 1965, 1968.1, 1968.2, 1976, 1978, 2030, 2031, 2047, 2065[,] and 2235 [and article 1.5] (see Table 1, section 200.9 of this Title) and is otherwise not in compliance with the Environmental Conservation Law and these departmental regulations, unless the vehicle is sold to another dealer, sold for the purpose of being wrecked or dismantled, sold exclusively for off-highway use or sold for registration out of state. Vehicles that have been certified to standards promulgated pursuant to the authority contained in 42 USC 7521 (see Table 1, section 200.9 of this Title) and that are in the possession of a rental agency in New York that are next rented with a final destination outside of New York will not be deemed as being in violation of this prohibition.

Sections 218-2.1(b) through 218-4.1 remain the same.

Section 218-5.1(a) is amended to read as follows:

(a) All manufacturers of new vehicles subject to this Part, certified for sale in California and produced and delivered for sale in New York, shall conduct inspection testing in accordance with California Code of Regulations, title 13, sections 2061, 2062[,] and 2065 [and article 1.5] (see Table 1, section 200.9 of this Title).

Sections 218-5.1(b) through 218-5.1(c) remain the same.

Section 218-5.2(a) is amended to read as follows:

(a) "Remedial action plans for facilities covered under California's reporting requirement". If the state of California requires a remedial action plan based upon full calendar or partial calendar quarter testing, under the California Code of Regulations, title 13, sections 2065, 2109[,] and 2110 [and article 1.5] (see Table 1, section 200.9 of this Title), such plan will apply to all vehicles certified to the California standards intended for sale in New York State. Such plan will not apply to vehicles that have previously been sold to ultimate purchasers in New York.

Sections 218-5.2(b) through 218-7.2(b)(2) remain the same.

Section 218-7.2(c)(1) is amended to read as follows:

It is unlawful for any person to install, sell, offer for sale or advertise any new aftermarket catalytic converter intended for use on a gasoline powered passenger car, light-duty truck, or medium-duty vehicle originally certified with a catalytic converter in New York State unless it has been exempted pursuant to the requirements of California Code of Regulations, title 13, section 2222 (see Table 1, Section 200.9 of this Title).

Sections 218-7.2(c)(2) through 218-8.3(d) remain the same.

Section 218-8.4 is amended to read as follows:

(a) Greenhouse gas vehicle test groups which are certified pursuant to California Code of Regulations, title 13, section 1961.1[(e)(2)(a)] (see Table 1, section 200.9 of this Title) in California are eligible to receive equivalent credit if delivered for sale and used in New York.

(b) In order to receive the credit identified in subdivision (a) of this section, a manufacturer must submit to the department the data identified in California Code of Regulations, title 13, section 1961.1[(e)(2)(a)(i)] (see Table 1, section 200.9 of this Title) for New York specific sale and use.

Sections 218-8.5 through 218-12.1 remain the same.

Final rule as compared with last published rule: Nonsubstantive changes were made in Parts 200 and 218.

Text of rule and any required statements and analyses may be obtained from: Jeff Marshall, P.E., NYSDEC, Division of Air Resources, 625 Broadway, Albany, NY 12233-3255, (518) 402-8292, email: Air.Reg@dec.ny.gov

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

Summary of Revised Regulatory Impact Statement

The New York State Department of Environmental Conservation (Department) is adopting amendments to 6 NYCRR Section 200.9 and 6 NYCRR Part 218 to incorporate California's latest greenhouse gas (GHG) standards, which were adopted by California on December 31, 2012, into New York's existing low emission vehicle (LEV) program. Part 218 is also being amended to incorporate California's latest zero emission vehicle (ZEV) standards.

Section 200.9 is being repealed and replaced to correct several typographical errors and to update Part 218's incorporation of California's amendments to the GHG program. The Department is adopting GHG standards and credit mechanisms that are identical to those adopted by the California Air Resources Board (CARB). The adopted amendments will allow compliance with federal GHG emission standards for the 2017 through 2025 model years as an alternative compliance option to existing CARB GHG emission standards adopted in 2012. The adopted GHG revisions will apply to all 2017 through 2025 model year passenger cars, light-duty trucks, and medium-duty passenger vehicles.

In New York's 2012 rulemaking to adopt California's Advanced Clean Car (ACC) Standards, the Department estimated that by 2035 the ACC standards will reduce carbon dioxide equivalent emissions in New York by approximately 14 million metric tons per year.

The federal GHG emission standards are not as stringent as California GHG standards. CARB estimated that compliance using federal standards will result in approximately a 4.5 percent loss of CO2 emission reductions in 2025 that would otherwise be achieved under the California standards. California and the Section 177 states have determined that this slight decrease in stringency is more than offset by the additional GHG emission reductions that will be achieved by nationwide implementation of federal GHG standards.

Part 218 is also being revised to update New York's incorporation of California's amendments to the ZEV program. The adopted ZEV revisions to Part 218 apply to all 2012 and subsequent model year passenger cars, light-duty trucks, and medium-duty vehicles. The adopted ZEV amendments include revisions to the Section 177 state optional compliance path adopted in 2012, clarification of the ZEV credit cap that may be used to meet the minimum ZEV requirement in a given model year, and modification of the fast refueling definition to exclude battery exchange.

The Section 177 state optional compliance path is a voluntary compliance mechanism intended to alleviate the compliance burden for manufacturers while ensuring that ZEVs are actually placed in service in Section 177 states prior to model year 2018. The revisions to the Section 177 state optional compliance path consist of the following:

1) Restrictions on the use of transportation system credits. Transportation system credits are earned for projects that involve the shared use of ZEVs and other advanced technology vehicles, application of intelligent new technologies, and often links to mass transit. The use of transportation system credits to offset part of the required ZEV and TZEV percentages under the optional path will be prohibited. Vehicles placed in a Section 177 state under the optional compliance path may still be used in a transportation system program, however, the credits may not be used towards compliance with the optional path requirements.

2) Clarification of pooling language. Manufacturers selecting the Section 177 state optional compliance path will be allowed to demonstrate compliance with the ZEV requirements by pooling regional ZEV sales. The pooling language has been clarified to state that manufacturers will be allowed to trade and transfer credits earned between model years 2012 and 2017 to meet a particular model year requirement.

3) Clarification of compliance requirements for intermediate volume manufacturers. CARB added language to clarify the compliance requirements for intermediate volume manufacturers (IVM) choosing the optional compliance path. IVMs choosing to demonstrate compliance using the optional compliance path will be required to meet the same additional ZEV percentage for model years 2016 and 2017 as large volume manufacturers (LVM). The additional ZEV percentages are 0.75 percent in 2016 and 1.50 percent in 2017. However, unlike LVMs, IVMs will be allowed to fulfill the remainder of their ZEV obligation for the 2016 and 2017 model years using partial zero emission vehicles (PZEVs).

4) Requirements for vehicle identification number reporting. CARB revised the reporting requirements to ease the compliance burden on vehicle manufacturers. Manufacturers were previously required to submit the vehicle identification number (VIN) for each ZEV and TZEV delivered for sale and placed in service in a Section 177 state prior to model year 2018. Under the revised reporting requirement, manufacturers will only be required to provide the VINs for ZEVs and TZEVs for which they are seeking pooled credit upon request from a Section 177 state. This will en-

able Section 177 states to confirm the placement of ZEVs and TZEVs within the regional pools.

5) Consequences for failure to comply. The language dealing with a manufacturer's failure to comply with the Section 177 state optional compliance path has been clarified. A manufacturer that chooses this voluntary option and fails to comply with the requirements will be prohibited from using this option going forward from the date of noncompliance. They will lose the ability to pool regional sales to demonstrate compliance with the ZEV requirements and will also be prohibited from trading or transferring credits within and between regional compliance pools. These actions will not be retroactive and will not undo trades completed prior to the demonstration of noncompliance with the optional path.

Additional revisions to the ZEV requirement include:

1) Revised cap on credits used to offset minimum ZEV requirement. The ZEV program has long included various caps on the amount of credits that could be used to comply with the minimum ZEV requirement in a given model year. However, previous ZEV revisions never specified how to apply the various caps in combination. CARB has revised the credit cap to clarify that use of credits will be capped at a combined 50 percent of the minimum ZEV requirement. None of the individual caps will change. Therefore, a manufacturer may use credits in any combination as long as the total does not exceed 50 percent of the minimum ZEV requirement for a given model year.

2) Modification of the fast refueling definition. CARB defines fast refueling for ZEVs as the ability to refuel the vehicle to 95 percent of full capacity within 15 minutes. ZEVs meeting these criteria are classified as Types IV and V and are eligible to earn increased ZEV credits. Some BEV have been certified as ZEV Types IV and V based on the ability to exchange, or swap, battery packs in order to achieve full range in less than 15 minutes. However, CARB states that there is no evidence that battery exchanges are actually taking place with in-use BEVs. As a result, CARB eliminated battery exchanges from the fast refueling definition and BEV relying on this technology will not be allowed to earn increased ZEV credit granted to Types IV and V.

The Department will disclose ZEV credit information for each manufacturer on an annual basis identical to the information released by California pursuant to California Code of Regulations (CCR), Title 13, Section 1962.1(i) starting with the 2014 model year. New York State adopted this section by reference in a previous revision of Part 218, but opted to release ZEV credit information in accordance with New York State's freedom of information law requirements. Similar information is published annually by California and other states that have adopted the California standards. This information will be posted on the Department's public website and will be identical to the information published by CARB. No additional information will be published beyond that specified in Section 1962.1(i).

The adopted GHG and ZEV amendments are not expected to have any impact on consumers. The adopted GHG amendments are intended to minimize manufacturers' compliance costs by granting them the option of demonstrating compliance with federal GHG emission standards in lieu of California GHG standards. The intent of the adopted ZEV amendments is to offer vehicle manufacturers an alternative option that eases the compliance burden while ensuring ZEV and TZEV vehicles are actually delivered to, and placed in, Section 177 states prior to model year 2018. There should be no costs associated with the adopted GHG and ZEV amendments that will be passed along to consumers in the form of higher prices.

Currently there is no automotive manufacturing in New York involving the final assembly of vehicles. Affiliated businesses, such as dealerships and engineering and design facilities, are local businesses which compete within the state and generally are not subject to competition from out-of-state businesses. New York dealerships will be able to sell California certified vehicles to states bordering New York, as is currently the case. New York residents will not be able to buy noncompliant vehicles out of state since vehicles must be California certified in order to be registered in New York. This is currently the case with the existing LEV program and will not change with the adopted requirements. The adopted amendments apply equally to all LVMs delivering new vehicles for sale in New York. Several of the surrounding states have adopted, or will adopt, similar requirements. Therefore, the regulation is not expected to impose a competitive disadvantage on dealerships.

There are no costs associated with these adopted amendments that will be passed along to dealerships. The intent of the GHG regulation is to provide vehicle manufacturers with the voluntary option to demonstrate compliance with federal GHG emission standards in lieu of California's GHG standards. This will enable manufacturers to lower compliance costs by producing and selling a fleet of vehicles built to a single national standard. The intent of the ZEV regulation is to offer vehicle manufacturers an alternative option that eases the compliance burden while ensuring ZEV and TZEV vehicles are actually delivered to and placed in Section 177 states prior to model year 2018. The adopted amendments are not expected to cause a noticeable change in New York employment, nor are

they expected to have any impact on business creation, elimination, or expansion.

The adopted amendments are not expected to result in any additional costs for local and state agencies, nor will they impose a local government mandate. No additional paperwork or staffing requirements are expected.

The adopted amendments should not result in any new significant paperwork requirements for New York vehicle suppliers, dealers or government. New York relies on materials submitted to California for certification, while manufacturers must submit to New York annual sales and corporate fleet average reports to show compliance with fleet average requirements. This has been the case since New York first adopted the California LEV program in 1992. The implementation of the adopted GHG and ZEV regulations is not expected to be burdensome in terms of paperwork to owners/operators of vehicles.

The Department could maintain the current LEV program without adopting CARB's GHG and ZEV amendments. This option was reviewed and rejected. The primary basis for this decision was that the Department believes this is not permitted under Section 177 due to the identity of the requirement. Further, the severity of New York State's air quality problems means New York State must maintain compliance with recent improvements in the California standards in order to achieve reductions necessary for the attainment and maintenance of the ozone and carbon monoxide standards, as well as reductions of GHG emissions. Federal GHG standards will be available as an alternative for the 2017 through 2025 model years. There are no equivalent federal ZEV standards available as an alternative.

The adopted GHG regulatory amendment will take effect for 2017 through 2025 model year passenger cars, light-duty trucks, and medium-duty passenger vehicles. The adopted ZEV amendments will have various effective dates including immediate, 2015 model year, and 2018 model year and will apply to passenger cars, light-duty trucks, and medium-duty vehicles. The annual publication of manufacturer ZEV credit balances will commence with 2014 model year data.

Revised Regulatory Flexibility Analysis

1. Effect of rule:

The New York State Department of Environmental Conservation (Department) is amending 6 NYCRR Section 200.9 and 6 NYCRR Part 218 to incorporate California's latest greenhouse gas (GHG) standards, which were adopted by California on December 31, 2012, into New York's existing low emission vehicle (LEV) program. Part 218 is also being amended to incorporate California's latest zero emission vehicle (ZEV) standards. These changes apply to vehicles purchased by consumers, businesses, and government agencies in New York and may impact businesses involved in manufacturing, selling, leasing, or purchasing passenger cars or trucks.

State and local governments are also consumers of vehicles that will be regulated under the adopted GHG amendments. Therefore, local governments who own or operate vehicles in New York State are subject to the same requirements as owners of private vehicles in New York State; i.e., they must purchase California certified vehicles. This rulemaking is not a local government mandate pursuant to Executive Order 17.

The changes are an addition to the current LEV standards. The new motor vehicle emissions program has been in effect in New York State since model year 1993 for passenger cars and light-duty trucks, with the exception of the 1995 model year, and the Department is unaware of any significant adverse impact to small businesses or local governments as a result of previous revisions.

2. Compliance requirements:

There are no specific requirements in the regulation which apply exclusively to small businesses or local governments. Reporting, record-keeping and compliance requirements are effective statewide. Automobile dealers (some of which may be small businesses) selling new cars are required to sell or offer for sale only California certified vehicles. These adopted amendments will not result in any additional reporting requirements to dealerships other than the current requirements to maintain records demonstrating that vehicles are California certified. This documentation is the same documentation already required by the New York State Department of Motor Vehicles for vehicle registration. If local governments are buying new fleet vehicles they should make sure that the vehicles are California certified.

3. Professional services:

There are no professional services needed by small business or local government to comply with the adopted rule.

4. Compliance costs:

New York State currently maintains personnel and equipment to administer the LEV program. It is expected that these personnel will be retained to administer the revisions to this program. Therefore, no additional costs will be incurred by the State of New York for the administration of this program.

5. Minimizing adverse impact:

The GHG and ZEV amendments are not expected to have any impact on automobile dealers. Dealerships will be required to ensure that the vehicles they sell are California certified. Starting with the 1993 model year, most manufacturers have included provisions in their ordering mechanisms to ensure that only California certified vehicles are shipped to New York dealers. Implementation of the GHG and ZEV regulations is not expected to be burdensome in terms of additional reporting requirements for dealers.

There will be no adverse impact on local governments who own or operate vehicles in the state because they are subject to the same requirements as those imposed on owners of private vehicles. In other words, state and local governments will be required to purchase California certified vehicles. This rulemaking is not a local government mandate pursuant to Executive Order 17.

This regulation contains exemptions for emergency vehicles, and military tactical vehicles and equipment.

6. Small business and local government participation:

The Department held a public hearing in Albany August 24, 2015 after the amendments were proposed. Small businesses and local governments had the opportunity to attend this public hearing. Additionally, a public comment period was held in which interested parties could submit written comments. No comments were received.

7. Economic and technological feasibility:

The GHG and ZEV amendments are not expected to have any adverse impacts on automobile dealers. Dealerships will be required to ensure that the vehicles they sell are California certified. Starting with the 1993 model year, most manufacturers have included provisions in their ordering mechanisms to ensure that only California certified vehicles are shipped to New York dealers. Implementation of the regulations is not expected to be burdensome in terms of additional reporting requirements for dealers. As stated previously, there would be no change in the competitive relationship with out-of-state businesses.

The GHG amendments attempt to minimize adverse impacts on automobile manufacturers by offering them the voluntarily option of demonstrating compliance based on federal GHG emission standards for the 2017 through 2025 model years as an alternative compliance option to the existing CARB GHG emission standards. The GHG revisions to Part 218 will apply to all 2017 through 2025 model year passenger cars, light-duty trucks, and medium-duty passenger vehicles.

The ZEV amendments consist of revised credit mechanisms and clarifying changes intended to simplify the program. The ZEV revisions to Part 218 will apply to all passenger cars, light-duty trucks, and medium-duty vehicles. There are various effective dates for the ZEV revisions including immediate, model year 2015, and model year 2018.

8. Cure period.

In accordance with NYS State Administrative Procedures Act (SAPA) Section 202-b, this rulemaking does not include a cure period because the Department is undertaking this rulemaking to comply with changes California has made to its vehicle emissions program in order to maintain identity with Section 177 of the Clean Air Act.

Revised Rural Area Flexibility Analysis

1. Types and estimated numbers of rural areas:

The New York State Department of Environmental Conservation (Department) is amending 6 NYCRR Section 200.9 and 6 NYCRR Part 218 to incorporate California's latest greenhouse gas (GHG) standards, which were adopted by California on December 31, 2012, into New York's existing low emission vehicle (LEV) program. Part 218 is also being amended to incorporate California's latest zero emission vehicle (ZEV) standards.

There are no requirements in the regulation which apply only to rural areas. These changes apply to vehicles purchased by consumers, businesses, and government agencies in New York. The changes to these regulations may impact businesses involved in manufacturing, selling, purchasing, or repairing passenger cars or trucks.

The changes are additions to the current LEV standards. The new motor vehicle emission program has been in effect in New York State since model year 1993 for passenger cars as well as light-duty trucks, with the exception of model year 1995, and the Department is unaware of any adverse impact to rural areas as a result. The beneficial emission reductions from the program accrue to all areas of the state.

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

There are no specific requirements in the adopted regulations which apply exclusively to rural areas. Reporting, recordkeeping and compliance requirements apply primarily to vehicle manufacturers, and to a lesser degree to automobile dealerships. Manufacturers reporting requirements mirror the California requirements, and are thus not expected to be burdensome. Dealerships do not have reporting requirements, but must maintain records to demonstrate that vehicles are California certified. This documentation is the same as documentation already required by the New York State Department of Motor Vehicles for vehicle registration.

Professional services are not anticipated to be necessary to comply with the rules.

3. Costs:

The adopted amendments to the GHG and ZEV standards are not expected to have any impact on consumers. The GHG amendments are intended to provide manufacturers with compliance flexibility by offering them the voluntarily option of demonstrating compliance based on federal GHG emission standards for the 2017 through 2025 model years.

The ZEV amendments consist of revised credit mechanisms and clarifying changes intended to simplify the program. The ZEV revisions to Part 218 will apply to all passenger cars, light-duty trucks, and medium-duty vehicles. There are various effective dates for the ZEV revisions including immediate, model year 2015, and model year 2018.

There are no costs associated with this change that would be passed along to consumers in the form of higher prices.

4. Minimizing adverse impact:

The changes will not adversely impact rural areas.

5. Rural area participation:

The Department held a public hearing in Albany August 24, 2015 after the regulation was proposed. Additionally, a public comment period was held in which interested parties could submit written comments. No public comments were received.

Revised Job Impact Statement

1. Nature of impact:

The New York State Department of Environmental Conservation (Department) is amending 6 NYCRR Section 200.9 and 6 NYCRR Part 218 to incorporate California's latest greenhouse gas (GHG) standards, which were adopted by California on December 31, 2012, into New York's existing low emission vehicle (LEV) program. Part 218 is also being amended to incorporate California's latest zero emission vehicle (ZEV) standards.

The amendments to the regulations are not expected to adversely impact jobs and employment opportunities in New York State. New York State has had a LEV program in effect since model year 1993 for passenger cars and light-duty trucks, with the exception of model year 1995, and the Department is unaware of any significant adverse impact to jobs and employment opportunities as a result of previous revisions.

2. Categories and numbers affected:

The changes to this regulation will not adversely impact businesses involved in manufacturing, selling or purchasing passenger cars or trucks. Automobile manufacturers are not expected to incur costs in order to comply with the regulation. Dealerships will be able to sell California certified vehicles to buyers from states bordering New York. Since vehicles must be California certified in order to be registered in New York, New York residents will not be able to buy non-complying vehicles out-of-state, but may be able to buy complying vehicles out-of-state. These businesses compete within the state and generally are not subject to competition from out-of-state businesses. Therefore, the adopted regulation is not expected to impose a competitive disadvantage on affiliated businesses, and there would be no change from the current relationship with out-of-state businesses.

3. Regions of adverse impact:

None.

4. Minimizing adverse impact:

The regulations are not expected to have adverse impacts on automobile dealers. Dealerships will be required to ensure that the vehicles they sell are California certified. Starting with the 1993 model year, most manufacturers have included provisions in their ordering mechanisms to ensure that only California certified vehicles are shipped to New York dealers. The implementation of the regulations is not expected to be burdensome in terms of additional reporting requirements for dealers. There would be no change in the competitive relationship with out-of-state businesses.

The GHG amendments attempt to minimize adverse impacts on automobile manufacturers by offering them the voluntarily option of demonstrating compliance based on federal GHG emission standards for the 2017 through 2025 model years as an alternative compliance option to the existing CARB GHG emission standards. The GHG revisions to Part 218 will apply to all 2017 through 2025 model year passenger cars, light-duty trucks, and medium-duty passenger vehicles.

The ZEV amendments consist of revised credit mechanisms and clarifying changes intended to simplify the program. The ZEV revisions to Part 218 will apply to all passenger cars, light-duty trucks, and medium-duty vehicles. There are various effective dates for the ZEV revisions including immediate, model year 2015, and model year 2018.

5. Self-employment opportunities:

None that the Department is aware of at this time.

Initial Review of Rule

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

Assessment of Public Comment

The agency received no public comment.

Department of Health

EMERGENCY RULE MAKING

Prohibit Additional Synthetic Cannabinoids

I.D. No. HLT-34-15-00005-E

Filing No. 965

Filing Date: 2015-11-04

Effective Date: 2015-11-04

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

Action taken: Amendment of section 9.1 of Title 10 NYCRR.

Statutory authority: Public Health Law, section 225

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

Specific reasons underlying the finding of necessity: "Synthetic cannabinoids" encompass a wide variety of chemicals that are designed to stimulate the same receptor in the body as cannabinoid 9-tetrahydrocannabinol (THC). However, they cause additional side effects that mimic other controlled substances and have been linked to severe adverse reactions, including death and acute renal failure. Reported side effects include: tachycardia (increased heart rate); paranoid behavior, agitation and irritability; nausea and vomiting; confusion; drowsiness; headache; hypertension; electrolyte abnormalities; seizures; and syncope (loss of consciousness). Additional signs and symptoms of synthetic cannabinoids include: anxiety; tremor; hallucinations; and violent behavior. These effects can be similar to those of phencyclidine (PCP). It has been reported that some recent patients are also presenting with both somnolence (drowsiness) and bradycardia (decreased heart rate), some requiring endotracheal intubation.

Synthetic cannabinoids are frequently applied to plant materials and then packaged as incense, herbal mixtures or potpourri. They often carry a "not for human consumption" label, and are not approved for medical use in the United States. Products containing synthetic cannabinoids are, in actuality, consumed by individuals, most often by smoking, either through a pipe, a water pipe, or rolled in cigarette papers.

Products containing synthetic cannabinoids have become prevalent drugs of abuse. When 10 NYCRR Part 9 was first promulgated, calls to New York State Poison Control Centers relating to the consumption of synthetic cannabinoids had increased dramatically. Over half of the calls to the Upstate Poison Control Center in 2011 involved children under the age of 19 years of age which is consistent with the results of a 2011 Monitoring the Future national survey of youth drug-use trends that showed that 11.4% of 12th graders used a synthetic cannabinoid during the twelve months prior to the survey, making it the second most commonly used illicit drug among high school seniors at that time.

In 2012, the Department issued 10 NYCRR Part 9, which addressed this emergent threat to public health by prohibiting the possession, manufacture, distribution, sale or offer of specified synthetic cannabinoids and other substances. Thereafter, New York State experienced a substantial decrease in reported cases of adverse health effects related to synthetic cannabinoid use, an achievement that was sustained until the early part of this year.

Recently, however, New York State experienced a dramatic increase in synthetic cannabinoid-related adverse events and emergency department visits. During April 1 to June 30, New York State has seen more than 1,900 emergency department visits and 680 poison control center calls due to reports of adverse health effects associated with synthetic cannabinoid use. This represents more than a tenfold increase over the same time period in 2014, when there was more than 150 emergency department visits and 50 poison control center calls reported. Nationally, there have been 15 synthetic cannabinoid-related deaths reported to poison control centers during from January to May of 2015. In New York, no fatalities have been reported to date, although there has been a 44% increase in the proportion of patients being admitted to critical care units from April 6 to June 30, 2015 when compared to the proportion of patients admitted to the critical care unit from Jan 1, 2011 to April 5, 2015. Calls received by poison control centers generally reflect only a small percentage of actual instances of poisoning.

Testing has identified synthetic cannabinoids that were not known to the Department in 2012, when 10 NYCRR Part 9 was first issued, and that are associated with the recent increase in cannabinoid-related adverse events and emergency department visits. Identifying these new synthetic cannabinoids in the regulation will simplify and enhance the efforts of local governments to control these dangerous chemicals.

Because synthetic cannabinoids continue to be an urgent public health issue, and because the Department has learned of additional specific synthetic cannabinoids since the regulation was first promulgated, the Commissioner of Health and the Public Health and Health Planning Council have determined it necessary to file these regulations on an emergency basis. Public Health Law § 225, in conjunction with State Administrative Procedure Act § 202(6), empowers the Council and the Commissioner to adopt emergency regulations when necessary for the preservation of the public health, safety or general welfare and that compliance with routine administrative procedures would be contrary to the public interest.

Subject: Prohibit Additional Synthetic Cannabinoids.

Purpose: To add additional chemicals to the list of explicitly prohibited synthetic cannabinoids.

Text of emergency rule: Subdivision (b) of section 9.1 is amended as follows:

(b) Synthetic Cannabinoid means any *manufactured* chemical compound that is a cannabinoid receptor agonist and includes, but is not limited to any material, compound, mixture, or preparation that is not listed as a controlled substance in Schedules I through V of § 3306 of the Public Health Law, and not approved by the federal Food and Drug Administration (FDA), and contains any quantity of the following substances, their salts, isomers (whether optical, positional, or geometric), homologues (analogs), and salts of isomers and homologues (analogs), unless specifically exempted, whenever the existence of these salts, isomers, homologues (analogs), and salts of isomers and homologues (analogs) is possible within the specific chemical designation:

(1) Naphthoylindoles. Any compound containing a 3-(1-Naphthoyl)indole structure with substitution at the nitrogen atom of the indole ring by an alkyl, haloalkyl, alkenyl, cycloalkylmethyl, cycloalkylethyl, 1-(N-methyl-2-piperidinyl)methyl, or 2-(4-morpholinyl)ethyl group, whether or not further substituted in the indole ring to any extent and whether or not substituted in the naphthyl ring to any extent. (Other names in this structural class include but are not limited to: *JWH 007*, *JWH 015*, *JWH 018*, *JWH 019*, *JWH 073*, *JWH 081*, *JWH 98*, *JWH 122*, *JWH 164*, *JWH 200*, *JWH 210*, *JWH 398*, *AM 2201*, *MAM 2201*, *EAM 2201* and *WIN 55 212*.)

(2) Naphthylmethylindoles. Any compound containing a 1 H-indol-3-yl-(1-naphthyl)methane structure with substitution at the nitrogen atom of the indole ring by an alkyl, haloalkyl, alkenyl, cycloalkylmethyl, cycloalkylethyl, 1-(N-methyl-2-piperidinyl)methyl, or 2-(4-morpholinyl)ethyl group, whether or not further substituted in the indole ring to any extent and whether or not substituted in the naphthyl ring to any extent. (Other names in this structural class include but are not limited to: *JWH-175*, and *JWH-184*.)

(3) Naphthoylpyrroles. Any compound containing a 3-(1-naphthoyl)pyrrole structure with substitution at the nitrogen atom of the pyrrole ring by an alkyl, haloalkyl, alkenyl, cycloalkylmethyl, cycloalkylethyl, 1-(N-methyl-2-piperidinyl)methyl, or 2-(4-morpholinyl)ethyl group, whether or not further substituted in the pyrrole ring to any extent and whether or not substituted in the naphthyl ring to any extent. (Other names in this structural class include but are not limited: *JWH 307*.)

(4) Naphthylmethylindenes. Any compound containing a naphthylmethyl indenes structure with substitution at the 3-position of the indene ring by an alkyl, haloalkyl, alkenyl, cycloalkylmethyl, cycloalkylethyl, 1-(N-methyl-2-piperidinyl)methyl, or 2-(4-morpholinyl)ethyl group, whether or not further substituted in the indene ring to any extent and whether or not substituted in the naphthyl ring to any extent. (Other names in this structural class include but are not limited: *JWH-176*.)

(5) Phenylacetylindoles. Any compound containing a 3-phenylacetylindole structure with substitution at the nitrogen atom of the indole ring by an alkyl, haloalkyl, alkenyl, cycloalkylmethyl, cycloalkylethyl, 1-(N-methyl-2-piperidinyl)methyl, or 2-(4-morpholinyl)ethyl group, whether or not further substituted in the indole ring to any extent and whether or not substituted in the phenyl ring to any extent. (Other names in this structural class include but are not limited to: *RCS-8 (SR-18)*, *JWH 201*, *JWH 250*, *JWH 203*, *JWH-251*, and *JWH-302*.)

(6) Cyclohexylphenols. Any compound containing a 2-(3-hydroxycyclohexyl)phenol structure with substitution at the 5-position of the phenolic ring by an alkyl, haloalkyl, alkenyl, cycloalkylmethyl, cycloalkylethyl, 1-(N-methyl-2-piperidinyl)methyl, or 2-(4-morpholinyl)ethyl group, whether or not substituted in the cyclohexyl ring to any extent. (Other names in this structural class include but are not limited to: *CP 47,497* (and homologues (analogs)), *cannabicyclohexanol*, and *CP 55,940*.)

(7) Benzoylindoles. Any compound containing a 3-(benzoyl)indole structure with substitution at the nitrogen atom of the indole ring by an alkyl, haloalkyl, alkenyl, cycloalkylmethyl, cycloalkylethyl, 1-(N-methyl-2-piperidinyl)methyl, or 2-(4-morpholinyl)ethyl group, whether or not further substituted in the indole ring to any extent and whether or not substituted in the phenyl ring to any extent. (Other names in this structural class include but are not limited to: AM 694, Pravadoline (WIN 48,098), RCS 4, AM-2233 and AM-679.)

(8) [2,3-Dihydro-5-methyl-3-(4-morpholinylmethyl)pyrrolo [1,2,3-de]-1, 4-benzoxazin-6-yl]-1-naphthalenylmethanone. (Other names in this structural class include but are not limited to: WIN 55,212-2.)

(9) (6aR,10aR)-9-(hydroxymethyl)-6, 6-dimethyl-3-(2-methyloctan-2-yl)-6a,7,10, 10a-tetrahydrobenzo[c]chromen-1-ol. (Other names in this structural class include but are not limited to: HU-210.)

(10) (6aS, 10aS)-9-(hydroxymethyl)-6,6-demethyl-3-(2-methyloctan-2-yl)-6a,7,10,10a-tetrahydrobenzo[c]chromen-1-ol (Dezanabinol or HU-211)

(11) Adamantoylindoles. Any compound containing a 3-(1-adamantoyl)indole structure with substitution at the nitrogen atom of the indole ring by an alkyl, haloalkyl, alkenyl, cycloalkylmethyl, cycloalkylethyl, 1-(N-methyl-2-piperidinyl)methyl, or 2-(4-morpholinyl)ethyl group, whether or not further substituted in the adamantyl ring system to any extent. (Other names in this structural class include but are not limited to: AM-1248.)

(12) *Adamantoylindazoles including but not limited to Adamantyl Carboxamide Indazoles. Any compound containing a 3-(1-adamantoyl)indazole structure with substitution at the nitrogen atom of the indazole ring by an alkyl, haloalkyl, alkenyl, cycloalkylmethyl, cycloalkylethyl, 1-(N-methyl-2-piperidinyl)methyl, or 2-(4-morpholinyl)ethyl group, whether or not further substituted in the adamantyl ring system to any extent. (Other names in this structural class include but are not limited to: AKB-48, MAB-CHMINACA, 5F-AKB-48.)*

(13) *Tetramethylcyclopropylcarbonylindoles or any compound structurally derived from 3-(2,2,3,3-tetramethylcyclopropylcarbonyl)indole by substitution at the nitrogen atom of the indole ring with alkyl, haloalkyl, alkenyl, cyanoalkyl, hydroxyalkyl, cycloalkylmethyl, cycloalkylethyl, (N-methylpiperidin-2-yl)methyl or 2-(4-morpholinyl)ethyl, whether or not further substituted in the indole ring to any extent, including without limitation the following: UR-11, XLR-11, A-796,260.*

(14) Any other synthetic chemical compound that is a cannabinoid receptor agonist that is not listed in Schedules I through V of § 3306 of the Public Health Law, or is not an FDA approved drug.

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-34-15-00005-P, Issue of August 26, 2015. The emergency rule will expire January 2, 2016.

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

Regulatory Impact Statement

Statutory Authority:

The Public Health and Health Planning Council (PHHPC) is authorized by Section 225 of the Public Health Law (PHL) to establish, amend and repeal sanitary regulations to be known as the State Sanitary Code (SSC) subject to the approval of the Commissioner of Health. PHL Section 225(5)(a) provides that the SSC may deal with any matter affecting the security of life and health of the people of the State of New York.

Legislative Objectives:

PHL Section 225(4) authorizes PHHPC, in conjunction with the Commissioner of Health, to protect public health and safety by amending the SSC to address issues that jeopardize health and safety. Accordingly, PHHPC has issued 10 NYCRR Part 9, which prohibits the possession, manufacture, distribution, sale or offer of synthetic phenethylamines and cannabinoids. This amendment would add additional chemicals to the list of explicitly prohibited synthetic cannabinoids.

Needs and Benefits:

“Synthetic cannabinoids” encompass a wide variety of chemicals that are designed specifically to stimulate the same receptor in the body as cannabinoid 9-tetrahydrocannabinol (THC). However, they cause additional side effects that mimic other controlled substances and have been linked to severe adverse reactions, including death and acute renal failure. Reported side effects include: tachycardia (increased heart rate); paranoid behavior, agitation and irritability; nausea and vomiting; confusion; drowsiness; headache; hypertension; electrolyte abnormalities; seizures; and syncope (loss of consciousness). Additional signs and symptoms of synthetic cannabinoids include: anxiety; tremor; hallucinations; and vio-

lent behavior. These effects can be similar to those of phencyclidine (PCP). It has been reported that some recent patients have presented with both somnolence (drowsiness) and bradycardia (decreased heart rate), some requiring endotracheal intubation.

Synthetic cannabinoids are frequently applied to plant materials and then packaged as incense, herbal mixtures or potpourri. They often carry a “not for human consumption” label, and are not approved for medical use in the United States. Products containing synthetic cannabinoids are, in actuality, consumed by individuals, most often by smoking, either through a pipe, a water pipe, or rolled in cigarette papers.

Products containing synthetic cannabinoids have become prevalent drugs of abuse. In 2012, before 10 NYCRR Part 9 was promulgated, calls to New York State Poison Control Centers relating to the consumption of synthetic cannabinoids had increased dramatically. Over half of the calls to the Upstate Poison Control Center in 2011 involved children under the age of 19, which was consistent with the results of a 2011 “Monitoring the Future” national survey of youth drug-use trends that showed that 11.4% of 12th graders used a synthetic cannabinoid during the twelve months prior to the survey, making it the second most commonly used illicit drug among high school seniors at the time.

In 2012, the Department issued 10 NYCRR Part 9, which addressed this emergent threat to public health by prohibiting the possession, manufacture, distribution, sale or offer of synthetic cannabinoids and other substances. Thereafter, New York State experienced a substantial decrease in reported cases of adverse health effects related to synthetic cannabinoid use, an achievement that was sustained until the early part of this year.

Recently, however, New York State experienced a dramatic increase in synthetic cannabinoid-related adverse events and emergency department visits. During April 1 to June 30, New York State has seen more than 1,900 emergency department visits and 680 poison control center calls due to reports of adverse health effects associated with synthetic cannabinoid use. This represents more than a tenfold increase over the same time period in 2014, when there was more than 150 emergency department visits and 50 poison control center calls reported. Nationally, there have been 15 synthetic cannabinoid-related deaths reported to poison control centers during from January to May of 2015. In New York, no fatalities have been reported to date, although there has been a 44% increase in the proportion of patients being admitted to critical care units from April 6 to June 30, 2015 when compared to the proportion of patients admitted to the critical care unit from Jan 1, 2011 to April 5, 2015. Calls received by poison control centers generally reflect only a small percentage of actual instances of poisoning.

Testing has identified synthetic cannabinoids that were not known to the Department in 2012, when 10 NYCRR Part 9 was first issued, and that are associated with the recent increase in cannabinoid-related adverse events and emergency department visits. Identifying these new synthetic cannabinoids in the regulation will simplify and enhance the efforts of local governments to control these dangerous chemicals.

Costs:

Costs to Private Regulated Parties:

The regulation imposes no new costs for private regulated parties.

Costs to State Government and Local Government:

There will be no additional cost to State Government. Local governments are already enforcing 10 NYCRR Part 9, which prohibits the possession, manufacture, distribution, sale or offer of synthetic phenethylamines and cannabinoids. The addition of these chemicals is expected to have negligible cost on local enforcement programs.

Local Government Mandates:

The SSC establishes a minimum standard for regulation of health and sanitation. Local governments can, and often do, establish more restrictive requirements that are consistent with the SSC through a local sanitary code. PHL § 228. Local governments have the power and duty to enforce the provisions of the State Sanitary Code, including 10 NYCRR Part 9, utilizing both civil and criminal options available. PHL §§ 228, 229, 309(1)(f) and 324(1)(e).

Paperwork:

The regulation imposes no new reporting or filing requirements.

Duplication:

The federal Synthetic Drug Abuse Prevention Act of 2012 banned the sale and distribution of products containing the synthetic cannabinoids identified in this regulation, by placing them on the federal schedule I list of substances under the federal Controlled Substances Act (21 U.S.C. § 812(c)). This regulation does not conflict with or duplicate that federal law, because it provides local enforcement authority, which the federal law does not provide.

Alternatives:

The Department considered relying on the existing regulation to address these recently identified synthetic cannabinoids. However, the Department determined that amending the regulation to explicitly identify these substances would enhance state and local enforcement authority and more effectively address this public health threat.

Federal Standards:

As noted above, the Synthetic Drug Abuse Prevention Act of 2012 places synthetic cannabinoids on the federal schedule I list of substances under the federal Controlled Substances Act (21 U.S.C. § 812[c]). This regulation does not conflict with or duplicate that federal law, because it provides local enforcement authority, which the federal law does not provide.

Compliance Schedule:

Regulated parties should be able to comply with these regulations effective upon filing with the Secretary of State.

Regulatory Flexibility Analysis

Effect of Rule:

The amendment will affect only the small businesses that are engaged in selling products containing synthetic cannabinoids. The Department does not have information concerning the number of small businesses that currently sell these products. However, in 2011 and 2012, Commissioner's Orders were issued banning certain synthetic phenethylamines and synthetic cannabinoids, resulting in approximately 8,000 establishments being served with one or both Orders by public health authorities. Banned product was found in 286 of these locations. Subsequent to these efforts, the number of related complaints dropped significantly.

This regulation affects local governments by establishing a minimum standard regarding the possession, manufacture, distribution, sale or offer of sale of additional synthetic cannabinoids. Local governments have the power and duty to enforce the provisions of the State Sanitary Code, including Part 9, utilizing any civil and criminal remedies that may be available. PHL §§ 228, 229, 309(1)(f) and 324(e). Local governments are also empowered to establish a local sanitary code that is more restrictive than the State Sanitary Code.

Compliance Requirements:

Small businesses must comply by not engaging in any possession, manufacturing, distribution, sale, or offer of sale of the additional synthetic cannabinoids.

Local governments must comply by enforcing the State Sanitary Code. Local boards of health may impose civil penalties for a violation of this regulation of up to \$2,000 per violation, pursuant to PHL § 309(1)(f). Pursuant to PHL § 229, local law enforcement may seek criminal penalties for a first offense of up to \$250 and 15 days in prison, and for each subsequent offense up to \$500 and 15 days in prison.

Professional Services:

Small businesses will need no additional professional services to comply. Local governments, in certain instances where local governments enforce, will need to secure laboratory services for testing of substances.

Compliance Costs:

Costs to Private Regulated Parties:

The regulation imposes no new costs for private regulated parties.

Costs to State Government and Local Government:

There will be no additional cost to State Government. Local governments are already enforcing 10 NYCRR Part 9, which prohibits the possession, manufacture, distribution, sale or offer of synthetic phenethylamines and cannabinoids. The addition of these chemicals is expected to have negligible cost on local enforcement programs.

Economic and Technological Feasibility:

Although there will be an impact on small businesses that sell these products, the prohibition is justified by the extremely dangerous nature of these products.

Minimizing Adverse Impact:

The New York State Department of Health will assist local governments by providing consultation, coordination and information and updates on its website.

Small Business and Local Government Participation:

The Department will work with local governments to provide technical information concerning the newly-listed synthetic cannabinoids.

Cure Period:

Violation of this regulation can result in civil and criminal penalties. In light of the magnitude of the public health threat posed by these substances, the risk that some small businesses will not comply with regulations and continue to make or sell or distribute the substance justifies the absence of a cure period.

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 areas, nor will it impose any additional reporting, record keeping or other compliance requirements on public or private entities in rural areas.

Job Impact Statement

Nature of the Impact:

The Department of Health does not expect there to be a positive or negative impact on jobs or employment opportunities.

Categories and Numbers Affected:

The Department anticipates no negative impact on jobs or employment opportunities as a result of the amended rule.

Regions of Adverse Impact:

The Department anticipates no negative impact on jobs or employment opportunities in any particular region of the state.

Minimizing Adverse Impact:

Not applicable.

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**

Sexually Transmitted Diseases (STDs)

I.D. No. HLT-47-15-00003-P

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

Proposed Action: Amendment of Part 23 of Title 10 NYCRR.

Statutory authority: Public Health Law, sections 225(4), 2304, 2311 and 2312

Subject: Sexually Transmitted Diseases (STDs).

Purpose: Control of Sexually Transmitted Diseases (STDs); Expedited Partner Therapy for Chlamydia Trachomatis Infection.

Text of proposed rule: Section 23.1 is amended as follows:

23.1 List of sexually [transmissible] *transmitted* diseases.

The following are groups of sexually [transmissible] *transmitted* diseases (STDs) and shall constitute the definition of sexually [transmissible] *transmitted* diseases for the purpose of this Part and Section 2311 of the Public Health Law:

Group A

[Treatment] Facilities referred to in section 23.2 of this [p]Part must provide diagnosis and treatment [free of charge] as provided in section 23.2(c) of this Part for the following STDs:

- Chlamydia trachomatis infection
- Gonorrhea
- Syphilis
- Non-gonococcal Urethritis (NGU)
- Non-gonococcal (mucopurulent) Cervicitis
- Trichomoniasis
- Lymphogranuloma Venereum
- Chancroid
- Granuloma Inguinale

Group B

[Treatment facilities] *Facilities* referred to in section 23.2 of this Part must provide diagnosis [free of charge] and [must provide] treatment as provided in section 23.2(d) of this Part for the following STDs:

- [Ano-genital warts]
- Human Papilloma Virus (HPV)
- Genital Herpes Simplex

Group C

[Treatment facilities] *Facilities* referred to in section 23.2 of this Part must provide diagnosis [free of charge] and [must provide] treatment as provided in section 23.2(e) of this Part for the following STD:

- Pelvic Inflammatory Disease (PID) Gonococcal/Non-gonococcal

Group D

[Treatment facilities] *Facilities* referred to in section 23.2 of this Part must provide diagnosis [free of charge] and [must provide] treatment as provided in section 23.2(f) of this Part for the following STDs:

- Yeast (Candida) Vaginitis
- Bacterial Vaginosis
- Pediculosis Pubis
- Scabies

Section 23.2 is amended as follows:

Section 23.2 [Treatment facilities] *Facilities*.

Each health district shall provide adequate facilities *either directly or through contract* for the diagnosis and treatment of persons living within its jurisdiction who are infected or are suspected of being infected with STD as specified in section 23.1 of this Part.

(a) Such persons shall be examined and shall have appropriate laboratory specimens taken and laboratory tests performed for those diseases designated in this Part as STDs for which such person exhibits symptoms or is otherwise suspected of being infected.

(b) The examinations and laboratory tests shall be conducted in accordance with accepted medical procedures as described in the most recent

STD clinical guidelines and laboratory guidelines distributed by the New York State Department of Health.

(c) Any persons diagnosed as having any of the STDs in Group A in section 23.1 of this Part shall be treated *directly in the facility* with appropriate medication in accordance with accepted medical procedures as described in the most recent treatment guidelines distributed by the department.

(d) Any persons diagnosed as having any of the STDs in Group B in section 23.1 of this Part must be provided treatment either directly in the [treatment] facility referred to in this section or through a written or electronic prescription or referral. [If treatment is provided directly, it must be provided free of charge.]

(e) Any person diagnosed as having the STD in Group C in section 23.1 of this Part may be managed by immediate referral or *if outpatient treatment is appropriate as indicated by accepted clinical guidelines, the person may be treated directly in the facility*. [If outpatient treatment is appropriate as indicated by accepted clinical guidelines and is provided directly in the treatment facility referred to in this section, it must be provided free of charge.]

(f) Any person diagnosed as having any of the STDs in Group D in section 23.1 of this Part may be provided treatment directly within the [treatment] facility referred to in this section or through a written or electronic prescription. [If treatment is provided directly, it must be provided free of charge.]

(g) *Health districts shall seek third party reimbursement for these services to the greatest extent practicable; provided, however, that no board of health, local health officer, or other municipal health officer shall request or require that such coverage or indemnification be utilized as a condition of providing diagnosis or treatment services. Health care providers that are permitted by the patient to utilize such coverage or indemnification may disclose information to third party reimbursers or their agents to the extent necessary to reimburse health care providers for health services.*

Section 23.3 is amended as follows:

23.3 Cases treated by other providers.

(a) Every physician, *physician assistant*, licensed midwife or nurse practitioner providing (as authorized by their scope of practice) gynecological, obstetrical, genito-urological, contraceptive, sterilization, or termination of pregnancy services or treatment, shall offer to administer to every patient treated by such physician, *physician assistant*, licensed midwife or nurse practitioner, appropriate examinations or tests for STD as defined in this Part.

(b) The administrative officer or other person in charge of a clinic or other facility providing gynecological, obstetrical, genito-urological, contraceptive, sterilization or termination of pregnancy services or treatment shall require staff of such clinic or facility to offer to administer to every resident of the State of New York coming to such clinic or facility for such services or treatment, appropriate examinations or tests [or] for the detection of sexually [transmissible] *transmitted* diseases.

A new section 23.4 is added as follows:

23.4 Minors.

When a health care provider diagnoses, treats or prescribes for a minor, without the consent or knowledge of a parent or guardian as permitted by section 2305 of the Public Health Law, neither medical nor billing records shall be released or in any manner be made available to the parent or guardian of such minor without the minor patient's permission. In addition to being authorized in accordance with section 2305 of the Public Health Law to diagnose, treat or prescribe for a person under the age of eighteen years without the consent or knowledge of the parent or guardian of such person where the individual is infected with a sexually transmitted disease, or has been exposed to infection with a sexually transmitted disease, health care practitioners may (as authorized by their scope of practice) render medical care related to other sexually transmitted diseases without the consent or knowledge of the parent or guardian.

Paragraph (2) of subdivision (c) of section 23.5 is amended as follows:

(2) not be provided for any partner or partners, when the patient with chlamydia trachomatis infection seen by the health care practitioner is found to be concurrently infected with gonorrhea [or], syphilis or HIV.

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:

To be consistent with and in conjunction with amendments contained in the 2013-14 enacted State budget which became effective on April 1, 2013

(L. 2013, ch. 56, Part E, §§ 32-41), modifications are needed to relevant sections of 10 NYCRR Part 23 (Sexually Transmissible Diseases). Under sections 225(4), 2311 and 2312 of the Public Health Law, the Commissioner of Health and the Public Health and Health Planning Council have the authority to amend the State Sanitary Code (10 NYCRR Parts 1-24), list the sexually transmitted diseases for which Public Health Law Article 23 is applicable and promulgate rules and regulations concerning expedited partner therapy for chlamydia.

Legislative Objectives:

Laws of 2013, Chapter 56 amended PHL section 2304 to clarify that counties may provide STD diagnosis and treatment not only directly but also "through contract." The Legislature removed the requirement that services must be provided "free" and, further, required municipalities to seek third party coverage (generally Medicaid) reimbursement for such services where appropriate. As amended, PHL section 2304 states that counties must "to the greatest extent possible" seek indemnification from insurance for STD services but shall not "request or require that such coverage or indemnification be utilized as a condition of providing" STD services. This provision allows the counties to bill a third party (usually Medicaid) for the Article 23-required STD services. Counties must seek third party coverage or indemnification if the patient provides evidence of insurance coverage, but patients can always receive diagnosis and treatment as specified in Part 23 of the health regulations even if they do not provide such evidence.

Laws of 1972, Chapter 244 amended PHL section 2305 to clarify that STD treatment is to be provided not only for an STD "case" but also for any person "exposed to" any STD.

Needs and Benefits:

Changing the word "transmissible" to "transmitted" throughout will conform the regulation to the Public Health Law, as amended, and is consistent with current terminology. Allowing local health departments to provide services through contract, as opposed to only direct provision of these services, gives counties greater flexibility without reducing the level or quality of services provided. Allowing for third party reimbursement will reduce the costs for counties and for the State.

The provisions regarding minors will increase the number of minors who receive treatment for STDs and will prevent the spread of STDs. These provisions will also decrease the number of children who get cancer. National guidelines for adolescent clinical preventive care include immunizations as a key preventive service with a strong evidence basis for effectiveness and safety. Human Papilloma Virus (HPV) represents the first vaccine-preventable sexually transmitted disease with vaccination protecting adolescents from future morbidity and mortality, including from cancer, associated with HPV infection. Section 23.4 permits health care providers to prescribe HPV vaccine to sexually active minors during a visit to diagnose and treat other STDs without consent or knowledge of the parent or guardian.

HPV is the most common sexually transmitted virus accounting for 79 million infections nationally and 14 million new infections each year. Up to 70 percent of sexually active persons will acquire genital HPV infection at some point in their lives. On an annual basis, young people ages 15-24 who make up 25 percent of the sexually active population, account for 49 percent of new infections.

HPV vaccination prevents 70 percent of cervical cancers, other anogenital and oropharyngeal cancers and over 86 percent of non-cancerous anogenital warts caused by HPV infection. Since HPV vaccine introduction, vaccine-type HPV prevalence has decreased 56 percent among a nationally representative sample of 14-19 year olds in the vaccine era (2007-2010) compared with the pre-vaccine era. A separate study documented a 35 percent decrease in anogenital warts among females younger than 21. Post-licensure monitoring of the HPV vaccine shows that the vaccine continues to be safe and recent data indicates that one dose of vaccine provides 82 percent effectiveness against vaccine type infection.

Finally, contraindication for expedited partner therapy for chlamydia is noted for people who are co-infected with HIV in order to ensure that expedited partner therapy is only provided in appropriate cases consistent with current clinical guidelines.

Costs:

The amendments are intended to ease the cost to local health departments. For those local health departments that do implement a billing system, some may experience associated costs with implementation of the system, however it is anticipated that the ability to bill for rendered services will off-set any up front expense. It is estimated that any county that elects to implement an electronic billing system will incur an estimated cost of \$5,000 - \$10,000. Costs will vary depending on type of EMR (if used), staffing and whether or not LHDs can leverage existing billing systems for other public health programs. It is noted within the Regulation that the administrative burden of implementing a billing system should not cost the county more than the revenue to be generated by third

party payer reimbursement and co-pay. The law only requires billing be pursued in cases where it is practicable.

Local Government Mandates:

Each board of health and local health officer shall ensure that diagnosis and treatment services are available and, to the greatest extent practicable, seek third party coverage or indemnification for such services; provided, however, that no board of health, local health officer, or other municipal officer or entity shall request or require that such coverage or indemnification be utilized as a condition of providing diagnosis or treatments services.

Paperwork:

This rule imposes no new reporting requirements. In order to manage billing operations, forms and paperwork may be necessary for individual local health departments to implement billing systems and contracts with vendors, if any.

Duplication:

There are no relevant rules or other legal requirements of the Federal or State governments that duplicate, overlap, or conflict with this rule.

Alternatives:

The regulations were developed with considerable input from the community, provider groups, and regulated parties, particularly local governments. Input was elicited from the New York State Association of County Health Officials on repeated occasions through in-person meetings as well as telephone conference calls. Existing practices of local health departments that support billing are acceptable. This includes local health departments contracting with local providers and utilizing the contractor's billing infrastructure. Further, the Regulation states that the administrative burden of implementing a billing system should not cost the county more than the revenue to be generated by third party payer reimbursement and co-pay. The law only requires billing be pursued in cases where it is practicable.

Federal Standards:

The rule does not exceed any minimum standards of the Federal government for the same or similar subject area.

Compliance Schedule:

The amendments will be effective upon publication of a Notice of Adoption in the New York State Register. The Department has continued to assist affected entities in compliance efforts.

Regulatory Flexibility Analysis

Effect of Rule:

Modifications to 10 NYCRR Part 23 will impact the existing sixty two local governments. This includes fifty-seven local governments outside of New York City, and the New York City Department of Health and Mental Hygiene.

Compliance Requirements:

State and local public health programs have experienced reductions in discretionary funding for services. Billing public and commercial third party payers may offer LHD STD clinics additional revenue to support direct service delivery and offset budget gaps. However, Public Health Law section 2304 requires LHDs to seek reimbursement "to the greatest extent practicable." LHDs will need to evaluate the costs associated with the development, implementation and maintenance of billing infrastructure and determine if such costs will be offset by the revenue generated. Billing guidance issued by the New York State Department of Health can be found at http://www.health.ny.gov/diseases/communicable/std/docs/billing_guidance.pdf.

Professional Services:

Local governments may seek professional services to develop billing systems if such systems do not exist.

Compliance Costs:

Anticipated capital costs include those associated with the implementation of billing systems and contracts with vendors, if any, to implement and manage billing operations. These costs are anticipated be offset by the revenue generated through reimbursement by third party payers for the clinical services provided. It is estimated that any county that elects to implement an electronic billing system is looking at an estimated cost of \$5,000 - \$10,000. Costs will vary depending on type of EMR (if used), staffing and whether or not LHDs can leverage existing billing systems for other public health programs. At this time that the great majority of local health departments have some form of a billing system. More than half of local health departments currently contract to a local provider and report utilizing the contractor's billing infrastructure. The 2014 Article 6 State Aid Application included a question to local health departments regarding efforts being made to collect payments from third party payers such a Medicaid and private insurers. Thirty-nine or 68% of LHDs responded "Yes."

Additionally, it is noted within the Regulation that the administrative burden of implementing a billing system should not cost the county more than the revenue to be generated by third party payer reimbursement and co-pay. The law only requires billing be pursued in cases where it is practicable.

Economic and Technological Feasibility:

The New York State Department of Health provides technical assistance to impacted providers regarding economic and technological feasibility. The provision of technical assistance provides the NYSDOH with the necessary evidence to seek and respond to identified economic issues and technological barriers to compliance with the Law.

Minimizing Adverse Impact:

These amendments are intended to ease the cost to local health departments. However, the administrative burden of implementing billing systems should not cost the county more than the revenue to be generated by third party payer reimbursement and co-pay. The law only requires billing be pursued in cases where it is practicable.

Small Business and Local Government Participation:

Local government had the opportunity to participate in the rule making process through (a) a series of workgroup meetings, (b) participation in regional meeting updates with New York State Association of County Health Officials, and (c) individual local government technical assistance provided by electronic mail, phone and in person as requested.

Cure Period:

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

Rural Area Flexibility Analysis

Types and Estimated Numbers of Rural Areas:

Laws of 2013, Chapter 56 amended PHL section 2304 impacts local health departments including those located within rural and urban counties. The proposed regulations provides clarification for the provision of treatment and billing for rendered services.

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

This rule imposes no mandates upon entities in rural areas outside those entities noted within the law. Clarification is made for all counties may provide STD diagnosis and treatment not only directly but also "through contract." The Legislature removed the requirement that services must be provided "free" and, further, required municipalities to seek third party coverage (generally Medicaid) reimbursement for such services where appropriate. As amended, PHL section 2304 states that counties must "to the greatest extent possible" seek indemnification from insurance for STD services but shall not "request or require that such coverage or indemnification be utilized as a condition of providing" STD services. This provision allows the counties to bill a third party (usually Medicaid) for the Article 23-required STD services. Counties must seek third party coverage or indemnification if the patient provides evidence of insurance coverage, but patients can always receive diagnosis and treatment as specified in Part 23 of the health regulations even if they do not provide such evidence. Laws of 1972, Chapter 244 amended PHL section 2305 to clarify that STD treatment is to be provided not only for an STD "case" but also for any person "exposed to" any STD.

Costs:

The amendments are intended to ease the cost to local health departments. For those local health departments that do implement a billing system, some may experience associated costs with implementation of the system; however, it is anticipated that the ability to bill for rendered services will off-set any up front expense. It is estimated that any county that elects to implement an electronic billing system will incur an estimated cost of \$5,000 - \$10,000. Costs will vary depending on type of EMR (if used), staffing and whether or not LHDs can leverage existing billing systems for other public health programs. It is noted within the Regulation that the administrative burden of implementing a billing system should not cost the county more than the revenue to be generated by third party payer reimbursement and co-pay. The law only requires billing be pursued in cases where it is practicable.

Minimizing Adverse Impact:

These amendments are intended to ease the cost to local health departments. However, the administrative burden of implementing billing systems should not cost the county more than the revenue to be generated by third party payer reimbursement and co-pay. The law only requires billing be pursued in cases where it is practicable.

Rural Area Participation:

Rural area participation was available through (a) a series of workgroup meetings, (b) participation in regional meeting updates with New York State Association of County Health Officials, and (c) individual local government technical assistance provided by electronic mail, phone and in person as requested.

Job Impact Statement

No Job Impact Statement is required pursuant to section 201 a(2)(a) of the State Administrative Procedure Act. It is apparent, from the nature of the

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

State Commission on Judicial Conduct

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Practice of Law Before the Commission

I.D. No. JDC-47-15-00006-P

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

Proposed Action: Addition of section 7000.14(d) to Title 22 NYCRR.

Statutory authority: Judiciary Law, section 42(5)

Subject: Practice of law before the commission.

Purpose: To prohibit the practice of law before the commission, by commission members, their law firms and former commission members.

Text of proposed rule: A new subdivision of section 7000.14 is added to read as follows:

(d) Practice of law before the commission. No commission member shall represent a judge or witness, or otherwise serve as counsel, before the commission while serving as a member of the commission. The foregoing prohibition shall also apply to the law firm, partners and associates of a member of the commission. No commission member may represent a judge or witness, or otherwise serve as counsel, before the commission for a period of two years after ceasing to serve as a member of the commission.

Text of proposed rule and any required statements and analyses may be obtained from: Marisa E. Harrison, Commission on Judicial Conduct, 61 Broadway, Suite 1200, New York, New York 10006, (646) 386-4800, email: harrison@cjc.ny.gov

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

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

Regulatory Impact Statement

1. Statutory authority: Judiciary Law, Section 42(5)
2. Legislative objectives: The proposal articulates situations in which a Commission Member and/or his or her law firm, partners and associates would be prohibited from representing a judge or witness before the Commission.

3. Needs and benefits: The proposal enhances public confidence in the fairness of Commission proceedings by prohibiting a Commission Member and/or his or her law firm, partners and associates from representing judges or witnesses before the Commission, and by prohibiting former Commission members from doing so for a period of two years after their service as Commission members ends.

4. Costs: None.
5. Local government mandates: None.
6. Paperwork: None.
7. Duplication: None.
8. Alternatives: None.
9. Federal standards: None.
10. Compliance schedule: None.

Regulatory Flexibility Analysis

1. Effect of rule: These are internal agency operating rules concerning disciplinary proceedings against judges. No small businesses or local governments are affected.

2. Compliance requirements: None.
3. Professional services: None.
4. Compliance Costs: None.
5. Economic and Technological Feasibility: Not applicable.
6. Minimizing adverse impact: There is no economic impact on small businesses or local governments.
7. Small business and local government participation: This internal agency operating rule concerning disciplinary proceedings against judges do not involve small businesses or local governments.
8. For rules that either establish or modify a violation or penalties associated with a violation: Not applicable.
9. Initial review of the rule, pursuant to SAPA § 207 as amended by L. 2012, ch. 462: Not applicable.

Rural Area Flexibility Analysis

This proposal will not impose any adverse economic impact on rural areas or reporting, recordkeeping or other compliance requirements on public or private entities in rural areas. This proposal contains internal agency operating rules concerning disciplinary proceedings against judges of the state unified court system. The agency analyzed the plain language of the proposed rule and concluded that the subject matter – i.e. prohibiting a Commission member and/or his or her law firm, partners or associates from representing a judge or a witness before the Commission, and prohibiting a former Commission member from doing so for a period of two years after the end of his/her tenure as a Commission member – is not addressed to rural areas and, in any event, contains no reporting or recordkeeping requirements.

Job Impact Statement

This proposal will not impose any adverse impact on jobs and employment opportunities. This proposal contains internal agency operating rules concerning disciplinary proceedings against judges of the state unified court system. It does not add or eliminate any jobs, nor does it impose or modify any responsibilities associated with existing jobs. The agency analyzed the plain language of the proposed rule and concluded that the subject matter – i.e. prohibiting a Commission member and/or his or her law firm, partners or associates from representing a judge or a witness before the Commission, and prohibiting a former Commission member from doing so for a period of two years after the end of his/her tenure as a Commission member – does not address, create or impact upon any jobs.

Department of Law

EMERGENCY/PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Clarification of Protections for Senior and Disabled Tenants During Condominium or Cooperative Ownership Conversions

I.D. No. LAW-47-15-00007-EP

Filing No. 969

Filing Date: 2015-11-10

Effective Date: 2015-11-10

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

Proposed Action: Addition of sections 18.1(e)(5), (6), 18.5(e)(10), 23.1(e)(5), (6), 23.5(e)(10); and amendment of sections 18.3(d), (l), 23.3(d), (m) and (n)(8) of Title 13 NYCRR.

Statutory authority: General Business Law, section 352-e(6)

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

Specific reasons underlying the finding of necessity: At present, senior citizens and disabled persons with market-rate leases whose buildings are converting to condominium or cooperative ownership pursuant to non-eviction plans are at risk of eviction from the date the offering plan is submitted to the Department of Law (“DoL”) until the date the plan is declared effective. As described below, this gap in tenant protection is inconsistent with the legislative intent and plain language of New York General Business Law (“GBL”) Article 23-A (“The Martin Act”). The DoL therefore is revising its governing regulations on an emergency basis to make clear that the protections for senior citizen and disabled market-rate tenants apply in both eviction and non-eviction plans. In making this change, the DoL will simultaneously limit the period of time during which the vast majority of senior and disabled market-rate tenants subject to non-eviction plans are susceptible to displacement while also ensuring its regulations are consistent with the Martin Act.

The Martin Act regulates the advertisement, sale, purchase, and investment advice given to securities and other covered investment vehicles. See NYS CLS GBL § 352(1). Included under the Martin Act’s purview is the regulation of real estate syndication offerings, including the conversion of residential buildings to cooperative and condominium ownership. The legislative history of the 1982 revisions to the Martin Act demonstrates a clear desire to maintain and improve neighborhoods and housing by permitting the conversion of residential real estate to cooperative or condominium ownership while also “protecting tenants in possession who do

not desire or who are unable to purchase the units in which they reside from being coerced into vacating such units.” McKinney’s 1982 Session Laws of New York, Volume 2, p. 1474. The notion that, as a matter of public policy, tenants should be protected during the conversion process appears repeatedly in the Martin Act’s legislative history. See New York Summary of Legislation, 1982, p. 27-5. In addition, the legislature aimed to include specific and additional protections for seniors and disabled persons, specifically stating: “tenants who are sixty-two years of age or older [are in a] particularly precarious [position] by reason of limited financial resources of many such persons and the physical limitations of many such persons.” McKinney’s 1982 Session Laws of New York, Volume 2, p. 1474.

Pursuant to legislature’s intent of broad tenant protection, the Martin Act clearly states that tenants subject to conversion plans who have not purchased their apartments are “entitled to possession at the time the plan is declared effective.” NYS CLS GBL §§ 352-e(2-a)(a)(ii), 352-eeee(1)(e), and 352-eeee(1)(e). These “non-purchasing tenants” benefit from numerous protections under the Martin Act, including, in part, protection against eviction at any time, and continuation of any government regulation regarding rent and occupancy to which the apartment was subject prior to the conversion. See NYS CLS GBL §§ 352-eee(2)(c)(ii),(iii), and (iv); 352-eeee(2)(c)(ii),(iii), and (iv). The Martin Act also clearly states that if a tenant is “sixty-two years of age or older” or has “an impairment resulting from anatomical, physiological, or psychological conditions,” he or she can elect to become an “eligible senior citizen” or an “eligible disabled person,” respectively. NYS CLS GBL §§ 352-e(2-a)(a)(iii) and (iv); 352-eee(1)(f) and (g); and 352-eeee(1)(f) and (g). Provided that the property owner is not able to successfully contest a tenant’s election, the Martin Act accords to eligible senior citizens and eligible disabled persons the rights of non-purchasing tenants, as detailed above. Indeed, the statute unequivocally defines eligible senior citizens and eligible disabled persons as “non-purchasing tenants.” See id.

Under the Martin Act, a sponsor can convert a building or development pursuant to an eviction plan or a non-eviction plan. See NYS CLS GBL §§ 352-eee(1)(b) and (c), 352-eeee(1)(b) and (c). Non-purchasing tenant protections apply in both eviction plans and non-eviction plans. However, the DoL’s governing regulations currently are written in a way that only extends the election process to eligible senior citizens and eligible disabled tenants in eviction plans. See 13 NYCRR Chapter 2, Subchapter B, Parts 18 and 23. As a result, senior and disabled tenants subject to non-eviction plans risk eviction from the date the offering plan is submitted to the DoL until the date the offering plan is declared effective. This gap period can last between 10 to 24 months, during which time a property owner may permit market-rate leases to expire without offering renewal leases. This regulatory gap in tenant protection for senior and disabled tenants conflicts with the plain language and intent of the Martin Act, as described above.

The DoL’s 13 NYCRR Parts 18 and 23 regulations were promulgated in 1989, when almost all tenants in occupied buildings undergoing conversion were rent-stabilized. In contrast to market-rate tenants, tenants in rent-stabilized apartments are adequately protected throughout the conversion process; they have the right to lease renewals, and, unless they default, they are entitled to possession at the time a plan is declared effective and as such will qualify for non-purchasing tenant protections. See NYS CLS GBL §§ 352-eee(2)(c)(iii) and 352-eeee(2)(c)(iii). Thus, in 1989, the election process was only relevant in eviction plans—plans where any non-purchasing tenant, including rent stabilized tenants, were subject to eviction three years from the date the plan is declared effective (except for seniors and disabled tenants who elected to be protected).

The residential real estate market has changed drastically since the promulgation of the DoL’s 13 NYCRR Parts 18 and 23 regulations in 1989. Currently, most conversion plans are non-eviction plans, and most tenants in buildings undergoing conversion are market-rate. In fact, the DoL recently conducted an internal analysis of 30 rental conversion plans under review and found that approximately 65% of the tenants were market-rate, and approximately 95% of their leases were set to expire during the conversion process. Moreover, the number of rent-regulated apartments has decreased by approximately 15% since the 1982 revisions to the Martin Act. Accordingly, senior and disabled market-rate tenants subject to non-eviction plans now need the ability to elect eligible senior citizen or eligible disabled person status more than ever before, because there are now more market-rate tenants subject to non-eviction plans than ever before.

These acute changes in the real estate market, combined with the fact that the DoL’s current regulations do not extend to senior and disabled tenants the Martin Act’s full protections, compel an emergency revision to the DoL’s governing regulations so that senior and disabled market-rate tenants whose buildings are converting to condominium or cooperative ownership pursuant to non-eviction plans can elect eligible senior citizen or eligible disabled person status during the conversion process. Under the

emergency regulatory revisions: (1) sponsors of new non-eviction conversion offerings must include the eligible senior citizen and eligible disabled person election forms in the offering plan when first submitted to the DoL and also in the Notice to Tenants, and (2) sponsors of non-eviction conversion offerings whose offering plans have been submitted to, but not yet accepted for filing by the DoL must revise the offering plan and Notice to Tenants to include the eligible senior citizen and eligible disabled person election forms. The revisions also require sponsors to provide renewal leases to non-purchasing tenants who timely elect eligible senior citizen or eligible disabled person status.

Senior and disabled market-rate tenants subject to non-eviction conversion plans will have the opportunity to elect eligible senior citizen or eligible disabled person status within 60 days of receiving the final offering plan that the DoL has accepted for filing (“the presentation date”). Unless a property owner is able to successfully challenge an election, the protections afforded by eligible senior citizen and eligible disabled person status will accrue as soon as the election form is filed (so long as it is filed within 60 days of the presentation date), thereby ensuring that, in accordance with the Martin Act, the vast majority of eligible senior citizen and eligible disabled tenants can protect themselves from displacement at an earlier point in the conversion process. The emergency regulatory revisions effectuate the Martin Act by providing needed and justified protections for senior and disabled tenants while still allowing property owners to convert to condominium and cooperative ownership.

Subject: Clarification of Protections for Senior and Disabled Tenants During Condominium or Cooperative Ownership Conversions.

Purpose: To clarify the Martin Act’s non-purchasing tenant protections for eligible senior citizens and eligible disabled persons.

Text of emergency/proposed rule: A new section 18.1(e)(5) is added to title 13 to read as follows:

(5) If G.B.L. section 352-e(2-a) or 352-eeee is applicable, the notice shall also state:

If you are a senior citizen or disabled tenant as defined by G.B.L. section 352-e(2-a)(a)(iii) and 352-eeee(1)(f) or G.B.L. section 352-e(2-a)(a)(iv) and 352-eeee(1)(g), respectively, you have additional rights and protections, including the right to elect to become a non-purchasing tenant within 60 days from the date you first received the offering plan from the sponsor. Senior citizen and disabled tenants are advised to read the section of the offering plan entitled “Rights of Eligible Senior Citizens and Eligible Disabled Persons.”

The notice shall also include the eligible senior citizen and eligible disabled person election forms promulgated by the Department of Law, forms SH-1 and SH-2, respectively.

A new section 18.1(e)(6) is added to title 13 to read as follows:

(6) If G.B.L. section 352-eee is applicable, the notice shall also state: *If you are a senior citizen or disabled tenant as defined by G.B.L. section 352-eee(1)(f) or G.B.L. section 352-eee(1)(g), respectively, you have additional rights and protections, including the right to elect to become a non-purchasing tenant. Senior citizen and disabled tenants are advised to read the section of the offering plan entitled “Rights of Eligible Senior Citizens and Eligible Disabled Persons.”*

The notice shall also include the eligible senior citizen and eligible disabled person election forms promulgated by the Department of Law, forms SH-5 and SH-2, respectively.

Section 18.3(d) of title 13 is amended to read as follows:

(d) [In an eviction plan, if] *If G.B.L. section 352-eee is applicable, include the eligible senior citizen and eligible disabled person election forms promulgated by the Department of Law, forms SH-5 and SH-2, respectively. [In an eviction plan, if] If G.B.L. section 352-e(2-a) or 352-eeee, is applicable, include the eligible senior citizen and eligible disabled person election forms promulgated by the Department of Law, forms SH-1 and SH-2, respectively.*

Section 18.3(l) of title 13 is amended to read as follows:

Rights of eligible senior citizens and eligible disabled persons. If G.B.L., section 352-e(2-a), 352-eee or 352-eeee is applicable, [and the plan provides that it is an eviction plan,] include the following information on the rights of eligible senior citizens and eligible disabled persons.

A new section 18.5(e)(10) is added to title 13 to read as follows:

(10) *If the plan was submitted pursuant to G.B.L. sections 352-e(2-a), 352-eee, or 352-eeee, include copies of all executed eligible senior citizen and/or eligible disabled person election forms (forms SH-1/SH-5 and SH-2, respectively), if any. Sponsor must also submit to the Department of Law, if requested, copies of the renewal leases for any tenants who have elected eligible senior citizen or eligible disabled person status.*

A new section 23.1(e)(5) is added to title 13 to read as follows:

(5) *If G.B.L. section 352-e(2-a) or 352-eeee is applicable, the notice shall also state:*

If you are a senior citizen or disabled tenant as defined by G.B.L. section 352-e(2-a)(a)(iii) and 352-eeee(1)(f) or G.B.L. section 352-e(2-

a(a)(iv) and 352-eeee(1)(g), respectively, you have additional rights and protections, including the right to elect to become a non-purchasing tenant within 60 days from the date you first received the offering plan from the sponsor. Senior citizen and disabled tenants are advised to read the section of the offering plan entitled "Rights of Eligible Senior Citizens and Eligible Disabled Persons."

The notice shall also include the eligible senior citizen and eligible disabled person election forms promulgated by the Department of Law, forms SH-1 and SH-2, respectively.

A new section 23.1(e)(6) is added to title 13 to read as follows:

(6) If G.B.L. section 352-eee is applicable, the notice shall also state:

If you are a senior citizen or disabled tenant as defined by G.B.L. section 352-eee(1)(f) or G.B.L. section 352-eee(1)(g), respectively, you have additional rights and protections, including the right to elect to become a non-purchasing tenant. Senior citizen and disabled tenants are advised to read the section of the offering plan entitled "Rights of Eligible Senior Citizens and Eligible Disabled Persons."

The notice shall also include the eligible senior citizen and eligible disabled person election forms promulgated by the Department of Law, forms SH-5 and SH-2, respectively.

Section 23.3(d) of title 13 is amended to read as follows:

(d) Election forms for eligible senior citizens and eligible disabled persons. [In an eviction plan, if] *If G.B.L. section 352-eee is applicable, include the eligible senior citizen and eligible disabled person election forms promulgated by the Department of Law, forms SH-5 and SH-2, respectively. [In an eviction plan, if] If G.B.L. section 352-e(2-a) or 352-eeee is applicable, include the eligible senior citizen and eligible disabled person election forms promulgated by the Department of Law, forms SH-1 and SH-2, respectively.*

Section 23.3(m) of title 13 is amended to read as follows:

Rights of eligible senior citizens and eligible disabled persons. *If G.B.L., section 352-e(2-a), 352-eee or 352-eeee is applicable (or in cases where applicable local law confers special rights for senior citizens, disabled persons, or other protected class of tenants), [and the plan provides that it is an eviction plan,] include the following information on the rights of eligible senior citizens and eligible disabled persons.*

Section 23.3(n)(8) of title 13 is amended to read as follows:

(8) Highlight as special risk and discuss if by reason of the termination of real estate tax benefits, tenants will no longer be subject to rent regulation. State when rent regulation will cease. If the plan is [an eviction plan] subject to G.B.L., section 352-eee or 352-eeee, or is a plan subject to section 352-e (2-a), discuss any protection against rent increases for eligible senior citizens and disabled persons contained in those sections. [If the plan is a noneviction plan subject to G.B.L., section 352-eee or 352-eeee, discuss any protection against rent increases for nonpurchasing tenants contained in those sections.]

A new section 23.5(e)(10) is added to title 13 to read as follows:

(10) If the plan was submitted pursuant to G.B.L. sections 352-e(2-a), 352-eee, or 352-eeee, include copies of all executed eligible senior citizen and/or eligible disabled person election forms (forms SH-1/SH-5 and SH-2, respectively), if any. Sponsor must also submit to the Department of Law, if requested, copies of the renewal leases for any tenants who have elected eligible senior citizen or eligible disabled person status.

This notice is intended: to serve as both a notice of emergency adoption and a notice of proposed rule making. The emergency rule will expire February 7, 2016.

Text of rule and any required statements and analyses may be obtained from: Jacqueline Dischell, Department of Law, 120 Broadway, 23rd Floor, New York, NY 10271, (212) 416-8655, email: jackie.dischell@ag.ny.gov

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

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

Regulatory Impact Statement

1. Statutory Authority. New York General Business Law Article 23-A ("the Martin Act") regulates the advertisement, sale, purchase, and investment advice given to securities and other covered investment vehicles. See NYS CLS GBL § 352(1). Included under the Martin Act's purview is the regulation of real estate syndication offerings, including the conversion of residential buildings to cooperative and condominium ownership. See NYS CLS GBL §§ 352-e, 352-ee, 352-eee, 352-eeee. Section 352-e(2-b) of the New York General Business Law ("GBL") authorizes the Department of Law ("DoL") to "adopt, promulgate, amend and rescind suitable rules and regulations to carry out the provisions of this subdivision." See also NYS CLS GBL § 352-e(6).

2. Legislative Objectives. The legislative history of the 1982 revisions to the Martin Act demonstrates a clear intent to maintain and improve neighborhoods and housing by permitting the conversion of residential real estate to cooperative or condominium ownership while also "protecting tenants in possession who do not desire or who are unable to purchase

the units in which they reside from being coerced into vacating such units." McKinney's 1982 Session Laws of New York, Volume 2, p. 1474. The notion that, as a matter of public policy, tenants should be protected during the conversion process appears repeatedly in the Martin Act's legislative history. See New York Summary of Legislation, 1982, p. 27-5. The legislature also aimed to add specific and additional protections for seniors and the disabled, specifically stating: "tenants who are sixty-two years of age or older [are in a] particularly precarious [position] by reason of limited financial resources of many such persons and the physical limitations of many such persons." McKinney's 1982 Session Laws of New York, Volume 2, p. 1474.

Pursuant to the legislature's intent of broad tenant protection, the Martin Act clearly states that tenants subject to conversion plans who have not purchased their apartments are "entitled to possession at the time the plan is declared effective." NYS CLS GBL §§ 352-e(2-a)(a)(ii), 352-eeee(1)(e), and 352-eeee(1)(e). These "non-purchasing tenants" benefit from numerous protections under the Martin Act, including, in part, protection against eviction at any time, and continuation of any government regulation regarding rent and occupancy to which the apartment was subject prior to the conversion. See NYS CLS GBL §§ 352-eee(2)(c)(ii),(iii), and (iv); 352-eeee(2)(c)(ii),(iii), and (iv). The Martin Act also clearly states that if a tenant is "sixty-two years of age or older" or has "an impairment resulting from anatomical, physiological, or psychological conditions," he or she can elect to become an "eligible senior citizen" or an "eligible disabled person," respectively. NYS CLS GBL §§ 352-e(2-a)(a)(iii) and (iv); 352-eee(1)(f) and (g); and 352-eeee(1)(f) and (g). Provided that the property owner is not able to successfully contest a tenant's election, the Martin Act accords to eligible senior citizens and eligible disabled persons the rights of non-purchasing tenants, as detailed above. Indeed, the statute unequivocally defines eligible senior citizens and eligible disabled persons as "non-purchasing tenants." See id.

Under the Martin Act, non-purchasing tenant protections apply in both eviction and non-eviction conversion plans. However, due to an inconsistency in the DoL's governing regulations, senior and disabled market-rate tenants whose buildings are converting to condominium or cooperative ownership pursuant to non-eviction plans are currently at risk of eviction during the conversion process, as described below. See 13 NYCRR Chapter 2, Subchapter B, Parts 18 and 23. This regulatory gap in tenant protection for senior and disabled tenants conflicts with the plain language and intent of the Martin Act. The DoL therefore proposes to permanently amend its regulations to clarify that the protections for senior citizen and disabled market-rate tenants apply in both eviction and non-eviction conversion plans. In making this change, the DoL would simultaneously limit the period of time during which the vast majority of senior and disabled market-rate tenants are susceptible to displacement while also ensuring its regulations are consistent with the Martin Act.

3. Needs and Benefits. The Martin Act allows sponsors to convert a building pursuant to an eviction plan or a non-eviction plan. See NYS CLS GBL §§ 352-eee(1)(b) and (c), 352-eeee(1)(b) and (c). As mentioned above, non-purchasing tenant protections apply in both eviction and non-eviction plans. However, the DoL's regulations currently are written in a way that only extends the election process to eligible senior citizens and eligible disabled tenants in eviction plans. See 13 NYCRR Chapter 2, Subchapter B, Parts 18 and 23. As a result, tenants subject to non-eviction plans risk eviction from the date the offering plan is submitted to the DoL until the date the offering plan is declared effective. This gap period can last between 10 to 24 months, during which a property owner may permit market-rate leases to expire without offering renewal leases. Such vulnerability to displacement during the conversion process is contrary to the Martin Act, especially those provisions providing increased protections for senior and disabled non-purchasing tenants.

The DoL's 13 NYCRR Parts 18 and 23 regulations were promulgated in 1989, when almost all tenants in occupied buildings undergoing conversion were rent-stabilized. In contrast to market-rate tenants, tenants in rent-stabilized apartments are adequately protected throughout the conversion process; they have the right to lease renewals, and, unless they default, they are entitled to possession at the time a plan is declared effective and as such will qualify for non-purchasing tenant protections. See NYS CLS GBL §§ 352-eee(2)(c)(iii) and 352-eeee(2)(c)(iii). Thus, in 1989, the election process was only relevant in eviction plans—plans where any non-purchasing tenant, including rent stabilized tenants, were subject to eviction three years from the date the plan is declared effective (except for seniors and disabled tenants who elected to be protected).

The residential real estate market has changed drastically since the promulgation of the DoL's 13 NYCRR Parts 18 and 23 regulations in 1989. Currently, most conversion plans are non-eviction plans, and most tenants in buildings undergoing conversion are market-rate. In fact, the DoL recently conducted an internal analysis of 30 rental conversion plans under review and found that approximately 65% of the tenants were market-rate, and approximately 95% of their leases were set to expire dur-

ing the conversion process. Moreover, the number of rent-regulated apartments has decreased by approximately 15% since the 1982 revisions to the Martin Act. Accordingly, senior and disabled market-rate tenants subject to non-eviction plans now need the ability to elect eligible senior citizen or eligible disabled person status more than ever before, because there are now more market-rate tenants subject to non-eviction plans than ever before.

These acute changes in the real estate market, combined with the fact that the DoL's current regulations do not extend to senior and disabled tenants the Martin Act's full protections, compel a revision to the DoL's governing regulations so that senior and disabled market-rate tenants whose buildings are converting to condominium or cooperative ownership pursuant to non-eviction plans can elect eligible senior citizen or eligible disabled person status during the conversion process. Under the regulatory revisions: (1) sponsors of new non-eviction conversion offerings must include the eligible senior citizen and eligible disabled person election forms in the offering plan when first submitted to the DoL and also in the Notice to Tenants, and (2) sponsors of non-eviction conversion offerings whose offering plans have been submitted to, but not yet accepted for filing by the DoL must revise the offering plan and Notice to Tenants to include the eligible senior citizen and eligible disabled person election forms. The revisions also require sponsors to provide renewal leases to non-purchasing tenants who timely elect eligible senior citizen or eligible disabled person status.

Senior and disabled market-rate tenants subject to non-eviction conversion plans will have the opportunity to elect eligible senior citizen or eligible disabled person status within 60 days of receiving the final offering plan that the DoL has accepted for filing ("the presentation date"). Unless a property owner is able to successfully challenge an election, the protections afforded by eligible senior citizen and eligible disabled person status will accrue as soon as the election form is filed (so long as it is filed within 60 days of the presentation date), thereby ensuring that, in accordance with the Martin Act, the vast majority of eligible senior citizen and eligible disabled tenants can protect themselves from displacement at an earlier point in the conversion process.

4. Costs.

(a) Costs to regulated parties. Under the regulatory revisions, sponsors of condominium or cooperative ownership non-eviction conversion offerings must: (1) include the eligible senior citizen and eligible disabled person election forms in the offering plan when first submitted to the DoL and also in the Notice to Tenants, (2) provide renewal leases to non-purchasing tenants who elect eligible senior citizen or eligible disabled person status, and (3) include copies of all executed election forms (if any) with the effectiveness amendment when submitted to the DoL. Additionally, sponsors of non-eviction conversion offerings that have been submitted to, but not yet accepted for filing by the DoL must revise their offering plans and Notice to Tenants to include the eligible senior citizen and eligible disabled person election forms and serve the revision on all tenants as prescribed by 13 NYCRR Sections 18.1(h) and 23.1(h). The DoL believes that the costs associated with providing the above documents will be minimal.

Sponsors may also incur professional costs associated with the preparation or revision of their offering plans, such as legal fees. But because the sponsor would already be employing these services to prepare their offering plans, any additional professional costs are likely to be minimal. The DoL will provide sponsors with model election forms, thereby further limiting professional costs.

The DoL believes that the aforementioned minimal costs to regulated parties are outweighed by the large public benefit of protecting eligible senior and disabled market-rate tenants from eviction.

(b) Costs to the agency, the state and local governments. The revisions may result in nominal administrative costs to the DoL related to processing the election forms included in offering plans and amendments. The DoL foresees no costs to any other state agencies or local governments.

(c) Information and methodology upon which the estimate is based. The estimated costs to regulated parties, the agency, and state and local governments is based on the assessment of the Attorney General, in reliance upon data and information maintained by the DoL's Real Estate Finance Bureau.

5. Local government mandates. The revised regulations do not impose any programs, services, duties, or responsibilities on any county, city, town, village, school district, fire district, or other special district.

6. Paperwork. The regulatory revisions require sponsors of condominium and cooperative ownership non-eviction conversion offerings to: (1) include the eligible senior citizen and eligible disabled person election forms in the offering plan when first submitted to the DoL and also in the Notice to Tenants, (2) provide renewal leases to non-purchasing tenants who elect eligible senior citizen or eligible disabled person status, and (3) include copies of all executed election forms (if any) with the effectiveness amendment when submitted to the DoL. The DoL will need to process the election forms once submitted.

7. Duplication. The revised regulations do not duplicate any existing state or federal rule.

8. Alternatives. The DoL believes that there are no alternatives to the regulatory revisions. There is no means by which the DoL can shrink the unjustified protection gap for senior and disabled tenants in its own regulations, other than by amending its own regulations.

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

10. Compliance Schedule. The emergency revisions are effective as of November 10, 2015. The proposed regulatory revisions will go into effect upon their filing with the Secretary of State and the publication of a Notice of Adoption in the State Register. The revised regulations apply to any and all future offering plans submitted to the DoL, and also affect offering plans that the DoL has accepted for submission, but has not yet accepted for filing.

Regulatory Flexibility Analysis

1. Effect of rule. The regulatory revisions have the effect of allowing senior citizen and disabled market-rate tenants whose buildings are converting to condominiums or cooperative ownership pursuant to non-eviction plans to have the option to elect eligible senior citizen or eligible disabled person status during the conversion process. The revised regulations also ensure that the Department of Law's ("DoL") regulations are consistent with their statutory authority, New York General Business Law Article 23-A ("the Martin Act"). The revisions will not affect any local governments.

The regulatory revisions affect certain small businesses: specifically, sponsoring entities of properties that are converting to condominium or cooperative ownership pursuant to non-eviction plans. However, the majority of such conversion plans submitted to the DoL are sponsored by single-purpose limited liability corporations that are directly affiliated with larger entities. The State Administrative Procedures Act ("SAPA") Section 102(8) defines a small business as, "[a]ny business which is resident in this state, independently owned and operated and that employs 100 or less people." Accordingly, the DoL believes that very few small businesses, as defined by SAPA Section 102(8), will be affected by the proposed revisions.

2. Compliance requirements. The regulatory revisions do not require local governments to undertake any new obligations in terms of reporting, record keeping, or other affirmative acts in order to comply with the rule.

The revised regulations require sponsors of condominium or cooperative ownership non-eviction conversion offerings to: (1) include the eligible senior citizen and eligible disabled person election forms in the offering plan when first submitted to the DoL and also in the Notice to Tenants, (2) provide renewal leases to non-purchasing tenants who elect eligible senior citizen or eligible disabled person status, and (3) include copies of all executed election forms (if any) with the effectiveness amendment when submitted to the DoL. In addition, sponsors of non-eviction conversion offerings that have been submitted to, but not yet accepted for filing by the DoL must revise their offering plans and Notice to Tenants to include the eligible senior citizen and eligible disabled person election forms and serve the revision on all tenants as prescribed by 13 NYCRR Sections 18.1(h) and 23.1(h).

3. Professional services. The regulatory revisions do not require local governments to employ any professional services to comply with the rule. Sponsoring entities of condominium and cooperative ownership conversion offerings under non-eviction plans may incur professional costs associated with the preparation or revision of their offering plans, such as legal fees. But, in all cases, the sponsor would already be employing these services to prepare their offering plans, so any additional professional costs are likely to be minimal. In addition, the DoL will provide sponsors with model election forms, thereby further limiting professional costs.

4. Compliance costs. The DoL foresees no initial capital costs and no additional annual costs that will be incurred by local governments, regardless of their size, as a result of compliance with the regulatory revisions.

As described above, the revised regulations require sponsors of condominium or cooperative ownership non-eviction conversion offerings to: (1) include the eligible senior citizen and eligible disabled person election forms in the offering plan when first submitted to the DoL and also in the Notice to Tenants, (2) provide renewal leases to non-purchasing tenants who elect eligible senior citizen or eligible disabled person status, and (3) include copies of all executed election forms (if any) with the effectiveness amendment when submitted to the DoL. In addition, sponsors of non-eviction conversion offerings that have been submitted to, but not yet accepted for filing by the DoL must revise their offering plans and Notice to Tenants to include the eligible senior citizen and eligible disabled person election forms and serve the revision on all tenants as prescribed by 13 NYCRR Sections 18.1(h) and 23.1(h). The DoL believes that the costs associated with providing the above documents will be minimal and will not vary depending on the size of the sponsoring entity.

No other compliance costs exist. Moreover, the DoL believes that the

aforementioned minimal costs to regulated parties are outweighed by the large public benefit of protecting eligible senior and disabled market-rate tenants from eviction.

5. Economic and technical feasibility. The regulatory revisions contain no technological requirements for regulated small businesses or local governments, and thus are technologically feasible. Compliance with the revised regulations is also economically feasible, because, as described above, there are no compliance costs for local governments and minimal compliance costs for regulated small businesses.

6. Minimizing adverse impact. The regulatory revisions are designed to minimize any adverse economic impact on local governments and small businesses. The revisions have no adverse economic impact on local governments, as they neither require any action on the part of local governments nor affect them in any way. Likewise, the revisions do not impose an adverse economic impact on regulated small businesses. While certain small businesses may incur costs as a result of compliance with the new regulation, the DoL expects these costs to be minimal and believes such costs are necessary to effectuate the plain language and intent of the Martin Act.

The DoL has considered the approaches for minimizing adverse impact set forth in SAPA Section 202-b(1). Nevertheless, the DoL has concluded that there is no means by which it can shrink the unjustified protection gap for senior and disabled tenants in its own regulations, other than by amending its own regulations. The regulatory revisions simultaneously limit the period of time during which the vast majority of senior and disabled market-rate tenants are susceptible to displacement during the conversion process while also ensuring the DoL's regulations comply with the Martin Act.

7. Small business and local government participation. To ensure that small businesses and local governments have an opportunity to participate in the rule making process, a copy of the regulatory revisions will be sent to members of the Bar who represent sponsors and purchasers of condominiums and cooperatives. Copies of the regulatory revisions will also be posted on the website of the Attorney General of the State of New York.

Rural Area Flexibility Analysis

1. Types and estimated numbers of rural areas. The regulatory revisions apply uniformly throughout the state, including all rural areas. Executive Law, Article 19-F Rural Affairs Act, Section 481(7) defines a rural area as a county with a population of less than 200,000. New York currently has forty-four rural areas.

However, nearly all cooperative and conversion offerings submitted to the Department of Law ("DoL") are for properties in New York City. To illustrate, of the twenty-eight conversion offerings (two cooperatives, twenty-six condominiums) submitted to the Department of Law in 2014, only one was located outside of New York City, and it was not in a rural area. Accordingly, the DoL believes that the revised regulations will have very little impact on rural areas.

2. Reporting, recordkeeping, and other compliance requirements. The regulatory revisions do not require rural public entities to undertake any new obligations in terms of reporting, record keeping, or other affirmative acts in order to comply with the rule.

The revised regulations require sponsors of condominium or cooperative ownership non-eviction conversion offerings operating in rural areas to: (1) include the eligible senior citizen and eligible disabled person election forms in the offering plan when first submitted to the DoL and also in the Notice to Tenants, (2) provide renewal leases to non-purchasing tenants who elect eligible senior citizen or eligible disabled person status, and (3) include copies of all executed election forms (if any) with the effectiveness amendment when submitted to the DoL. In addition, sponsors of non-eviction conversion offerings that have been submitted to, but not yet accepted for filing by the DoL must revise their offering plans and Notice to Tenants to include the eligible senior citizen and eligible disabled person election forms and serve the revision on all tenants as prescribed by 13 NYCRR Sections 18.1(h) and 23.1(h).

3. Compliance costs. The DoL foresees no initial capital costs and no additional annual costs that will be incurred by rural public entities, regardless of their size, as a result of compliance with the regulatory revisions.

As described above, the revised regulations require sponsors of condominium or cooperative ownership non-eviction conversion offerings operating in rural areas to: (1) include the eligible senior citizen and eligible disabled person election forms in the offering plan when first submitted to the DoL and also in the Notice to Tenants, (2) provide renewal leases to non-purchasing tenants who elect eligible senior citizen or eligible disabled person status, and (3) include copies of all executed election forms (if any) with the effectiveness amendment when submitted to the DoL. In addition, sponsors of non-eviction conversion offerings that have been submitted to, but not yet accepted for filing by the DoL must revise their offering plans and Notice to Tenants to include the eligible senior citizen and eligible disabled person election forms and serve the revision on all tenants as prescribed by 13 NYCRR Sections 18.1(h) and

23.1(h). The DoL believes that the costs associated with providing these documents will be minimal, and will not vary depending on the size of the sponsoring entity.

Sponsoring entities of condominium and cooperative non-eviction conversion offerings operating in rural areas may incur professional costs associated with the preparation or revision of their offering plans, such as legal fees. But, in all cases, the sponsor would already be employing these services to prepare their offering plans, so any additional professional costs are likely to be minimal. The DoL will also provide sponsors with model election forms, thereby further limiting professional costs.

No other compliance costs exist. Moreover, the DoL believes that the minimal costs associated with the regulatory revisions are outweighed by the large public benefit of protecting eligible senior and disabled market-rate tenants from eviction.

4. Minimizing adverse impact. The regulatory revisions have no adverse economic impact on rural public entities, as they neither require any action on their part nor affect them in any way.

The revised regulations have no adverse economic impact the very few sponsors of cooperative and condominium conversion offerings operating in rural areas. Although these few sponsors may incur certain costs as a result of compliance with the revised regulations, the DoL expects these costs to be minimal and believes such costs are necessary to effectuate the plain language and intent of New York General Business Law Article 23-A ("the Martin Act").

The DoL has considered the approaches for minimizing adverse impact set forth in SAPA Section 202-bb(2). Nevertheless, the DoL has concluded that there is no other means by which it can shrink the unjustified protection gap for senior and disabled tenants in its own regulations, other than by amending its own regulations. The regulatory revisions simultaneously limit the period of time during which the vast majority of senior and disabled market-rate tenants are susceptible to displacement during the conversion process while also ensuring the DoL's regulations comply with the Martin Act.

5. Small business and local government participation. To ensure that small businesses and local governments have an opportunity to participate in the rule making process, a copy of the regulatory revisions will be sent to members of the Bar who represent sponsors and purchasers of condominiums and cooperatives. Copies of the revised regulations will also be posted on the website of the Attorney General of the State of New York.

Niagara Frontier Transportation Authority

NOTICE OF ADOPTION

Technical Changes to Existing Rule Regulating Commercial Ground Transportation at the Buffalo Niagara International Airport

I.D. No. NFT-31-15-00001-A

Filing No. 967

Filing Date: 2015-11-10

Effective Date: 2015-11-25

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

Action taken: Amendment of sections 1160.1, 1160.2(b), (c), (w), (x) and 1160.21 of Title 21 NYCRR.

Statutory authority: Public Authorities Law, section 1299-(e)(5), (14), (eee)(1)-(10) and (f)(2)-(4)

Subject: Technical changes to existing rule regulating commercial ground transportation at the Buffalo Niagara International Airport.

Purpose: To correct the name of the airport within the existing rule and delete outdated text.

Text or summary was published in the August 5, 2015 issue of the Register, I.D. No. NFT-31-15-00001-P.

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

Text of rule and any required statements and analyses may be obtained from: Mary Perla, Niagara Frontier Transportation Authority, 4200 Genesee Street, Buffalo, New York 14225, (716) 630-6034, email: mary_perla@nfta.com

Assessment of Public Comment

The agency received no public comment.

Office of Parks, Recreation and Historic Preservation

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Adding Windsurfing, Sailboarding and Paddleboarding to the List of Activities Regulated by OPRHP

I.D. No. PKR-47-15-00001-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 375.1 and 377.1 of Title 9 NYCRR.

Statutory authority: Parks, Recreation and Historic Preservation Law, sections 3.09(8) and 13.13

Subject: Adding windsurfing, sailboarding and paddleboarding to the list of activities regulated by OPRHP.

Purpose: To authorize the regulated activity by the public of windsurfing and stand-up paddleboarding.

Text of proposed rule: Title 9 NYCRR Part 375, entitled "Activities absolutely prohibited" is amended to read as follows:

Paragraph (2) of subdivision (r) of section 375.1 is amended to read as follows:

(r) Artificial swimming aids. No person shall use tubes, floats, swim fins, Aqua-lungs or skin diving equipment of any kind, or any other inflated or buoyant objects or artificial or mechanical aids for swimming or diving, except under the following circumstances:

(1) when the use of skin or scuba diving equipment is authorized in accordance with the terms of a permit issued by the commissioner; or

(2) when the use of personal flotation devices at designated facilities is specifically authorized by the commissioner. Only United States Coast Guard-approved personal flotation devices [of types I, II and III] shall be allowed.

9 NYCRR Part 377 entitled "Regulated Activities" is amended to read as follows:

Section 377.1 Regulated activities. The following activities are prohibited on property under the jurisdiction, custody and control of the office, except in areas specifically designated therefor, during such hours or seasonal periods specifically authorized and subject to such conditions as may be contained herein or imposed by a region.

Paragraph (1) of subdivision (i) of section 377.1 is amended to read as follows:

(i) The use, launching, beaching, docking, mooring or anchoring of a boat or watercraft used as a means of transportation on water.

(1) No boat or watercraft shall be operated within an area specifically designated for [a] bathing or within the ninth park region within an area specifically designated as a surfing area. For the purposes of the ninth park region only, a bathing or surfing area shall be deemed to include the water area adjacent to and within 1,000 feet of any bathing beach or surfing area on the Atlantic Ocean, Long Island Sound and the bays along the shores of Long Island.

Paragraph (7) of subdivision (i) of section 377.1 is amended to read as follows:

(7) Use and operation of vessels in Allegany State Park.

(i) Vessels are permitted only in waters designated for vessel operation.

(ii) The use of inflatable vessels is prohibited.

(iii) The use of [motorized] motorized vessels is permitted in the Allegany Reservoir.

(iv) In the waters of Quaker Lake, motorized vessels utilizing electric motors of no more than five horsepower are permitted.

A new paragraph (11) of subdivision (i) of section 377.1 is added to read as follows:

(11) Notwithstanding paragraph (1) of this subdivision, the use of a paddleboard, windsurfing board or sailboard may be permitted within an area specifically designated for such activities, including a surfing area within the ninth park region. The use of a personal flotation device is required when paddleboarding, windsurfing or sailboarding.

Subdivision (j) of section 377.1 is amended to read as follows:

(j) The towing of persons on water skis[,] or aquaplanes; the use of a surfboard, paddleboard, windsurfing board or sailboard. A surfboard must have securely fastened to it a tether not exceeding eight feet in length,

the free end of which must be securely bound to either the ankle or waist of the surfer. A personal flotation device must be worn at all times when using a paddleboard, windsurfing board or sailboard, or as required by law when operating a boat or watercraft used as a means of transportation on water.

Text of proposed rule and any required statements and analyses may be obtained from: Kathleen L. Martens, Office of Parks, Recreation and Historic Preservation, OPRHP, Albany, NY 12238 (for USPS mailing), 625 Broadway, Albany, NY 12207 (for physical delivery), (518) 486-2921, email: rule.making@parks.ny.gov

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

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

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

Regulatory Impact Statement

1) Statutory Authority

Parks, Recreation and Historic Preservation Law (PRHPL or Parks Law), sections 3.09(8) and 13.13 authorize OPRHP to adopt regulations necessary to carry out the functions of the office and to regulate water sports in or upon any waters or waterways under the jurisdiction of the Agency, including any waters offshore of Jones Beach State Park, Robert Moses State Park, Montauk Point State Park, Heckscher State Park, Wildwood State Park, Sunken Meadow (Governor Alfred E. Smith) State Park, and Orient Beach State Park within a distance of one thousand feet from the shore line.

2) Legislative Objectives

Updating this rule confirms OPRHP's authority to regulate activities conducted by the public including certain water sports within waters and waters offshore of state parks or state historic sites. Generally, activities identified in the rule are prohibited except in areas specifically designated for such activities, during specific hours or seasonal periods determined by the Agency and subject to other restrictions determined by the Agency for one or more of the following reasons:

- to provide public access and uses consistent with the existing goals and policies of the Agency;
- to mitigate or avoid conflict with other public uses allowed at a designated site;
- to provide for the health and safety of the public in light of available resources made available to the Agency to maintain public safety; or
- to minimize any health hazard to employees.

3) Needs and Benefits

OPRHP regulates public activities within state parks, parkways and state historic sites. The Agency manages the public recreational use of over 60 million visitors to its parks and historic sites each year. Every year, new forms of public recreational activities are developed, and the Agency considers the impacts of providing for new activities within lands under its jurisdiction. The Agency has determined that the addition of windsurfing (also known as sailboarding) and paddleboarding will provide more opportunities to the public to pursue these outdoor sports. As a regulated activity, the Agency has determined that it can provide the public with specific areas within its parks to conduct these activities. Also, daily time periods and seasons can also be specified to mitigate or avoid conflict with other public uses in the parks. Finally, the introduction of these regulated activities will not diminish or detract from the recreational experience enjoyed by the public visiting state parks to engage in other activities.

Windsurfing is a water sport which is conducted while riding a sailboard or modified surfboard with a movable mast. An individual steers the windsurfing board from a standing position. These windsurfing boards, or sailboards, are capable of moderately high speeds and are usually used on lakes or close to shore within the surf zone on the ocean. The sport originated in the United States late in the 1960s and quickly grew in popularity. It was introduced as a sport in the Olympic Games in 1984. There is currently a need, as evidenced by public demand, to provide for additional opportunities for the public to windsurf.

Paddleboarding is a water sport in which participants are propelled on a board, similar to a surfboard, by paddling while standing or kneeling on the board. Paddleboarding is usually performed in the open waters. This sport offers the public with a fun, relaxing way to play on the water. With a minimum amount of gear, the public can paddle on paddleboards in ocean surf, lakes or rivers since no waves are required. Additionally, paddleboarding may provide a full body workout and has become a popular cross-training activity. Also, since the public can stand at their full height while paddleboarding, they can enjoy unique views of everything from sea creatures to scenic vistas. Paddleboarding is also relatively easy to learn. There is currently public demand to provide for additional opportunities for the public to experience paddleboarding.

The controlling statute recognizes a need to regulate water sports on

lands and waters under the jurisdiction of the Agency. Providing public recreational opportunities is central to the mission of the Agency. Currently, OPRHP regulates surfing, boating and swimming on waters or waters offshore of its lands. In most instances, the regulation of different recreational activities is necessary to avoid conflict between uses and to promote public safety. OPRHP continues to prohibit activities that may promote conflicts between uses, such as kiteboarding, and requires the use of safety measures for certain activities. As such, OPRHP regulations currently require a tether to be attached to a surfboard when in use. Additionally, the U.S. Coast Guard determined that stand-up paddleboards may constitute vessels so the rule would require the use of Personal Flotation Devices (PFDs).

4) Costs

The benefits associated with providing additional recreational opportunities for the public under regulated conditions will increase the likelihood that the public will pursue outdoor recreation. This form of recreation may also provide for an increase in the health of the public. OPRHP will continue to review the extent of the designated areas available for these activities and the times and seasons when the activities are authorized. OPRHP should not incur any costs from allowing these activities.

5) Local Government Mandates

The proposed rule does not affect local governments.

6) Paperwork

The proposed rule will require staff to prepare, document and publish the areas designated for the additional regulated activities and to determine when the activities may be authorized.

7) Duplication

None. There is no overlap or duplication with other state and federal requirements.

8) Alternatives

There are no viable alternatives to updating this rule to authorize the regulated use of these water sports.

9) Federal Standards

The proposed regulatory changes do not exceed any federal minimum standards.

10) Compliance Schedule

The proposed regulatory changes would take effect on the day that the Notice of Adoption for this regulation is published in the New York State Register.

Regulatory Flexibility Analysis

A Regulatory Flexibility Analysis is not required for this proposal since it will not impose any adverse economic impact or reporting, record keeping or other compliance requirements on small businesses or local governments. The rule only applies to windsurfing, sailboarding and paddleboarding as regulated activities in or upon any waters or waterways under the jurisdiction of Office of Parks Recreation and Historic Preservation. Therefore, a Regulatory Flexibility Analysis is not required.

Rural Area Flexibility Analysis

This rulemaking does not impact any rural areas as defined in New York State Administrative Procedure Act Section 102(10). The rule only applies to windsurfing, sailboarding or paddleboarding as regulated activities in or upon any waters or waterways under the jurisdiction of the Office of Parks Recreation and Historic Preservation. Therefore, a Rural Area Flexibility Analysis is not required.

Job Impact Statement

A job impact statement is not submitted because this proposed rule will have no adverse impact on jobs or employment opportunities. The proposed regulatory changes are needed to regulate windsurfing, sailboarding and paddleboarding in or upon any waters or waterways under the jurisdiction of the Office of Parks Recreation and Historic Preservation.

Public Service Commission

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Notice of Intent to Submeter Electricity

I.D. No. PSC-47-15-00008-P

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

Proposed Action: The Public Service Commission is considering the No-

tice of Intent to submeter electricity filed by 150 Charles Street Holdings LLC, located at 150 Charles Street, New York, New York.

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

Subject: Notice of Intent to Submeter electricity.

Purpose: To consider the request of 150 Charles Street Holdings LLC to submeter electricity at 150 Charles Street, New York, New York.

Substance of proposed rule: On August 25, 2015, 150 Charles Street Holdings LLC submitted a Notice of Intent to Submeter Electricity at 150 Charles Street, New York, New York. The Public Service Commission is considering the request for authorization to submeter and to take other actions necessary to address the Notice of Intent. The Commission may adopt, reject or modify, in whole or in part, the relief proposed and may resolve related matters.

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

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

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

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

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

(15-E-0499SP1)

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Addition of LED Options to NMPC's SC No. 2 in Its Street Lighting Schedule, P.S.C. No. 214 — Electricity

I.D. No. PSC-47-15-00009-P

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

Proposed Action: The Commission is considering a proposal filed by Niagara Mohawk Power Corporation d/b/a National Grid to update Service Classification No. 2 to incorporate LED options in its street lighting schedule, P.S.C. No. 214 — Electricity.

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

Subject: Addition of LED options to NMPC's SC No. 2 in its street lighting schedule, P.S.C. No. 214—Electricity.

Purpose: To consider the addition of LED options to NMPC's SC No. 2 in its street lighting schedule, P.S.C. No. 214—Electricity.

Substance of proposed rule: The Public Service Commission is considering a proposal filed by Niagara Mohawk Power Corporation d/b/a National Grid (NMPC or the Company) to update Service Classification (SC) No. 2 — Street Lighting — Unmetered Company Owned/Company Maintained Facility to incorporate Light Emitting Diode (LED) options in its street lighting schedule, P.S.C. No. 214 — Electricity. NMPC proposes to offer four Roadway Luminaire LED fixture options (labeled as LED A through D) that will be available to replace existing non-LED luminaire fixtures in the current Roadway offerings of 70, 100, 150, 250 and 400 watts. For the conversion of a Company-owned non-LED facility to a Company-owned LED facility, removal costs will not be collected directly from the customer requesting the LED installations. The undepreciated net book value and system reconfiguration costs will be collected directly from the customer requesting the LED installations and such costs will be dependent upon the specific installations. The proposed amendments have an effective date of April 1, 2016. The Commission may adopt, reject, or modify, in whole or in part, the relief proposed and may resolve related matters.

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

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

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

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

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

(15-E-0645SP1)

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

Use of the AMETEK JEMStar II Digital Power Meter

I.D. No. PSC-47-15-00010-P

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

Proposed Action: The Public Service Commission is considering a petition filed by AMETEK Power Instruments to use the JEMStar II Digital Power Meter for electric metering applications.

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

Subject: Use of the AMETEK JEMStar II Digital Power Meter.

Purpose: To consider permitting the use of AMETEK Power Instrument's JEMStar II Digital Power Meter for electric metering applications.

Substance of proposed rule: The Public Service Commission is considering a petition filed by AMETEK Power Instruments, on October 29, 2015, for approval to use the JEMStar II Digital Power electric meter in industrial applications. The Commission may adopt, reject or modify, in whole or in part, the relief proposed and may resolve related matters.

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

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

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

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

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

(15-E-0636SP1)

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

SIR and the Interconnection of Distributed Generation

I.D. No. PSC-47-15-00011-P

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

Proposed Action: The Commission is considering proposed changes to the Standardized Interconnection Requirements (SIR) and the interconnection application process for Distributed Generators.

Statutory authority: Public Service Law, sections 65(1), (2), (3), 66(1), (2), (3), (5), (8) and (10)

Subject: SIR and the interconnection of Distributed Generation.

Purpose: Consider SIR and the interconnection of Distributed Generation.

Substance of proposed rule: The Public Service Commission (Commission) is considering modifications to the New York State Standardized Interconnection Requirements (SIR) for New Distributed Generators 2 MW or Less Connected in Parallel with Utility Distribution Systems, as proposed by Department of Public Service Staff and detailed in Proposed Amendments to the New York State Standardized Interconnection Requirements (SIR) for New Distributed Generators Connected in Parallel with Utility Distribution Systems filed with the Commission in Case 15-E-0557 and posted to its website on November 9, 2015. The proposed changes are intended to improve and simplify the procedures for the interconnection of small distributed generation facilities to New York's

electric grid while still ensuring electric system safety and reliability. The Commission may adopt, reject, or modify, in whole or in part, the relief proposed and may resolve related matters.

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

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

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

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

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

(15-E-0557SP1)

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

Reimbursement of Costs for Construction Under 16 NYCRR 230

I.D. No. PSC-47-15-00012-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 petition by North Ridge, LLC and Megnin Farms at Poolsbrook, LLC regarding reimbursement for costs related to construction by Niagara Mohawk Power Corporation d/b/a National Grid under 16 NYCRR 230.

Statutory authority: Public Service Law, sections 65 and 66

Subject: Reimbursement of costs for construction under 16 NYCRR 230.

Purpose: To determine proper reimbursement for costs related to trenching and construction.

Substance of proposed rule: On September 16, 2015, North Ridge, LLC (North Ridge) and Megnin Farms and Poolsbrook, LLC (Megnin Farms), submitted a petition requesting that the Commission order Niagara Mohawk Power Corporation d/b/a National Grid (NMPC) to reimburse North Ridge and Megnin Farms for trenching work completed under an agreement between North Ridge and Megnin Farms, and NMPC. The Commission is considering North Ridge and Megnin Farms' petition and may also consider whether there is a need for clarifying its policies under 16 NYCRR 230, including but not limited to, 230.2(d) Residential Applicant-Heating. The Commission may adopt, reject, or modify, in whole or in part, the relief proposed and may resolve related matters.

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

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

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

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

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

(15-E-0646SP1)

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

Whitepaper on Implementing Lightened Ratemaking Regulation

I.D. No. PSC-47-15-00013-P

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

Proposed Action: The Commission is considering a Whitepaper on

Implementing Lightened Ratemaking Regulation that proposes policies for regulating participants in competitive markets and standards for making filings that can be reviewed with reduced scrutiny.

Statutory authority: Public Service Law, sections 5(1)(b), (c), (f), 64, 65, 66, 67, 68, 69, 69-a, 70, 71, 72, 72-a, 78, 79, 80, 81, 82, 82-a, 83, 84, 85, 105-114, 114-a, 115, 117, 118, 119-b and 119-c

Subject: Whitepaper on Implementing Lightened Ratemaking Regulation.

Purpose: Consider Whitepaper on Implementing Lightened Ratemaking Regulation.

Substance of proposed rule: The Public Service Commission (Commission) is considering a Whitepaper on Implementing Lightened Ratemaking Regulation, filed by Department of Public Service Staff on November 4, 2015 in Case 15-M-0365, that proposes policies for regulating participants in competitive markets and standards for making filings that can be reviewed with reduced scrutiny. A comprehensive approach to lightened regulation is proposed that will clarify the application of the Public Service Law to competitive providers and set consistent standards for making the filings required under lightened regulation. The Commission may adopt, reject, or modify, in whole or in part, the relief proposed and may resolve related matters.

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

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

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

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

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

(15-M-0365SP1)

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Calculation of NYSEG and RG&E's Percent of Estimate Customer Service Quality Metric for February 2015

I.D. No. PSC-47-15-00014-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 petition filed by NYSEG and RG&E to normalize the February 2015 Percent of Estimates in calculating the companies' 2015 customer service quality metrics.

Statutory authority: Public Service Law, sections 65 and 66

Subject: Calculation of NYSEG and RG&E's Percent of Estimate customer service quality metric for February 2015.

Purpose: To consider a petition by NYSEG and RG&E to normalize the February 2015 level of meter reading estimates.

Substance of proposed rule: On September 11, 2015, New York State Electric & Gas Corporation (NYSEG) and Rochester Gas and Electric Corporation (RG&E) filed a petition with the Public Service Commission regarding the companies' Percent of Estimate customer service quality metric. The petition states that due to the extreme winter weather in February 2015, the companies were unable to meet their goals for meter reading, resulting in an anomalously high level of estimates for that month. The companies request permission to normalize the February 2015 results when calculating their reported percent of estimates under their current rate plans. The Commission may adopt, reject or modify, in whole or in part, the relief proposed and may resolve related matters.

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

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

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

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

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

(15-M-0649SP1)

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Petition to Transfer and Merge Telephone and Cable Systems, Franchises and Assets and Issue Debt

I.D. No. PSC-47-15-00015-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 petition filed by Altice and Cablevision to transfer ownership of telephone and cable systems, franchises and assets from Cablevision to Altice and issue debt.

Statutory authority: Public Service Law, sections 99(2), 100(1), 101 and 222

Subject: Petition to transfer and merge telephone and cable systems, franchises and assets and issue debt.

Purpose: Consider the proposed acquisition of Cablevision, its systems, franchises and assets, by Altice and the issuance of debt.

Substance of proposed rule: The Public Service Commission is considering a petition filed by Altice N.V. (Altice) and Cablevision Systems Corporation (Cablevision) requesting approval under Public Service Law (PSL) § § 99, 100, 101, and 222 to transfer certain Cablevision telephone systems, cable systems, franchises and assets to Altice and issue debt. Under the proposed transaction, Altice, a Dutch company, has entered into an agreement with Cablevision whereby Altice, through a new U.S. subsidiary, Neptune Holding US Corp. will acquire 100 percent of Cablevision through a combination of debt and equity. Under the proposed transaction Altice plans to retain all of Cablevision's existing assets in New York State. The full text of the petition may be reviewed online at the Department of Public Service web page: www.dps.ny.gov. The Commission may adopt, reject, or modify, in whole or in part, the relief proposed and may resolve related matters.

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

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

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

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

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

(15-M-0647SP1)

Department of State

PROPOSED RULE MAKING HEARING(S) SCHEDULED

State Energy Conservation Construction Code (the "Energy Code")

I.D. No. DOS-47-15-00016-P

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

Proposed Action: Repeal of Part 1240; and addition of new Part 1240 to Title 19 NYCRR.

Statutory authority: Energy Law, section 11-103(2)

Subject: State Energy Conservation Construction Code (the “Energy Code”).

Purpose: To repeal the existing Energy Code and to adopt a new, updated Energy Code.

Public hearing(s) will be held at: 10:00 a.m., Jan. 25, 2016 at Department of State, 99 Washington Ave., Conference Rm. 505, Albany, NY; 10:00 a.m., Jan. 26, 2016 at Perry B. Duryea Jr. State Office Bldg., 250 Veterans Memorial Hwy., Training Rm. 1A16, Hauppauge, NY; 10:00 a.m., Jan. 27, 2016, at Hughes State Office Bldg., 333 E. Washington St., Main Hearing Rm. - 1st Fl., Syracuse, NY; 10:00 a.m., Jan. 28, 2016 at Walter J. Mahoney State Office Bldg., 65 Court St., Hearing Rm. 4, Buffalo, NY; and 10:00 a.m., Jan. 29, 2016, Department of State, 123 William St., Conference Rm. 231, New York, NY.

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

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

Substance of proposed rule (Full text is not posted on a State website): This rule will repeal the current version of Part 1240 of Title 19 of the NYCRR and add a new version of Part 1240 (entitled “State Energy Conservation Construction Code”) in its place. The new version of Part 1240 is summarized below.

Section 1240.1 (“State Energy Conservation Construction Code”) provides that Part 1240 and the publications incorporated by reference in Part 1240 constitute the State Energy Conservation Construction Code (the “Energy Code”) promulgated pursuant to Article 11 of the Energy Law.

Section 1240.2 (“Definitions”) defines certain terms used in Part 1240, including:

“2015 Energy Code Supplement” (the publication entitled “2015 Supplement to the New York State Energy Conservation Construction Code,” published by the New York State Department of State, publication date October 16, 2015);

“2015 IECC” (the publication entitled “2015 International Energy Conservation Code,” published by the International Code Council, Inc., second printing, publication date May, 2015);

“2015 IECC Commercial Provisions” (that part of the 2015 IECC that is designated as the “IECC - Commercial Provisions”);

“2015 IECC Commercial Provisions (as amended)” (the 2015 IECC Commercial Provisions, as said provisions are deemed to be amended by Part 1 of the 2015 Energy Code Supplement);

“2015 IECC Residential Provisions” (that part of the 2015 IECC that is designated as the “IECC - Residential Provisions”);

“2015 IECC Residential Provisions (as amended)” (the 2015 IECC Residential Provisions, as said provisions are deemed to be amended by Part 3 of the 2015 Energy Code Supplement);

“ASHRAE 90.1-2013” (the publication entitled “Energy Standard for Buildings Except Low-Rise Residential Buildings,” standard reference number 90.1-2013, published by American Society of Heating, Refrigerating and Air-Conditioning Engineers, Inc., publication date October 2013);

“ASHRAE 90.1-2013 (as amended)” (ASHRAE 90.1-2013, as said publication is deemed to be amended by Part 2 of the 2015 Energy Code Supplement);

“commercial building” (any building that is not a residential building, as defined in subdivision (p) of section 1240.2); and

“residential building” (includes: (1) detached one-family dwellings having not more than three stories above grade plane; (2) detached two-family dwellings having not more than three stories above grade plane; (3) buildings that (i) consist of three or more attached townhouse units and (ii) have not more than three stories above grade plane; (4) buildings that (i) are classified in accordance with Chapter 3 of the publication entitled “2015 International Building Code,” published by the International Code Council, Inc., publication date May, 2014, in Group R-2, R-3 or R-4 and (ii) have not more than three stories above grade plane; (5) factory manufactured homes (as defined in section 372(8) of the Executive Law); and (6) mobile homes (as defined in section 372(13) of the Executive Law).

Other terms defined in section 1240.2 are “building,” “building system,” “dwelling unit,” “Energy Code,” “grade plane,” “historic building,” and “townhouse unit.”

Section 1240.3 (“Amendments made by the 2015 Energy Code Supplement”) provides that for the purposes of applying the 2015 IECC Commercial Provisions, the 2015 IECC Residential Provisions, and ASHRAE 90.1-2013 in New York State, the 2015 IECC Commercial Provisions shall be deemed to be amended in the manner provided in Part 1 of the

2015 Energy Code Supplement; ASHRAE 90.1-2013 shall be deemed to be amended in the manner provided in Part 2 of the 2015 Energy Code Supplement; and the 2015 IECC Residential Provisions shall be deemed to be amended in the manner provided in Part 3 of the 2015 Energy Code Supplement.

Section 1240.4 is entitled “Energy Code provisions applicable to Commercial Buildings.”

Subdivision (a) of section 1240.4 (“2015 IECC Commercial Provisions (as amended)”) provides that except as otherwise provided in section 1240.6 (“Exceptions”) of Part 1240, the construction of all new commercial buildings; all additions to, alterations of, and/or renovations of existing commercial buildings; and all additions to, alterations of, and/or renovations of building systems in existing commercial buildings shall comply with the requirements of the 2015 IECC Commercial Provisions (as amended). Section 1240.4(a) also incorporates the 2015 IECC Commercial Provisions and the 2015 Energy Code Supplement by reference; specifies the name and addresses of the publishers where the 2015 IECC (which contains the 2015 IECC Commercial Provisions) and the 2015 Energy Code Supplement may be obtained; and specifies that those publications are available for public inspection and copying at the office of the New York State Department of State located at One Commerce Plaza, 99 Washington Avenue, Albany, NY 12231-0001.

Subdivision (b) of section 1240.4 (“ASHRAE 90.1-2013 (as amended)”) provides that to the extent provided in the 2015 IECC Commercial Provisions (as amended), compliance with the requirements of ASHRAE 90.1-2013 (as amended) shall be permitted in lieu of compliance with specified sections of the 2015 IECC Commercial Provisions (as amended). Subdivision (b) of section 1240.4 also incorporates ASHRAE 90.1-2013 and the 2015 Energy Code Supplement by reference; specifies the name and addresses of the publishers where ASHRAE 90.1-2013 and the 2015 Energy Code Supplement may be obtained; and specifies that those publications are available for public inspection and copying at the office of the New York State Department of State located at One Commerce Plaza, 99 Washington Avenue, Albany, NY 12231-0001.

Subdivision (c) of section 1240.4 (“Referenced standards”) provides that the referenced standards listed in Chapter 6 of the 2015 IECC Commercial Provisions (as amended) are considered to be part of the 2015 IECC Commercial Provisions (as amended), subject to the provisions and limitations set forth in Sections C106.1, C106.1.1, and C106.1.2 of the 2015 IECC Commercial Provisions (as amended).

Subdivision (c) of section 1240.4 also incorporates the following referenced standards by reference, and provides that the following referenced standards shall be considered to be part of the 2015 IECC Commercial Provisions (as amended), subject to the provisions and limitations set forth in Sections C106.1, C106.1.1, and C106.1.2 of the 2015 IECC Commercial Provisions (as amended):

Room Fan Coil (“AHRA 440-08”), publication date 2008, and Unit Ventilators (“AHRI 840-98”), publication date 1998, published by the Air Conditioning, Heating, and Refrigeration Institute;

ASHRAE HVAC Systems and Equipment Handbook - 2012 (“ASHRAE-2012”), publication date 2012, Energy Standard for Buildings Except Low-rise Residential Buildings (“ASHRAE 90.1-2013”), publication date October, 2013, and Peak Cooling and Heating Load Calculations in Buildings, Except Low-rise Residential Buildings (ANSI/ASHRAE/ACCA Standard 183-2007 [RA2011]), publication date 2013, published by American Society of Heating, Refrigerating and Air-Conditioning Engineers, Inc.;

Standard Test Method for Determining Air Leakage Rate by Fan Pressurization (“ASTM E 779-10”), publication date 2010, and Standard Specification for an Air Retarder (AR) Material or System for Low-Rise Framed Building Walls (“ATSM E 1677-11”), publication date 2011, published by ASTM International;

North American Fenestration Standard / Specification for Windows, Doors and Unit Skylights (“AAMA / WDMA / CSA 101 / I.S.2 / A440-11”), publication date 2011, published by Canadian Standards Association;

2015 International Building Code (publication date May 30, 2014, 2015), International Fire Code (publication date May 30, 2014), 2015 International Fuel Gas Code (publication date May 30, 2014), 2015 International Mechanical Code (publication date May 30, 2014), 2015 International Plumbing Code (publication date May 30, 2014), 2015 International Property Maintenance Code (publication date May 30, 2014), 2015 International Residential Code (publication date May 30, 2014), and Energy Conservation Construction Code of New York State (publication date 2010), published by International Code Council, Inc.;

National Electrical Code (NFPA 70-14), publication date 2014, published by National Fire Protection Association;

HVAC Air Duct Leakage Test Manual (“SMACNA-85”), publication date 1985, published by Sheet Metal and Air Conditioning Contractors National Association, Inc.; and

Standard for Oil-Fired Central Furnaces, Ninth Edition, including revisions through April 22, 2010 (“UL 727-06”), publication date 2010 (Note: The Ninth Edition of this standard was originally published on April 7, 2006. The version of this standard incorporated herein by reference includes revisions through April 22, 2010, and was published in 2010), Oil-fired Unit Heaters—with Revisions through April 2010 (“UL 731-95”), original publication date 1995, with revisions published through 2010, published by Underwriters Laboratory.

Subdivision (c) of section 1240.4 also specifies the name and addresses of the publishers where the foregoing referenced standards may be obtained, and specifies that those publications are available for public inspection and copying at the office of the New York State Department of State located at One Commerce Plaza, 99 Washington Avenue, Albany, NY 12231-0001.

Section 1240.5 is entitled “Energy Code provisions applicable to Residential Buildings.”

Subdivision (a) of section 1240.5 (“2015 IECC Residential Provisions (as amended)”) provides that except as otherwise provided in section 1240.6 (“Exceptions”) of Part 1240, the construction of all new residential buildings; all additions to, alterations of, and/or renovations of existing residential buildings; and all additions to, alterations of, and/or renovations of building systems in existing residential buildings shall comply with the requirements of the 2015 IECC Residential Provisions (as amended). Subdivision (a) of section 1240.5 also incorporates the 2015 IECC Residential Provisions and the 2015 Energy Code Supplement by reference; specifies that names and addresses of the publishers from which copies of the 2015 IECC (which includes the 2015 IECC Residential Provisions) and the 2015 Energy Code Supplement may be obtained, and specifies that the 2015 IECC and the 2015 Energy Code Supplement are available for public inspection and copying at the office of the New York State Department of State located at One Commerce Plaza, 99 Washington Avenue, Albany, NY 12231-0001.

Subdivision (b) of section 1240.5 (“Referenced standards”) provides that the referenced standards listed in Chapter 6 of the 2015 IECC Residential Provisions (as amended) are considered to be part of the 2015 IECC Residential Provisions (as amended), subject to the provisions and limitations set forth in Sections R106.1, R106.1.1, and R106.1.2 of the 2015 IECC Residential Provisions (as amended). Subdivision (b) of section 1240.5 also provides that the following referenced standards are incorporated herein by reference and shall be considered to be part of the 2015 IECC Residential Provisions (as amended), subject to the provisions and limitations set forth in Sections R106.1, R106.1.1, and R106.1.2 of the 2015 IECC Residential Provisions (as amended):

Residential Load Calculation, Eighth Edition (“Manual J – 2011”), publication date 2011, and Residential Equipment Selection (“Manual S—13”), publication date 2013, published by Air Conditioning Contractors of America;

Method for Measuring Floor Area in Office Buildings (Z-65-96), publication date 1996, published by American National Standards Institute;

ASHRAE Handbook of Fundamentals - 2013 (“ASHRAE - 2013”), publication date 2013, published by American Society of Heating, Refrigerating and Air-Conditioning Engineers, Inc.;

Standard Test Method for Determining Air Leakage Rate by Fan Pressurization (“ASTM E 779-10”), publication date 2010, and Standard Test Method for Determining Air Tightness of Building Using an Orifice Blower (“ASTM E 1827-11”), publication date 2011, published by ASTM International;

2015 International Building Code, publication date May 30, 2014; 2015 International Fire Code, publication date May 30, 2014; 2015 International Fuel Gas Code, publication date May 30, 2014; 2015 International Mechanical Code, publication date May 30, 2014; 2015 International Plumbing Code, publication date May 30, 2014; 2015 International Property Maintenance Code, publication date May 30, 2014; 2015 International Residential Code, publication date May 30, 2014; Standard on the Design and Construction of Log Structures (“ICC 400-12”), publication date 2012, 2006 International Energy Construction Code (“IECC-2006”), publication date 2006; and 2009 International Energy Construction Code (“IECC-2009”), publication date 2009, published by International Code Council, Inc.; and

National Electric Code (“NFPA 70-14”), publication date 2014, published by National Fire Protection Association.

Section 1240.6 (“Exceptions”) provides that the Energy Code shall not apply to the alteration or renovation of an historic building or to certain alterations of existing buildings, provided that the alteration will not increase the energy usage of the building. These exceptions mirror the provisions of Law § 11-104(5) and Energy Law § 11-103(1)(b).

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

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

Public comment will be received until: February 5, 2016.

Summary of Regulatory Impact Statement

1. STATUTORY AUTHORITY.

This rule amends the State Energy Conservation Construction Code (“Energy Code”). This rule is authorized by Energy Law § 11-103(2).

2. LEGISLATIVE OBJECTIVES.

The energy policy of the State is “to encourage conservation of energy in the construction and operation of new commercial, industrial, and residential buildings, and in the rehabilitation of existing structures, through heating, cooling, ventilation, lighting, insulation and design techniques and the use of energy audits and life-cycle costing analyses” (Energy Law § 3-101(2)). In furtherance of that policy, the Energy Code is intended “to protect the health, safety and security of the people of the State and to assure a continuing supply of energy for future generations [by mandating] that economically reasonable energy conservation techniques be used in the design and construction of all new public and private buildings in New York” (Energy Law § 11-101).

Energy Law § 11-103(2) provides that the Energy Code, as amended from time to time, should remain “cost effective” with respect to building construction and that in determining whether the Energy Code remains cost effective, the State Fire Prevention and Building Code Council (the Code Council¹) “shall consider whether the cost of materials and their installation to meet its standards would be equal to or less than the present value of energy savings that could be expected over a ten year period in the building in which such materials are installed.”

Energy Law § 11-103(2) provides that the Energy Code for commercial buildings must meet or exceed the 2007 edition of the “Energy Standard for Buildings Except Low-Rise Residential Buildings” (ASHRAE 90.1), or achieve equivalent or greater energy savings; and that the Energy Code for residential buildings must meet or exceed the then most recently published edition of the “International Energy Conservation Code” (the IECC), or achieve equivalent or greater energy savings.

Title III of the Energy Conservation and Production Act (ECPA) provides that when the U.S. Department of Energy (DOE) determines that commercial buildings constructed to a revised edition of ASHRAE 90.1 would achieve greater energy efficiency than buildings constructed to the prior edition of ASHRAE 90.1, states are required to update their energy codes for commercial buildings to codes that meet or exceed the revised ASHRAE 90.1. DOE has determined that the most recent edition of ASHRAE 90.1 (ASHRAE 90.1-2013) would achieve greater energy efficiency than the prior edition (ASHRAE 90.1-2010).

Based on the studies more fully described in Part 3 (Needs and Benefits) below, the Department of State (DOS) and the Code Council have determined that this rule will (1) make the Energy Code for residential buildings equal to or exceed the most recent (2015) edition of the IECC; (2) make the Energy Code for commercial buildings equal to ASHRAE 90.1-2013; (3) result in significant savings in energy usage; (4) be cost effective; and (5) on average, will pay back increased construction costs through savings in energy costs in less than 10 years.

3. NEEDS AND BENEFITS.

Purpose. The purpose of this rule is to amend and update the Energy Code to a code that equals or exceeds ASHRAE 90.1-2013 (for commercial buildings) and a code that equals or exceeds the 2015 IECC (for residential buildings).

Necessity. This rule is necessary to encourage conservation of energy in the construction and operation of new commercial and industrial buildings; and otherwise to help achieve the legislative objectives summarized in Part 2 (Legislative Objectives) above.

Benefits. The principal benefits to be derived from this rule will be (1) the reduction in the energy used by buildings that comply with the Energy Code as amended by this rule (the “Amended Energy Code”), and (2) the savings in energy costs to be realized by owners of buildings that comply with the Amended Energy Code. Other benefits to be derived from this rule include the following:

DOS anticipates that the Amended Energy Code, will be cost effective, and that on average, building owners will receive a net economic benefit from the adoption of this rule. More specifically, DOS anticipates that, on average, when comparing a building constructed to the requirements of the Amended Energy Code to a similar building constructed to the requirements of the current version of the Energy Code (the Current Energy Code), the present value of the annual savings in energy costs over a 30-year period will exceed the sum of (1) the increase in initial construction costs, plus (2) the present value of the increase in maintenance costs over that 30-year period, plus (3) the present value of the increase in replacement costs over that 30-year period.

DOS anticipates that, on average, the increase in initial construction costs resulting from constructing a building to the requirements of the Amended Energy Code rather than the requirements of the Current Energy

Code will be less than the present value of the savings in energy costs over 10 years.

DOE anticipates that many other states will update their building energy codes for commercial buildings to codes that meet or exceed ASHRAE 90.1-2013 and update their building energy codes for residential buildings to codes that meet or exceed the 2015 IECC. This rule will assure that energy conservation construction practices in the State remain consistent with national practices, which should make it easier and less expensive for regulated parties to comply with the Energy Code.

By reducing energy demands in a cost effective manner, this rule should reduce the growth in the use of energy produced from nonrenewable sources, reduce dependence on imported fossil fuels, and reduce emissions produced by use of fossil fuels.

Studies used. The studies, reports, and analyses which served as the basis for this rule include:

Commercial Buildings.

(1) Notice of Determination issued by the U.S. Department of Energy (“DOE”) and published in the Federal Register on September 26, 2014 in 79 Federal Register at 57900.² This Notice (hereafter referred to as the “DOE Commercial Notice of Determination”) indicates that (1) DOE has determined that buildings constructed to the requirements of ASHRAE 90.1-2013 would achieve greater energy efficiency than buildings constructed to the requirements of ASHRAE 90.1-2010 and (2) based on its quantitative analysis, DOE anticipates national source energy savings of approximately 8.5 percent of commercial building energy consumption and site energy savings of approximately 7.6 percent. See 79 Federal Register 57900 (September 26, 2014) at 57912.

(2) National Cost-effectiveness of ANSI/ASHRAE/IES Standard 90.1-2013 published by Pacific Northwest National Laboratory (“PNNL”), Richland, WA (publication date January 2015).³ This study (hereinafter referred to as the “PNNL National Cost-Effectiveness Study” or “PNNL-23824”) builds on an earlier technical report issued by PNNL, entitled ANSI/ASHRAE/IES Standard 90.1-2013 Determination of Energy Savings: Quantitative Analysis (Halverson et al. 2014),⁴ which analyzed sixteen building prototype EnergyPlus building models in 15 climate locations representing all eight U.S. climate zones. The PNNL National Cost-Effectiveness Study “used a subset of prototypes and climate locations, providing coverage of nearly all of the changes in Standard 90.1 from the 2010 to 2013 edition that affect energy savings, equipment and construction costs, and maintenance, including conventional HVAC systems used in commercial buildings” (PNNL National Cost-Effectiveness Study, at page iv). Specifically, the PNNL National Cost-Effectiveness Study considered six commercial building prototypes (small office, large office, standalone retail, primary school, small hotel, and mid-rise apartment) in five climate zones, including two (4A and 5A) of the three climate zones found in New York State. The principal characteristics of the six building prototypes studied in the PNNL National Cost-Effectiveness Study are as set forth in Table 2.4 of the PNNL National Cost-Effectiveness Study.

The PNNL National Cost-Effectiveness Study analyzed the differences in energy usage in the six building prototypes constructed to the requirements of ASHRAE 90.1-2013 compared to similar buildings constructed to the requirements of ASHRAE 90.1-2010; the annual energy cost savings that will result from the reduction in energy usage; the “first costs” (i.e., the increase [or decrease] in the cost of constructing a building that complies with ASHRAE 90.1-2013 compared to the cost of constructing a building that complies with ASHRAE 90.1-2010); and the changes in the costs of maintaining and replacing equipment in a building that complies with ASHRAE 90.1-2013 compared to the costs of maintaining and replacing equipment in a building that complies with ASHRAE 90.1-2010.

(3) Cost Estimate Spreadsheet Workbook, as revised, prepared by PNNL to accompany the PNNL National Cost-Effectiveness Study.⁵ This Workbook (hereinafter referred to as the “PNNL Cost Estimate Spreadsheet Workbook”) includes a spreadsheet showing electrical energy cost savings and natural gas cost savings of buildings constructed to ASHRAE 90.1-2013, as compared with buildings constructed to ASHRAE 90.1-2010. That spreadsheet also shows the energy costs of buildings constructed to ASHRAE 90.1-2010 and buildings constructed to ASHRAE 90.1-2013 and the energy cost savings that will result from constructing a building to ASHRAE 90.1-2013 rather than ASHRAE 90.1-2010.

(4) Cost-Effectiveness of ASHRAE Standard 90.1-2013 for the State of New York, prepared by PNNL (publication date April 2015). This study (hereinafter referred to as the “PNNL New York Cost-Effectiveness Study” or “PNNL-24223”) considers the six commercial building prototypes examined in the PNNL National Cost-Effectiveness Study mentioned above in the three climate zones in New York State, and applies weighting factors to take into account the relative number of each such building prototype constructed in each such climate zone. The PNNL New York Cost-Effectiveness Study indicates that the “simple payback period” (i.e., the time required for the savings in energy costs to equal the “incremental first costs”) will range from a low of “immediate” (in cases

where the “incremental first costs” are negative, i.e., where initial construction costs are decreased) to a high of 27.1 years. However, when considering the weighted averages of those six commercial building prototypes:

(a) the weighted average annual energy cost savings as a result of construction complying with ASHRAE 90.1-2013 rather than ASHRAE 90.1-2010 would be \$0.154 per square foot;

(b) the weighted average increase in construction costs as a result of construction complying with ASHRAE 90.1-2013 rather than ASHRAE 90.1-2010 would be \$0.595 per square foot; and

(c) the weighted average “simple payback period” would be approximately 3.9 years.

The PNNL New York Cost-Effectiveness Study also includes an analysis of two “Life Cycle Cost” (or “LCC”) scenarios. Both scenarios consider increases (or decreases) in initial construction costs, the present value (over 30 years) of savings in energy costs, the present value (over 30 years) of increases (or decreases) maintenance costs, and the present value (over 30 years) of increases (or decreases) in replacements costs. Scenario 1, which represents publicly owned buildings, does not reflect borrowing costs or taxes. Scenario 2, which represents privately owned buildings, does reflect borrowing costs and tax impacts. The PNNL New York Cost-Effectiveness Study indicates that the weighted average LCC savings will be \$2.11 per square foot for Scenario 1 (publicly owned buildings) and \$1.92 per square foot for Scenario 2 (privately owned buildings). See Tables 2, 3, and 4 in the PNNL New York Cost-Effectiveness Study.

(5) Rulemaking Support to the NYS Department of State for the NYS Energy Conservation Construction Code and 2015 International Energy Conservation Code prepared by Vidaris, Inc., dated June 16, 2015. This report (hereinafter referred to as the “Vidaris Report”) refines the information in the PNNL National Cost-Effectiveness Study and the PNNL Cost Estimate Spreadsheet Workbook to better reflect the impact this rule will have in this State:

First, the Vidaris Report re-computes the energy cost savings using the average energy costs to New York State commercial customers, as reported by the U.S. Energy Information Administration. The costs used for this re-computation of energy cost savings were \$0.1535 per kWh for electricity⁶ and \$7.98 per 1,000 cubic feet (or \$0.7763 per therm) for natural gas.⁷

Second, for the purposes of computing the present value of the expected energy savings, the Vidaris Report uses the “Uniform Present Value” factors for Census Region 1 (which includes New York State) as shown in the publication entitled Energy Price Indices and Discount Factors for Life-Cycle Cost Analysis – 2013 Annual Supplement to NIST Handbook 135 and NBS Special Publication 709, published by National Institute of Standards and Technology.⁸ The factors used to compute the present value of electrical energy cost savings are 8.32 (for 10 years) and 19.50 (for 30 years), and the factors to be used to compute the present value of natural gas energy cost savings are 8.93 (for 10 years) and 22.92 (for 30 years).

Third, the Vidaris Report shows: (1) for each of the six commercial building prototypes in Climate Zones 4A and 5A, the “net savings” over ten years; and (2) for Climate Zones 4A and 5A, the aggregate “net savings” based on the weighting factors developed by PNNL based on construction volume by building type and climate zone.

Finally, the Vidaris Report shows, for each of the six commercial building prototypes in Climate Zones 4A and 5A: (1) the increase (or decrease) in initial construction costs (the “first costs”); (2) the present value (over 30 years) of the expected increase (or decrease) in replacement costs; (3) the present value (over 30 years) of the expected increase (or decrease) in maintenance costs; (4) the present value (over 30 years) of the expected savings in energy costs; and (5) the present value (over 30 years) of the net benefit of a building constructed to the requirements of ASHRAE 90.1-2013 compared to a building constructed to the requirements of ASHRAE 90.1-2010.

Residential Buildings.

(1) Notice of Determination issued by DOE and published in the Federal Register on June 11, 2015 in 80 Federal Register at 33250.⁹ This Notice of Determination (hereinafter referred to as the “DOE Residential Notice of Determination”) indicates that (1) DOE has determined that buildings constructed to the requirements of the 2015 IECC would achieve greater energy efficiency than buildings constructed to the requirements of the 2012 IECC and, based on its quantitative analysis, DOE anticipates national source energy savings of approximately 0.87 percent of residential building energy consumption and site energy savings of approximately 0.98 percent of residential building energy consumption. See 80 Federal Register 33250 (June 11, 2015) at 33261.

(2) Energy Use Savings for a Typical New Residential Dwelling Unit Based on the 2009 and 2012 IECC as Compared to the 2006 IECC, published by PNNL (publication date April 2013).¹⁰ This report (hereinafter referred to as the “PNNL Energy Savings Report” or “PNNL-88603”) averages the energy use savings for a typical new residential dwelling unit

based on the 2009 and 2012 IECC compared to the 2006 IECC. Since the provisions of the Energy Code currently applicable to residential buildings are based on the 2009 IECC, energy savings in the 2012 IECC compared to the 2009 IECC are part of the basis for examining energy savings that would result from adopting the proposed rule. Information extracted from Table 1 of the PNNL Energy Savings Report demonstrates that annual source energy use (in million Btu) would decline from 139 to 103 in Zone 4, from 154 to 114 in Zone 5 and from 179 to 126 in Zone 6. This indicates source energy savings of approximately 25.9 percent in Zones 4 and 5, and 29.6 percent in Zone 6. This is consistent with national average energy savings of approximately 24.1 percent between 2009 IECC and 2012 IECC.

(3) Cost-Effectiveness Analysis of the Residential Provisions of the 2015 IECC for the State of New York, published by PNNL (publication date December 2014).¹¹ This analysis (hereinafter referred to as the “PNNL Residential Cost-Effectiveness Analysis” or “PNNL-23940”) follows the DOE methodology for determining energy savings and cost-effectiveness of various residential building energy codes.¹² It compares the prescriptive and mandatory provisions of the 2015 IECC to those in the 2009 IECC; as such, it does not include the new Energy Rating Index compliance alternative within the scope of its review. The PNNL Residential Cost-Effectiveness Analysis contains three main parts:

Section 2 in the PNNL Residential Cost-Effectiveness Analysis identifies the code changes between 2009 IECC and 2015 IECC applicable to residential single-family and low-rise multifamily buildings. The PNNL residential prototype building models are customized to reflect the requirements of the 2009 and 2015 editions of the IECC applicable to the State of New York. Representative locations for each IECC climate-zone occurring in the State of New York are identified to represent the variability in construction and energy code requirements throughout the state. Energy savings of the 2015 IECC over the baseline 2009 IECC are calculated and converted to energy costs using latest fuel prices specific to the State of New York.

Section 3 of the PNNL Residential Cost-Effectiveness Analysis documents the estimated incremental costs associated with the code changes identified in Section 2 (Energy Analysis) of the PNNL Residential Cost-Effectiveness Analysis. Section 3 then calculates the Life Cycle Cost (LCC), simple payback period, and annual consumer cash flow for the requirements set by the 2015 IECC over the 2009 IECC.

Section 4 of the PNNL Residential Cost-Effectiveness Analysis summarizes the energy and consumer benefits of the 2015 IECC compared to the 2009 IECC for each climate-zone within the State of New York as well as the average results for the whole State of New York.

Explanation of how studies were used. DOS used the studies, reports, and analyses described above to determine the initial costs of compliance with this rule and the ongoing costs of continuing to comply with this rule, and to determine that:

- (1) this rule would reduce energy use by commercial buildings and residential buildings;
- (2) the Amended Energy Code will meet or exceed ASHRAE 90.1-2007 (for commercial buildings) and meet or exceed the 2015 IECC (for residential buildings);
- (3) adoption of this rule is necessary to assure that the Energy Code will comply with Title III of the ECPA;
- (4) the Amended Energy Code, will be cost effective; and
- (5) the weighted average of the “first costs” associated with compliance with the Amended Energy Code will be less than the weighted average of the present value of the energy cost savings that can be expected in a ten year period.

4. COSTS

a. Costs to Regulated Parties.

Implementation Costs – “First Costs”. In general, the costs to regulated parties for implementing this rule will include the “first costs,” i.e., the increase (or decrease) in the costs of constructing a building to the requirements of Amended Energy Code rather than the requirements of the Current Energy Code.

For the six commercial building prototypes studied in the PNNL National Cost-Effectiveness Study in Climate Zones 4A and 5A, the “first costs” range from an increase of \$221,481 (for a primary school in Zone 4A) to a decrease of \$996,504 (for a large office building in Zone 5A).

For the four residential building prototypes studied in the PNNL Cost-Effectiveness Analysis, the “first costs” range from an increase of \$3,592 (for a multifamily prototype with either a slab, unheated basement or crawlspace or a heated basement in Zone 6A) to an increase of \$1,004 (for a multifamily prototype with either a slab, unheated basement or crawlspace or a heated basement in Zone 5A).

Other Implementation Costs. A copy of the 2015 IECC costs approximately \$44. A copy of ASHRAE 90.1-2013 costs approximately \$135. Both publications can also be purchased as a package from ICC at a cost of approximately \$149. DOS will make the 2015 Energy Code

Supplement available by download from the Department’s website, free of charge.

Continuing Compliance Costs. In general, the ongoing costs of continuing to comply with this rule will consist of the change (increase or decrease) in (1) the cost of maintaining energy-related systems and equipment and (2) the cost of periodic replacement of energy-related systems and equipment.

For commercial buildings, DOS anticipates that the present value (over 30 years) of the change in replacement costs range from an increase of \$992 (for a primary school in Zone 5A) to a decrease of \$138,295 (for a large office building in Zone 4A), and the present value (over 30 years) of the change in maintenance costs range from an increase of \$46,163 (for a large office building in Zone 4A) to a decrease of \$2,371 (for a small hotel in Zone 4A).

For residential buildings, DOS anticipates that there will be no significant differences between ongoing maintenance and replacement costs and, accordingly, DOS anticipates that in the case of a residential building, there will be no significant continuing compliance costs associated with this rule.

b. Costs to DOS, the State, and Local Governments.

DOS’s Division of Building Standards and Codes (“DBSC”) will offer training on the Amended Energy Code to code enforcement personnel, registered design professionals, and other interested parties. However, offering such training is part of the DBSC’s core mission, and DOS anticipates that DBSC will be able to offer such training using its existing staff and facilities, at no significant additional cost to the agency.

Local governments (cities, towns, and villages), counties and State agencies that are currently required by other existing law to administer and enforce the Energy Code will continue to be required by other existing law to administer and enforce the Amended Energy Code. DOS does not anticipate that this rule will have any significant impact on the existing code administration and enforcement obligations.

Local governments, counties, and State agencies that currently administer and enforce the Energy Code will be required to ensure that their code enforcement personnel receive training on the Amended Energy Code. However, DOS anticipates that code enforcement personnel will be able to receive such training as part of the annual “in-service” code training they are already required to receive by other existing law.

Local governments, counties, and State agencies that currently administer and enforce the Energy Code will be required to purchase one or more copies of the 2015 IECC (about \$44) and one or more copies of ASHRAE 90.1-2013 (about \$135). Both publications can also be purchased as a package from ICC at a cost of approximately \$149. The 2015 Energy Code Supplement will be made available by download from the Department’s website, free of charge.

Local governments, counties, and State agencies that construct buildings for their own use will be required to comply with the Amended Energy Code. The costs and benefits for a local government, county or State agency constructs a building for its own use should be substantially similar to the costs and benefits realized by any other regulated party.

5. LOCAL GOVERNMENT MANDATES.

Existing law makes most local governments (cities, towns, and villages) and certain counties responsible for enforcing the Energy Code. This rule will not change the existing code enforcement responsibilities of any local government or county.

Local governments and counties that currently administer and enforce the Energy Code will be required to ensure that their code enforcement personnel receive training on the Amended Energy Code. However, code enforcement personnel are already required by regulation to receive annual “in-service” code training. DOS anticipates that code enforcement personnel will be able to receive training on the Amended Energy Code as part of the already required in-service training.

Local governments and counties that construct buildings for their own use are required to comply with the Current Energy Code, and will be required to comply with the Amended Energy Code.

6. PAPERWORK.

This rule will not add any new or additional reporting or paperwork requirements, except as follows:

(1) This rule will require that reports verifying compliance with air leakage testing provisions of section R402.4.1.2 of the 2015 IECC Residential Provisions (as amended) be submitted to and retained by the code enforcement official.

(2) This rule will clarify that certain drawings, manuals, and other data relating to lighting systems and equipment must be provided to the owner of a commercial building.

7. DUPLICATION.

DOS believes that this rule does not duplicate or conflict with any rule or other legal requirement of the State or the Federal government.

8. ALTERNATIVES.

Adopting ASHRAE 90.1-2013 as the new Energy Code for commercial

buildings was considered. This alternative was not selected because adopting the “commercial provisions” of the 2015 IECC (as amended by the 2015 Energy Code Supplement) provides flexibility to building owners and design professionals, while still assuring that the Energy Code for commercial buildings meets or exceeds ASHRAE 90.1-2013.

Adopting the 2015 IECC Commercial Provisions and ASHRAE 90.1-2013, without change, as the new Energy Code for commercial buildings, and adopting the 2015 IECC Residential Provisions, without change, as the new Energy Code for residential buildings were considered. However, these alternatives were not selected because it was determined that the 2015 IECC and ASHRAE 90.1-2013 must be amended to comply with Title III of the EPCA and with Article 11 of the Energy Law.

9. FEDERAL STANDARDS.

This rule will not cause the Energy Code to violate or exceed any applicable Federal standard.

10. COMPLIANCE SCHEDULE.

This rule will be effective 90 days after the date of publication of the Notice of Adoption. DOS anticipates that regulated parties will be able to comply with the amended the Energy Code immediately upon the rule becoming effective.

¹ The Code Council is a council established within the Department of State. See Executive Law § 374(1).

² <http://www.gpo.gov/fdsys/pkg/FR-2014-09-26/pdf/2014-22882.pdf>

³ http://www.energycodes.gov/sites/default/files/documents/Cost-effectiveness_of_ASHRAE_Standard_90-1-2013-Report.pdf (accessed February, 2015).

⁴ http://www.pnnl.gov/main/publications/external/technical_reports/PNNL-23479.pdf

⁵ http://www.energycodes.gov/sites/default/files/documents/Cost-effectiveness_of_ASHRAE_Standard_90-1-2013-Cost_Estimate.zip (accessed March 2, 2015).

⁶ http://www.eia.gov/electricity/sales_revenue_price/pdf/table4.pdf (accessed April 23, 2015).

⁷ <http://eia.gov/tools/faqs/faq.cfm?id=45&t=8> and <http://eia.gov/forecasts/aeo/pdf/appg.pdf> (accessed April 23, 2015). In 2013, the approximate heat content of natural gas consumed by end-use sectors was 1,028 Btu / cubic foot. One therm equals 100,000 Btu. Using these factors, dividing the natural gas price per 1,000 cubic feet by 10.28 give the natural gas price per therm: \$7.98 per 1,000 cubic feet divided by 10.28 equals \$0.7763 per therm.

⁸ <http://dx.doi.org/10.6028/NIST.IR.85-3273-28>

⁹ <http://www.gpo.gov/fdsys/pkg/FR-2015-06-11/pdf/2015-14297.pdf>

¹⁰ <http://www.energycodes.gov/sites/default/files/documents/NationalResidentialEnergyAnalysis.pdf> (accessed March 9, 2015).

¹¹ http://www.pnnl.gov/main/publications/external/technical_reports/PNNL-23940.pdf (accessed March 9, 2015).

¹² Methodology for Evaluating Cost-Effectiveness of Residential Energy Code Changes (Taylor et al. 2012), https://www.energycodes.gov/sites/default/files/documents/residential_methodology.pdf

Summary of Regulatory Flexibility Analysis

1. EFFECT OF RULE.

The rule will amend and update the State Energy Conservation Construction Code (the Energy Code). Article 11 of the Energy Law provides that the Energy Code (1) is applicable in all parts of the State and (2) applies to all new buildings, public and private, and to renovations and alterations of and additions to all existing buildings, public or private. Therefore, the Energy Code, as amended by this rule, will apply to every small business or local government that constructs a new building or renovates, alters or enlarges an existing building anywhere in the State. The Department of State (DOS) is not able to estimate the number of small businesses and local governments that will construct new buildings or renovate, alter or enlarge existing buildings, but that number is likely to be large.

This rule will require that newly constructed residential buildings be tested for air leakage rates, and this rule will specify standards for such testing. This rule will apply to businesses that perform such testing. DOS is not able to estimate the number of small businesses that perform such testing.

Certain businesses that provide services or products to owners of buildings, such as design professional (architects and professional engineers), will be impacted by this rule. DOS is not able to estimate the number of such indirectly affected businesses. However approximately 45,000 design professional are registered to practice in New York State.

Approximately 1,500 local governments (cities, towns, villages, and counties) are required by existing law to enforce the Energy Code with respect to buildings within their borders. When this rule becomes effective,

those local governments will continue to be required to enforce the Energy Code, as amended by this rule, with respect to buildings within their borders.

2. COMPLIANCE REQUIREMENTS.

Currently, every small business or local government that constructs a new building or renovates an existing building is required to comply with current versions of the Energy Code. When this rule becomes effective, every small business or local government that constructs a new building or renovates an existing building will have to comply with the Energy Code as amended by this rule.

Local governments that enforce the Energy Code are now required to review permit applications relating to buildings for compliance with current versions of the Energy Code. When this rule becomes effective, those local governments will have to review permit applications relating to buildings for compliance with the Energy Code as amended by this rule.

This rule will require newly constructed residential buildings to be tested verifying that such buildings have air leakage rates that do not exceed three air changes per hour. For residential buildings containing two or more dwelling units, this rule will allow, in lieu of testing the entire building, the testing of each “testing unit” (dwelling unit or other conditioned occupied space) in the building; the tests must verify that each “testing unit” has an air leakage rate that does not exceed 0.3 cubic feet per minute for each square foot of surface area within the testing unit.

The Energy Code, amended by this rule, will be set forth in certain publications (the “New Energy Code Books”), including the 2015 International Energy Conservation Code (the “2015 IECC”), the 2013 edition of the Energy Standard for Buildings Except Low Rise Residential Buildings (“ASHRAE 90.1-2013”), the 2015 Supplement to the New York State Energy Conservation Construction Code (the “2015 Energy Code Supplement”). Local governments that enforce the Energy Code, design professionals who provide services to building owners, and other interested parties may find that it is necessary to obtain the New Energy Code Books.

Local governments that enforce the Energy Code will be required to see that their code enforcement officials (CEOs) receive training on the amendments to the Energy Code made by this rule. Certain indirectly affected parties, such as design professionals who provide services to owners of buildings, may find it necessary to receive similar training.

3. PROFESSIONAL SERVICES.

Building owners typically rely on design professionals for their expertise in building and energy conservation regulations. When this rule becomes effective, regulated parties will continue to rely upon design, construction and energy conservation professionals to advise them with respect to the requirements of the Energy Code as amended by this rule.

Local governments that enforce the Energy Code rely on trained CEOs to review permit applications and/or to conduct construction inspections to determine compliance. When this rule becomes effective, local governments that enforce the Energy Code will continue to rely on trained CEOs to determine compliance with the Energy Code as amended by this rule.

This rule provides that, when required by the CEO, a regulated party constructing a new residential building will be required to use the services of an approved third party to conduct the air leakage testing required by this rule.

4. COMPLIANCE COSTS.

A. Initial costs that will be incurred to comply with this rule.

For a small business or local government that constructs a new building or renovates an existing building, the initial costs of compliance with this rule will include the increase (or decrease) in the cost of constructing or renovating the building to the requirements of the Energy Code as amended by this rule compared to the cost of constructing or renovating the building to the requirements of the current version of the Energy Code (such increases or decreases in costs hereinafter referred to as the “incremental first costs”).

The “incremental first costs” will vary depending on the type of the building and the climate zone in which the building is located. Based on the studies more fully described in the full Regulatory Impact Statement (RIS) and full Regulatory Flexibility Analysis for Small Businesses and Local Governments (RFASBLG) for this rule making, DOS anticipates that:

(1) for the prototype commercial buildings considered in those studies, the “incremental first costs” will range from a high of \$221,481 (for a primary school in climate zone 4A) to a low of negative \$996,504 (for a large office building in climate zone 5A, the negative “incremental first costs” indicating a decrease in such costs); and

(2) for the prototype residential buildings considered, the “incremental first costs” will range from a high of \$3,592 (for a single-family dwelling with a slab foundation and an unheated basement or crawlspace in climate zone 6A) to a low of \$1,004 (for a multi-family residential building with slab foundation and an unheated basement or crawlspace in climate zone 5A).

For local governments, design professionals, and other interested par-

ties who find it necessary to obtain the New Energy Code Books, DOS estimates the cost of purchasing one copy of the 2015 IECC and one copy of ASHRAE 90.1-2013 will be between \$149 and \$179. DOS will make the 2015 Energy Code Supplement available by download from the Department's website at no cost.

Local governments that enforce the Energy Code will be required to see that their CEOs receive training on amendments made to the Energy Code by this rule. However, CEOs are required by existing law to receive 24 hours of annual in-service training. DOS anticipates that CEOs will be able to receive training relating to this rule as part of such already required annual training, at little or no additional cost to the CEOs or to the local governments that employ them.

DOS anticipates training costs for design professionals will be approximately \$250 to \$400 per person, based upon a class size of 20 to 25 persons. However, DOS anticipates that NYSERDA will sponsor training in the Energy Code to interested parties, and DOS anticipates that costs to participate in these NYSERDA-sponsored trainings will be nominal. DOS also anticipates that design professionals will be able to receive training relating to this rule as part of the continuing education courses that design professionals are required by other laws to take to maintain licensure, at little or no additional cost to the design professionals.

B. Annual cost for continuing compliance with this rule.

The annual costs of continuing to comply with this rule will include the differences between the annual costs of maintaining and replacing the energy-related systems and equipment required by the Energy Code as amended by this rule compared to the annual costs of maintaining and replacing the energy-related systems and equipment required by the current version of the Energy Code.

Based on the studies more fully described in the full RIS and RFASBLG for this rule making, DOS anticipates that for the prototype commercial buildings considered, the present value (over 30 years) of the increase in maintenance costs will range from a high of \$46,163 (large office building, zone 4A) to a low of negative \$2,371 (small hotel in zone 4A, the negative value indicating a decrease in maintenance costs); and DOS anticipates that the present value (over 30 years) of the increase in replacement costs will range from a high of \$50,039 (standalone retail building in zone 4A) to a low of negative \$138,295 (large office building in zone 4A, the negative value indicating a decrease in replacement costs).

For residential buildings, DOS anticipates that the rule will result in no significant changes to annual maintenance and replacement costs.

C. Variations in costs of compliance.

Variations in the changes in the initial costs of compliance and the annual costs of continuing to comply with this rule are likely to depend on the size, and type of the building owned or operated by a small business or local government and the climate zone in which such building is located, and not on the type or size of the business or local government.

5. ECONOMIC AND TECHNOLOGICAL FEASIBILITY.

Economic Feasibility

Based on the studies mentioned in the full RIS and full RFASBLG for this rule making, DOS anticipates that, for both commercial buildings and residential buildings, (1) compliance with this rule will result in significant savings in energy costs, and (2) on average, the present value of the savings in energy costs over 30 years exceeds the sum of the increase in initial construction costs ("incremental first costs") plus the present value of the increase in equipment maintenance and replacement costs over 30 years. DOS also anticipates that, on average, the present value of the savings in energy costs over 10 years exceeds the "incremental first costs."

Technological Feasibility.

ASHRAE 90.1-2013 was published in 2013, and the 2015 IECC was first published in May of 2014. Therefore, by the time this rule becomes effective, parties involved in the construction industry will have had nearly two years to anticipate and prepare for the Energy Code as amended by this rule. DOS anticipates that design professionals will be able to design, and regulated parties will be able to construct, buildings that comply with the Energy Code as amended by this rule.

6. MINIMIZING ADVERSE EFFECTS.

The Energy Code as amended by this rule will provide several compliance options, including a performance-based option for all buildings, as well as an energy rating index option for residential buildings. This will allow small businesses and local governments that own buildings to select the most cost-effective alternative.

Energy Law section 11-101 provides that the Energy Code shall "mandate that economically reasonable energy conservation techniques be used in the design and construction of all new public and private buildings in New York" (emphasis added). The American Recovery and Reinvestment Act of 2009 requires participating states to develop a plan for achieving at least a 90% rate of compliance with energy codes. Therefore, DOS did not consider establishing differing compliance or reporting requirements or timetables for small businesses and local governments, or providing an exemption from coverage by the rule, or by any part thereof, for small businesses and local governments.

7. SMALL BUSINESS AND LOCAL GOVERNMENT PARTICIPATION.

DOS published an explanation of the proposed rule in Building New York, an electronic news bulletin covering topics related to the Uniform Code, the Energy Code, and the construction industry which is prepared by DOS and which is currently distributed to approximately 10,000 subscribers, including local governments, design professionals, and others involved in all aspects of the construction industry.

DOS also posted a draft of the proposed rule and a draft of the 2015 Energy Code Supplement on the DOS website.

The explanation published in Building New York and the DOS website posting included an invitation to all interested parties, including small businesses and local governments, to comment on the proposal and otherwise to participate in the development of the rule.

8. VIOLATIONS AND PENALTIES ASSOCIATED WITH VIOLATIONS.

This rule will amend the Energy Code, and violations of the Energy Code as amended by this rule will be subject to the penalties prescribed in Energy Law section 11-108. However, this rule will not directly establish or modify a violation, and this rule will not directly establish or modify penalties associated with a violation.

Summary of Rural Area Flexibility Analysis

1. TYPES AND ESTIMATED NUMBERS OF RURAL AREAS.

This rule will amend the State Energy Conservation Construction Code of New York State (the "Energy Code"). The Energy Code is applicable in all parts of the State, including all rural areas. Therefore, this rule will apply in all rural areas of the State.

2. REPORTING, RECORDKEEPING AND OTHER COMPLIANCE REQUIREMENTS.

Currently, every person or entity that constructs a new building, or renovates, alters or enlarges an existing building, is required to comply with the current version of the Energy Code; to prepare construction documents demonstrating compliance with the current version of the Energy Code; and submit construction documents with the building permit application. When this rule becomes effective, a person or entity that constructs a new building, or renovates, alters or enlarges an existing building, will be required to comply with the Energy Code as amended by this rule; to prepare construction documents, including documents demonstrating compliance with the Energy Code amended by this rule; submit those documents with the building permit application.

Local governments (including local governments in rural areas) that enforce the Energy Code are required to review permit applications relating to buildings' compliance with the current version of the Energy Code, issue permits, conduct construction inspections, issue certificates of occupancy, and keep applicable records. When this rule becomes effective, local governments (including local governments in rural areas) that enforce the Energy Code will be required to review permit applications for compliance with the Energy Code amended by this rule, issue permits, conduct construction inspections, issue certificates of occupancy, and keep applicable records.

This rule requires newly constructed residential buildings to be tested to verify that such buildings have air leakage rates that do not exceed three air changes per hour. For residential buildings containing two or more dwelling units, this rule will allow, in lieu of testing the entire building, the testing of each "testing unit" (dwelling unit or other conditioned occupied space) in the building; the tests must verify that each "testing unit" has an air leakage rate that does not exceed 0.3 cubic feet per minute for each square foot of surface area within the testing unit. For residential buildings containing more than seven dwelling units, testing of sample units will be allowed where approved by the code official. A record of the test results must be prepared and signed by the party conducting the test, and provided to the code official.

The Energy Code, amended by this rule, will be set forth in certain publications (the "New Energy Code Books"), including the 2015 International Energy Conservation Code (the "2015 IECC"), the 2013 edition of the Energy Standard for Buildings Except Low Rise Residential Buildings ("ASHRAE 90.1-2013"), and the 2015 Supplement to the New York State Energy Conservation Construction Code (the "2015 Energy Code Supplement"). Local governments that enforce the Energy Code, design professionals who provide services to building owners, and other interested parties may find that it is necessary to obtain the New Energy Code Books.

Local governments (including local governments in rural areas) that enforce the Energy Code will be required to see that their code enforcement officials (CEOs) receive training on the Energy Code, as amended by this rule. Indirectly affected parties, such as design professionals providing services to owners of buildings, may need to receive similar training.

3. PROFESSIONAL SERVICES.

Building owners typically rely on design professionals for their

expertise in building and energy conservation regulations. When this rule becomes effective, building owners will continue to rely upon design, construction and energy conservation professionals to advise them with respect to the requirements of the Energy Code amended by this rule.

Local governments (including local governments in rural areas) that enforce the Energy Code rely on trained CEOs to review permit applications and/or to conduct construction inspections to determine compliance. When this rule becomes effective, local governments that enforce the Energy Code will continue to rely on trained CEOs to determine compliance with the Energy Code amended by this rule.

This rule provides that, when required by the CEO, a regulated party constructing a new residential building will be required to use the services of an approved third party to conduct the air leakage testing required by this rule.

4. COMPLIANCE COSTS.

A. Initial costs that will be incurred to comply with this rule.

For a person or entity that constructs a new building (including a new building in a rural area) or renovates an existing building (including an existing building in a rural area), the initial costs of compliance with this rule will include the increase (or decrease) in the cost of constructing or renovating the building to the requirements of the Energy Code as amended by this rule compared to the cost of constructing or renovating the building to the requirements of the current version of the Energy Code (such increase [or decrease] in costs being hereinafter referred to as the "incremental first costs").

The "incremental first costs" will vary depending on the type of the building and the climate zone in which the building is located. Based on the studies more fully described in the full Regulatory Impact Statement (RIS), DOS anticipates that:

(1) for the prototype commercial buildings considered in those studies, the "incremental first costs" will range from a high of \$221,481 (for a primary school in climate zone 4A) to a low of negative \$996,504 (for a large office building in climate zone 5A, the negative "incremental first costs" indicating a decrease in such costs); and

(2) for the prototype residential buildings considered, the "incremental first costs" will range from a high of \$3,592 (for a single-family dwelling with a slab foundation and an unheated basement or crawlspace in climate zone 6A) to a low of \$1,004 (for a multi-family residential building with slab foundation and an unheated basement or crawlspace in climate zone 5A).

For local governments, design professionals, and other interested parties who find it necessary to obtain the New Energy Code Books, DOS estimates the cost of purchasing one copy of the 2015 IECC and one copy of ASHRAE 90.1-2013 will be between \$149 and \$179. DOS will make the 2015 Energy Code Supplement available by download from the Department's website at no cost.

Local governments (including local governments in rural areas) that enforce the Energy Code will be required to ensure that their CEOs receive training on amendments made to the Energy Code by this rule. However, CEOs are required by existing laws to receive 24 hours of annual in-service training. DOS anticipates that CEOs will be able to receive training relating to this rule as part of such already required annual training, at little or no additional cost to the CEOs or to local governments that employ them.

DOS anticipates training costs for design professionals will be approximately \$250 to \$400 per person, based upon a class size of 20 to 25 persons. However, DOS anticipates that NYSERDA will sponsor training in the Energy Code to interested parties, and DOS anticipates that costs to participate in these NYSERDA-sponsored trainings will be nominal. DOS also anticipates that design professionals will be able to receive training relating to this rule as part of the continuing education courses design professionals are required by other laws to take to maintain licensure, at little or no additional cost to the design professionals.

B. Annual cost for continuing compliance with this rule.

The annual costs of continuing to comply with this rule will include the differences between the annual costs of maintaining and replacing the energy-related systems and equipment required by the Energy Code as amended by this rule compared to the annual costs of maintaining and replacing the energy-related systems and equipment required by the current version of the Energy Code.

Based on the studies more fully described in the full RIS for this rule making, DOS anticipates that for the prototype commercial buildings considered in those studies, the present value (over 30 years) of the increase in maintenance costs will range from a high of \$46,163 (large office building, zone 4A) to a low of negative \$2,371 (small hotel in zone 4A, the negative value indicating a decrease in maintenance costs); and DOS anticipates that the present value (over 30 years) of the increase in replacement costs will range from a high of \$50,039 (standalone retail building in zone 4A) to a low of negative \$138,295 (large office building in zone 4A, the negative value indicating a decrease in replacement costs).

With respect to residential buildings, DOS anticipates that the rule will result in no significant changes to annual maintenance and replacement costs.

C. Variations in costs of compliance.

Variations in the changes in the initial costs of compliance and the annual costs of continuing to comply with this rule are likely to depend on the size, and type of the building owned or operated by a small business or local government and the climate zone in which such building is located, and not on the type of the public or private entity that owns the building.

5. MINIMIZING ADVERSE IMPACT.

Based on the studies mentioned above in this full Rural Area Flexibility Analysis (and more fully described in the full RIS for this rule making), DOS anticipates that compliance with the Energy Code as amended by this rule, when compared to compliance with the current version of the Energy Code will save energy and energy costs, and that, on average:

(1) for commercial buildings, the present value (over 30 years) of the savings in energy costs resulting from this rule will be greater than the sum of the "incremental first costs" (the increase in initial construction costs resulting from this rule) plus the present value (over 30 years) of the increases in maintenance and replacement costs resulting from this rule;

(2) for residential buildings, the present value (over 30 years) of the savings in energy costs resulting from this rule will be greater than the "incremental first costs" (the increase in initial construction costs resulting from this rule), and that this rule will have only a negligible impact on on-going maintenance and replacement costs; and

(3) for both commercial buildings and residential buildings, the present value (over 10 years) of the savings in energy costs resulting from this rule will be greater than the "incremental first costs" (the increase in initial construction costs resulting from this rule).

Therefore, DOS anticipates that this rule will result in a net economic benefit in all areas of the State, including all rural areas.

The Energy Code as amended provides several compliance options; a performance-based option for all buildings, and an energy rating index option for residential buildings. This allows owners of buildings (including owners of buildings in rural areas) to select the most cost-effective alternative.

Energy Law section 11-101 provides that the Energy Code shall "mandate that economically reasonable energy conservation techniques be used in the design and construction of all new public and private buildings in New York" (emphasis added). The American Recovery and Reinvestment Act of 2009 requires participating states to develop a plan for achieving at least a 90% rate of compliance with energy codes. Therefore, the State Fire Prevention and Building Code Council and DOS did not consider establishing differing compliance or reporting requirements or timetables taking into account resources available to rural areas.

6. RURAL AREA PARTICIPATION.

DOS notified interested parties throughout the State (including interested parties in rural areas) of the proposed rule by publishing an explanation of the proposal in Building New York, an electronic news bulletin. DOS posted a draft of the rule and a draft of the 2015 Energy Code Supplement on the DOS website. The explanation published in the Building New York news bulletin and the posting on the DOS website included an invitation to all interested parties to comment on the proposal and participate in the development of the rule.

Job Impact Statement

The Department of State has determined that this rule will not have a substantial adverse impact on jobs and employment opportunities.

The rule will amend the State Energy Conservation Construction Code (the "Energy Code"). The Energy Code, as amended by this rule, will be set forth in (1) the 2015 International Energy Conservation Code (the "2015 IECC"), (2) the 2013 edition of the Energy Standard for Buildings Except Low Rise Residential Buildings ("ASHRAE 90.1-2013"), and (3) the 2015 Supplement to the New York State Energy Conservation Construction Code (the "2015 Energy Code Supplement"). For the purposes of applying the 2015 IECC and ASHRAE 90.1-2013 in New York State, the Commercial Provisions of the 2015 IECC (the "2015 IECC Commercial Provisions") will be deemed to be amended in the manner provided in Part 1 of the 2015 Energy Code Supplement; ASHRAE 90.1-2013 will be deemed to be amended in the manner provided in Part 2 of the 2015 Energy Code Supplement; and the Residential Provisions of the 2015 IECC (the "2-15 IECC Residential Provisions") will be deemed to be amended in the manner provided in Part 3 of the 2015 Energy Code Supplement.

The Energy Code, as amended by this rule, will be (1) a building energy code for residential buildings which is based on the 2015 IECC Residential Provisions and (2) a building energy code for commercial buildings which is based on the 2015 IECC Commercial Provisions and ASHRAE 90.1-2013.

The 2015 IECC is a model code developed and published by the International Code Council, Inc. ASHRAE 90.1-2013 is a standard

published by the American Society Of Heating and Refrigeration and Air Conditioning Engineers, Inc.. Both the 2015 IECC and ASHRAE 90.1-2013 incorporate more current technology in the area of energy conservation. In addition, as a performance-based, rather than a prescriptive, code, the 2015 IECC provides for alternative methods of achieving code compliance, thereby allowing regulated parties to choose the most cost effective method.

As more fully appears in the Regulatory Impact Statement issued for this rule making, the Department of State anticipates that the Energy Code, as amended by this rule, will be cost effective, meaning that the present value of savings in energy costs resulting from constructing buildings according to requirements of the Energy Code as amended by this rule, rather than the requirements of the current version of the Energy Code, will exceed the sum of the increase in initial construction costs plus the present value of the increase in maintenance and replacement costs resulting from constructing buildings according to requirements of the Energy Code as amended by this rule, rather than the requirements of the current version of the Energy Code.

As a consequence, the Department of State and the State Fire Prevention and Building Code Council conclude that the Energy Code, as amended by this rule, will provide a greater incentive for the construction of new buildings and the rehabilitation of existing buildings than exists with the current version of the Energy Code. Therefore, the Department of State and the State Fire Prevention and Building Code Council conclude that this rule will not have a substantial adverse impact on jobs and employment opportunities within New York.

PROPOSED RULE MAKING HEARING(S) SCHEDULED

To Adopt Updated Provisions for the Uniform Fire Prevention and Building Code (“Uniform Code”)

I.D. No. DOS-47-15-00017-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 1219; repeal of Parts 1220-1228; and addition of new Parts 1220-1227 to Title 19 NYCRR.

Statutory authority: Executive Law, section 377

Subject: To adopt updated provisions for the Uniform Fire Prevention and Building Code (“Uniform Code”).

Purpose: To repeal the existing text of the Uniform Code and adopt updated text for the Uniform Code.

Public hearing(s) will be held at: 10:00 a.m., Jan. 25, 2016 at Department of State, 99 Washington Ave., Conference Rm. 505, Albany, NY; 10:00 a.m., Jan. 26, 2016 at Perry B. Duryea Jr. State Office Bldg., 250 Veterans Memorial Hwy., Training Rm. 1A16, Hauppauge, NY; 10:00 a.m., Jan. 27, 2016 at Hughes State Office Bldg., 333 E. Washington St., Main Hearing Rm. - 1st Fl., Syracuse, NY; and 10:00 a.m., Jan. 28, 2016 at Walter J. Mahoney State Office Bldg., 65 Court St., Hearing Rm. 4, Buffalo, NY.

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

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

Substance of proposed rule (Full text is not posted on a State website):

This rule making would repeal the current versions of Parts 1220, 1221, 1222, 1223, 1224, 1225, 1226, 1227, and 1228 of Title 19 of the Official Compilation of Codes, Rules and Regulations of the State of New York and add new Parts 1220, 1221, 1222, 1223, 1224, 1225, 1226 and 1227. The individual Parts pertain to specified portions of the Uniform Fire Prevention and Building Code and are summarized below:

Part 1220 Residential Construction
Section 1220.1. Requirements.

(a) Except as provided in subdivision (b) of this section, the construction, alteration, movement, replacement, repair, equipment, use, maintenance, removal and demolition of applicable residential structures and their accessory structures shall comply with the requirements of the “2015 International Residential Code” published by the International Code Council, Inc. (hereinafter the 2015 IRC), incorporated herein by reference.

Applicable residential structures include detached one- and two-family dwellings and multiple single-family dwellings (townhouses), not more than three stories in height above grade with a separate means of egress; such one-family dwellings converted to bed and breakfast dwellings; and

certain specified such dwellings under the supervision or jurisdiction of a department or agency of New York State (NYS). Copies of the 2015 IRC may be obtained from the publisher at the following address of the publisher:

International Code Council, Inc.
500 New Jersey Avenue, NW, 6th Floor
Washington, DC 20001

The 2015 IRC is available for public inspection and copying at:
New York State Department of State
One Commerce Plaza, 99 Washington Avenue
Albany, NY 12231-0001

(b) As applied in NYS, the 2015 IRC shall be deemed amended as specified in “2016 Uniform Code Supplement,” published in January, 2016, by the NYS Department of State and incorporated herein by reference. Copies may be obtained and are available for inspection and copying at the New York State office specified in subdivision (a) of this section.

(c) Referenced standards. Certain published standards are incorporated by reference into 19 NYCRR Part 1220. The 2016 Uniform Code Supplement identifies such standards, and the names and addresses of publishers from which copies may be obtained. Such standards are available for public inspection and copying at the NYS office specified in subdivision (a) of this section.

Part 1221 Building Construction
Section 1221.1. Requirements.

(a) Except as provided in subdivision (b) of this section, the construction, alteration, movement, enlargement, replacement, repair, equipment, use and occupancy, maintenance, removal and demolition of every building or structure, or appurtenance connected or attached to any building or structure, shall comply with the requirements of the publication entitled “2015 International Building Code” published by the International Code Council, Inc. (hereinafter the 2015 IBC), incorporated herein by reference. Copies of the 2015 IBC may be obtained from the publisher at the address specified in subdivision (a) of Section 1220.1. The 2015 IBC is available for public inspection and copying at the NYS office listed in subdivision (a) of section 1220.1.

(b) As applied in NYS, the 2015 IBC shall be deemed amended as specified in “2016 Uniform Code Supplement,” published in January 2016, by the NYS Department of State and incorporated herein by reference. Copies may be obtained and are available for inspection and copying at the NYS office specified in subdivision (a) of section 1220.1.

(c) Referenced standards. Certain published standards are incorporated by reference into 19 NYCRR Part 1221. The 2016 Uniform Code Supplement identifies such standards, and the names and addresses of publishers from which copies may be obtained. Such standards are available for public inspection and at the NYS office specified in subdivision (a) of Section 1220.1.

Part 1222 Plumbing Systems
Section 1222.1. Requirements.

(a) Except as provided in subdivision (b) of this section, the erection, installation, alteration, repair, relocation, replacement, addition to, use or maintenance of plumbing systems, nonflammable medical gas systems, and sanitary and condensate vacuum collection systems, shall comply with the requirements of the “2015 International Plumbing Code” published by the International Code Council, Inc. (hereinafter the 2015 IPC), incorporated herein by reference. Copies of the 2015 IPC may be obtained from the publisher, ICC, at the address of the publisher specified in subdivision (a) of Section 1220.1. The 2015 IPC is available for public inspection and copying at the NYS office specified in subdivision (a) of section 1220.1.

(b) As applied in NYS, the 2015 IPC shall be deemed amended as specified in “2016 Uniform Code Supplement,” published in January 2016, by the NYS Department of State and incorporated herein by reference. Copies may be obtained and are available for inspection and copying at the NYS office specified in subdivision (a) of section 1220.1.

(c) Referenced standards. Certain published standards are incorporated by reference into 19 NYCRR Part 1222. The 2016 Uniform Code Supplement identifies such standards, and the names and addresses of publishers from which copies may be obtained. Such standards are available for public inspection and copying at the NYS office specified in subdivision (a) of Section 1220.1.

Part 1223 Mechanical Systems
Section 1223.1. Requirements.

(a) Except as provided in subdivision (b) of this section, the design, installation, maintenance, alteration and inspection of mechanical systems that are permanently installed and utilized to provide control of environmental conditions and related processes within buildings shall comply with the requirements of the publication entitled “2015 International Mechanical Code” published by the International Code Council, Inc. (hereinafter the 2015 IMC), incorporated herein by reference. Copies of the 2015 IMC may be obtained from the publisher at the address of the

publisher specified in subdivision (a) of Section 1220.1. The 2015 IMC is available for public inspection and copying at the NYS office specified in subdivision (a) of section 1220.1.

(b) As applied in NYS, the 2015 IMC shall be deemed amended as specified in "2016 Uniform Code Supplement," published in January, 2016, by the NYS Department of State and incorporated herein by reference. Copies may be obtained and are available for inspection and copying at the NYS office specified in subdivision (a) of section 1220.1.

(c) Referenced standards. Certain published standards are incorporated by reference into 19 NYCRR Part 1223. The 2016 Uniform Code Supplement identifies such standards, and the names and addresses of publishers from which copies may be obtained. Such standards are available for public inspection and copying at the NYS office specified in subdivision (a) of Section 1220.1.

Part 1224 Fuel Gas Equipment and Systems

Section 1224.1. Requirements.

(a) Except as provided in subdivision (b) of this section, the design, installation, maintenance, alteration and inspection of fuel gas piping and equipment, fuel gas-fired appliances and fuel gas fired appliance ventilating systems shall comply with the requirements of the publication entitled "2015 International Fuel Gas Code" published by the International Code Council, Inc. (hereinafter the 2015 IFGC), incorporated herein by reference. Copies of the 2015 IFGC may be obtained from the publisher at the address of the publisher specified in subdivision (a) of Section 1220.1. The 2015 IFGC is available for public inspection and copying at the NYS office specified in subdivision (a) of section 1220.1.

(b) As applied in NYS, the 2015 IFGC shall be deemed amended as specified in "2016 Uniform Code Supplement," published in January, 2016, by the NYS Department of State and incorporated herein by reference. Copies may be obtained and are available for inspection and copying at the NYS office specified in subdivision (a) of section 1220.1.

(c) Referenced standards. Certain published standards are incorporated by reference into 19 NYCRR Part 1224. The 2016 Uniform Code Supplement identifies such standards, and the names and addresses of publishers from which copies may be obtained. Such standards are available for public inspection and copying at the NYS office specified in subdivision (a) of Section 1220.1.

Part 1225 Fire Prevention

Section 1225.1. Requirements.

(a) Except as provided in subdivision (b) of this section, structures, processes and premises; the storage, handling or use of structures, materials or devices; the occupancy and operation of structures and premises; and the construction, extension, repair, alteration or removal of fire suppression and alarms systems, shall comply with the requirements of the publication entitled "2015 International Fire Code" published by the International Code Council, Inc. (hereinafter the 2015 IFC), incorporated herein by reference. Copies of the 2015 IFC may be obtained from the publisher at the address of the publisher specified in subdivision (a) of Section 1220.1. The 2015 IFC is available for public inspection and copying at the NYS office specified in subdivision (a) of section 1220.1.

(b) As applied in NYS, the 2015 IFC shall be deemed amended as specified in "2016 Uniform Code Supplement," published in January, 2016, by the NYS Department of State and incorporated herein by reference. Copies may be obtained and are available for inspection and copying at the NYS office specified in subdivision (a) of section 1220.1.

(c) Referenced standards. Certain published standards are incorporated by reference into 19 NYCRR Part 1225. The 2016 Uniform Code Supplement identifies such standards, and the names and addresses of publishers from which copies may be obtained. Such standards are available for public inspection and copying at the NYS office specified in subdivision (a) of Section 1220.1.

Part 1226 Property Maintenance

Section 1226.1. Requirements.

(a) Except as provided in subdivision (b) of this section, all existing residential and nonresidential structures, premises, equipment and facilities, owners, operators and occupants of existing structures and premises, and the occupancy of existing structures and premises, shall comply with the requirements of the publication entitled "2015 International Property Maintenance Code" published by the International Code Council, Inc. (hereinafter the 2015 IPMC), and incorporated herein by reference. Copies of the 2015 IPMC may be obtained from the publisher at the address of the publisher specified in subdivision (a) of Section 1220.1. The 2015 IPMC is available for public inspection and copying at the NYS office specified in subdivision (a) of section 1220.1.

(b) As applied in NYS, the 2015 IPMC shall be deemed amended as specified in "2016 Uniform Code Supplement," published in January, 2016, by the NYS Department of State and incorporated herein by reference. Copies may be obtained and are available for inspection and copying at the NYS office specified in subdivision (a) of section 1220.1.

(c) Referenced standards. Certain published standards are incorporated

by reference into 19 NYCRR Part 1226. The 2016 Uniform Code Supplement identifies such standards, and the names and addresses of publishers from which copies may be obtained. Such standards are available for public inspection and copying at the NYS office specified in subdivision (a) of Section 1220.1.

Part 1227 Existing Buildings

Section 1227.1. Requirements.

(a) Except as provided in subdivision (b) of this section, the repair, alteration, change of occupancy, addition and relocation of existing buildings shall comply with the requirements of the "2015 International Existing Building Code" published by the International Code Council, Inc. (hereinafter the 2015 IEBC), incorporated herein by reference. Copies may be obtained from the publisher at the address of the publisher specified in subdivision (a) of Section 1220.1. The 2015 IEBC is available for public inspection and copying at the NYS office specified in subdivision (a) of section 1220.1.

(b) As applied in NYS, the 2015 IEBC shall be deemed amended as specified in "2016 Uniform Code Supplement," published in January 2016, by the NYS Department of State and incorporated herein by reference. Copies may be obtained and are available for inspection and copying at the NYS office specified in subdivision (a) of section 1220.1.

(c) Referenced standards. Certain published standards are incorporated by reference into 19 NYCRR Part 1227. The 2016 Uniform Code Supplement identifies such standards, and the names and addresses of publishers from which copies may be obtained. Such standards are available for public inspection and copying at the NYS office specified in subdivision (a) of section 1220.1.

Finally, 19 NYCRR Part 1219 would be amended to conform the references in such Part to the revised titles of Parts 1220 through 1227 and to delete the reference to the repealed Part 1228.

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

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

Public comment will be received until: February 5, 2016.

Summary of Regulatory Impact Statement

1. STATUTORY AUTHORITY

Article 18 of the Executive Law, entitled the New York State Uniform Fire Prevention and Building Code Act, establishes the State Fire Prevention and Building Code Council (hereinafter "Code Council") and authorizes such council to formulate a code to be known as the Uniform Fire Prevention and Building Code (hereinafter "Uniform Code"). Executive Law section 377 directs that the Uniform Code shall provide reasonably uniform standards and requirements for construction and construction materials for public and private buildings, including factory manufactured homes, consonant with accepted standards of engineering and fire prevention practices.

Executive Law section 378 provides that the Uniform Code shall address certain specified subjects. The subjects are listed in the full Regulatory Statement.

Subdivision 1 of Executive Law section 377 specifically states that the Code Council may amend particular provisions of the Uniform Code and shall periodically review the entire code to assure that it effectuates the purposes of Article 18 of the Executive Law. This rule making would repeal the existing text of the Uniform Code which is based on earlier editions of model codes published by the International Code Council (ICC), and replace it with new text which is based upon the 2015 editions of eight individual model codes developed and published by the ICC, a national building officials' organization. Although the existing text of the Uniform Code is to be repealed, much of the new code text will essentially be a recodification of current Uniform Code provisions but with appropriate modifications listed in the 2016 Uniform Code Supplement to accommodate advances in construction technology specific to New York State.

2. LEGISLATIVE OBJECTIVES

Subdivision 2 of Executive Law section 371 declares that it shall be the public policy of the State of New York to provide for promulgation of a Uniform Code addressing building construction and fire prevention in order to provide a basic minimum level of protection to all people of the State from the hazards of fire and inadequate building construction. The Code Council was assigned the task of formulating the Uniform Fire Prevention and Building Code which took effect January 1, 1984. However, in the years following 1984, the Uniform Code did not keep pace with the evolving technology of fire prevention and building construction. Furthermore, as the rest of the nation moved to using a nationally accepted set of model codes, New York continued to maintain the separate identity of its building and fire prevention code until January of 2003, when it repealed its entire code and replaced it with text based primarily on the 2000 edition of the International Codes.

The Uniform Code adopted in 2003 was based on International Codes, and represented the first major revision of the Uniform Code since its inception in January 1984. The Uniform Code was revised again in 2007 and 2010. The 2010 revision was based primarily on the 2006 edition of the International Codes. This rule making would revise the Uniform Code once again, and replace the current version of the Uniform Code with a new version based primarily on the 2015 edition of the International Codes. By repealing the existing text of the Uniform Code and replacing it with an update based primarily upon newer versions of model codes developed and published by the ICC, the Code Council seeks to better effectuate the purposes, objectives, and standards set forth in Article 18 of the Executive Law and therefore concludes that the rule making conforms with the public policy objectives of Executive Law section 371.

3. NEEDS AND BENEFITS

The purpose of this rule making is to adopt new provisions for the Uniform Code. This change is necessary if New York State is to remain competitive with the rest of the nation in matters involving building construction while at the same time providing an adequate level of safety to its residents. It is also necessary if New York State wishes to keep pace with evolving technology concerning fire prevention and building construction and to have a building and fire prevention code which is consistent with nationally accepted model codes.

Included in Item #3 of the full Regulatory Impact Statement, the Needs and Benefits of significant new provisions of the Uniform Code are discussed.

4. COSTS

a. COST TO REGULATED PARTIES FOR THE IMPLEMENTATION OF, AND CONTINUING COMPLIANCE, WITH THE PROPOSED RULE.

Further information concerning the costs of significant provisions of the Uniform Code is discussed in the full Regulatory Impact Statement. While costs vary depending on the construction or modification project, the Department does not anticipate that the costs will differ greatly from the current codes. This rule reflects performance based regulatory requirements that give regulated parties more alternatives to protect the occupants and users of buildings while at the same time fulfilling programmatic space needs with the most cost effective solution.

b. COSTS TO THE AGENCY, THE STATE AND LOCAL GOVERNMENTS FOR THE IMPLEMENTATION AND CONTINUED ADMINISTRATION OF THE RULE.

The Department of State, State agencies that administer and enforce the Uniform Code, State agencies that own or construct buildings, and local governments that administer and enforce the Uniform Code will be required to obtain copies of the new code books. It is anticipated that the set of code books will cost between \$554 and \$737. Smaller agencies and local governments typically require only one set of code books. Larger local governments may require multiple sets. Approximately 4,000 code enforcement officials in 1,600 municipalities will be affected by a new version of the Uniform Code.

Further information concerning costs and savings of the most significant of the new provisions of the Uniform Code are discussed within Item #3 of the full Regulatory Impact Statement.

5. LOCAL GOVERNMENT MANDATES

This rule making will impose some programs, services, duties and responsibilities upon counties, cities, towns, villages, school districts, fire districts and other special districts. When any of the aforementioned governmental entities undertake the construction of a building or structure, the construction process is subject to the provisions of the proposed rule to the same extent that the construction of a private building or structure would be regulated.

For example, this rule making will require emergency operation centers and schools located within a 250 mile per hour (mph) tornado design wind speed areas to build storm shelters designed to resist higher wind forces than other areas of the state.¹ These areas are located within a small portion of Chautauqua and Cattaraugus counties.

Similarly, existing buildings and structures owned or under the control of local government entities are potentially subject to maintenance or fire prevention provisions of the Uniform Code, and therefore, may become subject to maintenance and fire prevention provisions of the Uniform Code, as amended by this rule.

Pursuant to Executive Law, Section 381, every city, town and village is responsible for administering and enforcing the Uniform Code. Consequently, local government personnel will require training in the details of this rule. However, the Department of State, Building Standards and Codes Division has funding available to provide for training local government code enforcement officials. This training will provide knowledge to enable local government to enforce this regulation.

6. PAPERWORK

This rule will not impose any additional reporting or recordkeeping requirements. No additional paperwork is anticipated.

7. DUPLICATION

The New York State Uniform Fire Prevention and Building Code provides standards for the construction and maintenance of buildings and structures and for the protection of buildings and structures and their occupants from the hazards of fire. These are matters for which the federal government does not impose comprehensive requirements. The federal government has addressed the topic of accessible and usable facilities for the physically disabled, however, through adoption of the Americans with Disabilities Act (ADA) and the Fair Housing Act. The new text proposed for the Uniform Code also requires accessibility to buildings and structures for the physically disabled. Although the existence of federal and state standards may raise issues of overlap or conflict, no such overlap or conflict exists with this proposed rule.

Several State agencies have promulgated regulations which impose requirements upon buildings or structures which house activities which are licensed or regulated by the particular agency. Such regulations may impose an additional layer of regulation upon the construction, maintenance, or use of certain categories of buildings. These other regulations, however, are focused upon activities or occupants regulated or protected by the particular State agency and have been promulgated pursuant to statutory authority other than Article 18 of the Executive Law.

8. ALTERNATIVES

It is the policy of the Department of State to modernize and amend the Uniform Fire Prevention and Building Code, so as to maintain consistency with the national model codes, to keep building practices in New York State consistent with practice nationally, and to incorporate new technical developments in a timely manner. Consequently, the alternative of maintaining existing provisions of the Uniform Code was rejected.

To assist the Code Council, staff at the Department of State, Building Standards and Codes Division reviewed the ICC Codes and made recommendations to the Code Council to ensure that the new provisions of the Uniform Code would remain appropriate and applicable to continually developing design and construction issues and needs in New York State.

Proposed New York modifications made by staff at the Department of State, Building Standards and Codes Division were posted on the DOS website for public inspection. Code update presentations by DOS staff were made to various groups.

Public hearings will be held after a notice of proposed rule making has been published in the State Register in accordance with the provisions of the State Administrative Procedure Act. A draft of the proposed code will also be available on the Department's website and an e-bulletin will be sent announcing that fact.

9. FEDERAL STANDARDS

The federal government has adopted the Americans with Disabilities Act (ADA) which requires certain facilities to be accessible and usable by the physically disabled. The new text proposed for the Uniform Code also includes provisions which require buildings and structures to be accessible and usable by the physically disabled. The proposed rule would exceed the minimum standards established by the federal government.

10. COMPLIANCE SCHEDULE

The target date for publishing a notice of adoption for this rule making is early 2016. Upon publication of the notice of adoption, a transition period will commence. During this period, regulated parties will have the option of construction in compliance with either current code provisions or the newly adopted provisions.

The delay of the effective date of the new Uniform Code provisions and the option of compliance with either the existing or the new Code during that period ensures that regulated parties will be able to achieve compliance with the rule on the date it is adopted.

¹ Schools located on a small strip on the south edge of the western end of the state will be required to build storm shelters. This specified area is shown darkly shaded on page 10 at the following: <https://law.resource.org/pub/us/code/ibr/icc.500.2008.pdf>

Regulatory Flexibility Analysis

1. EFFECT OF RULE.

This rule making would repeal the current version of the Uniform Fire Prevention and Building Code (Uniform Code), and adopt new text for the code. The proposed new text of the Uniform Code is based upon the 2015 editions of model codes developed by the International Code Council, Inc. (ICC). The Uniform Code is applicable in all areas of the State with the exception of the City of New York.

This rule has the potential to affect small businesses that own or operate buildings in all areas of the State except the City of New York as well as small businesses that provide services, directly or indirectly, to building owners and operators. Small businesses that construct, own, or operate buildings or structures are subject to provisions of the Uniform Code and therefore will be required to comply with this rule. Businesses that provide services to building owners, such as facility managers, design profession-

als (e.g., architects and engineers), general and specialty contractors (including home builders), and product suppliers, though not directly regulated by this rule, will be impacted by this rule. It is not possible to estimate the exact number of businesses that will be affected by this rule, but the effect of the rule will be widespread. For example, according to the New York State Department of Education, as of July 1, 2015, there were 10,172 architects, 14,974 engineers and 786 landscape architects with active licenses in New York State.¹

There are approximately 1,605 local governments in New York, including 932 towns, 554 villages, 62 cities, and 57 counties.² Local governments will be affected by this rule if the government constructs, owns, or operates structures that are subject to the provisions of the Uniform Code. In those circumstances, a local government is in no different situation than that of any building owner or operator, public or private. Therefore, adoption of this rule making will affect all cities, towns, and villages of the State with the exception of the City of New York. In addition, Executive Law section 381 provides that every city, town, and village of the State shall administer and enforce the Uniform Fire Prevention and Building Code within its boundaries, except in limited specific circumstances. Consequently, in most instances, the cities, towns and villages of the State are responsible for enforcement of the Uniform Code within their boundaries, and will be responsible for enforcing the new Uniform Code provisions proposed for adoption by this rule making.

2. COMPLIANCE REQUIREMENTS.

This rule making will not change local government responsibility for administering and enforcing the Uniform Code. There will be no change in requirements for local governments concerning reporting, recordkeeping, and other compliance requirements.

As the owner, operator, or occupant of a building or structure, both small businesses and local governments will be required to comply with requirements for new building construction and for operation and maintenance of newly constructed buildings, as well as provisions of this rule that apply to existing buildings.

3. PROFESSIONAL SERVICES.

Regulated parties will continue to rely upon professionals to advise them of the requirements of the Uniform Code. Building owners typically rely on professionals with respect to design, construction and operation and maintenance of buildings because of their expertise in building regulations.

4. COMPLIANCE COSTS.

The adoption of new text for the Uniform Code will affect the construction, configuration and cost of new buildings, remodeling or construction of additions in existing buildings will be similarly affected. It is anticipated that regulated parties will see a change in construction costs and building operation costs as a result of this rule making, with some increases and some decreases depending on the project. There is such a broad range of potential projects that it is not possible to give a single estimate or even a reasonably accurate range. For instance, new construction of an educational occupancy in a region identified as prone to tornados will have the added cost of constructing a storm shelter that complies with the new code. Some buildings may have an increase in costs associated with annual inspection and certification of systems such as in-building radio coverage amplification. According to the federal Department of Housing and Urban Development (HUD), there is an "absence of sophisticated research on the impact of regulations on the supply and cost of housing; however, generally costs are likely to increase somewhat."³ This is likely to be true for the size of buildings that house small businesses in the State, many of which are home occupations.

Indirectly impacted parties, such as architects, engineers, designers, contractors and builders, may incur the cost of training necessary to familiarize themselves with the new and changed Uniform Code provisions. The Department of State estimates that, given a typical class size of 20 to 25 persons, the training costs will range from \$250 to \$270 per person for each part (i.e. building code, fire code, residential code, existing building code, property maintenance code, and plumbing / fuel gas / mechanical codes) of the Uniform Code. However, it is a customary practice for registered design professionals and construction personnel to receive continuing education throughout their careers. In New York State, architects and engineers are required by the Education Law to receive continuing education in order to maintain an active registration to practice the profession. Designers, however, may choose not to take specific courses on the new Uniform Code provisions. Depending on availability, others may choose to take the free Department of State training courses regarding the new code.

Code enforcement personnel employed by the cities, towns, villages and counties that are required to administer and enforce the Uniform Code will need to receive training regarding the new and changed provisions of the Uniform Code. However, such code enforcement personnel are already required by regulation (19 NYCRR Part 1208) to receive 24 hours of annual in-service training, and it is anticipated that the training needed

to familiarize code enforcement personnel with the revised Uniform Code to be implemented by this rule will be accomplished within that annual in-service training.

Regulated parties may find it necessary to purchase an updated set of code books. The Department of State estimates that a full set of new code books (including all eight ICC codes used for Uniform Code provisions) will cost between \$554 and \$737.

Cities, towns, villages and counties that administer and enforce the Uniform Code will be required to obtain copies of the new code books. Smaller local governments typically require only one set of code books. Larger local governments may require multiple sets. Approximately 1,600 municipalities will be responsible for administering and enforcing the updated Uniform Code within their boundaries.

5. ECONOMIC AND TECHNOLOGICAL FEASIBILITY.

The new code provisions proposed for adoption by this rule making will continue to provide regulated parties with a broad range of compliance options. These provisions are performance based and therefore provide an opportunity to select the most cost effective alternative for compliance.

Regulatory change, like technological innovation, is constant in the construction industry. Regulated parties as well as those who provide services to them (i.e. architects, engineers, designers, contractors, and builders) are accustomed to such change. This rule making is expected to encourage innovation in the construction industry and to provide increased opportunities for small businesses to grow.

This proposed rule making consists primarily of updating the Uniform Code by incorporating newer editions of the ICC model codes and adopting some New York modifications to those model codes. This is the third update of the Uniform Code based on the International Code Council model codes. Regulated parties are familiar with the International Codes, and with the ICC and code community practice of offering commentary and summaries of significant changes, training courses and a transparent update process.

Several training resources are available for impacted parties to learn the proposed new provisions of the Uniform Code. These include trainers affiliated with the ICC and other specialized training professionals. The staff of the Division of Building Standards and Codes of the Department of State will provide training for local government enforcement personnel. In addition, when class size permits, courses are open to design professionals and contractors. From time to time, the Department of State also offers specific courses to these groups relating to new code requirements.

6. MINIMIZING ADVERSE IMPACT.

The Department of State, Division of Building Standards and Codes will provide training on the new provisions of the Uniform Code for all local government code enforcement personnel in the State. Executive Law section 381 provides that local governments which do not wish to enforce the Uniform Code may relinquish that responsibility to the county in which they are located. In turn, a county may relinquish enforcement responsibility to the Department of State. As the health, safety, and security of the people of the State are at issue, exemption from coverage by the rule was not considered an option for minimizing the impact on local governments and/or small businesses.

The ICC model codes provide flexibility by providing for different compliance paths for many aspects of the codes. In many instances, the ICC codes provide for a performance design path in which a design professional provides documentation that demonstrates that the design and consequent performance of a structure or system meets the intent of the code.

7. SMALL BUSINESS AND LOCAL GOVERNMENT PARTICIPATION.

Proposed New York modifications made by staff at the Department of State, Building Standards and Codes Division were posted on the Department of State website for public inspection. Code update presentations by DOS staff were made to various groups:

- September 3, 2014 New York State Fire Marshals & Inspectors
 - September 10, 2014 Western Southern Tier Building Officials and
 - New York State Building Officials Conference (NYSBOC)
 - October 20, 2014 NYSBOC Capital District Conference
 - December 3, 2014 Rockland County Chapter, American Society of Professional Engineers
 - January 27, 2015 Niagara Frontier Building Officials
 - February 16, 2015 New York State Association of Towns
 - February 26, 2015 Nassau County Building Officials
 - March 2, 2015 Northern Adirondack Building Officials
 - March 18, 2015 New York State Building Officials Finger Lakes
 - March 31, 2015 NYSBOC Central Conference
 - April 22, 2015 Hudson Valley Code Enforcement Officials
 - May 21, 2015 NYSBOC Westchester Conference
 - June 17, 2015 Association of Fire Chiefs
- In addition, the Department maintains a list of over 10,000 interested

parties that have enrolled for e-bulletins that provide updates on code issues, including proposed changes to the Uniform Code.

Public hearings will be held during the public comment period associated with this rule making. A draft of the proposed new code text will also be available on the Department's website and an e-bulletin will be sent announcing that fact.

¹ New York State Licensed Professions. <http://www.op.nysed.gov/prof/>

² NYSDOS Local Government Issues in Focus, October 2006 (Vol. 2, No.3)

³ Michael H. Schill, Regulations and Housing Development: What we Know, *Citiescape: A Journal of Policy Development and Research* • Volume 8, Number 1 • 2005, U.S. Department of Housing and Urban Development, Office of Policy Development and Research, <http://www.huduser.gov/periodicals/cityscpe/vol8num1/ch1.pdf>.

Rural Area Flexibility Analysis

1. TYPES AND ESTIMATED NUMBERS OF RURAL AREAS:

This rule making would repeal the current version of the Uniform Fire Prevention and Building Code (Uniform Code), and adopt new text for the code. The proposed new text of the Uniform Code is based upon the 2015 editions of model codes developed by the International Code Council, Inc. (ICC). The Uniform Code is applicable in all areas of the State with the exception of the City of New York. Therefore, adoption of this rule making will apply to all rural areas of the State.

2. REPORTING, RECORDING/KEEPING AND OTHER COMPLIANCE REQUIREMENTS; AND PROFESSIONAL SERVICES:

This proposed rule-making will have no significant impact on reporting and recordkeeping requirements in rural areas or elsewhere in New York. Building owners and operators in rural areas will continue to be required to comply with requirements of the Uniform Code for building construction, for operation and maintenance of newly constructed buildings and for maintenance of existing buildings. There will be some changes in these requirements with the new text of the Uniform Code. Regulated parties will continue to rely upon professionals to advise them of the requirements of the Uniform Code. Building owners typically rely on professionals for their expertise in building regulations with respect to design, construction and operation and maintenance of buildings. The need for professionals in rural areas does not differ from such need in non-rural areas.

3. COSTS:

The new provisions of the Uniform Code are expected to reduce some building and development costs and increase others. In general, those costs are expected to increase slightly from the cost of construction based on current Uniform Code provisions. According to the federal Department of Housing and Urban Development (HUD), the literature on the impact of building codes on the price of housing is extremely thin. Much of it is so old as to be useful only for historic interest. Among the handful of studies completed after 1980, almost all are based on anecdotal accounts or poorly specified models. The more quantitative studies suggest that the impact of building codes on price is no more than five percent.¹ This is likely to hold true for construction of smaller buildings typical of rural areas. The proposed new provisions of the Uniform Code have been developed in response to updates in the building and fire safety industry. Any associated costs are expected to occur in rural communities as well as urban and suburban areas of the State.

4. MINIMIZING ADVERSE IMPACT:

The proposed rule requires uniform standards for building construction and fire prevention in all areas of the State with the exception of New York City, where only State buildings and structures must conform to the Uniform Code. The proposed rule will require compliance and reporting requirements similar to those required by the current provisions of the Uniform Code. As the health, safety and welfare of the people of New York are at issue, exemption from coverage by the rule was not considered an option for minimizing impact on rural areas.

The provisions of the ICC model codes which constitute the major source for the proposed new text of the Uniform Code were developed to provide flexibility in the paths available to regulated parties to achieve code compliance. In many instances, the ICC codes provide for a performance design path in which a design professional provides documentation that demonstrates that design and the consequent performance of a structure or system meets the intent of the code. The inclusion of these ICC code provisions as a part of the new text of the Uniform Code will provide the same flexibility for parties subject to the Uniform Code, whether located in rural areas or elsewhere in the State.

5. RURAL AREA PARTICIPATION:

Proposed New York modifications developed by staff at the Department of State, Building Standards and Codes Division were posted on the DOS website for public inspection. Code update presentations by DOS staff were made to various groups:

- September 3, 2014 New York State Fire Marshals & Inspectors
- September 10, 2014 Western Southern Tier Building Officials and New York State Building Officials Conference (NYSBOC)
- October 20, 2014 NYSBOC Capital District Conference
- December 3, 2014 Rockland County Chapter, American Society of Professional Engineers
- January 27, 2015 Niagara Frontier Building Officials
- February 16, 2015 New York State Association of Towns
- February 26, 2015 Nassau County Building Officials
- March 2, 2015 Northern Adirondack Building Officials
- March 18, 2015 New York State Building Officials Finger Lakes
- March 31, 2015 NYSBOC Central Conference
- April 22, 2015 Hudson Valley Code Enforcement Officials
- May 21, 2015 NYSBOC Westchester Conference
- June 17, 2015 Association of Fire Chiefs

In addition, the Department maintains a list of over 10,000 interested parties who have enrolled for e-bulletins that provide updates on code issues, including proposed changes to the Uniform Code.

Public hearings will be held during the public comment period associated with this rule making. A draft of the proposed new code text will also be available on the Department's website and an e-bulletin will be sent announcing that fact.

¹ U.S. Department of Housing and Urban Development, Office of Policy Development and Research, David Listokin and David B. Hattis, *Citiescape: A Journal of Policy Development and Research* Volume 8 Number 1, "Building Codes and Housing", 2005. <http://www.huduser.gov/periodicals/cityscpe/vol8num1/ch2.pdf>

Job Impact Statement

The Department of State has determined that it is apparent from the nature and purpose of the proposed rule making that it will not have a substantial adverse impact on jobs and employment opportunities.

This rule making would repeal the current version of the Uniform Fire Prevention and Building Code (Uniform Code), and adopt new text for the code. The current version of the Uniform Code (19 NYCRR Parts 1220 through 1228) took effect December 28, 2010. It is based upon the 2006 editions of model codes developed by the International Code Council (ICC), with some New York modifications. If adopted, this rule would repeal the existing text of the Uniform Code and adopt new text which is based upon the 2015 editions of model codes developed by the ICC. The provisions of the ICC model codes will be supplemented by provisions which address topics specific to New York.

The ICC model codes incorporate the most current technology in the areas of building construction and fire prevention. ICC codes are updated on a three-year cycle to keep current with industry practice and technical and life-safety evolution. As a consequence, the Department of State concludes that this update, which is based upon the newer (2015) versions of the ICC Codes, will provide a greater incentive to construction of new buildings and rehabilitation of existing buildings than exists with the current Uniform Code. Therefore, this rule making will not have a substantial adverse impact on jobs and employment opportunities within New York.

State University of New York

EMERGENCY/PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

College Tuition and Fees

I.D. No. SUN-47-15-00005-EP

Filing No. 968

Filing Date: 2015-11-10

Effective Date: 2015-11-10

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

Proposed Action: Amendment of section 602.10 of Title 8 NYCRR.

Statutory authority: Education Law, sections 355(1)(c) and 6305(8)

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

Specific reasons underlying the finding of necessity: Amendment of these regulations needs to proceed on an emergency basis because tuition

rates are intended to be effective for the Fall 2015 semester and thereafter. Billing for these new tuition rates is occurring; therefore, notice of the new rates needs to occur as soon as possible.

Subject: College tuition and fees.

Purpose: To amend the tuition and fees to allow for resident or in-state tuition to certain veterans and their dependents.

Text of emergency/proposed rule: 8 NYCRR Part 602.10. College Tuition and Fees.

* * * * *

(g) *Resident Tuition for Military Personnel and Dependents. Notwithstanding New York State resident status, the following individuals shall be charged the resident rate of tuition as approved by the state university trustees:*

(1) *Any student attending a community college who is a member or the spouse or dependent of a member of the armed forces of the United States on full-time active duty and stationed in New York State;*

(2) *Any student attending a community college in accordance with the federal GI bills and in compliance with all applicable eligibility requirements thereof; and*

(3) *Veterans and their dependents covered under the Veterans' Access to Care through Choice, Accountability, and Transparency Act of 2014, 38 U.S.C. § 3679, who are living in New York State while pursuing a course of education at a community college with assistance under chapter 30 or 33 of Title 38 of the U.S. Code. A covered veteran under 38 U.S.C. § 3679 is one who was discharged or released from a period of not fewer than 90 days of service in the active military, naval, or air service less than three years before the date of enrollment in the course at the community college. A covered dependent is one who is entitled to assistance under 38 U.S.C. § 3311(b)(9) or § 3319 by virtue of his or her relationship to a covered veteran.*

[(g)] (h) Tuition payments are to be recorded for all students except citizens 60 years of age or over who are auditing courses on a space-available basis.

[(h)] (i) Student revenue surpluses. With the exception of the excess student revenues expended as provided in section 602.8(d)(2) of this Part, when a college has accrued excess student revenues, the college when submitting its annual financial report shall submit a plan of action that will effectively reduce the surplus each successive year and eradicate it within five years.

[(i)] (j) Tuition limitations.

(1) To the extent authorized by law, community colleges may increase tuition and fees above that allowable under paragraph d of section 6304 of the Education Law, provided the local sponsor's contribution either in the aggregate or per full time equivalent student shall be no less than the comparable actual rates for the previous community college fiscal year.

(2) Tuition rates shall not exceed the maximum limitations provided in subdivision (c) of this section. However, the State University trustees may, upon a sufficient showing of financial need, approve a tuition rate in excess of the limitations provided in subdivision (c) of this section.

This notice is intended: to serve as both a notice of emergency adoption and a notice of proposed rule making. The emergency rule will expire February 7, 2016.

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

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

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

Regulatory Impact Statement

This is a technical amendment to implement the provisions of (a) the Veterans' Access to Care through Choice, Accountability, and Transparency Act of 2014, which requires that institutions of postsecondary education provide in-state tuition rates for courses taken by certain enrolled veterans and their dependents; and (b) Chapter 328 of the Laws of New York of 2014, which amends subdivision 8 of Section 6305 of the New York State Education Law to provide that "[a]ny student attending a community college in accordance with the federal GI bills and in compliance with all applicable eligibility requirements thereof, whether or not a resident of this state, shall be charged the tuition rate for residents as approved by the state university trustees."

Regulatory Flexibility Analysis

This is a technical amendment to implement the provisions of (a) the Veterans' Access to Care through Choice, Accountability, and Transpar-

ency Act of 2014, which requires that institutions of postsecondary education provide in-state tuition rates for courses taken by certain enrolled veterans and their dependents; and (b) Chapter 328 of the Laws of New York of 2014, which amends subdivision 8 of Section 6305 of the New York State Education Law to provide that "[a]ny student attending a community college in accordance with the federal GI bills and in compliance with all applicable eligibility requirements thereof, whether or not a resident of this state, shall be charged the tuition rate for residents as approved by the state university trustees." It will have no impact on small businesses and local governments.

Rural Area Flexibility Analysis

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

Job Impact Statement

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

Office of Temporary and Disability Assistance

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Child Support Program

I.D. No. TDA-47-15-00004-P

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

Proposed Action: Amendment of sections 346.2, 347.12, 347.17, 347.25, 352.15, 352.22, 352.31 and 369.1; addition of section 300.13; and repeal of sections 347.2 and 347.13 and addition of new sections 347.2 and 347.13 to Title 18 NYCRR.

Statutory authority: Social Services Law, sections 20(3)(d), 34(3)(f), 111-a, 111-c(2)(a), (d), 131-a(8)(a)(v), 158(5), (6)(i), 348(2) and (3); Federal Social Security Act, sections 408(a)(3) and 457; Code of Federal Regulations, title 45, sections 302.32, 302.50, 302.51, 302.52 and 303.72; Federal Deficit Reduction Act of 2005 (P.L. 109-171)

Subject: Child Support Program.

Purpose: Amend regulatory requirements concerning the distribution and disbursement of child support collections.

Substance of proposed rule (Full text is posted at the following State website: www.otda.ny.gov): This is a general summary of the proposed rule text concerning the distribution and disbursement of support collections. The full rule text is posted at the following State website: www.otda.ny.gov.

A new section 18 NYCRR § 300.13 would be added reflecting the requirements of 18 NYCRR § 347.25. Both sections address desk reviews of the distribution and disbursement of support collections.

The amendment to 18 NYCRR § 346.2 would update a cross-reference to 18 NYCRR § 347.17. Both of these sections concern support services for individuals who are not eligible for public assistance and care or foster care.

The current section 18 NYCRR § 347.2 would be repealed, and a new section § 347.2 would be added to provide definitions for 18 NYCRR Part 347. The new definitions would conform to federal requirements and provide consistency throughout Part 347.

The amendments to 18 NYCRR § 347.12 would address reporting support collections for public assistance, medical assistance-only and foster care cases. These amendments are needed, in part, to reflect references to the revised 18 NYCRR § 347.13.

The following sections of 18 NYCRR would be added or amended to provide consistency with Title IV-D of the federal Social Security Act and with State options provided by the Deficit Reduction Act of 2005: § 347.13 addressing the distribution and disbursement of support collections; § 352.15 addressing support payments; § 352.22 addressing noncountable

income and resources; § 352.31 addressing estimates of need and application of income; and § 369.1 addressing applications for or receipt of public assistance as an assignment to the State and the social services districts of rights to support.

The amendments to 18 NYCRR § 347.17 would update a cross-reference and provide guidance for the support collection units whenever an individual in receipt of services becomes ineligible for public assistance and care or foster care. The amendments address notice requirements and the continuation of services.

The amendments to 18 NYCRR § 347.25 would update the regulations regarding the desk review of the distribution and disbursement of support collections. The desk review process is an accounting of the distribution and disbursement of support collections made on behalf of a current or former recipient of public assistance who is or was receiving child support enforcement services.

Text of proposed 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, New York 12243-0001, (518) 486-7503, email: richard.rhodesjr@otda.ny.gov

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

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

Regulatory Impact Statement

1. Statutory authority:

Social Services Law (SSL) § 20(3)(d) authorizes the Office of Temporary and Disability Assistance (OTDA) to promulgate regulations to carry out its powers and duties.

SSL § 34(3)(f) requires the Commissioner of the OTDA to establish regulations for the administration of public assistance and care within the State. Chapter 41 of the Laws of 2012 amended SSL § 95 to change the name of the food stamp program to the supplemental nutrition assistance program.

SSL § 111-a requires the OTDA to promulgate regulations necessary to obtain and retain approval of its child support state plan, required to be submitted to the Department of Health and Human Services by Part D of Title IV of the Federal Social Security Act (the "Act").

Section 408(a)(3) of the Act governs new assignment of rights requirements. Section 408(a)(3) of the Act eliminates the assignment of pre-assistance arrears in new assistance cases, effective October 1, 2009, or as early as October 1, 2008 at state option. Under this requirement, assignments executed on or after the effective date will be limited to the amount of support that accrues during the assistance period, not to exceed the cumulative amount of unreimbursed assistance.

Section 457 of the Act governs the distribution of any support collected under the Child Support Enforcement Program under Title IV-D of the Act. Sections 457(b)(1)(A) and (2)(A) of the Act permit the State to retain rights to support obligations previously assigned.

Title 45 of the Code of Federal Regulations (45 CFR) §§ 302.50, 302.51, 302.52 and 303.72 address assignment of rights to support as a condition of eligibility for assistance under Title IV-A of the Act and distribution of support collections under Title IV-D of the Act. 45 CFR § 302.32 provides for the treatment of child support by the Title IV-A and IV-D agencies.

The Federal Deficit Reduction Act (DRA) of 2005, P.L.109-171, allows states the option to pass through both the federal and state share of certain amounts of assigned support collections to current-assistance families without paying to the Federal government the federal share of the amounts passed through.

SSL §§ 111-c(2)(a), 158(5) and (6)(i), and 348(2) and (3) were amended effective October 1, 2009, and reflect that the scope of an assignment is limited to all rights to support from any other person on behalf of the applicant/recipient, or on behalf of any other family member for whom the applicant/recipient is applying for or receiving public assistance, that accrue during the period that a family receives assistance under the Title IV-A of the Act and state-funded safety net assistance.

SSL §§ 111-c(2)(d) and 131-a(8)(a)(v) were amended to take advantage of the optional provision within DRA, and reflect respective increases to the amount of the pass-through payment and the amount of income disregarded for purposes of determining the standard of need and assistance provided through the public assistance program.

2. Legislative objectives:

It was the intent of the Legislature in enacting the above statutes that OTDA establish rules, regulations and policies so that child support enforcement services are provided to eligible persons to ensure that to the greatest extent possible parents provide financial support for their children.

3. Needs and benefits:

The amendments to 18 NYCRR § 347.13; associated changes to 18 NYCRR §§ 346.2, 347.2, 347.12, 347.17, and 347.25; amendments to 18

NYCRR §§ 352.15, 352.22, and 352.31; the addition of a new conforming provision in 18 NYCRR § 300.13; and amendments to 18 NYCRR § 369.1, are being made as the existing regulations for assignment and distribution of support collections are inconsistent with the revised section 457 of the Act. Effective October 1, 1996, section 302 of the Personal Responsibility and Work Opportunity Act of 1996 (PRWORA), Public Law 104-193, and effective October 1, 2008, section 7301 of the DRA, P.L.109-171, revised section 457 of the Act, which governs the distribution of any support collected under the Child Support Enforcement Program under Title IV-D of the Act. Section 103 of PRWORA and section 7301 of the DRA also revised Title IV-A of the Act, in part, by replacing the assignment of rights provisions contained in former section 402(a)(26) of the Act, effective July 1, 1997, with new assignment of rights requirements in section 408(a)(3) of the Act. And, SSL §§ 111-c(2)(d) and 131-a(8)(a)(v) were amended to take advantage of the optional provision within the DRA which allows states the option to pass through both the federal and state share of certain amounts of assigned support collections to current-assistance families without paying to the Federal government the federal share of the amounts passed through.

45 CFR §§ 302.50, 302.51, 302.52 and 303.72 address assignment of rights to support as a condition of eligibility of assistance under Title IV-A of the Act and distribution of support collections under Title IV-D of the Act. 45 CFR § 302.32 provides for the treatment of child support by the Title IV-A and IV-D agencies. To the extent that the regulation at 18 NYCRR § 347.13 is inconsistent with new section 457 of the Act, it is superseded by the new statutory requirements. 18 NYCRR §§ 352 and 369 in part, are inconsistent with the new section 457 of the Act.

In addition, the regulations need revision to comply with the child support distribution requirements set forth in Federal Office of Child Support Enforcement Action Transmittals (AT) 97-17, 98-24, and 07-05. The timeframes for distribution of amounts of child support collected currently set forth in state regulations are inconsistent with Federal regulations. Failure to comply with these mandatory timeframes may result in fiscal penalties imposed by the Federal government on the State.

Existing regulations at 18 NYCRR §§ 347.13, 352.15, 352.22, 352.31, and 369.1, need revision to delete and revise any inconsistent requirements. Related amendments are necessary to 18 NYCRR §§ 347.2 and 347.12 reflecting references to revised sections within 18 NYCRR § 347.13. Additionally, amendments to 18 NYCRR §§ 346.2, 347.17 and 347.25 are included reflecting conforming changes to revisions made to 18 NYCRR § 347.13 under SSL §§ 111-c(2)(d) and 131-a(8)(a)(v). And new regulation 18 NYCRR § 300.13 is added reflecting conforming requirements with procedures in relation to 18 NYCRR § 347.25.

4. Costs:

There are no new costs associated with the amendments to the regulations.

5. Local government mandates:

Child support distribution is a function of the State's Automated Support Collection Unit (ASCU), a part of the computerized Child Support Management System. No new or additional requirements will be imposed on social services districts.

6. Paperwork:

No new or additional requirements will result from the amendments to the regulations.

7. Duplication:

The proposed amendments do not duplicate, overlap or conflict with any existing State or federal statutes or regulations.

8. Alternatives:

No alternatives were considered since the proposed amendments are required in accordance with the aforementioned federal statutes and requirements.

9. Federal standards:

The proposed amendments do not exceed federal minimum standards for the same subject.

10. Compliance schedule:

The requirements are now operational within the Child Support Management System. The State and the social services districts are in compliance with the proposed amendments and their respective effective dates.

Regulatory Flexibility Analysis

1. Effect of rule:

Each of the 58 social services districts will be affected by the proposed regulatory amendments.

2. Compliance requirements:

Social services districts will be required to comply with the proposed amendments. Given that the changes to the regulations conform State regulations to federal regulations and State law, and clarify the timing of affirmative action needed on a case, no new reporting or recordkeeping is required by the social services districts. The NYS Division of Child Support Enforcement (DCSE), on behalf of the social services districts, will

continue to provide for assignment and distribution of collections, meeting federal and State requirements, through its computerized Child Support Management System (CSMS).

3. Professional services:

Given that the changes are mandatory and implemented in a systematic nature, child support enforcement and public assistance units will not need to hire additional staff.

4. Compliance costs:

This regulation will not result in increased administrative costs for social services districts. Assignment and distribution of collections continue under CSMS which is monitored by the DCSE on behalf of the social service districts. DCSE continues to assume all administrative costs for the systematic programming for assignment and distribution. Aside from systematic changes within assignment and distribution to meet federal and state requirements, the rest of this process is unchanged.

5. Economic and technological feasibility:

DCSE continues to assume all administrative costs for the systematic programming for assignment and distribution on behalf of the social services districts. Technological feasibility is not a concern for the social services districts since DCSE maintains the systematic programming.

6. Minimizing adverse impact:

The proposed regulatory amendment will not have an adverse impact on small business or local governments since this is a systematic change impacting only the current assignment and distribution programming. Approaches for minimizing adverse economic impact, as suggested in SAPA § 202-b, were not considered since no adverse economic impact is present under the proposed amendment.

7. Small business and local government participation:

The proposed changes regarding the required systematic changes to assignment and distribution were discussed with social services districts' child support enforcement and temporary assistance personnel. No specific concerns were raised about the statutory requirements. Social services districts did raise concerns about changes to standing manual processes which were addressed and clarified in policy and related discussions.

Rural Area Flexibility Analysis

1. Types and estimated numbers of rural areas:

The proposed regulations will affect 44 rural social services districts in the State.

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

Social services districts, including those in rural areas, will be required to comply with the proposed amendments. Given that the changes are technical and do not change but may simplify existing procedures, child support enforcement units should not need to hire additional staff.

3. Costs:

This regulation will not result in increased administrative costs for social services districts.

4. Minimizing adverse impact:

The proposed regulations will not have an adverse impact on social services districts, including those in rural areas.

5. Rural area participation:

The requirements for the assignment and distribution of collections received by the child support program are Federal and State mandates. The proposed amendments will ensure State regulations are consistent with the Federal assignment and distribution requirements, and related State statutory requirements.

The statutes on which these regulation changes are predicated have been discussed with the social services districts in rural areas, including section 408 (a)(3) of the Social Security Act (the "Act") and related revisions to Social Services Law (SSL) §§ 111-c (2)(a), 158(5) and (6)(i), and 348(2) and (3), regarding the revised assignment of support rights requirements; section 457 of the Act as revised regarding distribution of any support collected; and SSL §§ 111-c(2)(d) and 131-a(8)(a)(v) regarding increases to the amount of the pass-through and the amount of income disregarded.

The Office of Temporary and Disability Assistance and the social services districts have had ongoing discussions regarding these requirements and changes to the State's Child Support Management System. This regulatory proposal will bring State regulations into compliance with Federal and State requirements and, at the same time, assist social services districts with practical, day-to-day needs.

Job Impact Statement

A job impact statement has not been prepared for the proposed regulatory amendments. It is evident from the subject matter of these amendments that the jobs of child support and public assistance personnel representing the social services districts will not be impacted in any real way by the proposed amendments. The proposed amendments to 18 NYCRR §§ 347.13, 352.15, 352.22, 352.31, and 369.1; related amendments to 18 NYCRR §§ 346.2, 347.2, 347.12, 347.17, and 347.25; and new conform-

ing regulation 18 NYCRR § 300.13, will have no impact on jobs and employment opportunities in the State.

Department of Transportation

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Various Regulations Addressing Accident Reporting, Record Retention, Insurance, Vehicle Inspection and Equipment Identification

I.D. No. TRN-47-15-00002-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 Parts 557, 566, 568, 701, 723, 741, 760, 761, 762, 763, 764, 765, 800, 810, 840 and 850 and sections 700.3, 700.4, 722.1, 722.2, 722.3, 742.1, 742.2, 781.3, 841.1 and 841.2; amend section 720.11; and add sections 720.11(c), 722.1, 742.0, 750.3, 781.3, 841.1 to Title 17 NYCRR.

Statutory authority: Transportation Law, sections 14(18), 138, 140, 142 and art. 6

Subject: Various regulations addressing accident reporting, record retention, insurance, vehicle inspection and equipment identification.

Purpose: Updates to regulations addressing accident reporting, record retention, insurance, vehicle inspection, equipment identification.

Text of proposed rule: Subdivision 17 NYCRR 720.11(c) is renumbered to subdivision 17 NYCRR 720.11(d) and a new subdivision 17 NYCRR 720.11(c) is added to read as follows:

(c) *The department may elect to inspect only certain vehicle components based on the overall safety performance of the operator.*

17 NYCRR sections 700.3, 700.4, 722.1, 722.2, 722.3, 742.1, 742.2, 781.3, 841.1, 841.2 and Parts 557, 566, 568, 701, 723, 741, 760, 761, 762, 763, 764, 765, 800, 810, 840 and 850 are repealed. New 17 NYCRR sections 722.1, 742.0, 750.3, 781.3 and 841.1 are added to read as follows:

Section 722.1. Reportable accidents.

(a) *Any accident in any way involving a motor vehicle subject to department inspection, which results in the loss of life or injury of any passenger, employee or other person, or which was caused by mechanical failure (regardless of whether or not injuries were incurred), shall be immediately reported to the department by telephone or electronically to: passengersafety@dot.ny.gov.*

(b) *In addition to an incident commonly known as an accident, the following are reportable accidents within the purview of this Part:*

(1) *any mechanical failure;*

(2) *evidence of intrusion into the body of the vehicle of carbon monoxide, exhaust fumes emitted from such vehicle, or other noxious gases or smoke;*

(3) *smoke (other than normal exhaust) emanating from the engine or any other part of the vehicle, whether internal or external; and*

(4) *presence of or emission, whether internal or external, of sparks, flame or fire.*

(c) *No work shall be performed on and no passengers shall be transported in the vehicle involved until it is released by the Department of Transportation.*

Section 742.0.

Every corporation, company, association, joint-stock association, partnership and person under the jurisdiction of the Commissioner of Transportation shall retain possession of all accounts, books, contracts, records, documents and papers at the principal office of such corporation, company, association, joint-stock association, partnership and person and hold them for inspection by the commissioner or the agents or employees of the commissioner.

Section 750.3. Minimum levels of financial responsibility for for-hire motor carriers of passengers.

The Commissioner of Transportation adopts part 387 of title 49 of the Code of Federal Regulations with the same force and effect as though herein fully set forth at length for for-hire motor carriers of passengers operating motor vehicles in interstate and foreign commerce. 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 book entitled: Code of Federal Regulations, Title 49 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 20402-0001. Copies of the Code of Federal Regulations are also available at many public libraries and bar association libraries.

Section 781.3. Identification.

All equipment operated pursuant to this Part, except equipment operated in a bus line operation shall have affixed thereto the full name and USDOT number when applicable of the authorized carrier in the same manner as if the equipment were owned by the authorized carrier.

Section 841.1. Retention of records at principal office.

Every corporation, company, association, joint-stock association, partnership and person under the jurisdiction of this commissioner shall retain possession of all accounts, books, contracts, records, documents and papers, and hold them for inspection by the Department of Transportation or its agents or employees at the principal office of such corporation, company, association, joint-stock association, partnership and person under the jurisdiction of this commissioner.

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 amendments to 17 NYCRR as herein proposed. These rulemaking provisions repeal several parts that are no longer needed, allow for flexibility in the selection of vehicle components subject to Departmental inspection, update correspondence and notice options to allow for electronic communication, update the references to the statutory authority for these regulations, correct out of date addresses, and add one section to bring the regulations into conformity with Title 49 of the Code of Federal Regulations applicable to insurance requirements for interstate for-hire motor carriers. This rulemaking does not represent a change in NYSDOT policy or practice or result in significant additional regulatory requirements for motor carriers.

Job Impact Statement

1. Nature of impact: The proposed rule changes are being advanced for the purpose of updating the material to reflect changes in the related statutory authority, to allow for electronic communications with the department, and to correct addresses which have changed. The rule changes are not expected to have any 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 a that would affect employment.

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 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 and federal law and regulation pertaining to motor carrier safety; consequently, there are no adverse impacts.