

RULE MAKING ACTIVITIES

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

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

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

Office of Children and Family Services

NOTICE OF ADOPTION

Limited Secure Regulations

I.D. No. CFS-35-15-00007-A

Filing No. 907

Filing Date: 2015-10-20

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: Addition of Part 450 to Title 18 NYCRR.

Statutory authority: Social Services Law, sections 20, 34 and 404

Subject: Limited secure regulations.

Purpose: To establish regulations for residential facilities providing limited secure care within a social services district.

Text or summary was published in the September 2, 2015 issue of the Register, I.D. No. CFS-35-15-00007-P.

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

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

Initial Review of Rule

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

Assessment of Public Comment

Two comments were received on the proposed regulations. One comment was from a social services district and the other from a member of the public.

One commenter objected to the requirement in proposed 18 NYCRR 450.6(d)(1)(v) that each limited secure facility have closed circuit video coverage of the control center. The objection is based on a concern over increased cost and a claimed lack of need for such coverage. The Office of Children and Family Services (OCFS) has considered the comment and determined that no change will be made to the proposed regulation. We believe the added cost will be minimal, and that the coverage is necessary for security purposes. As this is not a statutory requirement, a waiver of the requirement could be available if particular facilities can show that compliance would present an undue hardship.

The same commenter objected to the requirement in proposed 18 NYCRR 450.6(d)(3)(i) that video records of an incident that involves an injury to youth be retained for a period of three years beyond the 18th birthday of the youth who was injured. The objection is based on the cost of maintaining the records for that period of time and a claimed lack of need. OCFS has considered the comment and determined that no change will be made to the proposed regulation. We believe that the records should be maintained to the end of the applicable statute of limitations for tort claims, as this would be important and relevant evidence in the event that the injured youth were to bring litigation against the agency operating the facility and/or any involved government agencies. As this is not a statutory requirement, a waiver of the requirement could be available if particular facilities can show that compliance would present an undue hardship.

The other commenter advocated for a change to the regulations in proposed 18 NYCRR 450.5 to require that each limited secure facility be required to have an auditorium or performance space. OCFS has considered the comment and determined that no change will be made to the proposed regulation. Some of the limited secure facilities will be for small numbers of residents (12 or less), and a requirement for an auditorium would be unrealistic and unduly costly for such programs.

Department of Civil Service

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Jurisdictional Classification

I.D. No. CVS-44-15-00004-P

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

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

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

Subject: Jurisdictional Classification.

Purpose: To classify a position in the exempt class.

Text of proposed rule: Amend Appendix 1 of the Rules for the Classified Service, listing positions in the exempt class, in the Executive Department under the subheading "Office for the Aging," by increasing the number of positions of Special Assistant from 1 to 2.

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

Data, views or arguments may be submitted to: Ilene Lees, Counsel, NYS

Department of Civil Service, Empire State Plaza, Agency Building 1, Albany, NY 12239, (518) 473-2624, email: ilene.lees@cs.ny.gov

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

Regulatory Impact Statement

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

Regulatory Flexibility Analysis

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

Rural Area Flexibility Analysis

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

Job Impact Statement

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

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Jurisdictional Classification

I.D. No. CVS-44-15-00005-P

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

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

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

Subject: Jurisdictional Classification.

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

Text of proposed rule: Amend Appendix 2 of the Rules for the Classified Service, listing positions in the non-competitive class, in the State Department Service under the subheading "All State Departments and Agencies," by adding thereto the positions of Addictions Counselor Assistant (Spanish Language).

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

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

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

Regulatory Impact Statement

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

Regulatory Flexibility Analysis

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Rural Area Flexibility Analysis

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

Job Impact Statement

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PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Jurisdictional Classification

I.D. No. CVS-44-15-00006-P

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

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

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

Subject: Jurisdictional Classification.

Purpose: To classify positions in the exempt class.

Text of proposed rule: Amend Appendix 1 of the Rules for the Classified Service, listing positions in the exempt class, in the Executive Department under the subheading "Justice Center for the Protection of People with Special Needs," by increasing the number of positions of Assistant Counsel from 23 to 28.

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

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

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

Regulatory Impact Statement

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

Regulatory Flexibility Analysis

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

Rural Area Flexibility Analysis

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

Job Impact Statement

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

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Jurisdictional Classification

I.D. No. CVS-44-15-00007-P

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

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

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

Subject: Jurisdictional Classification.

Purpose: To classify positions in the exempt class.

Text of proposed rule: Amend Appendix 1 of the Rules for the Classified Service, listing positions in the exempt class, in the Department of Transportation, by increasing the number of positions of Assistant Commissioner from 6 to 9.

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

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

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

Regulatory Impact Statement

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

Regulatory Flexibility Analysis

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

Rural Area Flexibility Analysis

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

Job Impact Statement

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

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

Jurisdictional Classification

I.D. No. CVS-44-15-00008-P

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

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

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

Subject: Jurisdictional Classification.

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

Text of proposed rule: Amend Appendix 2 of the Rules for the Classified Service, listing positions in the non-competitive class, in the Executive Department under the subheading “Office of General Services,” by adding thereto the positions of Contract Management Specialist 1 (Market Analysis) (1) and Contract Management Specialist 2 (Market Analysis) (13).

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

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

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

Regulatory Impact Statement

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

Regulatory Flexibility Analysis

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

Rural Area Flexibility Analysis

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

Job Impact Statement

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

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

Jurisdictional Classification

I.D. No. CVS-44-15-00009-P

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

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

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

Subject: Jurisdictional Classification.

Purpose: To classify positions in the exempt class.

Text of proposed rule: Amend Appendix 1 of the Rules for the Classified Service, listing positions in the exempt class, in the Department of Family Assistance under the subheading “Office of Temporary and Disability Assistance,” by increasing the number of positions of Assistant Counsel from 8 to 9 and by adding there to the position of Associate Counsel.

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

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

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

Regulatory Impact Statement

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

Regulatory Flexibility Analysis

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

Rural Area Flexibility Analysis

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

Job Impact Statement

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

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

Jurisdictional Classification

I.D. No. CVS-44-15-00010-P

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

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

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

Subject: Jurisdictional Classification.

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

Text of proposed rule: Amend Appendix 2 of the Rules for the Classified Service, listing positions in the non-competitive class, in the Department of Corrections and Community Supervision, by increasing the number of positions of Assistant Counsel from 5 to 7, Assistant Parole Services Program Specialist from 11 to 18 and Parole Services Program Specialist from 7 to 8.

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

Data, views or arguments may be submitted to: Ilene Lees, Counsel, NYS

Department of Civil Service, Empire State Plaza, Agency Building 1, Albany, NY 12239, (518) 473-2624, email: ilene.lees@cs.ny.gov
Public comment will be received until: 45 days after publication of this notice.

Regulatory Impact Statement

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

Regulatory Flexibility Analysis

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

Rural Area Flexibility Analysis

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

Job Impact Statement

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

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

Jurisdictional Classification

I.D. No. CVS-44-15-00011-P

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

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

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

Subject: Jurisdictional Classification.

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

Text of proposed rule: Amend Appendix 1 of the Rules for the Classified Service, listing positions in the exempt class, in the Department of Family Assistance under the subheading "Office of Temporary and Disability Assistance," by deleting therefrom the position of Director, Bureau of Income Maintenance Systems Development and by increasing the number of positions of Special Assistant from 14 to 19.

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

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

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

Regulatory Impact Statement

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

Regulatory Flexibility Analysis

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

Rural Area Flexibility Analysis

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

Job Impact Statement

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

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

Jurisdictional Classification

I.D. No. CVS-44-15-00012-P

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

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

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

Subject: Jurisdictional Classification.

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

Text of proposed rule: Amend Appendix 2 of the Rules for the Classified Service, listing positions in the non-competitive class, in the Westchester County Service under the subheading "Department of Emergency Services," by adding thereto the positions of Fire Inspector(s) part time; and, in the Westchester County Service by adding thereto the subheading "Westchester Health Care Corporation," and the positions of Health Student Intern(s).

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

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

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

Regulatory Impact Statement

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

Regulatory Flexibility Analysis

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

Rural Area Flexibility Analysis

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

Job Impact Statement

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

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

Jurisdictional Classification

I.D. No. CVS-44-15-00013-P

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

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

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

Subject: Jurisdictional Classification.

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

Text of proposed rule: Amend Appendix 2 of the Rules for the Classified Service, listing positions in the non-competitive class, in the Department of Motor Vehicles, by adding thereto the position of Affirmative Action Administrator 3 (1).

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

Data, views or arguments may be submitted to: Ilene Lees, Counsel, NYS

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

Regulatory Impact Statement

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Regulatory Flexibility Analysis

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

Rural Area Flexibility Analysis

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

Job Impact Statement

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PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Jurisdictional Classification

I.D. No. CVS-44-15-00014-P

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

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

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

Subject: Jurisdictional Classification.

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

Text of proposed rule: Amend Appendix 2 of the Rules for the Classified Service, listing positions in the non-competitive class, in the Executive Department under the subheading "Division of Criminal Justice Services," by deleting therefrom the position of Supervisor Forensic Laboratory Accreditation Program (1) and by adding thereto the position of Supervisor Forensic Services (DNA) (1).

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

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

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

Regulatory Impact Statement

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Regulatory Flexibility Analysis

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Rural Area Flexibility Analysis

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Job Impact Statement

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PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Jurisdictional Classification

I.D. No. CVS-44-15-00015-P

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

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

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

Subject: Jurisdictional Classification.

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

Text of proposed rule: Amend Appendix 2 of the Rules for the Classified Service, listing positions in the non-competitive class, in the Department of Family Assistance under the subheading "Office of Temporary and Disability Assistance," by adding thereto the position of Chief Information Security Officer 1 (1).

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

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

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

Regulatory Impact Statement

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Regulatory Flexibility Analysis

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

Rural Area Flexibility Analysis

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

Job Impact Statement

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

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Jurisdictional Classification

I.D. No. CVS-44-15-00016-P

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

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

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

Subject: Jurisdictional Classification.

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

Text of proposed rule: Amend Appendix 2 of the Rules for the Classified Service, listing positions in the non-competitive class, in the Department of Audit and Control, by deleting therefrom the position of Chief Information Security Officer 1 (1) and by adding thereto the position of Chief Information Security Officer 2 (1).

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

Data, views or arguments may be submitted to: Ilene Lees, Counsel, NYS

Department of Civil Service, Empire State Plaza, Agency Building 1, Albany, NY 12239, (518) 473-2624, email: ilene.lees@cs.ny.gov

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

Regulatory Impact Statement

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

Regulatory Flexibility Analysis

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

Rural Area Flexibility Analysis

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

Job Impact Statement

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

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Jurisdictional Classification

I.D. No. CVS-44-15-00017-P

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

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

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

Subject: Jurisdictional Classification.

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

Text of proposed rule: Amend Appendix 2 of the Rules for the Classified Service, listing positions in the non-competitive class, in the Executive Department under the subheading "Office of Parks, Recreation and Historic Preservation," by adding thereto the position of Interpretive Program Assistant (1).

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

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

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

Regulatory Impact Statement

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

Regulatory Flexibility Analysis

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

Rural Area Flexibility Analysis

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

Job Impact Statement

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

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Jurisdictional Classification

I.D. No. CVS-44-15-00018-P

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

Proposed Action: Amendment of Appendices 1 and 2 of Title 4 NYCRR.

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

Subject: Jurisdictional Classification.

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

Text of proposed rule: Amend Appendix 1 of the Rules for the Classified Service, listing positions in the exempt class, in the Westchester County Service under the subheading "Office of the County Executive," by adding thereto the position of Director of Economic Development and increasing the number of positions of Senior Assistant to the County Executive II from 2 to 3; and, under the subheading "Department of Law," by increasing the number of positions of Assistant Chief Deputy County Attorney from 2 to 3; and

Amend Appendix 2 of the Rules for the Classified Service, listing positions in the non-competitive class, in the Westchester County Service under the subheading "Office of the District Attorney," by adding thereto the position of Forensic Accountant (1).

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

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

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

Regulatory Impact Statement

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

Regulatory Flexibility Analysis

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

Rural Area Flexibility Analysis

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

Job Impact Statement

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

Education Department

EMERGENCY RULE MAKING

Elementary and Secondary Education Act (ESEA) Flexibility and School and School District Accountability

I.D. No. EDU-31-15-00002-E

Filing No. 905

Filing Date: 2015-10-19

Effective Date: 2015-10-19

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

Action taken: Amendment of section 100.18 of Title 8 NYCRR.

Statutory authority: Education Law, sections 101(not subdivided), 207(not subdivided), 210(not subdivided), 211-e(1-5), 211-f(15), 215(not subdivided), 305(1), (2), 309(not subdivided), 3713(1) and (2)

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

Specific reasons underlying the finding of necessity: The purpose of the proposed amendment is to implement New York State's approved Elementary and Secondary Education Act (ESEA) Flexibility Waiver Renewal Request.

On March 31, 2015, the New York State Education Department submitted to the United States Education Department (USDE) an ESEA Flexibility Waiver Renewal Request. On June 23, 2015, the USDE Secretary, based upon his authority to issue waivers pursuant to section 9401 of the ESEA, approved the Waiver Request.

The proposed rulemaking amends Commissioner's Regulations sections 100.18 to align the Commissioner's Regulations with the approved ESEA Flexibility Renewal Waiver, and align the regulations with Commissioner's Regulation 100.19 related to receivership. Adoption of the proposed amendment is necessary to ensure a seamless transition to the revised school and school district accountability plan under the Waiver and will allow school districts the option to demonstrate improvements, using options that closely align with the federal school turnaround principles described in Race to the Top and School Improvement Grant requirements.

The proposed amendment was adopted by emergency action at the July 20-21, 2015 Regents meeting, effective July 21, 2015, to timely implement New York State's approved ESEA Flexibility Renewal Waiver so that school districts may timely meet school/school district accountability requirements for the 2015-2016 school year and beyond, consistent with the approved ESEA Flexibility Waiver and pursuant to statutory requirements. A Notice of Emergency Adoption and Proposed Rule Making was published in the State Register on August 5, 2015. Because the Board of Regents meets at scheduled intervals the earliest the proposed amendment could be presented for regular (non-emergency) adoption, after publication in the State Register and expiration of the 45-day public comment period provided for in State Administrative Procedure Act (SAPA) section 202(1) and (5), is the October 26-27, 2015 Regents meeting. Furthermore, pursuant to SAPA section 203(1), the earliest effective date of the proposed amendment, if adopted at the September meeting, would be November 11, 2015, the date a Notice of Adoption would be published in the State Register. However, the July emergency rule will expire on October 18, 2015, 90 days from its filing with the Department of State on July 21, 2015.

Emergency action to adopt the proposed rule is necessary for the preservation of the general welfare to ensure that the emergency rule adopted at the July 2015 Regents meeting remains continuously in effect until the proposed rule can be presented for adoption and take effect as a permanent rule, and thereby ensure that school districts may timely meet school/school district accountability requirements for the 2015-2016 school year and beyond, consistent with the approved ESEA Flexibility Waiver and pursuant to statutory requirements.

It is anticipated that the proposed rule will be presented to the Board of Regents for permanent adoption at its October 26-27, 2015 meeting, which is the first scheduled meeting after expiration of the 45-day public comment period mandated by the State Administrative Procedure Act.

Subject: Elementary and Secondary Education Act (ESEA) Flexibility and school and school district accountability.

Purpose: To implement New York State's approved ESEA Flexibility Waiver Renewal.

Substance of emergency rule: At their September 16-17, 2015 meeting, the Board of Regents took emergency action to readopt the emergency rule adopted at the July 20-21, 2015 Regents meeting in order to ensure the July emergency rule remains continuously in effect until the effective date of its adoption as a permanent rule (The rule is anticipated to be presented for permanent adoption at the October 26-27, 2015 Regents meeting). The following is a summary of the substantive provisions of the emergency rule.

Section 100.18(a), Definitions, is amended to revise the definitions of "performance levels", "performance index" and "whole school reform model"; to add definitions of "re-identified focus school", "re-identified priority school", "Innovation framework model", "evidence-based model", and "early learning intervention model"; and to provide that "struggling school", "persistently struggling school", "school district receiver", "school intervention plan", "school receiver" and "consultation and collaboration" shall be as defined in 8 NYCRR section 100.19(a).

Section 100.18(f), Adequate Yearly Progress, is amended to provide that:

- commencing with 2014-15 school year results, a public school, charter school or school district will not be held accountable for an accountability

group that consists of fewer than 30 students on performance criterion set forth in 100.18(j) if the "all students" accountability group for that performance criterion includes at least 30 students for that school year and the accountability group with fewer than 30 students did not fail to meet participation rate requirements pursuant to 100.18(f)(4)(ii);

- effective with 2014-2015 school year results and continuing with the results for each school year thereafter, the "all students" accountability group for a public school, charter school or school district shall be deemed to have made adequate yearly progress on a performance criterion specified in 100.18(j)(3) if all the accountability groups, except the "all students" group, for which a public school, charter school or school district is accountable on that performance criterion made adequate yearly progress.

Section 100.18(g), Differentiated Accountability for Schools and Districts, is amended to set forth criteria for:

- (1) preliminary identification of priority schools, focus districts and schools based upon 2014-2015 school year results;

- (2) identification of focus schools with the 2014-2015 school year results;

- (3) identification of local assistance plan schools as focus schools;

- (4) designation of schools requiring a local assistance plan, based on 2013-14 school year results;

and to provide that in the event a priority school has been identified as a struggling school or a persistently struggling school pursuant to 100.19, the annual public notification requirements of 100.19(c) shall apply.

Section 100.18(h), Interventions, is amended to provide that:

- commencing with the 2015-16 school year, re-identified focus schools must revise their school comprehensive education plan to focus on the needs identified through their most recent Integrated Intervention Team (IIT), district-led, or School-led with district oversight Diagnostic Tool for School and District Effectiveness reviews, and to require the plan include a review of the re-identified focus school leader, and a description of how the school will implement at least one ESEA turnaround principle starting no later than the 2016-17 school year;

- for schools that are identified as Persistently Struggling or Struggling Schools and that are under a School District Receiver, the comprehensive education plan must also include the requirements specified in 8 NYCRR section 100.19(d)(1), related to development of a community engagement plan and inclusion of rigorous performance metrics and goals;

- for schools designated as struggling or persistently struggling, in creating the school intervention plan or in revising the Department-approved school comprehensive education plan or intervention model plan, the school receiver shall ensure that the plan addresses the tenets of the Diagnostic Tool For School and District Effectiveness and include student outcome data pursuant to section 100.19(f)(4); and

- No later than September 30, 2012 for schools identified during the 2011-12 school year, and no later than July 31, 2016 for schools identified during the 2016-17 school year, except that the commissioner may waive this timeline for good cause, each focus district with one or more priority schools shall submit in such format as prescribed by the commissioner the schedule by which each of the school district's priority schools shall implement, as part of the school's comprehensive improvement plan, a whole school reform model. A school implementing a transformation, turnaround, innovative framework model, early learning intervention model or evidence based model, or restart model pursuant to a school improvement grant or a school innovation fund grant, shall be deemed to be implementing a whole school reform model. Upon approval of the schedule by the commissioner, each priority school shall implement the whole school reform model according to the timeline specified in the schedule, which shall require that implementation begin no later than the 2014-2015 school year for schools identified during the 2012-13 school year, and no later than the 2018-19 school year for schools identified during the 2015-16 school year. The schedule for implementation of the whole school reform model may not be modified without prior approval of the commissioner.

Section 100.18(i), Removal from accountability designation, is amended to provide that:

- for a focus school that is identified pursuant to 100.18(g)(8), a district may petition for removal if the school meets the criteria specified in 100.18(g)(8)(vi); and

- commencing with 2015-16 school year results, if the school district does not meet the criteria for removal but each priority and focus school within the school district meets the criteria for removal, the district will remain a focus district but each school within the district shall be removed from priority or focus school designation.

Section 100.18(k), Identification of Schools for Public School Registration Review, is amended to:

- add the following additional grounds as among the factors the Commissioner may consider in determining whether a school is to be identified as a poor learning environment: (1) evidence the school does not maintain required programs and services; (2) evidence of failure to appropriately

refer for identification and/or provide required programs and services to students with disabilities pursuant to 8 NYCRR Part 200; and (3) evidence of failure to appropriately identify and/or provide required programs and services to English language learners pursuant to 8 NYCRR Part 154.

- provide that, notwithstanding the provisions of 100.18(g), any school identified as a School Under Registration Review pursuant to 100.18(k) shall also be identified as a priority school and shall be subject to all of the requirements of this section;

Subdivision (l) of section 100.18 is amended to provide:

- in the event that the Commissioner places a struggling school or a persistently struggling school pursuant to section 100.19 under registration review, the district may use a single notification to fulfill the annual public notification requirements of subdivisions 100.18(g)(7)(ii) and (l)(1)(ii) and section 100.19(c)(1)(ii);

- a school district may fulfill the requirements for implementation of a revised or new improvement plan by: (a) entering into a contract with an Educational Partnership Organization; (b) converting a school to a charter school; (c) entering into a contract with the state university trustees, subject to the approval of the commissioner of education, for the education of the children of the school; (d) for the city school district of New York, entering into a contract with the City University of New York (CUNY) to administer a New York City public high school; (e) implementing a plan to provide enhanced support and oversight of the school through an alternative governance structure, pursuant to prescribed criteria.

- A school that is identified for registration review that has also been identified as a struggling school or persistently struggling school pursuant to section 100.19 of this Part shall implement the school receivership provisions of that section, except that if the school fails to make demonstrable improvement pursuant to section 100.19 of this Part for two consecutive years, the Commissioner may direct that the school receivership be terminated and provide the district the opportunity to take one of the following actions: (a) convert the school to a charter school; (b) enter into a contract with SUNY trustees, subject to the approval of the commissioner of education, for the education of the children of the school; or (c) for the city school district of New York, entering into a contract with the city board and CUNY to administer a New York City public high school. In the event that the school district does not submit an acceptable plan in such format and in such timeline as the commissioner may establish, the commissioner may direct that the school district close or phase out the school pursuant to a plan approved by the commissioner.

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. EDU-31-15-00002-EP, Issue of August 5, 2015. The emergency rule will expire December 17, 2015.

Text of rule and any required statements and analyses may be obtained from: Kirti Goswami, State Education Department, Office of Counsel, State Education Building Room 148, 89 Washington Ave., Albany, NY 12234, (518) 474-6400, email: legal@nysed.gov

Regulatory Impact Statement

1. STATUTORY AUTHORITY:

Education Law section 101 continues existence of Education Department, with Board of Regents as its head, and authorizes Regents to appoint Commissioner of Education as Department's Chief Administrative Officer, which is charged with general management and supervision of all public schools and educational work of State.

Education Law section 207 empowers Regents and Commissioner to adopt rules and regulations to carry out State education laws and functions and duties conferred on Department.

Education Law section 210 authorizes Regents to register domestic and foreign institutions in terms of State standards, and fix the value of degrees, diplomas and certificates issued by institutions of other states or countries and presented for entrance to schools, colleges and professions in the State.

Education Law § 211-e sets forth provisions relating to contracts between a board of education (in New York City, the Chancellor of the city school district of the City of New York) and educational partnership organizations to intervene in a school designated by the Commissioner as a persistently lowest-achieving school, consistent with federal requirements, or a school under registration review.

Education Law § 211-f provides for appointment of receivers to assist low-performing schools to make demonstrable improvement in student performance.

Education Law section 215 authorizes Commissioner to require schools and school districts to submit reports containing such information as Commissioner shall prescribe.

Education Law section 305(1) and (2) provide Commissioner, as chief executive officer of the State's education system, with general supervision over all schools and institutions subject to the Education Law, or any stat-

ute relating to education, and responsibility for executing all educational policies of the Regents. Section 305(20) provides Commissioner shall have such further powers and duties as charged by Regents.

Education Law section 309 charges Commissioner with general supervision of boards of education and their management and conduct of all departments of instruction.

Education Law section 3713(1) and (2) authorize State and school districts to accept federal law making appropriations for educational purposes and authorize Commissioner to cooperate with federal agencies to implement such law.

2. LEGISLATIVE OBJECTIVES:

The proposed amendment relates to public school and school district accountability, is consistent with the above authority, and is necessary to implement and otherwise conform the Commissioner's Regulations to New York State's approved Elementary and Secondary Education Act (ESEA) Flexibility Waiver Renewal Request and to align section 100.18 with new section 100.19 relating to Receivership (July 8, 2015 State Register; EDU-27-15-00008-EP). The State and local educational agencies (LEAs) are required to comply with the ESEA as a condition to their receipt of federal funds under Title I of the ESEA Act of 1965, as amended.

3. NEEDS AND BENEFITS:

In September 2011, President Obama announced an ESEA regulatory flexibility initiative, based upon the Secretary of Education's authority to issue waivers. In October 2011, the Board of Regents directed the Commissioner to submit an ESEA Flexibility Request to the United States Department of Education (USDE). On May 29, 2012, the USDE approved New York State's ESEA Flexibility Waiver Request. In September 2013, the USDE offered states with approved ESEA Flexibility Waivers the opportunity to renew those waivers for the 2014-15 school year. At its February 2014 meeting, the Board of Regents directed the Department to submit its ESEA Renewal Application. On July 31, 2014, USDE approved New York State's ESEA Waiver Renewal Request for the 2014-15 school year. On November 13, 2014, the USDE issued new guidance for states with approved ESEA Flexibility Waivers describing how states could apply for a three- or four-year renewal of their approved Flexibility Waivers. At its March 2015 meeting, the Board of Regents directed the Department to submit its ESEA Renewal application for the 2015-16, 2016-17, 2017-18, and 2018-19 school years. On June 15, 2015, the Board of Regents added section 100.19 to the Regulations of the Commissioner, in order to implement Education Law 211-f related to school receivership. On June 23, 2015, the USDE approved New York's 2015-19 ESEA Renewal Request.

The approved request grants New York flexibility, among other things, to:

- establish alternative Annual Measurable Objectives (AMOs) that do not require that all students by no later than the 2013-14 school year be proficient in language/arts and mathematics.

- replace the identification of schools and districts for improvement, corrective action, and restructuring based on failure to make Annual Yearly Progress (AYP) with the identification of Priority Schools and Focus Schools and Districts.

- revise the consequences for identified schools and districts, providing districts with greater flexibility to implement their plans for improvement without having to set aside significant percentages of funding to support activities such as supplementary educational services.

- waive the requirement that a school have a poverty percentage of 40 percent or more to become a school wide program.

- allow the use of 1003(a) school improvement funds to provide grants to Title I Reward Schools and Local Assistance Plan Schools.

- allow districts to forego testing students who take Regents math examinations in grade 7 or 8 on the mathematics assessments for those grade levels.

- allow 21st Century Community Learning Center funds to support expanded learning time both during the school day and when school is not in session.

- waive the requirement that districts develop improvement plans regarding highly qualified teachers; and

- allow districts to transfer up to 100 percent of funds from certain programs into Title I.

4. COSTS:

Cost to the State: None.

Costs to local government: None. The proposed rule does not impose any new or additional program, service or duty or responsibility upon local government.

Cost to private regulated parties: None.

Cost to regulating agency for implementation and continued administration of this rule: None.

The proposed amendment does not impose any direct costs on the State, school districts, BOCES or charter schools, or on the State Education Department. It is anticipated that any indirect costs associated with the

proposed amendment will be minimal and capable of being absorbed using existing staff and resources.

5. LOCAL GOVERNMENT MANDATES:

The proposed amendment relates to public school and school district accountability and New York State's approved Elementary and Secondary Education Act (ESEA) Flexibility Waiver Renewal, and aligns section 100.18 with new section 100.19 relating to Receivership. The proposed rule does not impose any new or additional program, service, duty, or responsibility upon local governments, including school districts or BOCES. The proposed amendment will:

- accelerate the ability of the Department to inform schools and districts of their accountability status without having any material effect on accountability determinations;
- allow affected districts to use one of the three new School Improvement Grant (SIG) intervention models (early learning model, evidence-based model, and innovative framework model) to meet the requirements to implement a whole school reform model in a Priority School;
- allow the Department to make modest revisions to the methodologies used to identify/remove schools from Priority School, Focus School and Local Assistance Plan (LAP) status and districts from Focus status and use these revised methodologies to create new lists in February 2016 of Priority Schools, Focus Schools, LAP Schools and Focus Districts based on 2014-15 school year data;
- extend through the 2018-19 school year the provision that allows districts to forego testing students on the Grade 7 and 8 Mathematics assessments, if these students have taken a Regents examination in mathematics;
- require more rigorous interventions and supports for Re-identified Focus Schools.
- revise the Schools under Registration Review (SURR) process to align to the receivership requirements in section 100.19 pertaining to Persistently Struggling and Struggling Schools, including provisions pertaining to parent and public notification. A SURR that has also been identified as a Struggling School or Persistently Struggling School pursuant to Section 100.19 will be required to implement school receivership.
- require that any school identified as a SURR automatically also be identified as a Priority School, subject to the requirements pertaining to such schools and restrict the identification of Focus and LAPs as SURRs to those schools that have been determined by the Commissioner to be a poor learning environment in which the health, safety or educational welfare of children is at risk and/or a school that has been the subject of persistent parent complaints.
- revise the conditions for which a school could be identified as a poor learning environment and therefore be identified as a SURR by the Commissioner.

6. PAPERWORK:

Commencing with the 2015-16 school year, Re-identified Focus Schools must revise their school comprehensive education plan (SCEP) to focus on the needs identified through their most recent Integrated Intervention Team (IIT), district-led, or School-led with district oversight Diagnostic Tool for School and District Effectiveness reviews and describe how the school will implement at least one ESEA turnaround principle (e.g., redesign the school day, week, or year; modify the instructional program to ensure it is research-based, rigorous, and aligned with State academic content standards; provide time for collaboration on the use of data) starting no later than the 2016-17 school year. The plan must also include a review of the Re-identified Focus School leader, if the principal has been leader of the school for more than two full academic years. The purpose of the review is to determine whether the school leader should be provided additional professional development and/or mentoring or replaced.

7. DUPLICATION:

The rule does not duplicate existing State or federal regulations.

8. ALTERNATIVES:

There were no significant alternatives and none were considered.

9. FEDERAL STANDARDS:

The rule is necessary to conform the Commissioner's Regulations to New York's approved ESEA Flexibility Waiver Renewal.

10. COMPLIANCE SCHEDULE:

It is anticipated parties will be able to achieve compliance with the rule by its effective date.

Regulatory Flexibility Analysis

Small businesses:

The proposed amendment relates to public school and school district accountability and is necessary to conform the Commissioner's Regulations to New York State's approved Elementary and Secondary Education Act (ESEA) Flexibility Waiver Renewal Request. The State and local educational agencies (LEAs) are required to comply with the ESEA as a condition to their receipt of federal funds under Title I of the ESEA Act of 1965, as amended.

The amendment applies to public schools, school districts and charter schools that receive funding as LEAs pursuant to the ESEA, and does not impose any adverse economic impact, reporting, record keeping or any other compliance requirements on small businesses. Because it is evident from the nature of the proposed amendment that it does not affect small businesses, no further measures were needed to ascertain that fact and none were taken. Accordingly, a regulatory flexibility analysis for small businesses is not required and one has not been prepared.

Local governments:

1. EFFECT OF RULE:

The amendment applies to public schools, school districts and charter schools that receive funding as LEAs pursuant to the Elementary and Secondary Education Act of 1965, as amended.

2. COMPLIANCE REQUIREMENTS:

The amendment relates to public school and school district accountability and New York State's approved Elementary and Secondary Education Act (ESEA) Flexibility Waiver Renewal, and aligns section 100.18 with new section 100.19 relating to Receivership (July 8, 2015 State Register; EDU-27-15-00008-EP). The State and local educational agencies (LEAs) are required to comply with the ESEA as a condition to their receipt of federal funds under Title I of the ESEA Act of 1965, as amended. The amendment has been carefully drafted to meet specific federal and State requirements and does not impose any additional compliance requirements or costs on school districts and BOCES beyond those inherent in such federal and State requirements. The amendment will:

- accelerate the ability of the Department to inform schools and districts of their accountability status without having any material effect on accountability determinations;
- allow affected districts to use one of the three new School Improvement Grant (SIG) intervention models (early learning model, evidence-based model, and innovative framework model) to meet the requirements to implement a whole school reform model in a Priority School;
- allow the Department to make modest revisions to the methodologies used to identify/remove schools from Priority School, Focus School and Local Assistance Plan (LAP) status and districts from Focus status and use these revised methodologies to create new lists in February 2016 of Priority Schools, Focus Schools, LAP Schools and Focus Districts based on 2014-15 school year data;
- extend through the 2018-19 school year the provision that allows districts to forego testing students on the Grade 7 and 8 Mathematics assessments, if these students have taken a Regents examination in mathematics;
- require more rigorous interventions and supports for Re-identified Focus Schools.
- revise the Schools under Registration Review (SURR) process to align to the receivership requirements in section 100.19 pertaining to Persistently Struggling and Struggling Schools, including provisions pertaining to parent and public notification. A SURR that has also been identified as a Struggling School or Persistently Struggling School pursuant to Section 100.19 will be required to implement school receivership.
- require that any school identified as a SURR automatically also be identified as a Priority School, subject to the requirements pertaining to such schools and restrict the identification of Focus and LAPs as SURRs to those schools that have been determined by the Commissioner to be a poor learning environment in which the health, safety or educational welfare of children is at risk and/or a school that has been the subject of persistent parent complaints.
- revise the conditions for which a school could be identified as a poor learning environment and therefore be identified as a SURR by the Commissioner.

Commencing with the 2015-16 school year, Re-identified Focus Schools must revise their school comprehensive education plan (SCEP) to focus on the needs identified through their most recent Integrated Intervention Team (IIT), district-led, or School-led with district oversight Diagnostic Tool for School and District Effectiveness reviews and describe how the school will implement at least one ESEA turnaround principle (e.g., redesign the school day, week, or year; modify the instructional program to ensure it is research-based, rigorous, and aligned with State academic content standards; provide time for collaboration on the use of data) starting no later than the 2016-17 school year. The plan must also include a review of the Re-identified Focus School leader, if the principal has been leader of the school for more than two full academic years. The purpose of the review is to determine whether the school leader should be provided additional professional development and/or mentoring or replaced.

3. PROFESSIONAL SERVICES:

The amendment imposes no additional professional service requirements.

4. COMPLIANCE COSTS:

The proposed amendment does not impose any direct costs on school

districts or BOCES. It is anticipated that any indirect costs associated with the proposed amendment will be minimal and capable of being absorbed using existing staff and resources.

5. ECONOMIC AND TECHNOLOGICAL FEASIBILITY:

The amendment imposes no technological requirements on local governments. Costs are discussed under the Compliance Costs section above.

6. MINIMIZING ADVERSE IMPACT:

The amendment is necessary to implement and otherwise conform the Commissioner's Regulations to New York State's approved Elementary and Secondary Education Act (ESEA) Flexibility Renewal Waiver Request, and to align section 100.18 with new section 100.19 relating to Receivership. The State and local educational agencies (LEAs) are required to comply with the ESEA as a condition to their receipt of federal funds under Title I of the ESEA Act of 1965, as amended. The amendment has been carefully drafted to meet specific federal and State requirements and does not impose any additional compliance requirements or costs on school districts or BOCES beyond those inherent in such federal and State requirements. The amendment will:

- accelerate the ability of the Department to inform schools and districts of their accountability status without having any material effect on accountability determinations;

- allow affected districts to use one of the three new School Improvement Grant (SIG) intervention models (early learning model, evidence-based model, and innovative framework model) to meet the requirements to implement a whole school reform model in a Priority School;

- allow the Department to make modest revisions to the methodologies used to identify/remove schools from Priority School, Focus School and Local Assistance Plan (LAP) status and districts from Focus status and use these revised methodologies to create new lists in February 2016 of Priority Schools, Focus Schools, LAP Schools and Focus Districts based on 2014-15 school year data;

- extend through the 2018-19 school year the provision that allows districts to forego testing students on the Grade 7 and 8 Mathematics assessments, if these students have taken a Regents examination in mathematics;

- require more rigorous interventions and supports for Re-identified Focus Schools.

- revise the Schools under Registration Review (SURR) process to align to the receivership requirements in section 100.19 pertaining to Persistently Struggling and Struggling Schools, including provisions pertaining to parent and public notification. A SURR that has also been identified as a Struggling School or Persistently Struggling School pursuant to Section 100.19 will be required to implement school receivership.

- require that any school identified as a SURR automatically also be identified as a Priority School, subject to the requirements pertaining to such schools and restrict the identification of Focus and LAPs as SURRs to those schools that have been determined by the Commissioner to be a poor learning environment in which the health, safety or educational welfare of children is at risk and/or a school that has been the subject of persistent parent complaints.

- revise the conditions for which a school could be identified as a poor learning environment and therefore be identified as a SURR by the Commissioner.

- Commencing with the 2015-16 school year, Re-identified Focus Schools must revise their school comprehensive education plan (SCEP) to focus on the needs identified through their most recent Integrated Intervention Team (IIT), district-led, or School-led with district oversight Diagnostic Tool for School and District Effectiveness reviews and describe how the school will implement at least one ESEA turnaround principle (e.g., redesign the school day, week, or year; modify the instructional program to ensure it is research-based, rigorous, and aligned with State academic content standards; provide time for collaboration on the use of data) starting no later than the 2016-17 school year. The plan must also include a review of the Re-identified Focus School leader, if the principal has been leader of the school for more than two full academic years. The purpose of the review is to determine whether the school leader should be provided additional professional development and/or mentoring or replaced.

The proposed amendment has been carefully drafted to meet specific federal and State requirements and does not impose any additional compliance requirements or costs beyond those inherent in such federal and State requirements. Since these requirements apply to all local educational agencies in the State that receive ESEA funds, it is not possible to adopt different standards for school districts and BOCES.

7. LOCAL GOVERNMENT PARTICIPATION:

Copies of the amendment have been provided to District Superintendents with the request that they distribute it to school districts within their supervisory districts for review and comment. Copies were also provided for review and comment to the chief school officers of the five big city school districts and to charter schools.

8. INITIAL REVIEW OF RULE (SAPA § 207):

Pursuant to State Administrative Procedure Act section 207(1)(b), the State Education Department proposes that the initial review of this rule shall occur in the fifth calendar year after the year in which the rule is adopted, instead of in the third calendar year. The justification for a five year review period is that the proposed rule is necessary to implement and otherwise conform the Commissioner's Regulations to New York State's approved Elementary and Secondary Education Act (ESEA) Flexibility Waiver Request. The State and local educational agencies (LEAs) are required to comply with the ESEA as a condition to their receipt of federal funds under Title I of the ESEA Act of 1965, as amended. Consequently, the major, substantive provisions of the proposed rule are subject to the approved Waiver Request and generally cannot be changed without approval by the U.S. Department of Education.

The Department invites public comment on the proposed five year review period for this rule. Comments should be sent to the agency contact listed in item number 16. of the Notice of Emergency Adoption and Proposed Rule Making published herewith, and must be received within 45 days of the date the Notice is published in the State Register.

Rural Area Flexibility Analysis

1. TYPES AND ESTIMATED NUMBER OF RURAL AREAS:

The proposed amendment applies to public schools, school districts and charter schools that receive funding as LEAs pursuant to the Elementary and Secondary Education Act (ESEA) of 1965, as amended, including those located in the 44 rural counties with less than 200,000 inhabitants and the 71 towns in urban counties with a population density of 150 per square mile or less.

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

The amendment relates to public school and school district accountability and New York State's approved Elementary and Secondary Education Act (ESEA) Flexibility Waiver Renewal, and aligns section 100.18 with new section 100.19 relating to Receivership. The proposed amendment has been carefully drafted to meet specific federal and State requirements and does not impose any additional compliance requirements or costs on school districts, BOCES and charter schools in rural areas beyond those inherent in such federal and State requirements. The amendment will:

- accelerate the ability of the Department to inform schools and districts of their accountability status without having any material effect on accountability determinations;

- allow affected districts to use one of the three new School Improvement Grant (SIG) intervention models (early learning model, evidence-based model, and innovative framework model) to meet the requirements to implement a whole school reform model in a Priority School;

- allow the Department to make modest revisions to the methodologies used to identify/remove schools from Priority School, Focus School and Local Assistance Plan (LAP) status and districts from Focus status and use these revised methodologies to create new lists in February 2016 of Priority Schools, Focus Schools, LAP Schools and Focus Districts based on 2014-15 school year data;

- extend through the 2018-19 school year the provision that allows districts to forego testing students on the Grade 7 and 8 Mathematics assessments, if these students have taken a Regents examination in mathematics;

- require more rigorous interventions and supports for Re-identified Focus Schools.

- revise the Schools under Registration Review (SURR) process to align to the receivership requirements in section 100.19 pertaining to Persistently Struggling and Struggling Schools, including provisions pertaining to parent and public notification. A SURR that has also been identified as a Struggling School or Persistently Struggling School pursuant to Section 100.19 will be required to implement school receivership.

- require that any school identified as a SURR automatically also be identified as a Priority School, subject to the requirements pertaining to such schools and restrict the identification of Focus and LAPs as SURRs to those schools that have been determined by the Commissioner to be a poor learning environment in which the health, safety or educational welfare of children is at risk and/or a school that has been the subject of persistent parent complaints.

- revise the conditions for which a school could be identified as a poor learning environment and therefore be identified as a SURR by the Commissioner.

- Commencing with the 2015-16 school year, Re-identified Focus Schools must revise their school comprehensive education plan (SCEP) to focus on the needs identified through their most recent Integrated Intervention Team (IIT), district-led, or School-led with district oversight Diagnostic Tool for School and District Effectiveness reviews and describe how the school will implement at least one ESEA turnaround principle (e.g., redesign the school day, week, or year; modify the

instructional program to ensure it is research-based, rigorous, and aligned with State academic content standards; provide time for collaboration on the use of data) starting no later than the 2016-17 school year. The plan must also include a review of the Re-identified Focus School leader, if the principal has been leader of the school for more than two full academic years. The purpose of the review is to determine whether the school leader should be provided additional professional development and/or mentoring or replaced.

The amendment imposes no additional professional service requirements on school districts and BOCES in rural areas.

3. COMPLIANCE COSTS:

The proposed amendment does not impose any direct costs on school districts, BOCES or charter schools located in rural areas. It is anticipated that any indirect costs associated with the proposed amendment will be minimal and capable of being absorbed using existing staff and resources.

4. MINIMIZING ADVERSE IMPACT:

The amendment is necessary to implement and otherwise conform the Commissioner’s Regulations to New York State’s approved Elementary and Secondary Education Act (ESEA) Flexibility Renewal Waiver Request, and to align section 100.18 with new section 100.19 relating to Receivership (July 8, 2015 State Register; EDU-27-15-00008-EP) . The State and local educational agencies (LEAs) are required to comply with the ESEA as a condition to their receipt of federal funds under Title I of the ESEA Act of 1965, as amended. The amendment has been carefully drafted to meet specific federal and State requirements and does not impose any additional compliance requirements or costs on school districts, BOCES and charter schools in rural areas beyond those inherent in such federal and State requirements. The amendment will:

- accelerate the ability of the Department to inform schools and districts of their accountability status without having any material effect on accountability determinations;
- allow affected districts to use one of the three new School Improvement Grant (SIG) intervention models (early learning model, evidence-based model, and innovative framework model) to meet the requirements to implement a whole school reform model in a Priority School;
- allow the Department to make modest revisions to the methodologies used to identify/remove schools from Priority School, Focus School and Local Assistance Plan (LAP) status and districts from Focus status and use these revised methodologies to create new lists in February 2016 of Priority Schools, Focus Schools, LAP Schools and Focus Districts based on 2014-15 school year data;
- extend through the 2018-19 school year the provision that allows districts to forego testing students on the Grade 7 and 8 Mathematics assessments, if these students have taken a Regents examination in mathematics;
- require more rigorous interventions and supports for Re-identified Focus Schools.
- revise the Schools under Registration Review (SURR) process to align to the receivership requirements in section 100.19 pertaining to Persistently Struggling and Struggling Schools, including provisions pertaining to parent and public notification. A SURR that has also been identified as a Struggling School or Persistently Struggling School pursuant to Section 100.19 will be required to implement school receivership.
- require that any school identified as a SURR automatically also be identified as a Priority School, subject to the requirements pertaining to such schools and restrict the identification of Focus and LAPs as SURRs to those schools that have been determined by the Commissioner to be a poor learning environment in which the health, safety or educational welfare of children is at risk and/or a school that has been the subject of persistent parent complaints.
- revise the conditions for which a school could be identified as a poor learning environment and therefore be identified as a SURR by the Commissioner.
- Commencing with the 2015-16 school year, Re-identified Focus Schools must revise their school comprehensive education plan (SCEP) to focus on the needs identified through their most recent Integrated Intervention Team (IIT), district-led, or School-led with district oversight Diagnostic Tool for School and District Effectiveness reviews and describe how the school will implement at least one ESEA turnaround principle (e.g., redesign the school day, week, or year; modify the instructional program to ensure it is research-based, rigorous, and aligned with State academic content standards; provide time for collaboration on the use of data) starting no later than the 2016-17 school year. The plan must also include a review of the Re-identified Focus School leader, if the principal has been leader of the school for more than two full academic years. The purpose of the review is to determine whether the school leader should be provided additional professional development and/or mentoring or replaced.

The amendment relates to public school and school district accountability and New York State’s approved Elementary and Secondary Educa-

tion Act (ESEA) Flexibility Waiver Renewal, and aligns section 100.18 with new section 100.19 relating to Receivership. Since these requirements apply to all local educational agencies in the State that receive ESEA funds, it is not possible to adopt different standards for school districts, BOCES and charter schools in rural areas.

5. RURAL AREA PARTICIPATION:

The amendment was submitted for review and comment to the Department’s Rural Education Advisory Committee, which includes representatives of school districts in rural areas.

6. INITIAL REVIEW OF RULE (SAPA § 207):

Pursuant to State Administrative Procedure Act section 207(1)(b), the State Education Department proposes that the initial review of this rule shall occur in the fifth calendar year after the year in which the rule is adopted, instead of in the third calendar year. The justification for a five year review period is that the proposed rule is necessary to implement and otherwise conform the Commissioner’s Regulations to New York State’s approved Elementary and Secondary Education Act (ESEA) Flexibility Waiver Request. The State and local educational agencies (LEAs) are required to comply with the ESEA as a condition to their receipt of federal funds under Title I of the ESEA Act of 1965, as amended. Consequently, the major, substantive provisions of the proposed rule are subject to the approved Waiver Request and generally cannot be changed without approval by the U.S. Department of Education.

The Department invites public comment on the proposed five year review period for this rule. Comments should be sent to the agency contact listed in item number 16. of the Notice of Emergency Adoption and Proposed Rule Making published herewith, and must be received within 45 days of the date the Notice is published in the State Register.

Job Impact Statement

The proposed amendment relates to public school and school district accountability and is necessary to implement and otherwise conform the Commissioner’s Regulations to New York State’s approved Elementary and Secondary Education Act (ESEA) Flexibility Waiver Renewal Request and to align section 100.18 with new section 100.19 relating to Receivership (July 8, 2015 State Register; EDU-27-15-00008-EP). The State and local educational agencies (LEAs) are required to comply with the ESEA as a condition to their receipt of federal funds under Title I of the ESEA Act of 1965, as amended.

The proposed amendment applies to public schools, school districts and charter schools that receive funding as LEAs pursuant to the ESEA, and will not have an adverse impact on jobs or employment opportunities. Because it is evident from the nature of the amendment that it will have no impact, on jobs or employment opportunities, no further steps were needed to ascertain those facts and none were taken. Accordingly, a job impact statement is not required and one has not been prepared.

Department of Environmental Conservation

EMERGENCY/PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Sanitary Condition of Shellfish Lands

I.D. No. ENV-44-15-00001-EP

Filing No. 903

Filing Date: 2015-10-14

Effective Date: 2015-10-14

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

Proposed Action: Amendment of Part 41 of Title 6 NYCRR.

Statutory authority: Environmental Conservation Law, sections 13-0307 and 13-0319

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

Specific reasons underlying the finding of necessity: Shellfish are filter feeders that consume plankton, other minute organisms, and particulate matter found in the water column. They are capable of accumulating pathogenic bacteria, viruses and toxic substances within their bodies. Consequently, shellfish harvested from areas that do not meet the bacteriological standards for certification have an increased potential to

cause illness in shellfish consumers. Closures of shellfish lands that do not meet the water quality standards provide essential protection of public health. Some shellfish growing areas (SGA) will require being reclassified as seasonally uncertified. These areas are open during a portion of the year when water quality meets the criteria for certified classification. The seasonally open dates can vary between SGA because sample collection in each area is randomly selected and water quality results will determine when and if areas meet certified criteria for shellfish harvest. Water quality samples that meet criteria during a portion of the year (typically the colder months of the year) determine the seasonally uncertified open dates.

Recent evaluations of current water quality data indicate that the bacteriological standards are not met in the affected areas (described below) and an increased risk of illness exists for shellfish consumers. During the most recent 2015 evaluations of growing areas, many of the sampling stations that were formerly passing certified criteria are now failing criteria. In many cases, formerly passing stations were only marginally passing (right at or very near threshold values) in prior 2012 triennial evaluations. Slight increases in non-point source pollution (storm water runoff, wildlife), which is a major contributing factor to increases in fecal coliform levels, can occur near times of routine water sampling. This in turn causes higher fecal coliform values at these borderline stations, triggering stations to fail certified criteria during triennial evaluations. When that happens, reclassification to protect public health is needed.

This rulemaking designates the following areas as “uncertified areas” for shellfishing in order to protect public health:

In the Towns of Huntington and Oyster Bay: Approximately 99 acres in Cold Spring Harbor shall be reclassified from year-round certified to seasonally uncertified (closed) May 1 through October 15;

In the Town of Brookhaven: Approximately 200 acres in Mt. Sinai Harbor shall be reclassified from year-round certified to seasonally uncertified (closed) May 1 through October 31;

In the Towns of Brookhaven (north shore) and Smithtown: Approximately 300 acres in Stony Brook Harbor shall be reclassified from seasonally uncertified May 15 through October 31, to seasonally uncertified May 1 through December 31;

In the Towns of Brookhaven (south shore) and Islip: Approximately 1,028 acres in Patchogue Bay shall be reclassified from year-round certified to seasonally uncertified (closed) May 1 through September 30;

In the Towns of Brookhaven (north shore) and Riverhead: Approximately 72 acres in Long Island Sound shall be designated from year-round certified to year-round uncertified;

In the Towns of Southold and Riverhead: Approximately 65 acres in Great Peconic Bay shall be reclassified from year-round certified to year-round uncertified;

In the Town of Southampton: Approximately 60 acres in Shinnecock Bay (Heady Creek) shall be reclassified from year-round certified to seasonally uncertified May 1 to November 30; and

In the Town of East Hampton: Approximately 20 acres in Acabonac Harbor shall be reclassified from seasonally uncertified May 1 through November 30, to year-round uncertified.

The promulgation of this regulation on an emergency basis is necessary to protect public health. If the Department does not adopt this rulemaking on an emergency basis, shellfish could be lawfully harvested from the above areas, which could lead to human consumption of potentially harmful shellfish.

Subject: Sanitary Condition of Shellfish Lands.

Purpose: To reclassify shellfish lands to prohibit the harvest of shellfish.

Text of emergency/proposed rule: 6 NYCRR Part 41 is amended to read as follows:

Clause 41.2(b)(4)(vii)(‘a’) is amended to read as follows:

(‘a’) *During the period January 1 through December 31, both dates inclusive, [All] all that area including tributaries south and east of a line extending southerly from the seaward end of the dock serving the Cold Spring Harbor Beach Club (local landmark) to the western extremity of the white house (known as the Gale House) located on the shoreline immediately west of Cold Spring Beach (local landmark), on the campus of Cold Spring Harbor Laboratory.*

Clause 41.2(b)(4)(vii)(‘b’) is renumbered 41.2(b)(4)(vii)(‘c’).

New clause 41.2(b)(4)(vii)(‘b’) is adopted to read as follows:

(‘b’) *During the period May 1 through October 15, both dates inclusive, all that area including tributaries south and east of a line extending westerly from the seaward end of the dock serving the Cold Spring Harbor Beach Club (local landmark) to the flag pole situated near the village hall of the Village of Laurel Hollow, 1492 Laurel Hollow Road (local landmark).*

Clause 41.3(b)(2)(ii)(‘b’) is amended to read as follows:

(‘b’) *During the period [May 1st through December 14th] May 1 through September 30, both dates inclusive, all that area of Great South Bay, Patchogue Bay and tributaries [within 500 yards in any direction*

from the foot of Dunton Avenue, West Bellport.] lying north of a line extending westerly from the southernmost tip of land at Howells Point (local landmark) to the southernmost tip of the fixed dock at the entrance to the boat basin at Sayville Yacht Club (local landmark).

Clause 41.3(b)(3)(ii)(‘b’) is amended to read as follows:

(‘b’) *During the period [May 1st through December 14th] May 1 through September 30, both dates inclusive, all that area of Great South Bay, Patchogue Bay and tributaries [within 500 yards in any direction from the foot of Dunton Avenue, West Bellport.] lying north of a line extending westerly from the southernmost tip of land at Howells Point (local landmark) to the southernmost tip of the fixed dock at the entrance to the boat basin at Sayville Yacht Club (local landmark).*

Clause 41.3(b)(4)(iii)(‘h’) is amended to read as follows:

(‘h’) *During the period May 1[st] through November 30[th] (both dates inclusive) all that area, including tributaries of Heady Creek, lying north of a line extending [easterly] due west from the [northeast corner of the peaked roof of the beige Shinnecock Indian Reservation, old hatchery building, to a red brick chimney of a two-story residence at 509 Captains Neck Lane, known locally as “Colonnades,” on the opposite shoreline (said residence is a two-story structure with natural wood shingled siding and a natural wood shingled roof) (1993).] southernmost tip of land on the eastern side of Heady Creek directly across to the opposite shoreline.*

Clause 41.3(b)(5)(x)(‘a’) is repealed.

New clause 41.3(b)(5)(x)(‘a’) is adopted to read as follows:

(‘a’) *All that area of East Harbor (located in the southernmost portion of Acabonac Harbor) lying south of a line extending northwesterly from the southernmost point of the southernmost bulkhead located on the property at 73 Louse Point Road, to an orange marker on the opposite western shoreline.*

Clauses 41.3(b)(5)(x)(‘c’) and (‘d’) are renumbered (‘d’) and (‘e’).

New clause 41.3(b)(5)(x)(‘c’) is adopted to read as follows:

(‘c’) *All that area of Acabonac Harbor, Pussy’s Pond and an unnamed cove, including tributaries, lying west of a line heading north from an orange marker on the southern shore to an orange marker on the opposite northern shoreline. Said unnamed cove lies southerly of the Merrill Lake Sanctuary and northerly of Harbor Lane and Shipyard Lane (local landmarks in Springs).*

Clause 41.3(b)(7)(xi)(‘a’) is amended to read as follows:

(‘a’) *All that area of Brush Creek, including tributaries and the entrance canal, and all that area of Great Peconic Bay within a [300] 1,000-yard radius of the southwesternmost corner of the bulkheading protecting the northern shoreline of the entrance to Brush Creek.*

New clause 41.3(b)(8)(iii)(‘b’) is adopted to read as follows:

(‘b’) *All that area of Brush Creek, including tributaries and the entrance canal, and all that area of Great Peconic Bay within a 1,000-yard radius of the southwesternmost corner of the bulkheading protecting the northern shoreline of the entrance to Brush Creek.*

Subparagraph 41.3(b)(8)(‘iv’) is amended to read as follows:

(‘iv’) *All that area of Long Island Sound within [a 500-yard radius of the northernmost point of the rock jetty (local landmark) located at the mouth of Wading River Creek.] 500 yards of the shoreline, beginning at a point 200 yards west of the westernmost point of the west jetty at the Shoreham Canal to the westernmost point of the paved parking lot at Wading River Beach located on Creek Road (Hamlet of Wading River).*

Subparagraph 41.3(b)(9)(iii) is amended to read as follows:

(iii) [Mt.] Mount Sinai Harbor.

Clauses 41.3(b)(9)(iii)(‘a’) through (‘d’) are repealed.

New clauses 41.3(b)(9)(iii)(‘a’) and (‘b’) are adopted to read as follows:

(‘a’) *During the period May 1 through October 31, both dates inclusive, all that area of Mount Sinai Harbor, including tributaries, lying southerly of a line extending easterly from the northernmost point of the west jetty at the harbor entrance to the northernmost point of the east jetty at the harbor entrance.*

(‘b’) *During the period January 1 through December 31, both dates inclusive, all that area of Mount Sinai Harbor, including tributaries lying south of a line extending westerly from the northernmost point of the bulkhead at the Town of Brookhaven access point known locally as Satterly Landing (located on the northern side of Shore Road and west of the residence at 182 Shore Road, local landmarks) to the northernmost end of the small white building known locally as “Adee’s Boathouse” (local landmark), located on the opposite western shoreline.*

Clause 41.3(b)(9)(iv)(‘e’) is amended to read as follows:

(‘e’) *During the period [May 15th through October 31st] May 1 through December 31, both dates inclusive, all that area of Stony Brook Harbor and tributaries lying south of a line extending southeasterly from the southernmost red brick chimney on the Knox School located at 541 Long Beach Road in the incorporated Village of Nissequogue (said school is a three-story red brick building, local landmark) to the southernmost chimney on the residence at 121 Harbor Road in the incorporated Village*

of Head of the Harbor (said residence is a white three-story structure with dark shutters and three chimneys and is located on the Thatch Meadow Farm property, local landmark).

Clause 41.3(b)(9)(‘vi’) is amended to read as follows:

(‘vi’) All that area of Long Island Sound within [a 500-yard radius of the northernmost point of the rock jetty (local landmark) located at the mouth of Wading River Creek.] *500 yards of the shoreline, beginning at a point 200 yards west of the westernmost point of the west jetty at the Shoreham Canal to the westernmost point of the paved parking lot at Wading River Beach located on Creek Road (Hamlet of Wading River).*

Clause 41.3(b)(10)(ii)(‘d’) is amended to read as follows:

(‘d’) During the period [May 15th through October 31st] *May 1 through December 31*, both dates inclusive, all that area of Stony Brook Harbor and tributaries lying south of a line extending southeasterly from the southernmost red brick chimney on the Knox School located at 541 Long Beach Road in the incorporated Village of Nissequogue (said school is a three-story red brick building, local landmark) to the southernmost chimney on the residence at 121 Harbor Road in the incorporated Village of Head of the Harbor (said residence is a white three-story structure with dark shutters and three chimneys and is located on the Thatch Meadow Farm property, local landmark).

Existing clause 41.3(b)(11)(iv)(‘a’) is amended to read as follows:

(‘a’) *During the period January 1 through December 31, both dates inclusive, [All] all that area including tributaries south and east of a line extending southerly from the seaward end of the dock serving the Cold Spring Harbor Beach Club (local landmark) to the western extremity of the white house (known as the Gale House) located on the shoreline immediately west of Cold Spring Beach (local landmark), on the campus of Cold Spring Harbor Laboratory.*

Clause 41.3(b)(11)(iv)(‘b’) is renumbered to 41.3(b)(11)(iv)(‘c’).

New clause 41.3(b)(11)(iv)(‘b’) is adopted to read as follows:

(‘b’) *During the period May 1 through October 15, both dates inclusive, all that area including tributaries south and east of a line extending westerly from the seaward end of the dock serving the Cold Spring Harbor Beach Club (local landmark) to the flag pole situated near the village hall of the Village of Laurel Hollow, 1492 Laurel Hollow Road (local landmark).*

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 January 11, 2016.

Text of rule and any required statements and analyses may be obtained from: Matthew Richards, NYS Department of Environmental Conservation, 205 N. Belle Mead Road, Suite 1, East Setauket, NY 11733, (631) 444-0491, email: matt.richards@dec.ny.gov

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

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

Additional matter required by statute: The action is subject to SEQR as an Unlisted action and a Short EAF was completed. The Department has determined that an EIS need not be prepared and has issued a negative declaration. The EAF and negative declaration are available upon request.

Consolidated Regulatory Impact Statement

1. Statutory authority:

The statutory authority for designating shellfish lands as certified or uncertified is given in Environmental Conservation Law (ECL) section 13 0307. Subdivision 1 of section 13 0307 of the ECL requires the Department of Environmental Conservation (the department) to periodically conduct examinations of all shellfish lands within the marine district to ascertain the sanitary condition of these areas. Subdivision 2 of this section requires the department to certify which shellfish lands are in such sanitary condition that shellfish may be taken for food. Such lands are designated as certified shellfish lands. All other shellfish lands are designated as uncertified. The statutory authority for promulgating regulations with respect to the harvest of shellfish is given in ECL section 13 0319.

2. Legislative objectives:

There are two purposes of the legislation: to ensure that shellfish lands are appropriately classified as either certified or uncertified and to protect public health by preventing the harvest and consumption of shellfish from lands that do not meet the standards for a certified shellfish land. This legislation requires the department to examine shellfish lands and determine which shellfish lands meet the sanitary criteria for a certified shellfish land, as set forth in Part 47 of Title 6 NYCRR, promulgated pursuant to section 13 0319 of the ECL. Shellfish lands which meet these criteria must be designated as certified. Shellfish lands which do not meet criteria must be designated as uncertified to prevent the harvest of shellfish from those lands.

3. Needs and benefits:

Regulations that designate shellfish lands as certified are needed to al-

low the harvest of shellfish from lands that meet the sanitary criteria for a certified area. Shellfish are a valuable state resource and, where possible, should be available for commercial and recreational harvest. The classification of previously uncertified shellfish lands as certified may provide additional sources of income for commercial shellfish diggers, by increasing the amount of areas available for harvest. Recreational harvesters also benefit by having increased harvest opportunities and the ability to make use of a natural resource readily available to the public. The direct harvest of shellfish for use as food is allowed from certified shellfish lands only.

To protect public health and to comply with ECL 13-0307, the Bureau of Marine Resources’ Shellfish Sanitation Program conducts and maintains sanitary surveys of shellfish growing areas (SGA) in the marine district in New York State. Maintenance of these surveys includes the regular collection and bacteriological examination of water samples to monitor the sanitary condition of SGAs. Triennial water quality evaluation reports written in 2015 are prepared by the staff of the Shellfish Sanitation Program for each SGA. These reports present the results of statistical analyses of water quality data comprised of a minimum of 30 water quality data points. The years involved can vary based on the number of samples collected for each year, for each growing area.

The report summary may state that all or portions of an SGA should be designated as uncertified for the harvest of shellfish or that all, or portions of an SGA should be designated as certified or seasonally uncertified for the harvest of shellfish based on criteria in 6NYCRR Part 47.

Regulations that designate shellfish lands as uncertified are needed to prevent the harvest and consumption of shellfish from lands that do not meet the sanitary criteria for a certified area. Shellfish harvested from uncertified shellfish lands have a greater potential to cause human illness due to the possible presence of pathogenic bacteria or viruses. These pathogens may cause the transmission of infectious disease to the shellfish consumer.

These regulations also protect the shellfish industry. Seafood wholesalers, retailers, and restaurants are adversely affected by public reaction to instances of shellfish related illness. By prohibiting the harvest of shellfish from lands that fail to meet the sanitary criteria, these regulations can ensure that only wholesome shellfish are allowed to be sold to the shellfish consumer.

4. Costs:

There will be no costs to State or local governments. No direct costs will be incurred by regulated commercial shellfish harvesters in the form of initial capital investment or initial non capital expenses, in order to comply with these proposed regulations. The department cannot provide an estimate of potential lost income to shellfish harvesters when areas are classified as uncertified, due to a number of variables that are associated with commercial shellfish harvesting; nor can the potential benefits be estimated when areas are reopened. Those variables are listed in the following three paragraphs.

As of August 5, 2015, the department had issued 1,649 New York State shellfish digger’s permits for the year 2015. However, the actual number of those individuals who harvest shellfish commercially full time is not known. Recreational harvesters who wish to harvest more than the daily recreational limit of 100 hard clams, with no intent to sell their catch, can only do so by purchasing a New York State digger’s permit. The number of individuals who hold shellfish digger’s permits for that type of recreational harvest is unknown. The department’s records do not differentiate between full time and part-time commercial or recreational shellfish harvesters.

The number of harvesters working in a particular area cannot be estimated for the reason stated above. In addition, the number of harvesters in a particular area is dependent upon the season, the amount of shellfish resource in the area, the price of shellfish and other economic factors, unrelated to the department’s proposed regulatory action. When a particular area is classified as uncertified (closed to shellfish harvesting), harvesters can shift their efforts to other certified areas.

Estimates of the existing shellfish resource in a particular embayment are not known. Recent shellfish population assessments have not been conducted by the department. Without this information, the department cannot determine the effect a closure or reopening would have on the existing shellfish resource.

The department’s actions to classify areas as certified or uncertified are not dependent on the shellfish resources in a particular area. They are based solely on the results of water quality analyses, the need to protect public health, and statutory requirements.

There is no cost to the department. Sampling requirements will likely be reduced when an area is reclassified from certified or seasonally uncertified to seasonally uncertified or uncertified year-round. Administration and enforcement of the proposed amendment are covered by existing programs.

5. Local government mandates:

The proposed rule does not impose any mandates on local government.

6. Paperwork:

No new paperwork is required.

7. Duplication:

The proposed amendment does not duplicate any state or federal requirement.

8. Alternatives:

There are no acceptable alternatives. ECL section 13 0307 stipulates that when the department has determined that a shellfish land meets the sanitary criteria for certified shellfish lands, the department must designate the land as certified and open to shellfish harvesting. All other shellfish lands must be designated as uncertified and closed to shellfish harvesting. These actions are necessary to protect public health. Failure to comply with the National Shellfish Sanitation Program (NSSP) guidelines could result in a ban on New York State shellfish in interstate commerce and would cause undue hardship to the commercial harvesting industry.

9. Federal standards:

There are no federal standards regarding the certification of shellfish lands. New York and other shellfish producing and shipping states participate in the National Shellfish Sanitation Program (NSSP) which provides guidelines intended to promote uniformity in shellfish sanitation standards among members. The NSSP is a cooperative program consisting of the federal government, states and the shellfish industry. Participation in the NSSP is voluntary, but participating states agree to follow NSSP water quality standards. Each state adopts its own regulations to implement a shellfish sanitation program consistent with the NSSP. The U.S. Food and Drug Administration (FDA) evaluates state programs and standards relative to NSSP guidelines. Substantial non conformity with NSSP guidelines can result in sanctions being taken by FDA, including removal of a state's shellfish shippers from the Interstate Certified Shellfish Shippers List. This would effectively bar a non conforming state's shellfish products from interstate commerce.

10. Compliance schedule:

Compliance with any new regulations designating areas as certified or uncertified does not require additional capital expense, paperwork, record keeping or any action by the regulated parties. Immediate compliance with any regulation designating shellfish lands as uncertified is necessary to protect public health. Shellfish harvesters are notified of changes in the classification of shellfish lands by mail either prior to, or concurrent with, the adoption of new regulations. Therefore, immediate compliance can be readily achieved.

Consolidated Regulatory Flexibility Analysis

1. Effect on small business and local government:

As of August 5, 2015 there were 1,649 licensed shellfish diggers in New York State for the year 2015. The numbers of permits issued for areas in the State are as follows: Town of Babylon, 49; Town of Brookhaven, 285; Town of East Hampton, 239; Town of Hempstead, 107; Town of Huntington, 150; Town of Islip, 128; Town of North Hempstead, 4; Town of Oyster Bay, 111; Town of Riverhead, 60; Town of Shelter Island, 33; Town of Smithtown, 158; Town of Southampton, 158; Town of Southold, 227; New York City, 44; Westchester, 3; other, 16.

Any change in the designation of shellfish lands may have an effect on shellfish diggers. Each time shellfish lands or portions of shellfish lands are designated as uncertified, there may be some loss of income for shellfish diggers who are harvesting shellfish from the lands to be closed. This loss may be determined by the acreage to be closed, the type of closure (whether year-round or seasonal), the species of shellfish present in the area, the area's productivity, and the market value of the shellfish resource in the particular area.

When uncertified shellfish lands are found to meet the sanitary criteria for a certified shellfish land, and are then designated as certified, there is also an effect on shellfish diggers. More shellfish lands are made available for the harvest of shellfish, and there is a potential for an increase in income for shellfish diggers. Again, the effect of the re opening of a harvesting area is determined by the shellfish species present, the area's productivity, and the market value of the shellfish resource in the area.

Local governments on Long Island exercise management authority, and share law enforcement responsibility for shellfish with the State and the counties of Nassau and Suffolk. These include the towns of Hempstead, North Hempstead and Oyster Bay in Nassau County and the towns of Babylon, Islip, Brookhaven, Southampton, East Hampton, Southold, Shelter Island, Riverhead, Smithtown and Huntington in Suffolk County. Changes in the classification of shellfish lands impose no additional requirements on local governments above what level of management and enforcement that they normally undertake; therefore, there should be no effect on local governments.

2. Compliance requirements:

There are no reporting or recordkeeping requirements for small businesses or local governments.

3. Professional services:

Small businesses and local governments will not require any professional services to comply with proposed rules.

4. Compliance costs:

There are no capital costs which will be incurred by small businesses or local governments.

5. Economic and technological feasibility:

There are no reporting, recordkeeping, or affirmative actions that small businesses or local governments must undertake to comply with the proposed rules. Similarly, small businesses and local governments will not have to retain any professional services or incur any capital costs to comply with such rules. As a result, it should be economically and technically feasible for small businesses and local governments to comply with rules of this type.

6. Minimizing adverse impact:

The designation of shellfish lands as uncertified may have an adverse impact on commercial shellfish diggers. All diggers in the towns affected by proposed closures will be notified by mail of the designation of shellfish lands as uncertified prior to the date the closures go into effect. Shellfish lands which fail to meet the sanitary criteria during specified times of the year will be designated as uncertified only during those times. At other times, shellfish may be harvested from those lands (seasonally certified). To further minimize any adverse effects of proposed closures, towns may request that uncertified shellfish lands be considered for conditionally certified designation or for a shellfish transplant project. Shellfish diggers will also be able to shift harvesting effort to nearby certified shellfish lands. There should be no significant adverse impact on local governments from most changes in the classification of shellfish lands.

7. Small business and local government participation:

Impending shellfish closures are discussed at regularly scheduled Shellfish Advisory Committee meetings. This committee, organized by the department, is comprised of representatives of local baymen's associations, shellfish shippers and local town officials. Through their representatives, shellfish harvesters and shippers can express their opinions and give recommendations to the department concerning shellfish land classification. Local governments, state legislators, and baymen's organizations are notified by mail and given the opportunity to comment on any proposed rulemaking prior to filing the Notice of Adoption with the Department of State.

8. Cure period or other opportunity for ameliorative action:

Pursuant to SAPA 202-b (1-a)(b), no such cure period is included in the rule because of the potential adverse impact that could have on the health of shellfish consumers. Immediate compliance is required to ensure the general welfare of the public is protected.

Rural Area Flexibility Analysis

Amendments to 6 NYCRR Part 41, Sanitary Condition of Shellfish Lands, will not impose an adverse impact on rural areas. The marine district will be directly affected by regulatory initiatives to open or close shellfish lands to harvest. The Department of Environmental Conservation has determined that there are no rural areas within the marine district, and no shellfish lands within the marine district are located adjacent to any rural areas of the state. The proposed regulations will not impose reporting, record keeping, or other compliance requirements on public or private entities in rural areas. Since no rural areas will be affected by amendments of Part 41, the Department of Environmental Conservation has determined that a Rural Area Flexibility Analysis is not required.

Consolidated Job Impact Statement

1. Nature of impact:

Environmental Conservation Law section 13-0307 requires that the department examine shellfish lands and certify which shellfish lands are in such sanitary condition that shellfish may be taken for use as food. Shellfish lands that do not meet the criteria for certified (open) shellfish lands must be designated as uncertified (closed) to protect public health.

Rule makings to amend 6 NYCRR 41, Sanitary Condition of Shellfish Lands, can potentially have a positive or negative effect on jobs for shellfish harvesters. Amendments to reclassify areas as certified may increase job opportunities, while amendments to reclassify areas as uncertified may limit harvesting opportunities.

The department does not have specific information regarding the locations in which individual diggers harvest shellfish, and therefore is unable to assess the specific job impacts on individual shellfish diggers. In general terms, amendments of 6 NYCRR Part 41 to designate areas as uncertified can have negative impacts on harvesting opportunities. The extent of the impact will be determined by the acreage closed, the type of closure (year-round or seasonal), the area's productivity, and the market value of the shellfish. In general, any negative impacts are small because the department's actions to designate areas as uncertified typically only affect a small portion of the shellfish lands in the state. Negative impacts are also diminished in many instances by the fact that shellfish harvesters are able to redirect effort to adjacent certified areas.

2. Categories and numbers affected:

Licensed commercial shellfish diggers can be affected by amendments

to 6 NYCRR Part 41. Most harvesters, are self-employed, but there are some who work for companies with privately controlled shellfish lands or who harvest surfclams or ocean quahogs in the Atlantic Ocean.

As of August 5, 2015 there were 1,649 licensed shellfish diggers in New York State. The numbers of permits issued for areas in the State are as follows: Town of Babylon, 49; Town of Brookhaven, 285; Town of East Hampton, 239; Town of Hempstead, 107; Town of Huntington, 150; Town of Islip, 128; Town of North Hempstead, 4; Town of Oyster Bay, 111; Town of Riverhead, 60; Town of Shelter Island, 33; Town of Smithtown, 158; Town of Southampton, 158; Town of Southold, 227; New York City, 44; Westchester, 3; other, 16.

It is estimated that ten (10) to twenty-five (25) percent of the diggers are full-time harvesters. The remainders are seasonal or part-time harvesters.

3. Regions of adverse impact:

Certified shellfish lands that could potentially be affected by amendments to 6 NYCRR Part 41 are located in or adjacent to Nassau County and Suffolk County. There is no potential adverse impact to jobs in any other areas of New York State.

4. Minimizing adverse impact:

Shellfish lands are designated as uncertified to protect public health as required by the Environmental Conservation Law. Some impact from rule makings to close areas that do not meet the criteria for certified shellfish lands is unavoidable.

To minimize the impact of closures of shellfish lands, the department evaluates areas to determine whether they can be opened seasonally during periods of improved water quality. The department also operates conditional harvesting programs at the request of, and in cooperation with, local governments. Conditional harvesting programs allow harvest in uncertified areas under prescribed conditions, determined by studies, when bacteriological water quality is acceptable. Additionally, the department operates shellfish transplant harvesting programs which allow removal of shellfish from closed areas for bacterial cleansing in certified areas, thereby recovering a valuable resource. Conditional harvesting and shellfish transplant programs increase harvesting opportunities by making the resource in a closed area available under controlled conditions.

5. Self-employment opportunities:

A large majority of shellfish harvesters in New York State are self-employed. Rule makings to change the classification of shellfish lands can have an impact on self-employment opportunities. The impact is dependent on the size and productivity of the affected area and the availability of adjacent lands for shellfish harvesting.

NOTICE OF ADOPTION

Water Quality Standards for Class I and Class SD Waters in New York City and Suffolk County

I.D. No. ENV-48-14-00005-A

Filing No. 906

Filing Date: 2015-10-20

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 Parts 701 and 703 of Title 6 NYCRR.

Statutory authority: Environmental Conservation Law, arts. 3, 15 and 17, sections 3-0301, 15-0313, 17-0101 and 17-0301

Subject: Water quality standards for Class I and Class SD waters in New York City and Suffolk County.

Purpose: To amend New York's water quality standards for Class I and Class SD waters to meet the swimmable goal of the Clean Water Act.

Text or summary was published in the December 3, 2014 issue of the Register, I.D. No. ENV-48-14-00005-P.

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

Text of rule and any required statements and analyses may be obtained from: Robert Simson, New York State Department of Environmental Conservation, Division of Water, 625 Broadway, Albany, NY 12233, (518) 402-8233, email: Comments.NYCRR701and703@dec.ny.gov

Initial Review of Rule

As a rule that requires a RFA, RAFA or JIS, this rule will be initially reviewed in the calendar year 2020, which is the 4th or 5th year after the year in which this rule is being adopted. This review period, justification for proposing same, and invitation for public comment thereon, were contained in a RFA, RAFA or JIS.

An assessment of public comment on the 4 or 5-year initial review period is not attached because no comments were received on the issue.

Assessment of Public Comment

The Department of Environmental Conservation (Department or DEC) proposed amendments to 6 NYCRR Parts 701 and 703 to address water quality in Class I and Class SD saline waters. The proposal appeared in the December 3, 2014 New York State Register.

The public comment period for this proposal was open from December 3, 2014 until March 16, 2015. A public hearing was held in Manhattan, NY on March 9, 2015. Written comments for this rulemaking were received from approximately 25 parties. In addition, approximately 20 people spoke at the public hearing. Major areas of comment included: the need to clean up the waters through the proposed rule; the rule does not go far enough to protect waters; standards for pathogen indicators as an average value is not sufficiently protective; monitoring should be conducted where people use the waters; standard should be for enterococcus rather than coliform human powered boating is primary contact recreation which should be designated as a best use, some waters are not appropriate for primary contact recreation and should not be required to be suitable for it, and the cost estimates for the rule are too low. A synopsis of these issues and the Department's response is provided below. The full Assessment of Public Comment is available on the DEC website at <http://www.dec.ny.gov/regulations/103760.html>.

Many comments support the proposed rule, although some assert that the proposal does not go far enough to improve water quality for primary contact recreation. The Department acknowledges and appreciates these comments. This rulemaking represents a significant step forward in improving water quality by requiring that all remaining Class I and Class SD waters in New York State must now meet the swimmable goal of the federal Clean Water Act (CWA).

Some comments object to the standard for coliform being an average value (geometric mean) rather than a never-to-exceed maximum concentration of this pathogen indicator. While average values are used, the proposed and final standards also include a level not to be exceeded.

Some comments want the waters to be monitored near shore, where people are exposed to pathogens while paddling or otherwise recreating in the shallower waters, rather than relying on monitoring data from deeper waters that are likely to be less polluted. For water quality purposes, it is not possible or scientifically necessary to monitor all locations at all times. Monitoring is done through a combination of sampling locations and models, including some near shore locations, to provide the best information available on water quality. Beaches are separately monitored by health agencies.

Many comments address the particular pathogen indicator that should be required for Class I and Class SD waters, expressing a preference for enterococcus instead of coliforms. The Department acknowledges that the US EPA 2012 Recreational Water Quality Criteria, required to be adopted for coastal recreation waters, is for enterococcus for salt waters. DEC will consider proposing enterococcus standards in a future water quality standards rulemaking. However, adopting enterococcus now, for only certain classes of waters, would result in a patchwork of standards and indicators that would be impractical to implement or enforce. Thus, in the current rulemaking, the coliform standards are being adopted for consistency with the other saline water classes, SA, SB, and SC.

Many comments address the need to designate Class I and Class SD waters with the best use of primary contact recreation, noting that they are used extensively for human powered boating (including Dragon boating). They describe human powered boating as primary contact recreation - people are exposed to waters, including polluted waters. This rulemaking addresses their concern by providing equivalent protection. By requiring the quality of Class I and Class SD waters to be suitable for primary contact recreation, and adopting standards for coliforms to protect that activity, Class I and Class SD waters will be protected as though the waters were formally designated with that best use.

New York City raises a concern in their comments that the cost estimates in the Regulatory Impact Statement (RIS) for this rulemaking are inaccurately low. The Department based its cost estimates on data provided by New York City in the City's Waterbody/Watershed Facility Plans (WWFPs) and Long-Term Control Plans (LTCPs). The data provided by New York City in its WWFPs and LTCPs is the most accurate and relevant data available to DEC for this purpose. The Department used this data to develop its cost estimates based on generally accepted engineering practices for projects at the planning stage. No new or revised cost estimates were submitted by New York City with their comments. However, even if new costs estimates were made available to DEC, the Department maintains, as articulated in the RIS for the proposed rulemaking, that the rulemaking does not impose any additional costs on New York City or regulated persons above what is currently required.

Having reviewed the public comment, the Department has concluded that no changes to the proposal are necessary and that the rulemaking should be adopted as proposed.

New York State Gaming Commission

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Reporting Requirements for a Race Horse That Has Been Castrated and Is Classified As a Gelding

I.D. No. SGC-44-15-00019-P

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

Proposed Action: Addition of sections 4007.7 and 4106.10; and amendment of sections 4105.13 and 4106.1 of Title 9 NYCRR.

Statutory authority: Racing, Pari-Mutuel Wagering and Breeding Law, sections 103(2), 104(1, 19) and 301

Subject: Reporting requirements for a race horse that has been castrated and is classified as a gelding.

Purpose: To ensure that the betting public is properly informed that a race horse that was previously an intact male has been castrated.

Text of proposed rule: New section 4007.7 would be added to 9 NYCRR as follows:

§ 4007.7. [(Reserved)] *Geldings*

The gelding of a horse shall be reported to the racing secretary at any race meeting at which the horse might race.

(a) *If a racehorse is gelded on the premises of a licensed racetrack, then the trainer shall report the alteration within 72 hours of such procedure.*

(b) *If a racehorse is gelded off-track, then the owner or trainer shall report the alteration at or before the time the horse is entered to race.*

(c) *A trainer who enters a gelding, or who causes a gelding to be entered on his or her behalf, is responsible for ensuring that the horse's status as a gelding is listed accurately on the horse's certificate of registration on file in the racing office.*

(d) *Such reports shall include the name of the veterinarian who performed the alteration and the date of the alteration. The alteration shall be recorded on the official registration certificate and horse identification record of the horse.*

Section 4105.13 of 9 NYCRR would be amended as follows:

§ 4105.13. Duties of the racing secretary.

It shall be the duty of the racing secretary to:

(a) [Receive and to keep safe the eligibility certificates of all horses competing at the race track or stabled on grounds owned or cared for by any licensed harness race association and to return same to the owner of a horse or his representative upon their departure from the grounds] *Provide electronic access to the eligibility certificates and other horse ownership and registration records of the United States Trotting Association and Standardbred Canada.*

Section 4106.1 of 9 NYCRR would be amended as follows:

§ 4106.1. Records.

No horse will be permitted to race unless an eligibility certificate or other certificate of registration, in current form, is on file with the *United States Trotting Association or Standardbred Canada* [the track conducting the race].

New section 4106.10 would be added to 9 NYCRR as follows:

§ 4106.10. *Geldings.*

The gelding of a horse shall be reported to the racing secretary at any race meeting at which the racehorse might race and, as applicable, to either the United States Trotting Association or Standardbred Canada.

(a) *If a racehorse is gelded on the premises of a licensed racetrack, then the trainer shall report the alteration within 72 hours of such procedure.*

(b) *If a racehorse is gelded off-track, then the owner or trainer shall report the alteration at or before the time the horse is entered to race.*

(c) *A trainer who enters a gelding, or who causes a gelding to be entered on his or her behalf, is responsible for ensuring that the horse's status as a gelding is accurately listed on its eligibility certificate or other certificate of registration on file with such organizations.*

(d) *Such reports shall include the name of the veterinarian who performed the alteration and the date of the alteration. The alteration shall be recorded on the certificate of registration and horse identification record of the horse.*

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

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

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

Regulatory Impact Statement

1. Statutory authority: The New York State Gaming Commission ("Commission") is authorized to promulgate this rule by Racing, Pari-Mutuel Wagering and Breeding Law ("Racing Law") Sections 103(2), 104(1, 19) and 301.

Racing Law Section 103(2) provides that the Commission is responsible for the supervision, regulation and administration of all horse racing and pari-mutuel wagering activities. Racing Law Section 104(1) provides the Commission with general jurisdiction over all gaming activities within the State and over any person, corporation or association engaged in such activities. Section 104(19) of such law authorizes the Commission to promulgate any rules it deems necessary to carry out its responsibilities. Racing Law Section 301 provides the Commission with the power to supervise generally all harness race meetings in this state at which pari-mutuel betting is conducted and to adopt rules and regulations related to those activities.

2. Legislative objectives: To maintain the public confidence and trust in the credibility and integrity of legalized gaming activities and ensure that gaming is to be conducted in the most efficient, transparent and effective manner possible. To ensure all gaming activity conducted in this state will be of the highest integrity, credibility and quality and that the best interests of the public, both gaming and non-gaming, will be served.

3. Needs and benefits. This rulemaking is necessary to ensure that the betting public and persons who claim race horses are provided with timely information regarding the classification of a male race horse. The classification of a horse is included in a certificate of registration, which is made available to the racing secretary prior to entering a horse in a race.

There are three classifications for male horses: colt, ridgling and gelding. A colt is a male horse that has intact and unaltered genitalia. A ridgling is a male horse that has genitalia that have not naturally descended and are obscured. A gelding is a colt or ridgling that has had its genitalia removed surgically. A colt that is too high-strung and difficult to control may be gelded in order to improve its racing performance.

For that reason, the status of a colt is important to betting public in order to know if the horse was gelded after its last race because its performance may improve or slow down as a result of the surgery. This rule will ensure that the public is properly informed that the horse has undergone surgical alteration.

The status of a horse is also important to a person who claims a horse. When a horse is claimed, a person who has "claimed" the horse takes ownership of the horse after the conclusion of a race. The new owner may claim a horse whose status as a colt changed since the last race and he or she unexpectedly owns a gelding, which affects the value and future of the horse as a breeding stallion.

The Commission's current rules do not explicitly require that a horse's official documentation be updated to reflect any such alteration. The suggested rule proposal would require a trainer to report such alterations done on the grounds of the racetrack within 72 hours, and if the surgery were performed elsewhere, at the time of the next entry of the horse to race. The proposal sets forth the required contents of such reports, which would be recorded on the official registration certificate and horse identification record of the horse. Such reports would be made to a thoroughbred racing secretary and horse identifier, or to the official compilers of standardbred ownership information, the United States Trotting Association or Standardbred Canada.

The proposal also updates standardbred rules to recognize that racing secretaries now rely on electronic (internet) records on file with such organizations, rather than paper documentation.

4. Costs:

a. Costs to regulated parties for the implementation and continuing compliance with the rule: There are no costs to the regulated parties. Owners and trainers are already required to make reports to racing secretaries. This rule will actually reduce reporting costs by allowing for electronic access to eligibility certificates.

b. Costs to the agency, the State, and local governments for the implementation and continuation of the rule: No additional operating costs are anticipated.

c. Sources of cost evaluations: The Commission evaluated the impact of the new rule.

5. Local government mandates: The proposed amendment does not impose any new programs, services, duties or responsibilities upon any country, city, town, village school district, fire district or other special district.

6. Paperwork: There are no additional paperwork requirements. Certificates of registration were previously required. This rule establishes deadlines for filing.

7. Duplication: There are no relevant State programs or regulations that duplicate, overlap or conflict with the proposed amendment.

8. Alternatives: No other alternatives were considered.

9. Federal standards: The proposed amendment does not exceed any minimum standards imposed by the federal government.

10. Compliance schedule: Because this is a notification rule and doesn't require any substantive changes to the registration process, this rule can be implemented immediately upon adoption.

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

A regulatory flexibility analysis for small business and local governments, a rural area flexibility analysis, and a job impact statement are not required for this rulemaking proposal because it will not adversely affect small businesses, local governments, rural areas or jobs.

This proposal concerns the timely notification to the public of the surgical alteration to a racehorse by submitting a certificate of registration to the racing secretary of a licensed racetrack or respective racing association prior to the entry of a horse in a race or 72 hours after the gelding procedure if the horse is located on the premises of a licensed racetrack. Owners and trainers are already required to submit such certification, but this will require that they submit a revised certificate to reflect that the horse has been altered from a colt or ridgling to a gelding. This rule will not have an adverse economic impact or reporting, record keeping or other compliance requirements on small businesses in rural or urban areas or on employment opportunities.

Department of Health

NOTICE OF ADOPTION

Hospital Observation Services

I.D. No. HLT-43-14-00001-A

Filing No. 904

Filing Date: 2015-10-16

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 405.19; and addition of section 405.32 to Title 10 NYCRR.

Statutory authority: Public Health Law, sections 2803, 2805-v and 2805-w
Subject: Hospital Observation Services.

Purpose: To amend current observation services provisions to be in compliance with changes in Public Health Law, section 2805-v.

Text of final rule: Paragraph (2) of subdivision (e) of section 405.19 is amended to read as follows:

(2) Every person arriving at the emergency service for care shall be promptly examined, diagnosed and appropriately treated in accordance with triage and transfer policies and protocols adopted by the emergency service and approved by the hospital. Such protocols must include written agreements with local emergency medical services (EMS) in accordance with subparagraph (b)(1)(i) of this section. All patient care services shall be provided under the direction and control of the emergency services director or attending physician. In no event shall a patient be discharged or transferred to another facility, unless evaluated, initially managed, and treated as necessary by an appropriately privileged physician, physician assistant, or nurse practitioner. No later than eight hours after presenting in the emergency service, every person shall be admitted to the hospital, or assigned to [an] observation [unit] services in accordance with [subdivision (g) of this] section 405.32 of this part, or transferred to another hospital in accordance with paragraph (6) of this subdivision, or discharged to self-care or the care of a physician or other appropriate follow-up service. [Hospitals which elect to use physician assistants or nurse practitioners shall develop and implement written policies and treatment protocols subject to approval by the governing body that specify patient conditions that may be treated by a registered physician assistant or nurse practitioner without direct visual supervision of the emergency services attending physician.]

Subdivision (g) of section 405.19 is repealed.

A new section 405.32 is added to read as follows:

405.32 *Observation services.*

(a) *General.*

(1) *Observation services are post-stabilization services appropriate*

for short-term treatments, assessment, and re-assessment of those patients for whom diagnosis and a determination concerning inpatient admission, discharge, or transfer can reasonably be expected within forty-eight hours.

(2) *If observation services are provided, the services shall be provided in a manner which protects the health and safety of the patients in accordance with generally accepted standards of medical practice.*

(3) *Direct referral is defined as a patient referred to the hospital for observation services by a nursing home, hospital outpatient clinic, diagnostic and treatment center, private practice physician or appropriately licensed practitioner, without receiving emergency room or critical care services on the day observation care begins. The referring practitioner must be a licensed physician or appropriately licensed practitioner and must have conducted a physical assessment of the patient within the previous eight hours from the referral.*

(4) *Patients may be assigned to observation services only by order of a physician or appropriately licensed practitioner.*

(5) *Patients may be assigned to observation services only through the emergency department or by direct referral in accordance with hospital policies, procedures and bylaws, in conformance with applicable statutes and regulations.*

(b) *Organization and Notice.*

(1) *The medical staff shall develop and implement written policies and procedures, approved by the governing body, that are based on the clinical needs of the patient, that shall specify:*

(i) *the organizational structure for providing observation services, including the specification of authority and accountability of the services,*

(ii) *the proper clinical location for the care of a patient requiring observation services,*

(iii) *the appropriate medical and administrative oversight of observation services,*

(iv) *clinical criteria for observation assignment and discharge,*

(v) *assignment of a physician, nurse practitioner, or physician assistant who will be responsible for the care of the patient and timely discharge from observation services, and*

(vi) *integration with related services and quality assurance activities of the hospital.*

(2) *The hospital, in conjunction with the discharge planning program of the hospital, shall establish and implement written criteria and guidelines specifying the circumstances, the actions to be taken, and the appropriate contact agencies and individuals to accomplish adequate discharge planning for persons in need of post observation treatment or services but not in need of inpatient hospital care.*

(3) *Patients in observation shall be cared for by staff appropriately trained and in sufficient numbers to meet the needs of the patients.*

(4) *Patients being assigned to the observation services, or the patient representative, shall be provided with an oral and written notice within twenty-four hours of such placement that the patient is not admitted to the hospital and is under observation status. The hospital shall make a good faith effort to obtain written acknowledgment of receipt of the notice by the patient or the patient representative, and if not obtained, document its good faith efforts to obtain such acknowledgment and the reason why the acknowledgment was not obtained. Such written notice shall include, but not be limited to the following information:*

(i) *a statement that observation status may affect the patient's Medicare, Medicaid and/or private insurance coverage for the current hospital services, including medications and other pharmaceutical supplies, as well as coverage for any subsequent discharge to a skilled nursing facility or home and community based care; and*

(ii) *that the patient should contact his or her insurance plan to better understand the implications of being placed in observation status.*

(c) *Locations. Hospitals may provide observation services in the following locations:*

(1) *Inpatient beds;*

(2) *Distinct Observation Units; or*

(3) *In a hospital designated as a critical access hospital pursuant to Subpart F of Part 485 of Title 42 of the Code of Federal Regulations or a sole community hospital pursuant to section 412.92 of Title 42 of the Code of Federal Regulations, or any successor provisions, observation services may be provided in the emergency department.*

(d) *Distinct Observation Units.*

(1) *Physical Standards*

(i) *The observation unit shall comply with the applicable provisions of Parts 711 and 712-2 and section 712-2.4 of this Title for construction projects approved or completed after January 1, 2011, except that the unit need not be adjacent to the emergency department.*

(ii) *Observation unit beds shall not be counted within the state certified bed capacity of the hospital and shall be exempt from the public need provisions of Part 709 of this Title.*

(iii) *The observation unit shall be marked with a clear and conspicuous sign that states: "This is an observation unit for visits of up to 48 hours. Patients in this unit are not admitted for inpatient services."*

(2) Any hospital seeking to establish a distinct observation unit shall, not less than 90 days prior:

(i) if no construction, as defined in subdivision 5 of section 2801 of the Public Health Law, will be needed, no construction waivers are being requested, and no service will be eliminated, notify the Department in writing of the general location of the unit and the number of beds; and submit a certification from a licensed architect or engineer, in the form specified by the Department, that the space complies with the applicable provisions of Parts 711 and 712-2 and section 712-2.4 of this Title for construction projects approved or completed after January 1, 2011; or

(ii) if construction, as defined in subdivision 5 of section 2801 of the Public Health Law, will be needed, or construction waivers are being requested, or a service will be eliminated:

(a) submit a request for limited review under 710.1(c)(5) of this Title, provided that for purposes of Part 710, a construction project involving only the creation of an observation unit and the addition of observation unit beds shall not be subject to review under section 710.1(c)(2) or (3) of this Title, unless the total project cost exceeds \$15 million or \$6 million respectively; and

(b) comply with the applicable provisions of Parts 711 and 712-2 and section 712-2.4 of this Title for construction projects approved or completed after January 1, 2011.

(3) Any hospital operating an observation unit pursuant to a waiver granted by the Department shall be required to comply with the provisions of this subdivision within 12 months of its effective date.

Final rule as compared with last published rule: Nonsubstantive changes were made in section 405.32(a)(3).

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

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

Changes made to the last published rule do not necessitate revision to the previously published RIS, RFA, RAFA and JIS.

Assessment of Public Comment

COMMENT: A hospital association expressed general support for the regulations but wanted the Department to make it clear that referrals for observation services from nursing homes and community providers, such as physicians, nurse practitioners and physician assistants are permissible, and that the referring practitioner does not have to be a member of the medical staff of the receiving hospital.

RESPONSE: The Department agrees with this commenter. The Regulatory Impact Statement published along with the Notice of Proposed Rule Making (State Register, October 29, 2014, p. 5), states that this regulation allows direct referrals by “properly privileged and credentialed” community providers. The Department now wishes to make clear that this regulation also allows these direct referrals by community providers who are not members of the medical staff of the receiving hospital.

In the final rule, paragraph (3) of subdivision (a) of section 405.32 is amended to read as follows:

(3) Direct referral is defined as a patient referred to the hospital for observation services by a nursing home, hospital outpatient clinic, diagnostic and treatment center [or], private practice physician or appropriately licensed practitioner, [practicing in the community,] without receiving emergency room or critical care services on the day observation care begins. The referring practitioner must be a licensed physician or appropriately licensed practitioner and must have conducted a physical assessment of the patient within the previous eight hours from the referral.

The Department believes that this non-substantive change provides greater clarity regarding the community providers who may make direct referrals for observation services. A referring practitioner must be a licensed physician or appropriately licensed practitioner and must have conducted a physical assessment of the patient within the previous eight hours from the referral, but the referring practitioner does not have to be privileged and credentialed at the hospital where the patient is being referred for observation services.

COMMENT: One commenter believed that the Department of Health should revisit discharge planning regulations to assure that the needs of observation status patients and families are handled timely and appropriately.

RESPONSE: Section 405.32(b)(2) creates a new requirement that discharge planning policies and procedures be developed and implemented specifically for observation status.

COMMENT: One commenter thought that the Department should amend the language to state that a decision whether to admit or discharge a person can be expected to be within twenty-four hours and most rarely in forty-eight hours. The commenter also indicated the value of identifying a hospital representative that the patient may speak with regarding questions about observation status, in particular the insurance aspects of this.

RESPONSE: The Department does not believe these suggestions are consistent with the enabling statute that is being implemented, Public Health Law §§ 805 v and 2805 w.

COMMENT: One commenter believed that the requirement that hospitals develop “clinical criteria” for observation status should be amended to clarify that inpatient admissions should be provided in instances where patients demonstrate signs and symptoms significant enough to indicate the need for medical care that would more safely and effectively be furnished on an inpatient basis.

RESPONSE: The amendments in 405.32(b)(1) will require the hospital to develop policies and procedures that specify the clinical criteria for observation status assignment and discharge; the organizational structure, proper location and medical oversight for observation services; and their integration with existing quality assurance services. The Department determined this suggestion would add unneeded complexity to the regulations with little added benefit.

COMMENT: A comment was received recommending that “conspicuous signage” be used in observation areas.

RESPONSE: Section 404.32(d)(1)(iii) does require signage for observation units. It is impractical to expand this for scattered observation services those beyond designated units, and the Department does not believe this suggestion is consistent with the enabling statute that is being implemented, Public Health Law §§ 2805 v and 2805 w.

COMMENT: One commenter did not agree that observation units should be exempt from 10 NYCRR Part 709, concerning public need determinations.

RESPONSE: The Department believes that adding a public need review would add additional cost and delay implementation without any clear added benefit.

NOTICE OF EXPIRATION

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

Immediate Needs for Personal Care Services

I.D. No.	Proposed	Expiration Date
HLT-28-14-00008-P	July 16, 2014	November 4, 2015

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Transgender Related Care and Services

I.D. No. HLT-44-15-00003-P

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

Proposed Action: Amendment of section 505.2(l) of Title 18 NYCRR.

Statutory authority: Public Health Law, sections 201 and 206; Social Services Law, sections 363-a and 365-a(2)

Subject: Transgender Related Care and Services.

Purpose: To amend provisions regarding Medicaid coverage of transition-related transgender care and services.

Text of proposed rule: Subdivision (l) of section 505.2 is amended to read as follows:

(l) Gender dysphoria treatment.

(1) As provided in this subdivision, payment is available for medically necessary hormone therapy and/or gender reassignment surgery for the treatment of gender dysphoria.

(2) Hormone therapy, whether or not in preparation for gender reassignment surgery, may be covered for individuals 18 years of age or older.

(3) Gender reassignment surgery may be covered for an individual who is 18 years of age or older [, or 21 years of age or older if the surgery will result in sterilization,] and has letters from two qualified New York State licensed health professionals who have independently assessed the individual and are referring the individual for the surgery. One of these letters must be from a psychiatrist, [or] psychologist, or *psychiatric nurse practitioner* with whom the individual has an established and ongoing relationship. The other letter may be from a licensed psychiatrist, psychologist, physician, *psychiatric nurse practitioner*, or licensed clinical social worker acting within the scope of his or her practice, who has only had an evaluative role with the individual. Together, the letters must establish that the individual:

(i) has a persistent and well-documented case of gender dysphoria;

(ii) has received hormone therapy appropriate to the individual's gender goals, which shall be for a minimum of 12 months in the case of an

individual seeking genital surgery, unless such therapy is medically contraindicated or the individual is otherwise unable to take hormones;

(iii) has lived for 12 months in a gender role congruent with the individual's gender identity, and has received mental health counseling, as deemed medically necessary, during that time;

(iv) has no other significant medical or mental health conditions that would be a contraindication to gender reassignment surgery, or if so, that those are reasonably well-controlled prior to the gender reassignment surgery; and

(v) has the capacity to make a fully informed decision and to consent to the treatment.

(4) Payment will not be made for the following services and procedures:

(i) cryopreservation, storage, and thawing of reproductive tissue, and all related services and charges;

(ii) reversal of genital and/or breast surgery;

(iii) reversal of surgery to revise secondary sex characteristics;

(iv) reversal of any procedure resulting in sterilization; and

(v) cosmetic surgery, services, and procedures, including but not limited to:

(a) abdominoplasty, blepharoplasty, neck tightening, or removal of redundant skin;

(b) breast augmentation;

(c) breast, brow, face, or forehead lifts;

(d) calf, cheek, chin, nose, or pectoral implants;

(e) collagen injections;

(f) drugs to promote hair growth or loss;

(g) electrolysis, unless required for vaginoplasty;

(h) facial bone reconstruction, reduction, or sculpturing, including jaw shortening and rhinoplasty;

(i) hair transplantation;

(j) lip reduction;

(k) liposuction;

(l) thyroid chondroplasty; and

(m) voice therapy, voice lessons, or voice modification surgery.

(5) For purposes of this subdivision, cosmetic surgery, services, and procedures refers to anything solely directed at improving an individual's appearance.

(6) All legal and program requirements related to providing and claiming reimbursement for sterilization procedures must be followed when transgender care involves sterilization.

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

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

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

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

Regulatory Impact Statement

Statutory Authority:

Social Services Law (SSL) section 363-a and Public Health Law section 201(1)(v) provide that the Department is the single State agency responsible for supervising the administration of the State's medical assistance ("Medicaid") program and for adopting such regulations, which shall be consistent with law, and as may be necessary to implement the State's Medicaid program. SSL section 365-a authorizes Medicaid coverage for specified medical care, services and supplies, together with such medical care, services and supplies as authorized in the regulations of the Department.

Legislative Objective:

Section 365-a of the SSL requires Medicaid to pay for part or all of the cost of medical, dental, and remedial care, services, and supplies that are necessary to prevent, diagnose, correct or cure conditions that cause acute suffering, endanger life, result in illness or infirmity, interfere with a person's capacity for normal activity, or threaten some significant handicap.

Needs and Benefits:

The proposed amendments would revise the Department's existing regulations providing for Medicaid coverage of treatments to address gender dysphoria. The current regulation sets forth a minimum age of 21 for coverage of gender reassignment surgery (GRS) if such surgery will result in sterilization. The proposed amendments would establish a minimum age of 18 for coverage of GRS, even in instances where sterilization would result. In addition, the proposed amendments would: add psychiatric nurse practitioners to the list of medical professionals who can provide letters establishing the appropriateness of GRS for a particular individual; and correct a numbering error in the existing regulation.

The minimum age of 21 for GRS that results in sterilization was based on federal Medicaid regulations prohibiting coverage of sterilization for individuals under 21 years of age. However, the Department concluded that federal regulations were unclear with respect to whether Medicaid may cover a procedure performed on an individual under age 21 that results in sterilization, but was performed for a reason other than to render the individual incapable of reproducing. The Department sought and obtained clarification from the Centers for Medicare & Medicaid Services that medically necessary procedures that result in sterilization can be covered for individuals under 21 if the procedure is not being performed solely for the purpose of rendering the individual incapable of reproducing. Accordingly, the proposed amendments would revise § 505.2(l)(3) to set a minimum age of 18 for medically necessary GRS regardless of whether sterilization will result.

A comment received on the existing regulation after the Notice of Adoption was submitted for publication urged the Department to add psychiatric nurse practitioners to the list of medical professionals in § 505.2(l)(3) who can provide letters establishing the appropriateness of GRS in individual cases. The Department has concluded that psychiatric nurse practitioners are qualified to diagnose gender dysphoria and to refer individuals for GRS; therefore the proposed regulations would add psychiatric nurse practitioners to § 505.2(l)(3).

Finally, the proposed amendments would designate the opening language of the existing regulation as paragraph (1), to correct a numbering error in the original promulgation of the regulation.

Costs:

Costs to Regulated Parties:

The proposed amendment pertains to a covered benefit under the State's Medicaid program. The amendment would not increase costs to regulated parties.

Costs to State Government:

The addition of psychiatric nurse practitioners to the list of medical professionals who can provide referral letters for GRS will not generate additional costs to the Medicaid program.

The Department believes any costs associated with covering GRS that results in sterilization, for persons age 18 or older and under age 21, were taken into account in the cost estimate prepared by the Department when promulgating the existing regulation. At the time the existing regulation was proposed, the Department looked at the number of current Medicaid recipients who were age 18 or older with a diagnosis of gender dysphoria, and made certain assumptions about the number of those recipients who would seek coverage of transition-related care, and the approximate costs of such care. The result was a rough estimate of the cost of eliminating the prohibition on coverage of transition-related care for gender dysphoria, and did not distinguish between persons who might seek such coverage from ages 18 to 20, versus persons seeking such coverage on or after age 21.

Costs to Local Governments:

Local social services districts' share of Medicaid costs is statutorily capped; therefore, there will be no additional costs to local governments as a result of the proposed amendment.

Costs to the Department of Health:

There will be no additional costs to the Department.

Local Government Mandates:

This amendment will not impose any program, service, duty, additional cost, or responsibility on any county, city, town, village, school district, fire district, or other special district.

Paperwork:

The proposed amendments would not increase the paperwork requirements for a medical provider to document the need for hormone therapy or GRS. It would merely add psychiatric nurse practitioners to the categories of medical professionals who can document the need for GRS.

Duplication:

There are no duplicative or conflicting rules identified.

Alternatives:

With respect to lowering the minimum age for covering GRS from 21 to 18 in cases where sterilization will result, no alternatives were considered. In the rulemaking for the existing regulation, the Department would have made Medicaid coverage of medically necessary GRS available for all individuals at or above the age of majority, but for the perceived conflict with federal Medicaid regulations governing sterilization. Because CMS has clarified that these federal regulations do not prohibit Medicaid coverage of medically necessary procedures for individuals under 21 that result in sterilization but are not performed solely for the purpose of rendering the individual incapable of reproducing, the regulation can now be revised to reflect the Department's original intent.

Federal Standards:

The proposed regulations do not exceed any minimum federal standards.

Compliance Schedule:

Regulated parties should be able to comply with the proposed regulations when they become effective.

Regulatory Flexibility Analysis

No regulatory flexibility analysis is required pursuant to section 202-(b)(3)(a) of the State Administrative Procedure Act. The proposed amendment pertains to a covered benefit under the State's Medicaid program. It would not impose an adverse economic impact on small businesses or local governments, and it would not impose reporting, record keeping or other compliance requirements on small businesses or local governments.

Rural Area Flexibility Analysis

A Rural Area Flexibility Analysis for the proposed amendments is not being submitted because the amendments would not impose any adverse impact or significant reporting, record keeping or other compliance requirements on public or private entities in rural areas. There would be no professional services, capital, or other compliance costs imposed on public or private entities in rural areas as a result of the proposed amendments.

Job Impact Statement

A Job Impact Statement for the proposed amendments is not being submitted because it is apparent from the nature and purpose of the amendment that it would not have a substantial adverse impact on jobs and/or employment opportunities.

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Statewide Health Information Network for New York (SHIN-NY)

I.D. No. HLT-44-15-00020-P

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

Proposed Action: Addition of Part 300 to Title 10 NYCRR.

Statutory authority: Public Health Law, sections 201, 206(1), (18-a)(b), 2800, 2803, 2816, 3600, 3612, 4000, 4010, 4400, 4403, 4700 and 4712

Subject: Statewide Health Information Network for New York (SHIN-NY).

Purpose: To establish the Statewide Health Information Network for NY (SHIN-NY).

Substance of proposed rule (Full text is posted at the following State website: www.health.ny.gov): Public Health Law § 206(18-a)(d) gives the Department broad authority to promulgate regulations, consistent with federal law and policies, that govern the Statewide Health Information Network for New York (SHIN-NY).

This regulation makes clear that, consistent with 42 USC § 17938, Qualified entities (QEs) may, without patient authorization, make patient information available among SHIN-NY participants or other entities otherwise serving the patient so long as the QEs enter into and adhere to participation agreements that comply with federal requirements under HIPAA and 42 CFR Part 2 for business associates and qualified service organizations. This regulation specifies consent requirements to access patient information made available through the QEs. This regulation incorporates legal requirements related to disclosure of patient information without consent, as well as laws that specifically authorize disclosure of patient information for health care purposes, including public health and health oversight purposes, without the type of written, signed authorization that contains all of the elements that would be required for a health care provider to get permission to disclose patient information to a third party for purposes other than health care.

In order to participate in the SHIN-NY, regional health information organizations will need to be certified as QEs by the Department and satisfy certification requirements on an ongoing basis under the procedures established by this regulation.

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: regsqa@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.

Summary of Regulatory Impact Statement**Statutory Authority:**

Public Health Law Section 206(18-a)(d) authorizes the Commissioner of Health to make rules and regulations to promote the development of a self-sufficient Statewide Health Information Network for NY (SHIN-NY) to enable widespread, non-duplicative interoperability among disparate

health information systems, including electronic health records (EHRs), personal health records (PHRs) and public health information systems while protecting patient privacy and ensuring data security. The Department of Health is exercising this authority in conjunction with its authority under Public Health Law Articles 28, 36, 40, 44 and 47 to regulate health care facilities as defined in Public Health Law section 18.

Purpose of Regulation:

This regulation will establish requirements for qualified entities and qualified entity participants in the SHIN-NY to allow them to securely exchange information across the state.

- Qualified Entities (QEs) (including RHIOs), through participation agreements with providers and patient consent, would implement a minimum set of core services. The QEs must also comply with federal and State laws, including laws regarding the confidentiality of alcohol and drug abuse treatment records under 42 CFR Part 2, confidential HIV-related information under PHL Article 27-F and mental health records under Mental Hygiene Law Article 33.

- The regulations would allow for the exchange of health information about minors of any age in a way that complies with current state and federal laws and regulations related to minor consented services.

- The department would create a certification process for QEs/RHIOs that ensures standard criteria are met for providing services to its members and that the number of QEs is sufficient to provide access to health information exchange services statewide.

Benefits of Regulation:

The regulation is intended to support the triple aim of improving the patient care experience (including quality and cost), improving the health of populations, and reducing the per capita cost of health care through the broad adoption of health information exchange by:

- increasing patient record availability to health care providers across the state;

- establishing the core set of health information exchange (HIE) services that provide clinical and administrative value to the healthcare system and are available to all providers and all patients in New York State; and

- reducing barriers for EHR integration with HIE services.

State and Local Cost:

To date, the development of the SHIN-NY and expansion of EHR adoption has been funded through a combination of federal and state funds distributed through grant programs, as well as private contributions from participating health plans, providers and other stakeholders. Currently, over 170 hospitals and over 8200 primary care providers qualify for "meaningful use" incentives under Medicaid and Medicare. In addition, through HEAL NY funding, it is expected that over 7800 primary and specialty care providers were supported to have adopted EHRs and be connected to the SHIN-NY by the end of 2013. Over 80% of hospitals and over 75% of Federally Qualified Health Centers (FQHCs) in New York State participate in RHIOs.

Investment in the operation of the SHIN-NY will also generate a substantial return through the elimination of wasted expenditures and promoting better quality health care at a lower cost. Three studies conducted in Rochester by the Health Information Technology Evaluation Collaborative (HITEC), an academic research consortium under contract with the State Department of Health to perform evaluation activities for the HEAL NY Program, identified improved quality and reduction in duplicative testing and in readmission rates for a two year study period for events in 2009-2010. Use of the Rochester RHIO by five Emergency Departments (EDs) resulted in 6 averted admissions per 100 patients who came to the ED, resulting in \$9 million projected savings annually across the adult community. Extrapolating the cost savings across the state would result in an annual savings of \$52 million. During the same study period, image exchange use through the Rochester RHIO within 90 days following an initial imaging procedure reduced the probability of repeat imaging by 35%. Finally, use of the Rochester RHIO after hospital discharge resulted in a 55% reduction in readmission within 30 days. These highly significant findings with important financial implications further demonstrate the value of the SHIN-NY.

An 18-month study in the Buffalo region looked at the number of multiple CT scans ordered for the same body part, for the same patient, over a six-month period. During the period, 2,763 CT scans were deemed to be potentially unnecessary, duplicative tests. 90% of the potentially duplicative tests were ordered by physicians who never or infrequently access the local health information exchange. By local calculations, that amounts to a potential additional cost of \$1.3 million over a six-month period for one test in one region of the state.

Costs to Regulated Entities:

The proposed regulation will require that health care facilities connect to the SHIN-NY.

Average interface costs for hospitals are \$75,000 while interface costs for physician practices vary but generally average \$5000 – 10,000 per

practice. Interface costs for other types of facilities, such as nursing homes, home care agencies and hospice would fall in between physician practices and hospitals, depending on the size and complexity. Some RHIOs have established this functionality for their participants, and therefore, there are reduced associated interface costs for their participants, which include physician practices. In some regions of the State, health plans have absorbed the interface costs for their network providers because they see the value of having their physicians connected to the SHIN-NY. Only health care providers, regulated by the Department of Health, using certified EHR technology need to comply with these requirements. Currently, adoption of certified EHR technology for health care facilities outside of hospitals and FQHCs is low because they are not eligible to receive meaningful use incentive payments.

Local Government Mandates:

The State Enterprise Health Information Exchange as part of the SHIN-NY is designed to streamline how providers interact with the many public health information systems that currently exist, to decrease reporting burdens, promote bidirectional information exchange, and advance public health priorities. Health care facilities operated by local governments will be required to comply with these regulations in the same manner as other health care facilities. Should local health departments need to make expenditures to comply with the regulatory requirements, they have opportunities to request funding through Article 6 Local Assistance Grant Program, and possibly other sources. Additionally, local agencies could seek a waiver to connect to their RHIO if funding is not available.

Paperwork:

Entities that wish to become QEs will need to submit an application for review by DOH to determine if the criteria outlined in the regulation have been met as well as meeting other criteria as may be required under the QE certification process.

Duplication:

This regulation will not conflict with any state or federal rules.

Alternatives:

The Department established a statewide collaboration process to establish a governance and policy framework to allow health information sharing among disparate providers to improve quality, improve efficiency and reduce costs of health care on a statewide basis while ensuring the patient privacy and ensuring data security of patient information.

While other states have different models for health information exchange, and NY considered the approaches and models used in other states through its statewide collaborative process, based on the size, complexity and diversity of New York and the resources that were available, the State Department of Health determined that this model was the best approach to allow for statewide health information exchange.

Federal Standards:

This rule aligns with current federal laws and regulations governing the adoption of interoperable exchange of health information and meaningful use requirements under the HITECH provisions of ARRA, as well as federal standards regarding the exchange of certain alcohol and drug abuse patient records under 42 CFR Part 2.

Compliance Schedule:

Since RHIOs or QEs are largely operational in NYS and the majority of hospitals and federally qualified health centers are already participants, and the number of physician practices participating continues to grow and the infrastructure for the SHIN-NY is already in development, the estimated time period needed for regulated persons or entities to achieve compliance with the rule is practicable.

Regulatory Flexibility Analysis

The proposed rule will not have a substantial adverse impact on small businesses or local governments. Small businesses such as physician practices, that are not regulated by the Department, that adopt certified electronic record technology in order to qualify for meaningful use incentives, would not be required to exchange patient health information among disparate providers to facilitate care coordination and appropriate follow up. Although this exchange is encouraged, it is strictly optional for these practitioners in private practice.

Local health departments that operate health facilities including Article 28 facilities, including outpatient departments of hospitals, diagnostic and treatment centers, free-standing ambulatory surgery centers and nursing homes, as well as home care services agencies, hospices and health maintenance organizations would be required to connect to the SHIN-NY would be impacted by the regulation if those facilities use certified electronic health record technology. Average interface costs for hospitals are \$75,000 while interface costs for physician practices vary but generally average \$5000 – \$10,000 per practice. Interface costs for other types of facilities, such as nursing homes, home care agencies and hospice would fall in between physician practices and hospitals, depending on the size and complexity. Costs of connecting the SHIN-NY could be offset by funds from the meaningful use incentive program. A connection to the SHIN-NY satisfies one requirement of the meaningful use incentive

program and will allow providers at these facilities to access Medicaid or Medicare Meaningful Use incentive payments. The meaningful use incentive program allows all individual eligible professionals who meet meaningful use requirements to apply for incentive payments of up to \$43,720 over a five year period. The Department of Health, with the New York eHealth Collaborative, has implemented an additional incentive program, with support from the Centers for Medicare and Medicaid Services (CMS), to allow meaningful use providers to receive an additional incentive payment of up to \$30,000 to help defray the cost of connecting to the SHIN-NY. It is anticipated that the incentive program will continue with additional funding from CMS. Additionally, any facility that is required to connect to the SHIN-NY under this regulation may request that this requirement be waived for its facilities based on economic or technical constraints.

Accessing the SHIN-NY to perform required local health department surveillance and case investigation activities has actually been documented to result in increased efficiency and decreased costs for the local health department. Through the statewide collaboration process, local governments have the opportunity to participate in SHIN-NY policy development including providing input on draft regulations. The SHIN-NY policy committee includes representatives from the local public health agencies.

Ensuring that clinical data are available in safe, secure way supports the goals of increasing the quality of care, increasing population health and reducing healthcare costs. Hospitals that connect to the SHIN-NY have been shown to decrease the number of tests and imaging studies thus reducing costs.

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 required.

Rural Area Flexibility Analysis

The proposed rule will not have a direct adverse impact on rural areas. Operation of the SHIN-NY and expanded use of certified EHR technology should improve health care, increase efficiency, reduce duplicative testing and reduce overall costs for underserved populations in the state, including rural areas.

Job Impact Statement

The proposed rule should not have any adverse impact on jobs and employment opportunities, but may increase the number of health IT jobs available in the state. The development and operation of the SHIN-NY will most likely result in opportunities for the development of new applications of health IT tools and services and may result in new health IT jobs in New York State. It has been estimated that the SHIN-NY, and related initiatives that use the data from the SHIN-NY has the potential to create 1,500 health technology jobs across New York State over the next five years.

Division of Human Rights

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Gender Identity Discrimination

I.D. No. HRT-44-15-00033-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 466.13 to Title 9 NYCRR.

Statutory authority: Executive Law, section 295.5

Subject: Gender Identity Discrimination.

Purpose: To clarify how gender identity discrimination may constitute either sex or disability discrimination under the Human Rights Law.

Text of proposed rule: A new Section 466.13 is added to read as follows:

466.13 Discrimination on the basis of gender identity.

(a) Statutory Authority. Pursuant to N.Y. Executive Law § 295.5, it is a power and a duty of the Division to adopt, promulgate, amend and rescind suitable rules and regulations to carry out the provisions of the N.Y. Executive Law, article 15 (Human Rights Law).

(b) Definitions.

(1) *Gender identity means having or being perceived as having a gender identity, self-image, appearance, behavior or expression whether or not that gender identity, self-image, appearance, behavior or expression is different from that traditionally associated with the sex assigned to that person at birth.*

(2) *A transgender person is an individual who has a gender identity different from the sex assigned to him or her at birth.*

(3) *Gender dysphoria is a recognized medical condition related to an individual having a gender identity different from the sex assigned to him or her at birth.*

(c) *Discrimination on the basis of gender identity is sex discrimination.*

(1) *The term "sex" when used in the Human Rights Law includes gender identity and the status of being transgender.*

(2) *The prohibitions contained in the Human Rights Law against discrimination on the basis of sex, in all areas of jurisdiction where sex is a protected category, also prohibit discrimination on the basis of gender identity or the status of being transgender.*

(3) *Harassment on the basis of a person's gender identity or the status of being transgender is sexual harassment.*

(d) *Discrimination on the basis of gender dysphoria is disability discrimination.*

(1) *The term "disability" as defined in Human Rights Law § 292.21, means (a) a physical, mental or medical impairment resulting from anatomical, physiological, genetic or neurological conditions which prevents the exercise of a normal bodily function or is demonstrable by medically accepted clinical or laboratory diagnostic techniques or (b) a record of such an impairment or (c) a condition regarded by others as such an impairment, provided, however, that in all provisions of this article dealing with employment, the term shall be limited to disabilities which, upon the provision of reasonable accommodations, do not prevent the complainant from performing in a reasonable manner the activities involved in the job or occupation sought or held.*

(2) *The term "disability" when used in the Human Rights Law includes gender dysphoria.*

(3) *The prohibitions contained in the Human Rights Law against discrimination on the basis of disability, in all areas of jurisdiction where disability is a protected category, also prohibit discrimination on the basis of gender dysphoria.*

(4) *Refusal to provide reasonable accommodation for persons with gender dysphoria, where requested and necessary, and in accordance with the Divisions regulations on reasonable accommodation found at 9 NYCRR § 466.11, is disability discrimination.*

(5) *Harassment on the basis of a person's gender dysphoria is harassment on the basis of disability.*

Text of proposed rule and any required statements and analyses may be obtained from: Edith Allen, Administrative Aide, Division of Human Rights, One Fordham Plaza, 4th Floor, Bronx, New York 10458, (718) 741-8398, email: eallen@dhr.ny.gov

Data, views or arguments may be submitted to: Caroline J. Downey, General Counsel, Division of Human Rights, One Fordham Plaza, 4th Floor, Bronx, New York 10458, (718) 741-8402, email: cdowney@dhr.ny.gov

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

Regulatory Impact Statement

Statutory authority: Pursuant to Executive Law, section 295.5, it is a power and a duty of the Division to adopt, promulgate, amend and rescind suitable rules and regulations to carry out the provisions of the Executive Law, article 15 (Human Rights Law).

Legislative objectives: The Legislature declared the opportunity to obtain employment and use of places of public accommodation and the ownership, use and occupancy of housing accommodations and commercial space without discrimination because of sex or disability to be a civil right, and has prohibited discrimination on the bases of sex and disability in these and other areas. Executive Law, sections 291, 296, 296-a, 296-b and 296-c.

Needs and benefits: It has long been the practice of the Division of Human Rights to accept and process Human Rights Law complaints alleging discrimination because of gender identity, on the basis of the protected categories of both sex and, where appropriate, disability. Over the years, both New York and federal case law in this area has developed to support protection for transgender persons on the basis of sex. Also, the New York Human Rights Law offers substantially more protection than federal anti-discrimination laws because gender dysphoria is a medical condition that falls within the broad definition of disability under the Human Rights Law, as courts in New York have recognized. This is not the case under federal law. This additional protection affords increased rights in New York, such as the right to reasonable accommodation for those diagnosed with gender dysphoria.

In *Richards v. U.S. Tennis Association*, 93 Misc.2d 713, 400 N.Y.S.2d

267 (Sup.Ct. N.Y. Co. 1977), it was recognized that sex discrimination claims under the Human Rights Law may be brought by individuals alleging discrimination because of their gender identity. Following *Richards*, the court in *Maffei v. Kolaeton Industry, Inc.*, 164 Misc.2d 547, 626 N.Y.S.2d 391 (Sup.Ct. N.Y. Co. 1995), found that derogatory comments by an employer directed at a person who has undergone sex reassignment surgery can be sexual harassment, just as comments about secondary sex characteristics of any person can be sexual harassment.

The expansion of protection from discrimination on the basis of gender identity to individuals who had not necessarily completed sex reassignment surgery but identified themselves as a different sex is consonant with the development of legal recognition of sex stereotyping as a form of sex discrimination. Sex stereotyping occurs when behavior is considered inappropriate or unacceptable because of the person's sex. In *Price Waterhouse v. Hopkins*, 490 U.S. 228 (1989), the Court found that the plaintiff stated a claim for sex discrimination where an employer reacted negatively to a female employee because her personality traits were considered inappropriate in a woman. Courts have interpreted the Human Rights Law to extend the prohibition on discrimination on the basis of sex stereotyping to transgender persons. See *Martin v. J.C. Penney Corp., Inc.*, 28 F.Supp.3d 153 (E.D.N.Y. 2014) (two females who alleged they were singled out and suspected of shoplifting because they were dressed as males stated valid sex discrimination claim under the Human Rights Law); *Hispanic Aids Forum v. Bruno*, 16 Misc.3d 960, 839 N.Y.S.2d 691 (Sup.Ct. N.Y. Co. 2007) (landlord's attempts to exclude plaintiff's transgender clients from the building constituted discrimination because of sex); *Buffong v. Castle on the Hudson*, 2005 N.Y. Slip Op. 52314U, 12 Misc.3d 1193(A), 2005 WL 4658320 (Sup.Ct. Westch. Co. 2005) (unpublished decision) (transgender person states a claim pursuant to the Human Rights Law on the ground that the word "sex" in the statute covers transgender persons, reviewing existing case law).

In addition, under the Human Rights Law, a person meeting the criteria for a medical diagnosis of gender dysphoria is entitled to the disability protections of the Human Rights Law. This includes being entitled to reasonable accommodations that may be requested based on treatments intended to ameliorate gender dysphoria. This may include living as, and being treated as, a person with a gender opposite one's birth gender. In *Wilson v. Phoenix House*, 42 Misc.3d 677, 978 N.Y.S.2d 748 (Sup.Ct. Kings Co. 2013), the provider of a drug rehabilitation program was found to have discriminated against the plaintiff, a biologically male transgender woman, where she was required to share facilities with men and attend all-male counselling sessions, and was told she could not wear her wig or high heeled shoes. The court found this was discrimination based upon her disability (at that time referred to as gender identity disorder) and the program failed to make reasonable accommodations for her disability.

In *Doe v. City of New York*, 42 Misc.3d 502, 976 N.Y.S.2d 360 (Sup.Ct. N.Y. Co. 2013), the plaintiff, who was diagnosed with gender identity disorder and completed reassignment surgery, requested that HIV/AIDS Services Administration, update her records and benefit card to reflect her legal name change and that she was now female, though formerly male. She submitted her court order and documentation from her doctor. HASA's refusal to make the change because plaintiff had been unable to obtain an amended birth certificate was discriminatory.

The proposed regulations clarify the impact of these legal developments on enforcement of the sex discrimination prohibitions, and clarify the extended coverage of gender dysphoria as a disability under the New York State Human Rights Law, thus providing information as to these important rights to all New Yorkers.

Costs:

a. costs to regulated parties for the implementation of and continuing compliance with the rule: No new costs are anticipated for regulated parties. The implementation of this rule clarifies the Division's practice and policy with regard to complaints of transgender individuals.

b. costs to the agency, the state and local governments for the implementation and continuation of the rule: It is anticipated that any costs to the State Division of Human Rights due to increased filings because of increased awareness of the protections described, and for continued implementation of the rule, will be minimal and capable of being absorbed using existing Division staff and resources. No new costs are anticipated for state and local governments.

c. the information, including the source(s) of such information and the methodology upon which the cost analysis is based: The State Division of Human Rights has, for decades, received and processed complaints of transgender persons alleging sex and/or disability discrimination. The implementation of this rule clarifies the Division's practice and policy with regard to complaints of transgender individuals and does not impose any new costs.

Local government mandates: None.

Paperwork: None.

Duplication: This proposed rule does not duplicate existing state

requirements. The proposed rule duplicates existing federal requirements pursuant to federal anti-discrimination statutes with regard to sex discrimination. The proposed rule does not duplicate federal requirements with regard to disability discrimination.

Alternatives: No significant alternatives were considered.

Federal standards: While this rule creates no new substantive requirements, the disability protections under this rule do exceed those provided under federal law. The Human Rights Law defines disability more broadly than the federal Americans With Disabilities Act.

Compliance schedule: Regulated parties have been required, for decades, not to discriminate against transgender persons under the Human Rights Law. This regulation does not impose any new compliance requirements or create new penalties for non-compliance.

Regulatory Flexibility Analysis

The proposed rule will not impose any adverse economic impact or reporting, recordkeeping or other compliance requirements on small businesses or local governments because the State Division of Human Rights has, for decades, received and processed complaints of transgender persons alleging sex and/or disability discrimination. The implementation of this rule clarifies the Division’s practice and policy with regard to complaints of transgender individuals and does not impose any new requirements.

Rural Area Flexibility Analysis

The proposed rule will not impose any adverse impact on rural areas or reporting, recordkeeping or other compliance requirements on public or private entities in rural areas because the State Division of Human Rights has, for decades, received and processed complaints of transgender persons alleging sex and/or disability discrimination. The implementation of this rule clarifies the Division’s practice and policy with regard to complaints of transgender individuals and does not impose any new requirements.

Job Impact Statement

The proposed rule will not have any adverse impact on jobs and employment opportunities. The proposed rule will have a positive impact on jobs and employment opportunities because it prohibits discrimination in employment against individuals based on their gender identity.

(1) the hospital has a history of compliance with applicable laws, rules, and regulations and a record of providing care of good quality, as determined by the commissioner;

(2) a copy of the survey report and the certification of accreditation of The Joint Commission or other approved accrediting organization is submitted by the accrediting body to the commissioner, within seven days of issuance to the hospital;

(3) The Joint Commission or other approved accrediting organization has agreed to, and does evaluate, as part of its accreditation survey, any minimal operational standards established by the commissioner which are in addition to the minimal operational standards of accreditation of The Joint Commission or other approved accrediting organization;

(4) there are no constraints placed upon access by the commissioner to The Joint Commission or other approved accreditation organization’s survey reports, plans of correction, interim self-evaluation reports, notices of noncompliance, progress reports on correction of areas of noncompliance, or any other related reports, information, communications, or materials regarding such hospital;

(5) the hospital at all times shall remain subject to inspection and visitation by the commissioner to determine compliance with applicable law, regulations, standards, or conditions as determined to be necessary by the commissioner; and

(6) the hospital at all times shall remain subject to the full range of licensing enforcement authority of the commissioner.

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

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

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

Consensus Rule Making Determination

This proposal is filed as a Consensus rule on the grounds that it conforms existing regulations to recent amendments to statute.

Section 31.07 of the Mental Hygiene Law gives the Commissioner of Mental Health the power to conduct periodic investigations into the operations of providers of services which are required by Article 31 of the Mental Hygiene Law to have an operating certificate and to make inspections and examine records, including, but not limited to, medical service and financial records, to determine whether such providers are complying with applicable provisions of the Mental Hygiene Law and applicable laws, rules and regulations. Section 31.08 of the Mental Hygiene Law, as amended in August, 2014, states that the requirements of Section 31.07 may be deemed to be met if the hospital has been accredited by The Joint Commission, or any other hospital accrediting organization to which the Centers for Medicare and Medicaid Services has granted deeming status, and which the Commissioner has determined has accrediting standards sufficient to assure the Commissioner that hospitals so accredited are in compliance with the provisions of applicable laws, rules and regulations. This consensus rule serves to conform 14 NYCRR Section 553.5 to the recently amended statute and will enable an external entity to review and inspect hospitals as defined in Article 28 of the Public Health Law that provide services for persons with mental illness pursuant to an operating certificate issued by the Commissioner under Article 31 of the Mental Hygiene Law.

Statutory Authority: Section 7.09 of the Mental Hygiene Law grants the Commissioner of Mental Health the authority and responsibility to adopt regulations that are necessary and proper to implement matters under his or her jurisdiction. Sections 31.02 and 31.04 of the Mental Hygiene Law authorize the Commissioner to set standards of quality and adequacy of facilities, equipment, personnel, services, records and programs for the rendition of services for persons diagnosed with mental illness, pursuant to an operating certificate. Section 31.05 of the Mental Hygiene Law establishes criteria for the issuance of operating certificates. Section 31.09 of the Mental Hygiene Law gives the Commissioner or his or her representative the power to inspect facilities, examine records, conduct examinations and interviews, and obtain such other information as necessary in order to carry out his or her responsibilities under Article 31 of such law. All such investigations and inspections shall be made by persons competent to conduct them. Sections 31.13 and 31.19 of the Mental Hygiene Law further authorize the Commissioner of his or her representatives to examine and inspect such programs to determine their suitability and proper operation.

Job Impact Statement

A Job Impact Statement is not submitted with this notice because the purpose of the amendment is to conform OMH regulations to recently amended statute. There will be no adverse impact on jobs and employment opportunities.

Office of Mental Health

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Visitation and Inspection of Facilities

I.D. No. OMH-44-15-00002-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 amend section 553.5 of Title 14 NYCRR.

Statutory authority: Mental Hygiene Law, sections 7.09, 31.02, 31.04, 31.05, 31.07, 31.08, 31.09, 31.13 and 31.19

Subject: Visitation and Inspection of Facilities.

Purpose: To conform existing regulations to statute and enable external entity to perform reviews and inspections.

Text of proposed rule: Subdivisions (a) and (c) of section 553.5 of Title 14 NYCRR are amended to read as follows:

(a) Applicability. For purposes of this section, the term hospital shall mean [a psychiatric unit of] a general hospital, [that is certified] as defined in article 28 of the Public Health Law, which provides services for persons with mental illness pursuant to an operating certificate issued by the Commissioner under article 31 of the Mental Hygiene Law, [and under article 28 of the Public Health Law] operating in accordance with [Part 580] applicable provisions of this Title. The provisions of this section shall apply to such hospitals.

(c) Hospitals must comply with [the] all operational standards set forth in [Part 580] applicable provisions of this Title. As evidence of compliance with such [Part] provisions, the commissioner may accept accreditation by The Joint Commission or an accreditation agency to which the Centers for Medicare and Medicaid Services has granted deeming status and which the commissioner has determined has accrediting standards sufficient to assure the commissioner that hospitals so accredited are in compliance with such operational standards, a list of which shall be made available on the public website of the office, provided that:

Public Service Commission

NOTICE OF ADOPTION

Joint Proposal for O&R to Establish Electric Rates

I.D. No. PSC-07-15-00005-A

Filing Date: 2015-10-16

Effective Date: 2015-10-16

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

Action taken: On 10/15/15, the PSC adopted the terms of a joint proposal establishing an electric rate plan for Orange and Rockland Utilities, Inc. (O&R).

Statutory authority: Public Service Law, sections 5, 65 and 66

Subject: Joint proposal for O&R to establish electric rates.

Purpose: To adopt a joint proposal establishing electric rates.

Substance of final rule: The Commission, on October 15, 2015, adopted the terms of a joint proposal by Orange and Rockland Utilities, Inc. (O&R), trial staff of the Department of Public Service, the Utility Intervention Unit of the New York Department of State's Consumer Protection Division, Pace Energy and Climate Center, the Sabin Center for Climate Change Law at Columbia Law School, the Retail Energy Supply Association, and the Department of Defense and all other Federal Executive Agencies, establishing an electric rate plan for O&R, subject to the terms and conditions set forth in the order.

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

Assessment of Public Comment

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

(14-E-0493SA1)

NOTICE OF ADOPTION

Joint Proposal for O&R to Establish Gas Rates

I.D. No. PSC-07-15-00007-A

Filing Date: 2015-10-16

Effective Date: 2015-10-16

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

Action taken: On 10/15/15, the PSC adopted the terms of a joint proposal establishing a gas rate plan for Orange and Rockland Utilities, Inc. (O&R).

Statutory authority: Public Service Law, sections 5, 65 and 66

Subject: Joint proposal for O&R to establish gas rates.

Purpose: To adopt a joint proposal establishing gas rates.

Substance of final rule: The Commission, on October 15, 2015, adopted the terms of a joint proposal by Orange and Rockland Utilities, Inc. (O&R), trial staff of the Department of Public Service, the Utility Intervention Unit of the New York Department of State's Consumer Protection Division, Pace Energy and Climate Center, the Sabin Center for Climate Change Law at Columbia Law School, the Retail Energy Supply Association, and the Department of Defense and all other Federal Executive Agencies, establishing a gas rate plan for O&R, subject to the terms and conditions set forth in the order.

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

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

Assessment of Public Comment

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

(14-G-0494SA1)

NOTICE OF ADOPTION

Remote Net Metering Tariff Filings

I.D. No. PSC-21-15-00005-A

Filing Date: 2015-10-16

Effective Date: 2015-10-16

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

Action taken: On 10/15/15, the PSC adopted an order directing modifications to remote net metering tariffs.

Statutory authority: Public Service Law, sections 5(2), 66-j and 66-l

Subject: Remote net metering tariff filings.

Purpose: To direct utilities to file tariff leaves for remote net metering.

Substance of final rule: The Commission, on October 15, 2015, adopted an order directing Consolidated Edison Company of New York, Inc., Orange and Rockland Utilities, Inc., Central Hudson Gas and Electric Corporation, New York State Electric & Gas Corporation, and Rochester Gas and Electric Corporation to file, in conformance with the Order, tariff leaves eliminating the Net Metered Limitation and the One Host Limitation but permitting no more than 2 MW of net metered generating capacity to serve any Satellite Account. The Commission directs Niagara Mohawk Power Corporation d/b/a National Grid to file, in conformance with the Order, tariff leaves conforming its tariff with the other utilities by eliminating the Net Metered Limitation and adding the same restriction on total capacity, subject to the terms and conditions set forth in the order.

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

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

Assessment of Public Comment

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

(15-E-0267SA1)

NOTICE OF ADOPTION

KEDNY's SIR Recovery Surcharge

I.D. No. PSC-26-15-00015-A

Filing Date: 2015-10-19

Effective Date: 2015-10-19

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

Action taken: On 10/15/15, the PSC adopted an order authorizing The Brooklyn Union Gas Company d/b/a National Grid NY (KEDNY) to increase its annual Site Investigation and Remediation (SIR) Surcharge by \$37.5 million.

Statutory authority: Public Service Law, section 66

Subject: KEDNY's SIR Recovery Surcharge.

Purpose: To authorize KEDNY to increase its annual SIR Surcharge by \$37.5 million.

Substance of final rule: The Commission, on October 15, 2015, adopted an order authorizing The Brooklyn Union Gas Company d/b/a National Grid NY to increase its annual Site Investigation and Remediation Surcharge by \$37.5 million to \$62.5 million, subject to the terms and conditions set forth in the order.

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

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

Assessment of Public Comment

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

(15-G-0323SA1)

NOTICE OF ADOPTION**KEDNY's Capital Reconciliation Mechanism****I.D. No.** PSC-26-15-00017-A**Filing Date:** 2015-10-19**Effective Date:** 2015-10-19

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

Action taken: On 10/15/15, the PSC adopted an order authorizing The Brooklyn Union Gas Company d/b/a National Grid NY (KEDNY) to modify its Capital Expenditures and Net Utility Plant and Depreciation Expense Reconciliation Mechanism (Capital Reconciliation Mechanism).

Statutory authority: Public Service Law, section 66

Subject: KEDNY's Capital Reconciliation Mechanism.

Purpose: To authorize KEDNY to modify its Capital Reconciliation Mechanism.

Substance of final rule: The Commission, on October 15, 2015, adopted an order authorizing The Brooklyn Union Gas Company d/b/a National Grid NY to modify its Capital Expenditures and Net Utility Plant and Depreciation Expense Reconciliation Mechanism, subject to the terms and conditions set forth in the order.

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

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

Assessment of Public Comment

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

(12-G-0544SA2)

NOTICE OF ADOPTION**Crestwood's Financing Limit****I.D. No.** PSC-28-15-00007-A**Filing Date:** 2015-10-19**Effective Date:** 2015-10-19

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

Action taken: On 10/15/15, the PSC adopted an order authorizing Crestwood Pipeline East LLC (Crestwood) to increase its financing limit from \$3 billion to \$4.5 billion.

Statutory authority: Public Service Law, section 69

Subject: Crestwood's financing limit.

Purpose: To authorize Crestwood to increase its financing limit.

Substance of final rule: The Commission, on October 15, 2015, adopted an order authorizing Crestwood Pipeline East LLC to increase its financing limit from \$3 billion to \$4.5 billion, subject to the terms and conditions set forth in the order.

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

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

Assessment of Public Comment

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

(15-G-0321SA1)

NOTICE OF ADOPTION**Joint Petition to Allow the Purchase of All Assets****I.D. No.** PSC-29-15-00024-A**Filing Date:** 2015-10-15**Effective Date:** 2015-10-15

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

Action taken: On 10/15/15, the PSC adopted an order approving the joint petition of New York American Water Company, Inc. (NYAW) and Spring Glen Lake Water Company LLC (Spring Glen) for NYAW to purchase all assets of Spring Glen.

Statutory authority: Public Service Law, section 89-h

Subject: Joint petition to allow the purchase of all assets.

Purpose: To approve the joint petition allowing NYAW to purchase all assets of Spring Glen.

Substance of final rule: The Commission, on October 15, 2015, adopted an order approving the joint petition of New York American Water Company, Inc. (NYAW) and Spring Glen Lake Water Company LLC (Spring Glen) for NYAW to purchase all assets of Spring Glen, subject to the terms and conditions set forth in the order.

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

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

Assessment of Public Comment

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

(15-W-0375SA1)

NOTICE OF ADOPTION**Joint Proposal to Extend Corning's Existing Rate Plan****I.D. No.** PSC-31-15-00003-A**Filing Date:** 2015-10-19**Effective Date:** 2015-10-19

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

Action taken: On 10/15/15, the PSC adopted the terms of a joint proposal by multiple parties to extend Corning Natural Gas Corporation's (Corning) existing rate plan.

Statutory authority: Public Service Law, sections 65 and 66

Subject: Joint proposal to extend Corning's existing rate plan.

Purpose: To adopt the joint proposal to extend Corning's existing rate plan.

Substance of final rule: The Commission, on October 15, 2015, adopted the terms of a joint proposal, signed by multiple parties, to extend Corning Natural Gas Corporation's existing rate plan two years until April 30, 2017, subject to the terms and conditions set forth in the order.

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

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

Assessment of Public Comment

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

(11-G-0280SA7)

NOTICE OF ADOPTION

Ceilings on the Interconnection of Net Metered Generation

I.D. No. PSC-31-15-00009-A

Filing Date: 2015-10-16

Effective Date: 2015-10-16

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

Action taken: On 10/15/15, the PSC adopted an order establishing interim ceilings on the interconnection of net metered generation.

Statutory authority: Public Service Law, sections 2(2-a) – 2(2-d), (4), 5(2), 65(1), (2), (3), 66(1), (2), (3), (4), (5), (9), (12), (12-a), 66-c and 66-j

Subject: Ceilings on the interconnection of net metered generation.

Purpose: To establish interim ceilings on the interconnection of net metered generation.

Substance of final rule: The Commission, on October 15, 2015, adopted an order establishing interim ceilings on the interconnection of net metered generation and directed Central Hudson Gas and Electric Corporation, Consolidated Edison Company of New York, Inc., New York State Electric & Gas Corporation, Niagara Mohawk Power Corporation d/b/a National Grid, Orange and Rockland Utilities, Inc., and Rochester Gas and Electric Corporation to file tariff leaves implementing revisions in conformance with the order, subject to the terms and conditions set forth in the order.

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

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

Assessment of Public Comment

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

(15-E-0407SA1)

NOTICE OF ADOPTION

Implementation of a Community DG Program

I.D. No. PSC-31-15-00012-A

Filing Date: 2015-10-16

Effective Date: 2015-10-16

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

Action taken: On 10/15/15, the PSC adopted an order concerning the implementation of a Community Distributed Generation (DG) Program.

Statutory authority: Public Service Law, sections 5(2), 65(1), (2), (3), 66(1), (2), (3), (4), (5), (9), (12), (12-a) and 66-j

Subject: Implementation of a Community DG Program.

Purpose: To implement a Community DG Program.

Substance of final rule: The Commission, on October 15, 2015, adopted an order directing Central Hudson Gas & Electric Corporation, Consolidated Edison Company of New York, Inc., New York State Electric & Gas Corporation, Niagara Mohawk Power Corporation d/b/a National Grid, Orange and Rockland Utilities, Inc., and Rochester Gas and Electric Corporation to file tariff leaves implementing changes concerning the implementation of a Community Distributed Generation (DG) Program, subject to the terms and conditions set forth in the order.

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

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

Assessment of Public Comment

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

(15-E-0082SA2)

NOTICE OF ADOPTION

Amendments to P.S.C. No. 4 — Steam

I.D. No. PSC-31-15-00022-A

Filing Date: 2015-10-15

Effective Date: 2015-10-15

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

Action taken: On 10/15/15, the PSC adopted an order approving Consolidated Edison Company of New York, Inc.'s (Con Ed) amendments to Rider G — Customer Sited Supply Pilot Program contained in P.S.C. No. 4 — Steam.

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

Subject: Amendments to P.S.C. No. 4 — Steam.

Purpose: To approve Con Ed's amendments to P.S.C. No. 4 — Steam.

Substance of final rule: The Commission, on October 15, 2015, adopted an order approving Consolidated Edison Company of New York, Inc.'s amendments to Rider G — Customer Sited Supply Pilot Program contained in P.S.C. No. 4 — Steam, subject to the terms and conditions set forth in the order.

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

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

Assessment of Public Comment

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

(15-S-0405SA1)

NOTICE OF ADOPTION

RG&E's Portfolio of Natural Gas and Pipeline Transportation and Storage Assets

I.D. No. PSC-32-15-00010-A

Filing Date: 2015-10-19

Effective Date: 2015-10-19

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

Action taken: On 10/15/15, the PSC adopted an order approving Rochester Gas and Electric Corporation (RG&E) to modify its portfolio of natural gas and pipeline transportation and storage assets.

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

Subject: RG&E's portfolio of natural gas and pipeline transportation and storage assets.

Purpose: To approve RG&E to modify its portfolio of natural gas and pipeline transportation and storage assets.

Substance of final rule: The Commission, on October 15, 2015, adopted an order approving Rochester Gas and Electric Corporation (RG&E) to modify its portfolio of natural gas and pipeline transportation and storage assets, and directed RG&E to file a supplement canceling the current tariff leaves and to refile the leaves once work is complete at the Oakwood Compressor Station, subject to the terms and conditions set forth in the order.

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

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

Assessment of Public Comment

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

(15-G-0439SA1)

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

AMI Business Plan of Con Edison

I.D. No. PSC-44-15-00021-P

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

Proposed Action: The Commission is considering the AMI Business Plan submitted by Consolidated Edison Company of New York, Inc. regarding the full implementation of AMI within its service territory.

Statutory authority: Public Service Law, sections 5, 65, 66 and 67

Subject: AMI Business Plan of Con Edison.

Purpose: To consider Con Edison's AMI Business Plan.

Substance of proposed rule: The Public Service Commission is considering the proposals set forth in the October 16, 2015, Consolidated Edison Company of New York, Inc. (Con Edison or the Company) Corrected AMI Business Plan filed in accordance with the Order Adopting Terms of Joint Proposal to Extend Electric Rate Plan, filed June, 19, 2015 in Cases 13-E-0030 in Accord with the Joint Proposal. The proposal sets forth a plan to for the full implementation of Advanced Metering Infrastructure in its territory. In its AMI Business Plan Con Edison proposes a smart meter initiative that will enhance customer control, choice, and convenience through enhanced customer features. The AMI Business Plan proposes a meter infrastructure that will be integrated with the digital market place envisioned by the Commission's Reforming the Energy Vision initiative allowing customers and distributed energy resources providers to bundle products and services together to meet customer needs, reduce demand, and provide environmental benefits. 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.

(13-E-0030SP11)

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

Cost Recovery Mechanism

I.D. No. PSC-44-15-00022-P

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

Proposed Action: The Commission is considering the petition of Rochester Gas & Electric Corporation (RG&E) to revise its electric tariff schedule, P.S.C. No. 19, to add components to its Supply Charge to recover NY Transco, LLC costs.

Statutory authority: Public Service Law, sections 5, 65 and 66

Subject: Cost recovery mechanism.

Purpose: To consider the addition of components to RG&E's Supply Charge for RG&E to recover costs for the NY Transco LLC projects.

Substance of proposed rule: The Public Service Commission (Commission) is considering whether to grant, deny or modify, in whole or in part, tariff amendments proposed by Rochester Gas & Electric Corporation on September 28, 2015 to add components to its Supply Charge to recover costs that are billed to RG&E by the New York Independent System Operator, Inc. (NYISO) for the New York Transco, LLC (NY Transco) projects. RG&E's proposed tariff amendments are designed to effectuate a cost recovery mechanism for allocation of costs related to the NY

Transco's annual revenue requirement, as approved by the Federal Energy Regulatory Commission (FERC) under the NYISO tariff. The proposed tariff amendments have an effective date of February 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-0582SP1)

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

Cost Recovery Mechanism

I.D. No. PSC-44-15-00023-P

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

Proposed Action: The Commission is considering the petition of New York State Electric & Gas Corporation (NYSEG) to revise its electric tariff schedule, P.S.C. No. 120, to add components to its Supply Charge to recover NY Transco, LLC costs.

Statutory authority: Public Service Law, sections 5, 65 and 66

Subject: Cost recovery mechanism.

Purpose: To consider the addition of components to NYSEG's Supply Charge for NYSEG to recover costs for the NY Transco LLC projects.

Substance of proposed rule: The Public Service Commission (Commission) is considering whether to grant, deny or modify, in whole or in part the tariff amendments proposed by New York State Electric & Gas Corporation (NYSEG) on September 28, 2015 to add a component to its Supply Charge to recover costs that are billed to it by the New York Independent System Operator, Inc. (NYISO) for the New York Transco, LLC (NY Transco) projects. NYSEG's proposed tariff amendments are designed to effectuate a cost recovery mechanism for its allocation of costs related to the NY Transco's annual revenue requirement, as approved by the Federal Energy Regulatory Commission (FERC) under the NYISO's tariff. The proposed tariff amendments have an effective date of February 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-0581SP1)

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

Development of Reliability Contingency Plan(s) to Address the Potential Retirement of Indian Point Energy Center

I.D. No. PSC-44-15-00024-P

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

Proposed Action: The Commission is considering a request filed by Consolidated Edison Company of New York Inc. on October 8, 2015, seeking confirmation regarding its reliability contingency plans.

Statutory authority: Public Service Law, sections 4(1), 5(1)(b), (2), 65(1), 66(1), (2), (4), (5), (9) and (12)

Subject: The development of reliability contingency plan(s) to address the potential retirement of Indian Point Energy Center.

Purpose: To identify the proposed projects for inclusion in the Indian Point Energy Center reliability contingency plan(s).

Substance of proposed rule: The Public Service Commission (Commission) is considering whether to adopt, modify, or reject, in whole or in part, a Motion filed in Case 12-E-0503 on October 8, 2015, by Consolidated Edison Company on New York, Inc. (Con Edison). The Motion seeks confirmation that Con Edison is not obligated to construct certain transmission facilities under the Commission's Order Accepting Indian Point Energy Center Reliability Contingency Plans, Establishing Cost Allocation and Recovery, and Denying Requests for Rehearing, issued in Case 12-E-0503 on November 4, 2013, in the event Con Edison does not renew transmission services with PJM Interconnection, LLC. The Commission may address the Motion and related matters in developing reliability contingency plan(s) to address the potential retirement of the Indian Point Energy Center.

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

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

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

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

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

(12-E-0503SP6)

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

Distributed System Implementation Plan Guidance

I.D. No. PSC-44-15-00025-P

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

Proposed Action: The Commission is considering a Department of Public Service (DPS) Staff Proposal regarding Distributed System Implementation Plan Guidance.

Statutory authority: Public Service Law, sections 4(1), 5(1), 65(1), (2), (3), 66(1), (2), (3), (4), (5), (6), (8), (9) and (12)

Subject: Distributed System Implementation Plan Guidance.

Purpose: To consider DPS Staff's proposal regarding the filing of Distributed System Implementation Plans by utilities.

Substance of proposed rule: The Public Service Commission (Commission) is considering a Department of Public Service Staff Proposal regarding Distributed System Implementation Plan (DSIP) Guidance. The DSIP is a multi-year plan the utilities will file with the Commission intended to promote transparent planning. The DSIP Guidance is designed to provide guidance to utilities explaining what data is required to be included in their DSIP filing, and is intended to promote consistency among utility filings. 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.

(14-M-0101SP14)

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

Transfer of Water Supply Assets

I.D. No. PSC-44-15-00026-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 Joint Petition filed October 13, 2015 by Beekman Water Company, Inc. and the Town of East Fishkill for the transfer of the Company's water supply assets to the Town and dissolution of the Company.

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

Subject: Transfer of water supply assets.

Purpose: To consider the transfer of the water supply assets of Beekman Water Company, Inc. to the Town of East Fishkill.

Text of proposed rule: The Public Service Commission is considering a joint petition filed October 13, 2015 by Beekman Water Company, Inc. (Company) and the Town of East Fishkill (Town) for the transfer of the Company's water supply assets to the Town and dissolution of the Company. The Company provides unmetered water service to 300 customers in the subdivisions known as Beekman Country Club Estates and The Legends at Beekman Country Club located in Hopewell Junction, Town of East Fishkill, in Dutchess County. The Company does not provide fire protection service. 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-W-0599SP1)

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

To Establish a Surcharge to Recover Costs Due to Unexpected Repairs

I.D. No. PSC-44-15-00027-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 West Branch Acres, Inc., requesting to establish a surcharge to recover the costs incurred as a result of replacing two well pumps and electrical repairs.

Statutory authority: Public Service Law, sections 4(1), 89-b and 89-c

Subject: To establish a surcharge to recover costs due to unexpected repairs.

Purpose: To consider the recovery of expenses incurred as a result of having to replace two well pumps and electrical repairs.

Substance of proposed rule: The Commission is considering a petition filed by West Branch Acres, Inc. (The Company), on October 6, 2015, to surcharge its customers \$129.25 per customer per quarter for two consecutive quarters, beginning January 1, 2016, to recover the cost of \$17,711.42 that was spent to replace two well pumps, repair the electrical panel, and purchase and delivery of potable drinking water. The Proposed recovery includes interest of 8% calculated from September 1, 2015. The Company provides water service to approximately 74 customers in a real estate development known as West Branch Acres, Town of Carmel, Putnam County. Fire protection service is not provided. 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-W-0590SP1)

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Deferral of Incremental Expenses Associated with New Compliance Requirements

I.D. No. PSC-44-15-00028-P

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

Proposed Action: The PSC is considering a petition by Central Hudson Gas & Electric Corporation for the recovery of \$2.1 million of deferred incremental costs associated with new compliance requirements to assess the risks of its gas underground facilities.

Statutory authority: Public Service Law, sections 4(1), 65, 66(1) and (12)

Subject: Deferral of incremental expenses associated with new compliance requirements.

Purpose: Consideration of Central Hudson's request to defer incremental expenses associated with new compliance requirements.

Substance of proposed rule: Central Hudson Gas & Electric Corporation (Central Hudson or Company) has requested the recovery, with carrying charges, of \$2.1 million in deferred incremental costs for the rate year ended June 30, 2015 associated with new compliance and reporting requirements to assess the risks of its gas underground facilities where third-party excavations may have occurred after the installation of gas pipes pursuant to the New York State Public Service Commission's ("Commission") February 20, 2014 Order Requiring Risk Assessments and Remediation of New York Gas Facilities; its May 14, 2014 Order Readopting Emergency Action and Modifying Order; its June 27, 2014 Order Making Permanent Risk Assessment Order and Clarifying Requirements; and its April 17, 2015 Order Directing Implementation of Best Practices of New York Gas Facilities in Case 11-G-0565, In the Matter of a Natural Gas Incident at 198 Joseph Street, Horseheads, on January 26, 2011, in the Service Territory of New York State Electric & Gas Corporation (Horseheads). The Company has deferred the incremental expense and associated deferred income taxes in Account 182. The Commission may adopt, reject or modify, in whole or in part, Central Hudson's request, and may also consider any related matters.

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

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

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

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

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

(09-G-0589SP3)

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Rider L — Direct Load Control (DLC) Program and Residential Smart Appliance Program (RSAP)

I.D. No. PSC-44-15-00029-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 by Consolidated Edison Company of New York, Inc. to continue its Residential and Small Commercial Demand Response programs.

Statutory authority: Public Service Law, sections 65(1), 66(1) and (12)

Subject: Rider L — Direct Load Control (DLC) program and Residential Smart Appliance Program (RSAP).

Purpose: To consider enhancing the DLC program and RSAP by expanding and increasing flexibility of both programs.

Substance of proposed rule: The Commission is considering whether to approve, modify or reject, in whole or in part, a proposal by Consolidated Edison Company of New York, Inc. to modify Rider L — Direct Load Control (DLC) program contained in P.S.C. No. 10 — Electricity and its Residential Smart Appliance Program (RSAP). Regarding the DLC program, the Company proposes to eliminate the annual program spending limit, and increase program flexibility. Regarding the RSAP, Con Edison proposes to change the program name, institute a \$4 million per year budget from 2016 through 2018, increase program flexibility, and expand the program to serve customers in Westchester and Small Commercial customers. Finally, the Company proposes the reauthorization of \$1.4 million to complete DLC program integration into its Commercial Demand Response Management System. The proposed filing does not have an effective date. The Commission 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-0593SP1)

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

System Improvement Plan Mechanism

I.D. No. PSC-44-15-00030-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 Bath Electric, Gas and Water Systems (Bath) to implement a System Improvement Plan (SIP) mechanism to allow for cost recovery associated with a Leak Prone Pipe Replacement Program.

Statutory authority: Public Service Law, sections 65 and 66

Subject: System Improvement Plan mechanism.

Purpose: To consider Bath's petition to implement a SIP mechanism.

Substance of proposed rule: The Public Service Commission is considering whether to grant, modify or deny, in whole or in part, a petition filed on October 6, 2015 by Bath Electric, Gas and Water Systems (Bath or the Company) to implement a System Improvement Plan (SIP) mechanism. The SIP mechanism addresses the costs associated with the following: all gas mains and services installed as replacements for existing infrastructure classified as leak prone pipe utilizing risk-based methodology; all gas mains, services, and meters installed for new customers, road repairs made necessary by previously mentioned work; facilities, equipment, and training necessary to install temperature-compensated meters; and acquiring updated, accurate maps for Bath's distribution system. The Commission may also consider other related issues.

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, Public Service Commission, 3 Empire State Plaza, Albany, New York 12223-1350, (518) 474-6530, email: secretary@dps.ny.gov

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

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

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

(15-G-0589SP1)

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

Transfer Ownership of Property

I.D. No. PSC-44-15-00031-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 the petition proposed by Rochester Gas & Electric Corporation to transfer to the Town of Greece, the system of street lighting installed throughout the town.

Statutory authority: Public Service Law, section 70

Subject: Transfer ownership of property.

Purpose: To consider the transfer of street lighting assets to the Town of Greece.

Substance of proposed rule: The Public Service Commission (Commission) is considering whether to grant, deny or modify, in whole or in part the petition by Rochester Gas and Electric Corporation (RG&E) on September 23, 2015 to transfer to the Town of Greece (the Town) the system of street lighting poles, luminaires and lamps, mast arms, electrical connections and wiring for street lighting (Facilities), now owned by RG&E, which are installed throughout the Town for a purchase price of \$4,900,000. 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-0568SP1)

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

Rider H—Non Residential Distributed Generation

I.D. No. PSC-44-15-00032-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 Consolidated Edison Company of New York, Inc.'s proposed revisions to Rider H—Non Residential Distributed Generation contained in P.S.C. No. 9—Gas.

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

Subject: Rider H—Non Residential Distributed Generation.

Purpose: To consider revisions to Rider H to allow for the aggregation of distributed generation capacity under certain circumstances.

Substance of proposed rule: The Public Service Commission is considering a tariff filing by Consolidated Edison Company of New York, Inc. (Con Edison) to revise Rider H—Non Residential Distributed Generation (DG) (Rider H) contained in P.S.C. No. 9—Gas. The proposed tariff revisions establish parameters to allow customers with separately metered distributed generation facilities, at the same location and under the same customer name, to aggregate those distributed generation facilities for the purpose of qualifying to be billed under Rate II of Rider H. The proposed amendments have an effective date of February 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-G-0601SP1)