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.

NOTICE OF ADOPTION

Jurisdictional Classification

I.D. No. CVS-29-15-00006-A
Filing No. 120
Filing Date: 2016-01-22
Effective Date: 2016-02-10

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

Action taken: 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 or summary was published in the July 22, 2015 issue of the Register, I.D. No. CVS-29-15-00006-P.

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

Text of 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

Assessment of Public Comment
The agency received no public comment.

NOTICE OF ADOPTION

Jurisdictional Classification

I.D. No. CVS-29-15-00007-A
Filing No. 121
Filing Date: 2016-01-22
Effective Date: 2016-02-10

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

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

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

Subject: Jurisdictional Classification.

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

Text or summary was published in the July 22, 2015 issue of the Register, I.D. No. CVS-29-15-00007-P.

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

Text of rule and any required statements and analyses may be obtained from: 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

Assessment of Public Comment
The agency received no public comment.

NOTICE OF ADOPTION

Jurisdictional Classification

I.D. No. CVS-29-15-00009-A
Filing No. 122
Filing Date: 2016-01-22
Effective Date: 2016-02-10

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

Action taken: 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 or summary was published in the July 22, 2015 issue of the Register, I.D. No. CVS-29-15-00009-P.

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

Text of 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

Assessment of Public Comment
The agency received no public comment.

NOTICE OF ADOPTION

Jurisdictional Classification

I.D. No. CVS-29-15-00011-A
Filing No. 119
Filing Date: 2016-01-22
Effective Date: 2016-02-10

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

Action taken: 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 or summary was published in the July 22, 2015 issue of the Register, I.D. No. CVS-29-15-00011-P.

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

Text of 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

Assessment of Public Comment

The agency received no public comment.

Education Department

PROPOSED RULE MAKING
NO HEARING(S) SCHEDULED

School Counseling, Certification Requirements for School Counselors and the School Counselor Program Registration Requirements

I.D. No. EDU-06-16-00004-P

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

Proposed Action: Amendment of sections 52.21(a), (d), 80-5.9, 100.2(j), Subparts 80-2, 80-3; and addition of section 80-5.23 to Title 8 NYCRR.

Statutory authority: Education Law, sections 101(not subdivided), 207(not subdivided), 210(not subdivided), 214(not subdivided), 215(not subdivided), 305(1), (2), 308, 3001(2), 3004(1), 3006(1)(b) and 3009(1)

Subject: School counseling, certification requirements for school counselors and the school counselor program registration requirements.

Purpose: To implement policy enacted by the Board of Regents to enhance existing public school district guidance programs to require comprehensive developmental counseling programs for all students in grades prekindergarten through twelve by certified school counselors. The proposed amendment also makes changes to the requirements for the certification of school counselors and school counselor preparation programs to support comprehensive developmental school counseling programs in the public schools of this State.

Substance of proposed rule (Full text is posted at the following State website:http://www.regents.nysed.gov/): The Commissioner of Education proposes to amend §§ 52.21, 80-2, 80-3, 80-5 and 100.2(j) of the Commissioner's regulations, relating to comprehensive developmental school counseling programs, certification requirements for school counselors and registration requirements for school counselor preparation programs. The following is a summary of the substance of the rule.

Subdivision (a) of section 52.21 is amended to require that programs leading to initial or professional certification in school counseling meet the new requirements outlined in subdivision (d) of section 52.21 by September 1, 2018.

A new subdivision (d) is added to section 52.21 to prescribe the requirements for institutions of higher education offering school counseling preparation programs leading to an initial certificate, and for those programs leading to a professional certificate.

The title of Subpart 80-2 is amended to clarify that the requirements of Subpart 80-2 do not apply to certificates for school counseling applied and qualified for on or after September 2, 2021.

Section 80-2.1 is amended to clarify that candidates who apply and qualify for the provisional certificate in the title school counselor on or before September 2, 2021 shall be subject to the requirements of this Subpart. Candidates who do not meet these requirements shall be subject to the requirements of Subpart 80-3 of this Part, unless otherwise specifically prescribed in this Part. Candidates with an expired provisional certificate in the title school counselor who apply for permanent certificates prior to September 2, 2023 shall be subject to this Subpart, provided that they have been issued a provisional certificate in this title and have met all requirements for the permanent certificate while under a provisional certificate that was in effect. Candidates with expired provisional certificates who apply for permanent certificates in the title school counselor on or after September 2, 2023 or who do not meet these conditions shall be subject to the requirements of Subpart 80-3 of the Part, unless otherwise specifically prescribed in this Part.

Sections 80-2.9(1)(iii) and 80-2.9(2)(iii) are amended to include the definition of pupil personnel service professional as defined in section 80-3.11.

The title of Subpart 80-3 is amended to clarify that the requirements of Subpart 80-3 for school counselor certificates shall apply for candidates who apply or qualify for such certificate on or after September 2, 2021.

Section 80-3.1 is amended to clarify that candidates who apply for a permanent certificate in the title school counselor shall be subject to the requirements of Subpart 80-2 of this Part, provided that they have been issued a provisional certificate in this title for which the permanent certificate is sought and have met all requirements for the permanent certificate while under a valid provisional certificate that was in effect after that date and that candidates who apply for certificates on or after September 2, 2021 shall be subject to the requirements of Subpart 80-3.

A new Section 80-3.11 is added to establish the requirements for both an initial certificate for school counselor, and a professional certificate for candidates who apply for a school counselor certificate on or after September 2, 2021.

A new Section 80-3.12 proscribes the requirements necessary for meeting the education requirements for school counselor certificates through individual evaluation.

Section 80-5.9 is amended to allow a candidate in a registered or approved graduate program of school counseling to obtain an internship certificate when the registered program includes internship experience, and the candidate has completed at least one-half of the semester hour requirements of the program.

A new Section 80-5.23 is added to set forth the standards and process of the Commissioner of Education to endorse the certificate of another state or territory of the United States or the District of Columbia for service as a school counselor, provided that the candidate meets the requirements set forth therein.

The title of Subdivision (j) of section 100.2 is amended to include comprehensive developmental school counseling programs. Paragraph (1) of section 100.2(j) is amended to clarify that the existing guidance programs for public schools shall apply until the 2017-2018 school year.

A new Paragraph (2) is added to section 100.2(j) to require public school districts to have a comprehensive developmental school counseling program, beginning with the 2017-2018 school year and describes the requirements thereof.

Text of proposed rule and any required statements and analyses may be obtained from: Kirti Goswami, New York State Education Department, 89 Washington Avenue, Albany, NY 12234, (518) 474-6400, email: legal@nysed.gov

Data, views or arguments may be submitted to: Peg Rivers, Office of Higher Education Department, New York State Education Department, 89 Washington Avenue, Room 979, Albany, NY 12234, (518) 486-3633, email: regcomments@nysed.gov

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

Summary of Regulatory Impact Statement

1. STATUTORY AUTHORITY:

Education Law (Ed.L.) § 101 continues the existence of the Education Department(SED), with the Board of Regents(Regents) at its head and the Commissioner of Education as the chief administrative officer, and charges SED with the general management and supervision of public schools and the educational work of the State.

Ed.L. § 207 empowers the Regents and the Commissioner to adopt rules and regulations to carry out the laws of the State regarding education and the functions and duties conferred on SED by law.

Ed.L. § 210 authorizes SED to fix the value of degrees, diplomas and certificates issued by institutions of other states or countries as presented for entrance to schools, colleges and the professions of the state.

Ed.L. § 214 provides that the institutions of The University of the State of New York shall include all secondary and higher educational institu-

tions which are or may be incorporated in the state, and grants authority to the Regents to exclude from such membership any institution failing to comply with law or with any rule of the university.

Ed.L. § 215 authorizes the Commissioner to require schools and school districts to submit reports containing such information as the Commissioner shall prescribe.

Ed.L. § 305(1) and (2) provide that the Commissioner, as chief executive officer of the State system of education and of the Regents, shall have general supervision over all schools and institutions subject to the provisions of the Ed.L., or of any statute relating to education.

Ed.L. § 308 authorizes the Commissioner to enforce and give effect to any provision in the Ed.L. or in any other general or special law pertaining to the school system of the State or any rule or direction of the Regents.

Ed.L. § 3001 (2) establishes certification by SED as a qualification to teach in the public schools of New York State(NYS).

Ed.L. § 3004(1) authorizes the Commissioner of Education to prescribe, subject to approval by the Board of Regents, regulations governing the examination and certification of teachers employed in the public schools of this State.

Ed.L. § 3006(1)(b) provides that the Commissioner may issue such teacher certificates as the Regents Rules prescribe.

Ed.L. § 3009(1) provides that no part of the school moneys apportioned to a district shall be applied to the payment of the salary of an unqualified teacher, nor shall his salary or part thereof, be collected by a district tax except as provided in the Ed.L.

2. LEGISLATIVE OBJECTIVES:

The amendment is consistent with the authority conferred by the above statutes and is necessary to implement policy enacted by the Regents to require comprehensive developmental counseling programs for all public school students in grades prekindergarten through twelve provided by certified school counselors. The amendment changes the certification requirements for school counselors and requirements for school counselor preparation programs.

3. NEEDS AND BENEFITS:

SED created the School Counselor Advisory Council(SCAC) to solicit recommendations for a comprehensive, developmentally appropriate school counseling program and for improving the school counselor preparation.

Two SCAC workgroups distributed surveys to P-12 and higher education practitioners. The results were compiled and analyzed by SED. SED also presented a summary of recommendations compiled from the April 2014 NYS School Counselor Summit. The SCAC reviewed the recommendations and also SCAC provided comments on a memo sent in April 2015 to the deans and department chairs overseeing school counseling programs which included an invitation to offer feedback. SED reviewed the feedback, made final adjustments to the amendment.

Highlights of § 100.2(j) revisions:

- School counseling services for prekindergarten through twelve students provided by certified school counselors.
- The ratio of student to counselors, to the extent practicable, should conform to American School Counselor Association standards or other comparable national and/or NYS recognized standards by 2020-2021 school year.
- Provide all P-12 public school students annual individual progress review plans.
- Annually updated comprehensive school counseling plans published on the district website.
- Require school counselor advisory councils to advise the district on implementation of the program.
- Change the word "guidance" program to "school counseling program" for public schools.
- Use the title "School Counselor" rather than "Guidance Counselor."

Highlights of Part 52.21 revisions, and the addition of Part 80-3.11:

Part 80-3.11 Certification

On or after September 2, 2021:

- Candidates seeking an initial certificate must complete an SED approved program (minimum of 48 semester hours) or complete 48 semester hours of graduate school counseling coursework in six areas as prescribed by the Commissioner in guidance. Initial certificate candidates must also take and receive a satisfactory passing score on a NYSED approved certification exam, if available.
- Candidates seeking a professional school counselor certificate must complete a registered program or a minimum of 60 semester hours of graduate study(an additional 12 semester hours over the already obtained 48 semester hours).
- Candidates seeking a professional school counselor certificate must meet the requirements for an initial certificate and three years of school counseling experience. Candidates who complete this requirement in total or part through experience in NY public schools shall be required to participate in a mentored program in the first year of employment.

Part 52.21(d) Program Registration

- By September 1, 2018, institutions of higher education (IHEs) offering a school counseling preparation program leading to an initial certificate are required to provide a minimum of 48 semester hours of graduate study in an approved program which must be in six areas prescribed by the Commissioner in guidance.
- By September 1, 2018, IHEs offering a program leading to a professional certificate are required to provide a minimum of 12 additional semester hours of graduate study in an approved certificate of advanced study, which must be in at least each of the two core areas prescribed by the Commissioner in guidance. Only individuals who have completed a minimum of a 48 semester hour program in school counseling or its equivalent, and who hold a NYS initial certificate or meet the requirements for a NYS initial certificate, will be admitted to a minimum 12-credit advanced certificate program.
- All 48 semester hour or higher preparation programs leading to initial certification or a master's degree must include a minimum of a 100-hour practicum and a 600-hour internship, as described in rule.
- The supervised 100-hour P-12 school counseling practicum must be in a P-12 setting and consist of 40 direct student service hours in group counseling, individual counseling, and school counseling core curriculum lesson delivery; and 60 indirect hours on developing, implementing, and/or evaluating certain program elements.
- The supervised 600-hour P-12 internship must be in a P-12 program and consist of 240 direct student service hours in group counseling, individual counseling, and counseling core curriculum lesson delivery; and 360 hours on developing, implementing, and evaluating certain program elements; 300 hours must be in elementary school and 300 in secondary school and there must be a written agreement with the school or school district.
- Programs registered for the first time on or after September 1, 2018 leading to an initial and/or professional certificate shall be accredited by an acceptable professional education accrediting association and be continuously accredited thereafter by an acceptable professional education accrediting association.

Other Changes:

- The amendment prescribes that candidates are eligible for internship certificates when they have completed at least one half of the program's semester hour requirements.
- All of the general requirements for registered programs in Sections 52.1 and 52.2 shall apply to school counseling programs in addition to the requirements in 52.21(d). All other general requirements not addressed in 80-3.11 are required pursuant to 80-1 and 80-3.2.
- Technical amendments are reflected throughout Subpart 80-2 and Subpart 80-3 and change the types of school counselor certificates issued on or after September 2, 2021 from "provisional" to "initial" and from "permanent" to "professional".
- Prescribes requirements for the endorsement of out-of-state initial and professional certificates.
- Adds § 80-3.12 to prescribe requirements for meeting the education requirements through individual evaluation.
- Initial certificates are valid for five years, subject to certain time extensions and renewals. Professional certificates are valid for life.

4. COSTS:

(a) Costs to State government: None.

(b) Costs to local government: The existing rule requires school districts to have a guidance program, designed in coordination with teaching staff for students in grades kindergarten through six, and services provided by certified school counselors for grades seven through twelve. The statewide average counselor to student ratio is 1:418. A successful comprehensive developmental school counseling program should, to the extent practicable, use ratios for certified school counselors that conform to the American School Counselor Association standards (1:100 - 1:250), or other national and/or NYS recognized standards. An effort to bring the statewide average ratio closer to the recommendation and achieve a ratio of 1:350 requires adding approximately 1,600 school counselors statewide. Adding 1,600 positions at an approximate average cost of $68,000 per position would cost approximately $100 million dollars. The proposed amendment merely recommends but does not require such ratios.

The amendment requires district and building-level comprehensive school counseling plans. Currently, the rule requires district-level plans and an annual review for 7-12 grade students. The amendment requires certified school counselors to provide annual individual progress review plans for each student from prekindergarten through twelfth. To minimize the impact of the amendment, for students in grades prekindergarten through six, the plan may be provided individually or with small groups.

It is anticipated that for roughly half of the 700 districts (350 districts) that already have elementary school counselors, the amendment would not impose additional costs. Those 350 districts could develop building level and district plans within current school counselor job responsibilities. Of

the remaining 350 school districts, we project that approximately half of those districts, (175 districts) would shift responsibilities to meet the requirements of the amendment. We project that the remaining 175 districts would need to hire, on average, one half-time counselor, with larger districts needing more and smaller districts sharing the cost of an additional school counselor. With the average estimated salary with fringe benefits of $68,000, the cost of a half-time school counselor would be approximately $34,000. The anticipated added cost of building-level plans and individual progress review plans for prekindergarten through twelfth grade students is estimated to be: $34,000 (.5FTE) X 175 districts (one quarter of the districts) = $5,950,000.

For candidates seeking a school counselor certificate if, and when, a certification exam is available, they will be required to pay an exam fee to SED.

(c) Costs to private regulated parties: None.

(d) Costs to regulating agency for implementation and continued administration of this rule: None.

5. LOCAL GOVERNMENT MANDATES:

The amendment is necessary to implement policy enacted by the Regents to require comprehensive developmental counseling programs for all students in grades prekindergarten through twelve provided by certified school counselors. The amendment provides a goal for public schools to increase the ratio of school counselors to students, to the extent practicable, to the ASCA standards (1:100- 1:250), or other comparable national and/or NYS recognized standards. The amendment requires certified school counselors to provide annual individual progress review plans for each prekindergarten through twelfth grade student. School districts are also required to annually update both building-level and district-level plans, and make them available on the district website. Districts must establish a school counselor advisory council to review and advise on program implementation.

6. PAPERWORK:

See Section 5.

7. DUPLICATION:

The amendment does not duplicate existing State or federal regulations.

8. ALTERNATIVES:

The proposal arose from the SCAC which initially considered requiring all schools to meet the national standard of 1:100-1:250. To reduce costs, the amendment merely recommends and does not require schools to meet those ratios. Flexibility was also provided to schools by allowing individual progress review plans for students in pre-kindergarten through sixth grade to be conducted through small groups.

9. FEDERAL STANDARDS:

There are no related federal standards.

10. COMPLIANCE SCHEDULE:

It is anticipated regulated parties will be able to comply by the effective date. Public school districts have until the 2017-2018 school year to comply with comprehensive school counseling program. IHE's school counseling preparation programs have until September 1, 2018 to meet the requirements. Candidates seeking school counselor certificates on or after September 2, 2021 must meet such requirements.

Regulatory Flexibility Analysis

Small Businesses:

The proposed amendment is necessary to implement policy enacted by the Board of Regents relating to enhancing existing public school district guidance programs to require comprehensive developmental counseling programs for all students in grades prekindergarten through twelve provided by certified school counselors. The proposed amendment also makes changes to the certification requirements for school counselors and the requirements for school counselor preparation programs in order to support comprehensive developmental school counseling programs.

The proposed amendment 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 Government:

1. EFFECT OF RULE:

The proposed amendment applies to each of the approximately 680 public school districts in the State who will be required to expand existing guidance programs to meet the needs of students in grades prekindergarten through twelve through a comprehensive developmental school counseling program. The proposed amendment will also apply to institutions of higher education with registered school counseling preparation programs that lead to certification in school counseling.

2. COMPLIANCE REQUIREMENTS:

The proposed amendment makes the following major changes to the existing guidance programs in the public schools of this State:

- School counseling services shall be provided to all students in grades prekindergarten through twelve by certified school counselors (current regulations only require school counselors for students in grades 7-12).
- The goal is for the ratio of student to school counselors, to the extent practicable, to conform to American School Counselor Association standards or other comparable national and/or New York State recognized standards.
- Provide all students in P-12 public schools with annual individual progress review plans reflecting each student's educational progress and career plans conducted by certified school counselors, except in grades P-6 where such plans may be provided in small groups.
- Comprehensive school counseling plans that are updated annually should be made available on the district website.
- Districts must establish a school counselor advisory council to review and advise the district on implementation issues relating to the comprehensive developmental school counseling program.

The proposed amendment makes the following major changes to the certification requirements for school counselors:

On or after September 2, 2021:

Candidates seeking an initial school counselor certificate must complete a registered graduate school counselor program (minimum of 48 semester hours) or complete 48 semester hours of graduate school counseling coursework in six core areas prescribed by the Commissioner in regulations and guidance and complete a 100-hour practicum and a 600-hour internship as described in section 52.21 (d). In addition to the requirements listed above for the Initial certificate, the candidate must take and receive a satisfactory passing score on a NYSED approved certification exam, if available.

Candidates seeking a professional school counselor certificate must complete a school counselor program registered by the Department pursuant to Section 52.21 (d) of the Commissioner's Regulations or a minimum of 60 semester hours of graduate study (an additional 12 semester hours over the already obtained 48 semester hours).

Candidates seeking a professional school counselor certificate must meet the education, experience, and examination requirements described for an initial certificate and will be required to satisfactorily complete three years of experience as a school counselor. A candidate who completes this requirement in total or part through experience in New York public schools shall be required to participate in a mentored program in the first year of employment.

Part 52.21(d) Program Registration

By September 1, 2018, institutions of higher education (IHEs) offering a school counseling preparation program leading to an initial certificate will be required to provide a minimum of 48 semester hours of graduate study in an approved school counseling program. The 48 hours of graduate study must be in each of the following six core areas, and the subareas for these core content areas, as prescribed by the Commissioner in regulations and guidance.

By September 1, 2018, IHEs offering a school counseling preparation program leading to a professional certificate will be required to provide a minimum of 12 additional semester hours of graduate study in an approved certificate of advanced study. Only individuals who have completed a minimum of a 48 semester hour program in school counseling or its equivalent, and who hold a NYS initial certificate or meet the requirements for a NYS initial certificate in school counseling, will be admitted to a minimum 12-credit advanced certificate program in school counseling. The minimum of 12 semester hours of graduate study must be in at least each of the following two core areas and the subareas for these core areas, as prescribed by the Commissioner in guidance:

o Career development and college readiness
o Research and program evaluation

All 48 semester hour or higher school counseling preparation programs leading to initial certification or a master's degree must include a minimum of a 100-hour practicum and a 600-hour internship.

The supervised 100-hour P-12 school counseling practicum must be in a P-12 school counseling program setting and consist of 40 direct student service hours in group counseling, individual counseling, and school counseling core curriculum lesson delivery; and 60 indirect hours on developing, implementing, and/or evaluating school counseling program elements such as:

o student outcomes and standards
o curriculum
o individual student needs and plans
o responsive services
o consultation with others on behalf of student
o time management
o school counseling program goals
o data analysis
o action plans
o calendars/schedules

o advisory panels, councils, and committees

The supervised 600-hour P-12 school counseling internship must be in a P-12 school counseling program setting and consist of 240 direct student service hours in group counseling, individual counseling, and school counseling core curriculum lesson delivery; and 360 hours of focus on developing, implementing, and evaluating school counseling program elements such as:

o student outcomes and standards
o curriculum
o individual student needs and plans
o responsive services
o consultation with others on behalf of student
o time management
o school counseling program goals
o data analysis
o action plans
o calendars/schedules
o advisory panels, councils, and committees

School counseling programs registered for the first time on or after September 1, 2018 leading to an initial and/or professional certificate under this subdivision shall be accredited by an acceptable professional education accrediting association, meaning an organization which is determined by the Department to have equivalent standards to the State's registration standards within seven years of the date of their initial registration, and be continuously accredited thereafter by an acceptable professional education accrediting association.

3. PROFESSIONAL SERVICES:

The proposed amendment does not impose any professional services requirements on school districts, school counselor candidates or school counselor preparation programs.

4. COMPLIANCE COSTS:

The existing rule requires school districts to have a guidance program, designed in coordination with teaching staff for students in grades kindergarten through six, and services provided by certified school counselors for grades seven through twelve. The current statewide average counselor to student ratio is 1:418. The proposed amendment provides that a successful comprehensive developmental school counseling program should, to the extent practicable, use ratios for certified school counselors that conform to the American School Counselor Association standards (1:100 - 1:250), or other national and/or NYS recognized standards. An effort to bring the statewide average ratio closer to the recommendation and achieve a ratio of 1:350 requires adding approximately 1,600 school counselors statewide. Adding 1,600 positions at an approximate average cost of $68,000 per position would cost approximately $100 million dollars. However, the proposed amendment merely recommends but does not require such ratios.

The amendment requires individual, district and building-level comprehensive school counseling plans. Currently, the regulations requires district-level plans, and an individual annual review for 7-12 grade students. The amendment requires certified school counselors to provide annual individual progress review plans for each student from prekindergarten through twelfth. However, in an effort to minimize the impact of the amendment, for students in grades prekindergarten through six, the plan may be provided individually or with small groups.

It is anticipated that for roughly half of the 700 districts (350 districts) that already have elementary school counselors, the amendment would not impose additional costs. It is expected that those 350 districts could develop building level and district plans within current school counselor job responsibilities. Of the remaining 350 school districts, we project that approximately half of those districts, (175 districts) could shift current responsibilities to meet the requirements of the amendment. We project that the remaining 175 districts would need to hire, on average, one half-time counselor, with larger districts needing more and smaller districts sharing the cost of an additional school counselor. With the average estimated salary with fringe benefits of $68,000, the cost of a half-time school counselor would be approximately $34,000. The anticipated added cost of building-level plans and individual progress review plans for prekindergarten through twelfth grade students is estimated to be: $34,000 (.5FTE) X 175 districts (one quarter of the districts) = $5,950,000.

For candidates seeking a school counselor certificate if, and when, a certification exam is available, they will be required to pay an exam fee to SED.

5. ECONOMIC AND TECHNOLOGICAL FEASIBILITY:

The proposed amendment requires school districts to post comprehensive developmental school counseling plans on the district website. Such actions may require minimal costs to add such documentation to an existing school district website.

6. MINIMIZING ADVERSE IMPACT:

In an effort to minimize any adverse impact, the proposed amendment merely recommends and does not impose specific school counselor to student ratios necessary to support a successful comprehensive developmental school counseling program.

The proposed amendments were based on the work and recommendations of the School Counseling Advisory Committee (SCAC). The SCAC initially considered requiring all schools to meet the nationally recognized school counselor to student standards of 1:100 - 1:250. However, in an effort to reduce potential costs, the proposed amendment was amended to merely recommend and not require schools to meet the nationally recognized ratios. The proposed amendment was further amended to provide flexibility to schools by allowing counseling for students in prekindergarten through sixth grade to be provided in small groups. Such alternatives were proposed for the purpose of minimizing the impact of expanded comprehensive developmental school counseling programs.

7. LOCAL GOVERNMENT PARTICIPATION:

Comments on the proposed rule were solicited from school districts through the offices of the district superintendents of each supervisory district in the State, and from the chief school officers of the five big city school districts. The proposed amendment arose from recommendations made by the SCAC which was comprised of 8 school counselors from across New York State and 8 representatives from school counselor preparation programs. Membership included two New York State United Teachers representatives, and one United Federation of Teachers representative.

Rural Area Flexibility Analysis

1. TYPES AND ESTIMATED NUMBER OF RURAL AREAS:

The proposed amendment applies to school districts, and candidates seeking a certificate in school counseling in this State, including those who live and work, or are 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. The proposed amendment also applies to institutions of higher education with registered school counseling preparation programs, which include those in rural areas of the State.

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

See the Needs and Benefits and Paperwork sections of the Regulatory Impact Statement submitted herewith. The proposed amendment does not impose any additional compliance requirements upon rural areas but merely implements policy enacted by the Board of Regents to enhance existing public school district guidance programs to require comprehensive developmental counseling programs for all students in grades prekindergarten through twelve provided by certified school counselors. The proposed amendment also makes changes to the requirements of school counselor preparation programs necessary to support comprehensive developmental school counseling programs.

The proposed amendment imposes no additional professional services requirements on school districts in rural areas.

3. COMPLIANCE COSTS:

The existing rule requires school districts to have a guidance program, designed in coordination with teaching staff for students in grades kindergarten through six, and services provided by certified school counselors for grades seven through twelve. The current statewide average counselor to student ratio is 1:418. The proposed amendment provides that a successful comprehensive developmental school counseling program should, to the extent practicable, use ratios for certified school counselors that conform to the American School Counselor Association standards (1:100 - 1:250), or other national and/or NYS recognized standards. An effort to bring the statewide average ratio closer to the recommendation and achieve a ratio of 1:350 requires adding approximately 1,600 school counselors statewide. Adding 1,600 positions at an approximate average cost of $68,000 per position would cost approximately $100 million dollars. However, the proposed amendment merely recommends but does not require such ratios.

The amendment requires individual, district and building-level comprehensive school counseling plans. Currently, the regulations requires district-level plans, and an individual annual review for 7-12 grade students. The amendment requires certified school counselors to provide annual individual progress review plans for each student from prekindergarten through twelfth. However, in an effort to minimize the impact of the amendment, for students in grades prekindergarten through six, the plan may be provided individually or with small groups.

It is anticipated that for roughly half of the 700 districts (350 districts) that already have elementary school counselors, the amendment would not impose additional costs. It is expected that those 350 districts could develop building level and district plans within current school counselor job responsibilities. Of the remaining 350 school districts, we project that approximately half of those districts, (175 districts) could shift current responsibilities to meet the requirements of the amendment. We project that the remaining 175 districts would need to hire, on average, one half-time counselor, with larger districts needing more and smaller districts sharing the cost of an additional school counselor. With the average estimated sal-

ary with fringe benefits of $68,000, the cost of a half-time school counselor would be approximately $34,000. The anticipated added cost of building-level plans and individual progress review plans for prekindergarten through twelfth grade students is estimated to be: $34,000 (.5FTE) X 175 districts (one quarter of the districts) = $5,950,000.

For candidates seeking a school counselor certificate if, and when, a certification exam is available, they will be required to pay an exam fee to SED.

4. MINIMIZING ADVERSE IMPACT:

The proposed amendment is necessary to implement policy enacted by the Board of Regents related to meeting the diverse and evolving needs of students by enhancing existing public school district guidance programs to require comprehensive developmental counseling programs for all students in grades prekindergarten through twelve provided by certified school counselors. The proposed amendment also makes changes to the requirements of school counselor preparation programs necessary to support comprehensive developmental school counseling programs.

Because the Regents policy upon which the proposed amendment is based uniformly applies to all school districts throughout the State, it is not appropriate to establish differing compliance or reporting requirements or timetables or to exempt school districts in rural areas from coverage by the proposed amendment. However, to provide flexibility to school districts, including those located in rural areas of the State, the proposed amendment merely recommends and does not require specific school counselor to student ratios.

The proposal to enhance school counselor preparation programs and to implement comprehensive developmental school counseling programs arose from the work of the School Counselor Advisory Council (SCAC), which was established by the Department upon recommendation by the Board of Regents. The proposed amendments were based on the work and recommendations of the SCAC. The SCAC initially considered requirements all schools to meet the nationally recognized school counselor to student standards of between 1:100 and 1:250. However, in an effort to reduce the potential costs of the comprehensive developmental school counseling program, the proposed amendment was amended to merely recommend and not require schools to meet the nationally recognized ratios. The proposed amendment was further amended to provide flexibility to schools by allowing the individual counseling for students in prekindergarten through sixth grade to be provided through small groups.

5. RURAL AREA PARTICIPATION:

Comments on the proposed amendment were solicited from the Department's Rural Advisory Committee, whose membership includes school districts located in rural areas. The proposed amendment was also based upon recommendations made by School Counselor Advisory Council which was comprised of 8 school counselors from across New York State, including Mount Markham Central School District and Hamburg Central School District, and representatives from school counselor preparation programs located across the State.

Job Impact Statement

The proposed amendment is necessary to implement policy enacted by the Board of Regents to enhance existing public school district guidance programs to require comprehensive developmental counseling programs for all students in grades prekindergarten through twelve. The proposed amendment also makes changes to the certification requirements for school counselors and the requirements for school counselor preparation programs to support comprehensive developmental school counseling programs in the public school districts of this state.

The proposed amendment 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.

REVISED RULE MAKING
NO HEARING(S) SCHEDULED

New York State Seal of Biliteracy

I.D. No. EDU-04-16-00003-RP

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

Proposed Action: Addition of section 100.5(h) to Title 8 NYCRR.

Statutory authority: Education Law, sections 101(not subdivided), 207(not subdivided), 208(not subdivided), 305(1), (2), 308(not subdivided), 309(not subdivided) and 815(2)(b)

Subject: New York State Seal of Biliteracy.

Purpose: To establish requirements for students to earn a State Seal of Biliteracy.

Text of revised rule: Subdivision (h) of section 100.5 of the Regulations of the Commissioner of Education is added, effective May 4, 2016, as follows:

(h) New York State Seal of Biliteracy.

(1) Purpose and Intent. The purpose of this subdivision is to establish requirements for earning a New York State (NYS) Seal of Biliteracy pursuant to Education Law § 815. The intent of the NYS Seal of Biliteracy is to encourage the study of languages; certify attainment of biliteracy; provide employers with a method of identifying high school graduates with language and biliteracy skills; provide universities with an additional method to recognize applicants seeking admission; prepare students with twenty-first century skills; recognize the value of foreign and home language instruction in schools; and strengthen intergroup relationships, affirm the value of diversity, and honor the multiple cultures and languages of a community. The NYS Seal of Biliteracy shall be awarded by the Commissioner to students who meet the criteria of this subdivision and attend schools in school districts that are approved by the Commissioner pursuant to this subdivision to participate in the program. The NYS Seal of Biliteracy shall be affixed to high school diplomas and transcripts of graduating pupils attaining Seal criteria. No fee shall be charged to a student pursuant to this subdivision.

(2) Definitions. For purposes of this section, "foreign language" means any language other than English (LOTE) including all modern languages, Latin, American Sign Language, Native American languages, and native languages.

(3) School district requirements. School district participation in the NYS Seal of Biliteracy program is voluntary. A school district that wishes to participate in the program shall:

(i) form a Seal of Biliteracy Committee (SBC).

(a) The SBC shall include, but is not limited to, the following personnel:

(1) a World Language teacher,

(2) an English Language Arts (ELA) teacher,

(3) an English for Speakers of Other Languages (ESOL) teacher,

(4) a guidance counselor, and

(5) an administrator;

(b) The SBC shall:

(1) create a Seal of Biliteracy plan that includes, but is not limited to, details concerning committee recruitment and composition, communications, student advisement, evaluation, and presentation of awards;

(2) create a timeline for all activities pertaining to the Seal of Biliteracy program including, but not limited to, communications, a student advisement schedule, and dates for important benchmarks throughout the program year;

(3) develop a student application process, including an application form to be completed by interested students and returned to the SBC;

(4) provide for the assignment of an advisor to each student accepted into the program to review program requirements and meet regularly with the student to review the student's progress; and

(5) review and evaluate all coursework, assessments, and other work completed by each student to ensure criteria for the seal are met.

(ii) submit an application to the Commissioner, in a form and by a date prescribed by the Commissioner, for approval for the school district to participate in the program. Such application shall include a narrative that describes how the district will implement the NYS Seal of Biliteracy program, including plans for program communications, processes pertaining to student application, advisement and evaluation, and timelines and benchmarks for the program.

(iii) Participating school districts shall maintain appropriate records in order to identify students who have earned a NYS Seal of Biliteracy. At the end of each school year in which a school district participates in the program, the school district shall submit a report to the Commissioner, in a form and by a date prescribed by the Commissioner, that includes the number of students receiving the Seal along with relevant data including, but not limited to, the types of languages, number of English Language Learner (ELL) students, and the criteria chosen under subparagraphs (ii) and (iii) of paragraph (4) of this subdivision.

(4) Student requirements.

(i) Minimum requirement. Students who wish to receive the NYS Seal of Biliteracy shall complete all requirements for graduating with a Regents diploma (however, students in schools with an alternate pathway for graduation approved by the Commissioner will be held to those schools' criteria);

(ii) Additional requirements. Except as provided in subparagraph

(iii) of this paragraph, in addition to the minimum requirement listed in subparagraph (i) of this paragraph, students shall earn at least three points in each of the two areas listed below:

(a) Area 1: Criteria for Demonstrating Proficiency in English.

(1) Students shall earn one point per item for achieving the following items:

(i) Score 75 or higher on the NYS Comprehensive English Regents Examination, or score 80 or higher on the NYS Regents Examination in English Language Arts (Common Core) (however, students in schools with an alternate pathway for graduation approved by the Commissioner will be held to those schools' criteria), or English Language Learners (ELLs) score 75 or above on two Regents exams other than English, without translation;

(ii) ELLs score at the Commanding level in two modalities on the New York State English as a Second Language Achievement Test (NYSESLAT);

(iii) complete all 11th and 12th grade ELA courses with an average of 85 or higher, or a comparable score using another scoring system set by the district and approved by the Commissioner; and

(iv) receive a score of 3 or higher on an Advanced Placement English Language or English Literature exam, or receive a total score of 80 or higher on the Test of English as a Foreign Language (TOEFL).

(2) Students shall earn two points for achieving the following item: present a culminating project, scholarly essay, or portfolio that meets the criteria for speaking, listening, reading, and writing established by the school district's SBC to a panel of reviewers with proficiency in English.

(b) Area 2: Criteria for Demonstrating Proficiency in a World Language.

(1) Students shall earn one point per item for achieving the following items:

(i) complete a level four Checkpoint C World Language course, with a grade of 85 or higher, or a comparable score using another scoring system set by the district and approved by the Commissioner, for both the coursework and final examination consistent with Checkpoint C Learning Standards;

(ii) for students enrolled in a bilingual education program, complete all required Home Language Arts (HLA) coursework and the district HLA exam with an 85 or higher, or a comparable score using another scoring system set by the district and approved by the Commissioner;

(iii) score at a proficient level on one or one group, as applicable, of the following accredited Checkpoint C World Language assessments:

AP – Advanced Placement Examination (minimum score 4)

IB – International Baccalaureate (minimum score 5)

STAMP4S – Standard Based Measurement of Proficiency (minimum score 6)

DELE – Diplomas of Spanish as a Foreign Language through Cervantes Institute of NYC (minimum score B1)

AAPPL – The ACTFL Assessment of Performance toward Proficiency in Languages (minimum score I-5)

OPI – The ACTFL Oral Proficiency Interview (minimum score Intermediate High)

OPIc – The ACTFL Oral Proficiency Computer Test (minimum score Intermediate High)

WPT/BWT – The ACTFL Writing Proficiency Test/Business Writing Test (minimum score Intermediate High)

RTP – The ACTFL Reading Proficiency Test (minimum score Intermediate High)

LPT – The ACTFL Listening Proficiency Test (minimum score Intermediate High)

ALIRA – The ACTFL Latin Interpretive Reading Assessment (minimum score I-4)

SLPI: ASL – American Sign Language Proficiency Interview (minimum score intermediate plus); and

(iv) provide transcripts from a school in a foreign country showing at least three years of instruction in the student's home/native language in Grade 8 or beyond, with equivalent grade average of B or higher;

(2) Students shall earn two points for achieving this item: present a culminating project, scholarly essay, or portfolio that meets the criteria for speaking, listening, reading, and writing established by the district's SBC and that is aligned to the NYS Checkpoint C Learning Standards to a panel selected by the SBC consisting of at least one SBC member and at least two reviewers who are proficient in the target language.

(iii) Unique Requirements for Specific Languages: Special allowances may be necessary to accommodate the unique characteristics of certain languages. In cases where language assessments across all three modes of communication (interpersonal, interpretive and presentational) may not be appropriate or available, school districts may substitute a different assessment that meets the intent of the NYS Seal of Biliteracy. Students seeking the Seal through languages not characterized by the use of listening, speaking, reading, or for which there is not a writing system, shall demonstrate the expected level of proficiency on an assessment of the modalities that characterize communication in that language, consistent with the recommendations in the "Guidelines for Implementing the Seal of Biliteracy" of the American Council on the Teaching of Foreign Languages (ACTFL), the National Association for Bilingual Education (NABE), the National Council of State Supervisors for Languages (NCSSFL) and TESOL International Association.

(a) Latin and Classical Greek: The NYS Seal of Biliteracy shall be earned by assessment of interpretive reading and presentational writing, not of listening or interpersonal face-to-face communication.

(b) American Sign Language (ASL): The NYS Seal of Biliteracy shall be earned by assessment of interpersonal signed exchange, presentational signing, and demonstrating understanding of ASL (such as interpreting a signed lecture or by summarizing and responding to questions aimed at overarching understanding).

(c) Native American Languages: The NYS Seal of Biliteracy shall be earned by assessment of interpersonal face-to-face communication as well as interpretive listening and presentational speaking, and writing and reading where a written code exists.

Revised rule compared with proposed rule: Substantial revisions were made in section 100.5(h)(4).

Text of revised proposed 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

Data, views or arguments may be submitted to: Angelica Infante-Green, Deputy Commissioner for P-12 Instructional Support, State Education Building, 2M West, 89 Washington Avenue, Albany, NY 12234, (518) 474-5520, email: NYSEDP12@nysed.gov

Public comment will be received until: 30 days after publication of this notice.

Revised Regulatory Impact Statement

Since publication of a Notice of Proposed Rule Making in the State Register on January 27, 2016, the proposed rule has been revised as follows:

In section 100.5(h)(3)(i)(a)(1), a typographical error has been corrected by substituting the term "World Language teacher" for "world language teacher."

In section 100.5(h)(4)(ii)(b)(1)(iv), relating to "Area 2: Criteria for Demonstrating Proficiency in a World Language", in the phrase "provide transcripts from a school in a foreign country showing at least three years of instruction in the student's home/native language in Grade 6 or beyond, with equivalent grade average of B or higher" the reference to "Grade 6" was changed to "Grade 8". This change was made to ensure consistency with the higher level of instruction that the proposed rule requires from students in order to demonstrate proficiency in a World Language.

In section 100.5(h)(4)(ii)(b)(1)(iii) deleted, as redundant, the word "Spanish" at the end of the phrase "DELE – Diplomas of Spanish as a Foreign Language through Cervantes Institute of NYC Spanish."

In addition, for purposes of grammar and clarity, commas were inserted as follows:

(1) In section 100.5(h)(1), lines 8- 9, after the phrase "the value of diversity";

(2) In section 100.5(h)(2), between "Native American Languages" and "native languages";

(3) In section 100.5(h)(3)(i)(b)(2), after the phrase "but not limited to" and after "a student advisement schedule";

(4) In section 100.5(h)(4)(ii), after the phrase "listed in subparagraph (i) of this paragraph"; and

(5) In section 100.5(h)(4)(ii)(a)(2), after the term "scholarly essay."

The above changes to not require any changes to the previously published Regulatory Impact Statement.

Revised Regulatory Flexibility Analysis

Since publication of a Notice of Proposed Rule Making in the State Register on January 27, 2016, the proposed rule has been revised as set forth in the Statement Concerning the Regulatory Impact Statement.

The aforementioned revisions do not require any changes to the previously published Regulatory Flexibility Analysis.

Revised Rural Area Flexibility Analysis

Since publication of a Notice of Proposed Rule Making in the State Register on January 27, 2016, the proposed rule has been revised as set forth in the Statement Concerning the Regulatory Impact Statement.

The aforementioned revisions do not require any changes to the previously published Rural Area Flexibility Analysis.

Revised Job Impact Statement

Since publication of a Notice of Proposed Rule Making in the State Register on January 27, 2016, the proposed rule has been revised as set forth in the Statement Concerning the Regulatory Impact Statement.

The proposed revised rule is necessary to implement Education Law section 815 by establishing requirements for a State Seal of Biliteracy to recognize high school graduates who have attained a high level of proficiency in listening, speaking, reading, and writing in one or more languages, in addition to English. The proposed revised rule relates to State learning standards, State assessments, graduation and diploma requirements, and higher levels of student achievement, and will not have an adverse impact on jobs or employment opportunities. Because it is evident from the nature of the proposed revised rule that it will have a positive impact, or 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.

Assessment of Public Comment

The agency received no public comment.

New York State Gaming Commission

NOTICE OF ADOPTION

To Require Claimant to Indicate on Claim Form Whether Commission at Claimant's Expense Shall Test a Claimed Horse for Drug Use

I.D. No. SGC-46-15-00004-A

Filing No. 129

Filing Date: 2016-01-26

Effective Date: 2016-02-10

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

Action taken: Amendment of sections 4038.5, 4038.17, 4109.3 and 4109.5 of Title 9 NYCRR.

Statutory authority: Racing, Pari-Mutuel Wagering and Breeding Law, sections 103(2), 104(1), (19), 301(1), (2) and 902(1)

Subject: To require claimant to indicate on claim form whether commission at claimant's expense shall test a claimed horse for drug use.

Purpose: To preserve the integrity of pari-mutuel racing while generating reasonable revenue for the support of government.

Text or summary was published in the November 18, 2015 issue of the Register, I.D. No. SGC-46-15-00004-P.

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

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

Initial Review of Rule

As a rule that does not require a RFA, RAFA or JIS, this rule will be initially reviewed in the calendar year 2021, which is no later than the 5th year after the year in which this rule is being adopted.

Assessment of Public Comment

The Gaming Commission received a letter from the New York Thoroughbred Horsemen's Association, which supports the current rule and urges the Gaming Commission to consider certain issues that will arise should the amendment be adopted.

NYTHA urged the Gaming Commission "to provide for significant random drug testing of claimed horses at the discretion of the Stewards" if the rule is adopted.

"NYTHA understands that this proposal is being made for purely economic reasons," NYTHA wrote, "However, the fundamental underpinning of our industry is its integrity, the welfare of the horse and the public interest, each of which are protected under the current rule."

NYTHA also asked the Commission to "consider whether a positive test from an elective drug test by a claimant should result in a disciplinary proceeding, since such testing is for the benefit of the claimant and not in furtherance of any regulatory purpose."

NOTICE OF ADOPTION

Requirement of Specific Minimum Penalties for Certain Multiple Medication Violations

I.D. No. SGC-46-15-00007-A

Filing No. 130

Filing Date: 2016-01-26

Effective Date: 2016-02-10

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

Action taken: Addition of Part 4045 to Title 9 NYCRR.

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

Subject: Requirement of specific minimum penalties for certain multiple medication violations.

Purpose: To enhance the integrity and safety of thoroughbred horse racing.

Text or summary was published in the November 18, 2015 issue of the Register, I.D. No. SGC-46-15-00007-P.

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

Text of rule and any required statements and analyses may be obtained from: 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

Initial Review of Rule

As a rule that does not require a RFA, RAFA or JIS, this rule will be initially reviewed in the calendar year 2021, which is no later than the 5th year after the year in which this rule is being adopted.

Assessment of Public Comment

The Gaming Commission received four letters in support of the adoption of the Multiple Medication Violation (MMV) penalty system.

The National Thoroughbred Racing Association (NTRA) supports the amendment because with a new database and the MMV penalty classification system to assign points, all racing commissions will be able to track the medication record of a licensee across jurisdictions and medication types, enabling each racing jurisdiction to collect and report drug and medication violations. NTRA also supports the amendment because the MMV penalty system provides for the right of expungement after a period of time, which "assures fair treatment for licensees and acts as a safeguard against public overreaction to minor mediation overages."

The Racing Medication and Testing Consortium submitted a letter in support, stating that the MMV is an integral part of the National Uniform Medication Program, the majority of which New York has already adopted. The RMTC based its support in part on the creation of a national database to collect and report drug and medication violations, the ability to track repeat offenders, set penalties for offenders and the right of expungement after a period of time for minor medication violations.

The New York Racing Association, Inc. ("NYRA") supports the amendment, noting that the proposed rule "is modeled on uniform rules which are the product of the collective expertise of many industry stakeholders and experts, including state regulators, and the Association of Racing Commissioners International, Inc." NYRA also noted that there is broad industry support for the adoption of this rule.

The New York Thoroughbred Horsemen's Association, Inc. (NYTHA) supports the amendment and urged adoption as quickly as possible. In its letter, NYTHA stated: "The Gaming Commission and NYTHA, along with our fellow Racing Commissions and horsemen's organizations in the Mid-Atlantic region, formally committed to the adoption of this system as part of the uniform medication program, both regionally and now nationally. By adopting these rules, the Gaming Commission will fulfill its commitment to the uniform program."

NOTICE OF ADOPTION

Per Se Thresholds and Related Rule Amendments for Cobalt, Ketoprofen, Isoflupredone and Albuterol

I.D. No. SGC-48-15-00006-A

Filing No. 128

Filing Date: 2016-01-26

Effective Date: 2016-02-10

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

Action taken: Amendment of sections 4043.2(i), 4043.3 and 4120.3 of Title 9 NYCRR.

Statutory authority: Racing, Pari-Mutuel Wagering and Breeding Law, sections 103(2), 104(1), (19), 301(1), (2) and 902(1)

Subject: Per Se thresholds and related rule amendments for cobalt, ketoprofen, isoflupredone and albuterol.

Purpose: To preserve the integrity of pari-mutuel racing while generating reasonable revenue for the support of government.

Text or summary was published in the December 2, 2015 issue of the Register, I.D. No. SGC-48-15-00006-P.

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

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

Initial Review of Rule

As a rule that does not require a RFA, RAFA or JIS, this rule will be initially reviewed in the calendar year 2021, which is no later than the 5th year after the year in which this rule is being adopted.

Assessment of Public Comment

The Gaming Commission received two public comments from the New York Racing Association, Inc. and the New York Thoroughbred Horsemen's Association.

The New York Racing Association, Inc. (NYRA) wrote in support of the amendment regarding per se thresholds for cobalt, ketoprofen, isoflupredone and albuterol. "This rulemaking is necessary to align the (Gaming Commission's) laboratory 'per se' thresholds for controlled therapeutic medications with the latest ones approved by the Association of Racing Commissioners International, Inc. (ARCI)," NYRA stated. "The adoption of this rulemaking by the (Gaming Commission) is another major step forward in the ongoing effort of thoroughbred racing regulators in many states and other participants to adopt uniformly stringent and effective equine medication and penalty rules across the country."

The New York Thoroughbred Horsemen's Association, Inc. (NYTHA) opposes the restricted time periods for albuterol and ketoprofen, stating that the Racing Medication and Testing Consortium (RMTC) has shorter withdrawal guidelines than the New York restricted time periods.

As an example, NYTHA contends that the amendment would impose a withdrawal time of 96 hours for the administration of albuterol, while the RMTC/ARCI withdrawal time is 72 hours. " New York horsemen would be required to withdraw the use of this therapeutic medication at a different time than horsemen in others states," NYTHA stated. It made a similar argument with the drug ketoprofen.

In fact, the Commission has not proposed to amend the existing restricted time periods for albturerol or ketoprofen, as the proposal adopts the national thresholds for such drugs, which are consistent with the existing restricted time periods in New York. The Commission will, however, examine the NYTHA comment with respect to whether a future rulemaking might shorten the restricted time period for one or more drugs. At present, the Commission's restricted time period rules function well to provide an assurance that trainers may rely upon to ensure their compliance with the national thresholds in all states.

Department of Health

NOTICE OF ADOPTION

Standards for Adult Homes and Adult Care Facilities Standards for Enriched Housing

I.D. No. HLT-42-15-00016-A

Filing No. 123

Filing Date: 2016-01-25

Effective Date: 2016-02-10

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

Action taken: Amendment of Parts 487 and 488 of Title 18 NYCRR.

Statutory authority: Social Services Law, sections 20, 20(3)(d), 34, 34(3)(f), 131-o, 460, 460-a—460-g, 461 and 461-a—461-h

Subject: Standards for Adult Homes and Adult Care Facilities Standards for Enriched Housing.

Purpose: Revisions to Parts 487 and 488 in regards to the establishment of the Justice Center for Protection of People with Special Needs.

Text or summary was published in the October 21, 2015 issue of the Register, I.D. No. HLT-42-15-00016-P.

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

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

Assessment of Public Comment

The agency received no public comment.

PROPOSED RULE MAKING
NO HEARING(S) SCHEDULED

Home Care Agencies to Obtain Written Medical Orders from Physicians

I.D. No. HLT-06-16-00001-P

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

Proposed Action: Amendment of sections 763.7 and 766.4 of Title 10 NYCRR.

Statutory authority: Public Health Law, section 3612(5) and (7)(a)

Subject: Home Care Agencies to Obtain Written Medical Orders from Physicians.

Purpose: Amend the clinical records rules for CHHAs and LHCSAs with regard to obtaining signed physician orders.

Text of proposed rule: Sections 763.7(a)(3)(i) and (ii) are amended as follows:

763.7 Clinical records.

(a) The agency shall maintain a confidential clinical record for each patient admitted to care or accepted for service to include:

* * *

(3) medical orders and nursing diagnoses to include all diagnoses, medications, treatments, prognoses, and need for palliative care. Such orders shall be:

(i) signed by the authorized practitioner within [30 days] *12 months* after admission to the agency, or prior to billing, whichever is sooner;

(ii) signed by the authorized practitioner within [30 days] *12 months* after issuance of any change in medical orders or prior to billing, whichever is sooner, to include all written and oral changes and changes made by telephone by such practitioner; and

(iii) renewed by the authorized practitioner as frequently as indicated by the patient's condition but at least every 60 days;

Sections 766.4(d)(1) and (2) are amended as follows:

Section 766.4 Medical Orders

* * *

(d) Medical orders shall reference all diagnoses, medications, treatments, prognoses, need for palliative care, and other pertinent patient information relevant to the agency plan of care; and

(1) shall be authenticated by an authorized practitioner within [thirty (30) days] *12 months* after admission to the agency; and

(2) when changes in the patient's medical orders are indicated, orders, including telephone orders, shall be authenticated by the authorized practitioner within [thirty (30) days] *12 months*.

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:

Section 3612(5) of the Public Health Law authorizes the adoption and amendment of regulations for certified home health agencies pursuant to Article 36 of the Public Health Law (Certified Home Health Agencies, Long Term Home Health Care Programs and AIDS Home Care Programs). Section 3612(7) (a) of the Public Health Law authorizes the adoption and amendment of regulations for licensed home care services agencies pursuant to Article 36.

Legislative Objective:

Article 36 of the Public Health Law was intended to promote the quality of home care services provided to residents of New York State and to ensure their adequate availability as a viable alternative to institutional care. The proposed regulation furthers this objective by aligning state regulations with federal rules governing payment for home health episodes, thereby making home care rules and regulations clear and consistent to both home health providers and physicians ordering home health care services for their patients.

Needs and Benefits:

The proposed rule making achieves consistency with the federal rules governing home health episode payment for certified home health agencies, long term home health care programs and AIDS home care programs. There are no corresponding federal rules and regulations for licensed home care services agencies.

Home care providers have identified difficulties in obtaining signed physician orders under the current timeframe of thirty (30) days, which adversely impacts their ability to bill and receive payment for services that were delivered based on verbal orders. The increased reliance on the use of hospitalists, whose relationship with patients tend to be transient in nature, and the use of hospital based clinics for medical care, contribute to the difficulty in obtaining signed physician orders within the current timeframes. Typically, the initial and subsequent follow-up physician orders are in the form of verbal orders. Obtaining the required signed orders from the physician who prescribed the care is challenging and time consuming. The current 30-day timeframe, coupled with payment rules, adversely impacts the ability of the home care agencies to bill and obtain reimbursement for services.

The inability to obtain signed physician orders in the 30 day period was identified as a main concern of the Home and Community Based Care Workgroup (Workgroup). In 2013, the Legislature created the Workgroup by enacting PHL Section 3614, as a response to changes in the delivery of, and reimbursement for, home health care services through New York State's Medicaid Redesign initiatives. The Workgroup, composed of eleven members representing providers, managed care plans and consumers, examined and made recommendations on issues which included but were not limited to state and federal regulatory requirements and related policy guidelines (including the applicability of the federal conditions of participation); efficient home and community based care delivery, including telehealth and hospice services; and alignment of functions between managed care entities and home and community based providers. The Workgroup, consistent with input from the provider associations, determined that a longer period to obtain signed physician orders would decrease the number of denied claims for payment from governmental payers. Additional input from Medicaid payment policy makers also indicated that extending the allowable time to obtain signed physician orders would alleviate the adverse impact related to claims submissions and payment exception rules.

Costs to Regulated Parties:

The regulated parties (providers) are not expected to incur any additional costs as a result of the proposed rule change. There are no additional costs to local governments for the implementation of and continuing compliance with this amendment.

Local Government Mandates:

The proposed amendment does not impose any new programs, services, duties or responsibilities upon any county, city, town, village, school district, fire district or other special district.

Paperwork:

There is no additional paperwork required of providers as a result of this amendment.

Duplication:

Proposed rules will be consistent with federal rules for home health agencies certified to participate in the Medicare and Medicaid programs. There are no known conflicts with federal rules; consistency should facilitate provider compliance and improve effectiveness of surveillance processes.

Alternatives:

The Department could choose to retain existing standards. During its discussions with providers, provider associations and the Workgroup, the Department evaluated timeframes ranging from sixty (60) days to two years. After careful analysis, it was determined that 12 months is optimal because it provides consistency with payment rules for governmental payers.

Federal Standards:

This amendment does not exceed any minimum standards of the federal government for the same or similar subject areas.

Compliance Schedule:

There are no significant actions which are required by the affected providers to comply with the amendments. As the amendments are consistent with federal standards that were already in effect, and any state requirements exceeding federal rules are already in effect, regulated parties should already be in compliance, and should readily be able to comply as of the effective date of these regulations.

Regulatory Flexibility Analysis

No regulatory flexibility analysis for small businesses and local governments is required pursuant to section 202-b(3)(a) of the State Administrative Procedure Act. The proposed amendment does not impose an adverse impact on small businesses or local governments, and it does not impose additional reporting, record keeping or other compliance requirements on small business home care agencies or local government home care agencies. The proposed amendment seeks to extend the timeframe agencies have to obtain signed physician orders.

Rural Area Flexibility Analysis

No rural area flexibility analysis is required pursuant to section 202-bb(4)(a) of the State Administrative Procedure Act. The proposed amendment does not impose an adverse impact on facilities in rural areas, and it does not impose additional reporting, record keeping or other compliance requirements on facilities in rural areas. The proposed amendment seeks to extend the timeframe agencies have to obtain signed physician orders.

Job Impact Statement

No Job Impact Statement is required pursuant to section 201a(2)(a) of the State Administrative Procedure Act. The proposed regulations are intended to be consistent with current federal rules for certified home health agencies and as consistent as feasible with proposed certified home health agency state regulations for licensed home care services agencies. It is apparent, from the nature and purpose of the proposed rule, that it will not have a substantial adverse impact on jobs or employment opportunities.

PROPOSED RULE MAKING
NO HEARING(S) SCHEDULED

Perinatal Services

I.D. No. HLT-06-16-00002-P

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

Proposed Action: Amendment of section 405.21 of Title 10 NYCRR.

Statutory authority: Public Health Law, section 2505-a

Subject: Perinatal Services.

Purpose: To update the Breastfeeding Mother's Bill of Rights to conform with recommended standards of care.

Text of proposed rule: Subdivision (f)(3) Section 405.21 is amended to read as follows:

(f)(3) Education and orientation of the mother who is planning to raise the baby.

(i) The hospital shall provide instruction and assistance to each maternity patient who has chosen to breastfeed and shall provide information on the advantages [and disadvantages] of breastfeeding *and possible impacts of not breastfeeding* to women who are undecided as to the feeding method for their infants. At a minimum:

(a) the hospital shall designate at least one person who is thoroughly trained in breastfeeding physiology and management to be responsible for ensuring the implementation of an effective breastfeeding program. At all times, there should be available at least one staff member qualified to assist and encourage mothers with breastfeeding;

(b) written policies and procedures shall be developed, *updated*, implemented, *and disseminated annually to staff providing maternity or newborn care* to assist and encourage the mother to breastfeed which shall include, but not be limited to:

(1) prohibition of the application of standing orders for antilactation drugs;

(2) placement of the newborn *skin-to-skin* for breastfeeding immediately following delivery, unless contraindicated;

(3) restriction of the newborn's supplemental feedings to those indicated by the medical condition of the newborn or of the mother;

(4) provision for the newborn to be fed on demand;

(5) *pacifiers or artificial nipples may be supplied by the hospital to breastfeeding infants to decrease pain during procedures, for specific medical reasons, or upon the specific request of the mother. Before providing a pacifier or artificial nipple that has been requested by the mother, the hospital shall educate the mother on the possible impacts to the success of breastfeeding and discuss alternative methods for soothing her infant, and document such education;*

[provision for distribution of discharge packs of infant formula only upon a specific order by the attending practitioner or at the request of the mother;]

(6) prohibition of the distribution of marketing materials, samples or gift packs that include breast milk substitutes, bottles, nipples, pacifiers, or coupons for any such items to pregnant women, mothers or their families;

(7) prohibition of the use of educational materials which refer to proprietary product(s) or bear product logo(s), unless specific to the mother's or infant's needs or condition; and

(8) prohibition of the distribution of any materials that contain messages that promote or advertise infant food or drinks other than breast milk.

(c) the hospital shall provide an education program as soon after admission as possible which shall include but not be limited to:

(1) the importance of scheduling follow-up care with a pediatric care provider within the timeframe following discharge as directed by the discharging pediatric care provider;

(2) the nutritional and physiological aspects of human milk;

(3) the normal process for establishing lactation, including care of the breasts, common problems associated with breastfeeding and frequency of feeding;

(4) *the potential impact of early use of pacifiers on the establishment of breastfeeding;*

[(4)] *(5)* dietary requirements for breastfeeding;

[(5)] *(6)* diseases and medication or other substances which may have an effect on breastfeeding;

[(6)] *(7)* sanitary procedures to follow in collecting and storing human milk;

[(7)] *(8)* sources for advice and information available to the mother following discharge; *and*

(d) for mothers who have chosen formula feeding or for whom breastfeeding is medically contraindicated, hospitals shall provide *individual* training in formula preparation and feeding techniques.

Subdivision (f)(5) of Section 405.21 is amended to read as follows:

(f)(5) Discharge planning. The discharge of mother and newborn shall be performed in accordance with section 405.9 of this Part. In addition, prior to discharge, the hospital shall determine that:

(i) sources of nutrition for the infant and mother will be available and sufficient and if this is not confirmed, the attending practitioner and an appropriate social services agency shall be notified;

(ii) follow-up medical arrangements [for mother and infant], *consistent with current perinatal guidelines and recommendations,* have been made for *mother and newborn;*

(iii) *the mother has been informed of community services, including the Special Supplemental Nutrition Program for Women, Infants and Children (WIC), and shall make referrals to such community services as appropriate.*

[(iii)] *(iv)* the mother has been instructed regarding normal postpartum events, care of breasts and perineum, care of the urinary bladder, amounts of activity allowed, diet, exercise, emotional response, family planning, resumption of coitus and signs of common complications;

[(iv)] *(v)* the mother has been advised on what to do if any complication or emergency arises;

[(v)] *(vi)* the newborn has had a documented and complete physical examination and verification of a passage of stool and urine;

[(vi)] *(vii)* the means of identification of mother and newborn are matched. If the newborn is discharged in the care of someone other than the mother, the hospital shall ensure that the person or persons are entitled to the custody of the newborn; and

[(vii)] *(viii)* the newborn is stable; sucking and swallowing abilities are normal. Routine medical evaluation of the neonate's status at two to three days of age shall have been conducted or arranged[as well as n]. *N*ewborn screening *shall be conducted* at time of discharge, provided discharge is greater than 24 hours after the birth, or between the third and fifth day of life, whichever occurs first, in accordance with Part 69 of this Title.

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

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

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

Regulatory Impact Statement

Statutory Authority:

Section 2505-a(4) of the Public Health Law (PHL) authorizes the Commissioner to make regulations reasonably necessary to implement the Breastfeeding Mother's Bill of Rights.

Legislative Objectives:

PHL § 2505-a(4) established the Commissioners authority to implement the Breastfeeding Mother's Bill of Rights and the principles enumerated therein. The Breastfeeding Mother's Bill of Rights gives women the right to be informed of the benefits of breastfeeding and have their health care provider and maternal health care facility encourage and support breastfeeding.

Needs and Benefits:

Part 405 of Title 10 of the New York Codes Rules and Regulations (10 NYCRR) outlines the minimum standards for hospitals, which includes provisions for perinatal services (405.21). The Department's proposal seeks to amend the perinatal services minimal standards to make them consistent with the evidence-based practices recommended in the Ten Steps to Successful Breastfeeding, the Baby-Friendly Hospital Initiative, and breastfeeding policy positions of professional health care organizations and government entities. These revisions will increase the number of women who exclusively breastfeed during birth hospitalization.

The current regulations require the hospital to educate and orientate the mother planning to raise the baby. These revisions will expand the requirements regarding educating and orientating breastfeeding mothers. These additional requirements include: discussing with mothers the possible impacts to the health of the baby or herself associated with not breastfeeding; ensuring hospitals annually update and disseminate their written policies and procedures to staff; encouraging "skin-to-skin" placement of the newborn immediately after delivery; prohibiting the distribution of marketing materials, samples or gift packs that include breast milk substitutes, bottles, nipples, pacifiers or coupons for any of these items; prohibiting educational materials that refer to proprietary products or product logos; prohibiting the distribution of materials that contain messages that promote or advertise infant food other than breast milk; and by only allowing dissemination of pacifiers when used to decrease pain during a procedure, for specific medical reasons, or upon the specific request from a mother. However, if a mother requests a pacifier, the hospital must first educate the mother on the possible impacts pacifier use may have to the success of breastfeeding and discuss alternative methods, and document such education. Furthermore, the proposed amendments require the hospital to include the potential impact of the early use of pacifiers on the establishment of breastfeeding, in the hospital's education program for the mother who is planning to raise the baby.

The current regulation also sets forth requirements for the discharge of the mother and newborn from the hospital. The proposed amendments will now require follow-up medical arrangements to be made for mother and newborn, consistent with current perinatal guidelines and recommendations; and require informing the mother of community services available including the WIC program and making appropriate referrals to community services.

Costs:

Costs to the State Government:

The proposed rule does not impose any new costs on state government.

Costs to Local Government:

The proposed rule does not impose any new costs on local government.

Costs to Private Regulated Parties:

The proposed rule would have minimal costs for hospitals. Minimal costs for hospitals include the cost of changing hospital policy and procedures and the costs of informing and training staff of the changes. For hospitals that currently distribute marketing materials or formula to new mothers, the space required for storage of the materials may now be used for other purposes.

Costs to the Regulatory Agency:

The proposed rule does not impose any new costs on any regulatory agency.

Local Government Mandates:

The proposed rule imposes no mandates upon any county, city, town, village, school district, fire district, or other special district.

Paperwork:

The proposed rule imposes no new reporting requirements, forms, or other paperwork upon regulated parties.

Duplication:

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

Alternatives:

There were not significant alternatives to be considered during the regulatory process. There are no risks of harm to mothers and their infants by this proposal, no costs or burdens to hospitals to implement, no existing programs or statutes would need to be amended to achieve the desired result, no additional regulations would be required, and enforcement would remain the same.

Federal Standards:

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

Compliance Schedule:

The proposal will go into effect 90 days after the Notice of Adoption is published in the New York State Register.

Regulatory Flexibility Analysis

Effect of Rule:

The proposed rule will apply to the 125 hospitals providing maternity and newborn care services in New York State including four hospitals run by a local government (county) and one hospital defined as a small business. Hospitals that are a small business or operated by local government will not be affected in any way different from any other hospital.

Compliance Requirements:

Compliance requirements are applicable to those hospitals considered small businesses as well as the hospitals operated by local governments. Compliance will require: (a) reviewing and changing written policy; and (b) training applicable providers and staff about the changes in the perinatal services.

Professional Services:

Professional services are not anticipated to be impacted as a result of the changes to perinatal services to comply with accepted standards of care. These updated regulations will be consistent with evidence-based practices recommended in the Ten Steps to Successful Breastfeeding, the Baby-Friendly Hospital Initiative, and breastfeeding policy positions of professional health care organizations and government entities.

Compliance Costs:

Compliance costs associated with these regulations will be minimal and will arise as a result of: (a) changing written policy and procedures, and (b) informing staff about the changes to perinatal services.

Economic and Technological Feasibility:

It is economically and technologically feasible for hospitals that are small businesses or operated by local governments to comply with this amended rule.

Minimizing Adverse Impact:

There are no adverse impacts anticipated. Hospitals will have a minimum of 90 days following adoption of these regulations to change their policy and protocols and three months to inform staff about the changes to perinatal services.

Small Business and Local Government Participation:

A copy of this notice of proposed rulemaking will be posted on the Department's website. The notice will invite public comments on the proposal and include instructions for anyone interested in submitting comments, including small businesses and local governments.

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

Types and Estimated Numbers of Rural Areas:

The proposed rule will apply to the 125 hospitals providing maternity and newborn care services in New York State, including the 38 hospitals located in rural areas of the State defined as counties with less than a population of 200,000.

Reporting, Recordkeeping, Other Compliance Requirements and Professional Services:

Compliance requirements are applicable to those hospitals located in rural areas. Compliance will require: (a) reviewing and changing written policy; and (b) informing applicable staff about the change in perinatal services. Professional services will not be impacted as a result of these regulations.

Costs:

There are minimal costs to report. The costs are associated with staff time to change written hospital policy and procedures and to train staffed regarding these changes in perinatal services.

Minimizing Adverse Impact:

There are no adverse impacts anticipated. Hospitals will have a minimum of 90 days following adoption of these regulations to change their policy and protocol and three months to inform staff about the changes in perinatal services.

Rural Area Participation:

A copy of this notice of proposed rulemaking will be posted on the Department's website. The notice will invite public comments on the proposal and include instructions for anyone interested in submitting comments, including small businesses and local governments.

Job Impact Statement

No Job Impact Statement is included because the Department has concluded that the proposed regulatory amendments will not have a substantial adverse effect on jobs and employment opportunities. The basis for this conclusion is that these amendments merely assist the State in the application of the Breastfeeding Mother's Bill of Rights, pursuant to Section 2505-a of the Public Health Law.

PROPOSED RULE MAKING
NO HEARING(S) SCHEDULED

Hospice Operational Rules

I.D. No. HLT-06-16-00005-P

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

Proposed Action: Amendment of Parts 700, 717, 793 and 794 of Title 10 NYCRR.

Statutory authority: Public Health Law, section 4010(4)

Subject: Hospice Operational Rules.

Purpose: To implement hospice expansion.

Substance of proposed rule (Full text is posted at the following State website:www.health.ny.gov): This rule amends Sections 700.2 and Parts 717 and repeals and replaces Part 793 and 794 of Title 10 (Health) of NYCRR, the operational rules for hospices approved to provide services in New York State under Article 40 of the Public Health Law. The changes will make state regulations consistent with the federal conditions of participation/rules, which were revised and implemented on December 3, 2008, as well as consistent with Article 40 of Public Health Law.

Section 700.2(a)(27) (Definitions) is amended to increase the maximum bed capacity from 8 to 16 beds in a hospice residence.

Section 700.2(c)(55) (Definitions) is amended to define hospice patient as a person certified as being terminally ill, who, alone or in conjunction with designated family member(s), has voluntarily requested admission and been accepted into a hospice for which the Department has issued a certificate of approval; and clarifies that nothing provided herein shall be construed to require provision of services to a patient that are not covered by the patient's payment source.

Section 700.2(c)(58) (Definitions) is amended to clarify that palliative and supportive care is provided to a hospice patient for the reduction and abatement of pain and other symptoms and stresses associated with terminal illness and dying. This terminology (palliative and supportive care) is used in the definition of hospice found in 700.2(a)(23).

Section 700.2(c)(60) (Definitions) is added to include the definition of palliative care, as defined in Public Health Law Section 4012-b, provided to a person with advanced, life limiting illness.

Section 717.2 (Construction standards) is amended to increase the maximum bed capacity from 8 to 16 beds in a free standing hospice residence.

Section 717.3 (Patient and service areas in hospice inpatient facilities and units) is amended to reduce maximum room capacity from four to two patients as required by new federal rules.

Section 717.4 (Functional areas in hospice residences) is amended to allow a hospice to operate a maximum of twenty five percent of total residence beds as dually certified beds at any given time.

Section 793.1 (Governing authority) is repealed and replaced with a new section, entitled Patient Rights, which sets forth patient rights for hospice patients and requires alleged violations of mistreatment, neglect or abuse to be investigated and reported to the State, if verified.

Section 793.2 (Contracts) is repealed and replaced with a new section, entitled Eligibility, Election, Admission and Discharge, which sets forth provisions for determining eligibility for and admitting persons into a hospice program as well as requirements for discharging a hospice patient.

Section 793.3 (Administration) is repealed and replaced with a new section, entitled Initial and Comprehensive Assessment, which requires hospices to complete initial and comprehensive assessments and reassessments within specified time periods and identifies the information required in such assessments.

Section 793.4 (Staff Services) is repealed and replaced with a new section, entitled Patient Plan of Care, Interdisciplinary Group and Coordination of Care, which defines the interdisciplinary group members responsible for management of hospice care, identifies the responsibilities of the group, and lists the information required in the hospice plan of care.

Section 793.5 (Personnel) is repealed and replaced with a new section, entitled Quality Assessment and Performance Improvement, which sets forth requirements for the hospice quality assessment and performance improvement program. Hospices will be required to track performance indicators and conduct performance improvement projects.

Section 793.6 (Patient referral, admission and discharge) is repealed and replaced with a new section, entitled Infection Control, which sets forth requirements for management of an infection control program including policies and procedures for preventing and managing persons exposed to blood-borne pathogens and appropriate training of staff.

Section 793.7 (Records and reports) is repealed and replaced with a new section, entitled Staff and Services, which identifies the types of

personnel a hospice is expected to employ and their responsibilities. This section also clarifies employment options (direct or contract), qualifications and supervision requirements strengthening the onsite supervision home health aide requirement.

Section 793.8 is repealed.

Section 794.1 (Patient/family rights) is repealed and replaced with a new section, entitled Governing Authority, which lists the responsibilities of the governing authority. It also sets forth requirements for a patient complaint investigation process and emergency plan. This section also requires hospices to obtain and maintain a Health Commerce System account as a communication link with the Department of Health.

Section 794.2 (Patient/family plan of care) is repealed and replaced with a new section, entitled Contracts, which sets forth contract requirements between the hospice and individual, facility or agency providers delivering services on behalf of the hospice. This section also specifies requirements for management contracts and explains those responsibilities that may not be delegated by the governing body.

Section 794.3 (Medical records systems and charts) is repealed and replaced with a new section, entitled Personnel, which sets forth personnel requirements including health requirements, identification and reference checks, maintenance and content of personnel records, job descriptions and orientation, performance appraisal and inservice education.

Section 794.4 (Hospice inpatient and residence services) is repealed and replaced with a new section, entitled Clinical Record, which sets forth requirements for maintenance and content of clinical records. Record retention standards are also included in this section.

Section 794.5 (Short Term Inpatient Service) is added and sets forth structural and operational standards for the provision of short-term inpatient service by the hospice. Physical plant, staffing, quality of life and patient comfort measures are addressed. This section also sets forth operational requirement for management and coordination of care.

Section 794.6 (Hospice Residence Service) is added and sets forth requirements for hospice residences, for those situations when a hospice chooses to offer a hospice operated home to a hospice patient without a suitable home in which to receive services, and increases maximum bed capacity from 8 to 16 beds.

Section 794.7 (Leases) is added and sets forth information which must be included in a lease agreement between a hospice and an inpatient setting or hospice residence.

Section 794.8 (Hospice Care Provided to Residents of a Skilled Nursing Facility (SNF) or Intermediate Care Facility for Individuals with Intellectual Disabilities (ICF/IID)) is added and identifies responsibilities of the hospice and the facility when a resident elects the hospice benefit. Services expected to be provided by the hospice and the facility are clarified, and development and implementation of collaborative plans of care and care coordination between the two entities is required.

Section 794.9 (Records and Reports) is added and identifies those records which must be maintained by the hospice, and the retention timeframes. This section also specifies reports which must be submitted to the Department of Health.

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

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

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

Regulatory Impact Statement

Statutory Authority:

Section 4010(4) of the Public Health Law authorizes the adoption and amendment of regulations for hospice providers approved pursuant to PHL Article 40 (Hospices). Section 4002 of the Public Health Law was amended by adding a new subdivision 5 to read as follows: "Terminally ill" means an individual has a medical prognosis that the individual's life expectancy is approximately one year or less if the illness runs its normal course.

Legislative Objective:

PHL Article 40 provides that hospice care may offer persons with terminal illness an appropriate palliative care alternative to curative treatments and protects such vulnerable individuals through the imposition of care delivery standards for providers. It is the legislative intent that hospice's interdisciplinary program and innovative approach to home and inpatient services be available statewide.

The proposed regulations attempt to achieve these legislative objectives by expanding the definition of terminal illness to conform with the statutory language as well as allow individuals the opportunity to receive hospice care earlier in their terminal illness – providing care to those who need it and reducing the need for emergency room visits and hospital stays.

Needs and Benefits:

The proposed rule making was necessitated by changes in the federal conditions of participation/rules for hospice providers and recent Medicaid Redesign Initiatives. State rules have been revised and reordered to be consistent with federal rules thereby facilitating provider compliance and surveillance activities. The intent of these revisions is to improve care delivery processes and support performance improvement activity at the provider level. Additionally, amendments were a result of changes made in Chapter 441 of the Laws of 2011 and Medicaid Redesign efforts to expand hospice benefits. Individuals could benefit from receiving hospice services earlier in their terminal illness and having their symptoms managed on an on-going basis, thereby reducing the need for emergency room visits and hospital stays.

Costs:

Costs to Regulated Parties:

Nominal costs may be incurred by hospice providers if coordination, management and documentation of care has not been effectively implemented by the hospice; or if data-driven, outcome-based quality assessment and performance improvement activities have not been taking place. These nominal costs are associated with federal quality assessment and performance improvement program requirements and would have to be incurred regardless of the proposed regulatory changes. There are currently 45 hospices in New York State.

Costs to the Agency and to the State and Local Governments Including this Agency:

The change in hospice patient eligibility which allows individuals with a 12-month life expectancy to elect the hospice benefit, has been estimated to have a net aggregate increase in gross Medicaid expenditures of $1,704,658. The aggregate NY State and Local Government share of the increase in Medicaid expenditures is approximately $400,000 for State government, and another $400,000 for local governments in the aggregate. Pursuant to 42 CFR Section 447.205, the Department gave public notice in December 2011 to amend the NYS Medicaid Plan for hospice services to expand access to the hospice benefit. No additional costs are anticipated for the Agency or for State and Local Governments.

Local Government Mandates:

There are no local mandates in this rule. However, 6 counties operate hospice programs and will be required to meet these rules in the same manner as will private entities, as there is no exemption authority for publicly sponsored programs.

Paperwork:

Under the proposed rules, providers will now be required to report verified incidences of mistreatment or abuse to the Department of Health and or state/local bodies having jurisdiction, as required by federal rules. All other reporting requirements are consistent with existing regulations.

Duplication:

Proposed rules will be duplicative of, but consistent with, federal rules. There are no known conflicts with federal rules; consistency should facilitate provider compliance and improve effectiveness of surveillance processes.

Alternatives:

The Department could choose to retain existing standards in which case federal rules would supersede State rules where gaps or inconsistency exist. This option was rejected as it would be confusing to both providers and surveyors. Furthermore, conforming state requirements to the federal requirements will facilitate the enforcement of both.

Federal Standards:

Section 418 of 42 CFR sets forth the federal rules for hospices. The proposed State rules are consistent with federal rules, but do exceed federal rules as follows:

- The quality assessment and performance improvement section includes the requirement to have a quality committee to assure comprehensive representation and involvement in quality activities and to assure a broader quality oversight process at the provider level. This is a state requirement that is not included in the federal rules.
- Infection control includes standards for prevention and management of HIV and other bloodborne pathogen infections, consistent with existing standards for all provider types in NYS. The standards exceed federal rules by including the required program specifications.
- The responsibilities of the governing body are more clearly delineated in the proposed rules than in the federal rules, including implementation of a complaint investigation procedure and requiring that the governing body obtain a Health Commerce System account for communication with the Department.
- The proposed rule specifically states the requirements for contracts, including management contracts, to ensure hospice and provider accountability and governing body responsibilities. Such requirements are not stated in the federal rules.
- Health requirements for personnel are specific and consistent with other provider types in NYS to assure adequate patient care protection. Job descriptions, employee identification and personnel records are also

required as appropriate business practices. These requirements are not stated in the federal rules.

Compliance Schedule:

As the amendments ensure conformance with federal standards that were already in effect as of December 3, 2008, and any state requirements exceeding federal rules are already in effect, regulated parties should already be in compliance, and should readily be able to comply as of the effective date of these regulations.

Regulatory Flexibility Analysis

Effect of Rule:

Local governments will not be affected by this rule except to the extent that they are providers of hospice services. There are 6 county-based hospice providers. The small businesses which will be affected are hospice providers which employ fewer than 100 persons. There are approximately 36 small business hospices in NYS.

Compliance Requirements:

Regulated parties are expected to be in immediate compliance as these rules are consistent with federal standards already in effect as of Dec. 3, 2008, and rules that exceed the federal rules are already in place for existing hospice providers in NYS. The proposed regulations will create a new state reporting requirement, consistent with federal rules, for reporting verified instances of patient mistreatment, abuse or neglect to the Department or to other state and local authorities. The reporting will be done through existing complaint reporting mechanisms. The proposed regulations also require the hospice to report to the Department data on quality indicators and patient outcomes, which will be the basis for performance improvement activities. This may require additional staff training and electronic data systems at the hospice. The Department implemented a hospice quality initiative intended to assist hospices with meeting this requirement. All other reporting requirements mentioned in the proposed regulations currently exist for the hospice providers.

The Department does not intend to publish a small business regulation guide in connection with this regulation. Although a number of hospices are small businesses, the impact is not expected to be substantial. Additional guidance will be posted on the web as needed after the regulation is promulgated.

Professional Services:

No additional professional staff are expected to be needed as a result of the regulations. Quality assessment and performance improvement requirements could be handled by existing staff with appropriate training, unless staff shortages already exist at the hospice.

Compliance Costs:

There are no capital costs associated with these proposed rules. Additional costs may be associated with maintaining and analyzing data and carrying out performance improvement activities. The costs for small businesses and county sponsored hospices should not be significantly different from the costs to other affected providers.

Economic and Technological Feasibility:

The Department has considered feasibility and believes the rules can be met with minimal economic and technological impact. Departmental resources have been identified to assist hospices with quality indicators and performance improvement. Other regulations should not affect the routine cost of doing business.

Minimizing Adverse Impact:

While the Department has considered the options of State Administrative Procedure Act (SAPA) Section 202-b(1) in developing this rule, flexibility does not exist for any particular entity since the new requirements are consistent with new federal rules already in effect.

Small Business and Local Government Participations:

The Hospice and Palliative Care Association of NYS, which represents the majority of the hospices statewide, were included during the development of the proposed rulemaking. The Department will meet the requirements of SAPA Section 202-b(6) in part by publishing a notice of proposed rulemaking in the State Register with a comment period.

Rural Area Flexibility Analysis

Types and Estimated Numbers of Rural Areas:

All counties in NYS have rural areas with the exception of 7 downstate counties. Counties with rural areas are served by 34 of the existing 47 hospices in NYS.

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

Regulated parties are expected to be in immediate compliance as these rules are consistent with federal standards already in effect as of Dec. 3, 2008, and rules that exceed the federal rules are already in place for existing hospice providers in NYS.

The proposed regulations will create a new state reporting requirement, consistent with federal rules, for reporting verified instances of patient mistreatment, abuse or neglect to the Department or other state and local authorities. The reporting will be done through existing complaint reporting mechanisms. The proposed regulations also require the hospice to report to the Department data on quality indicators and patient outcomes, which will be the basis for performance improvement activities. This may require additional staff training and electronic data systems at the hospice. The Department implemented a hospice quality initiative intended to assist hospices with meeting this requirement. All other reporting requirements mentioned in the proposed regulations currently exist for the hospice providers.

Additional quality indicator and outcome data will need to be maintained in support of the reporting of the quality indicators and patient outcomes. This can be accomplished by existing clinical and/or administrative staff with appropriate training. Professional personnel required of the hospice is unchanged from existing requirements.

Costs:

There are no capital costs associated with these rules; any such costs would result from new federal rules, regardless of whether amendments were made to state regulation. Additional training of staff in quality assessment and performance improvement may be required to be in compliance with the requirements of the new federal rules.

Minimizing Adverse Impact:

While the Department has considered the options in State Administrative Procedure Act (SAPA) Section 202-bb(2)(b), the proposed regulatory changes are consistent with new federal requirements. Therefore, Department authority to minimize impact is limited. Adverse impact is expected to be minimal.

Rural Area Impact:

The Department will meet the requirements of SAPA Section 202-bb(7) in part by publishing a notice of proposed rulemaking in the State Register with a comment period.

Job Impact Statement

A Job Impact Statement is not required pursuant to Section 201-a(2)(a) of the State Administrative Procedure Act. The proposed regulations are intended to be consistent with current federal rules and also expand the definition of "terminal illness" to allow expanded access to hospice services and improve patient care. It is apparent, from the nature and purpose of the proposed rule, that it will not have a substantial adverse impact on jobs or employment opportunities.

PROPOSED RULE MAKING
NO HEARING(S) SCHEDULED

Extended Mammography Hours for General Hospitals and Hospital Extension Clinics

I.D. No. HLT-06-16-00017-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 405.33 to Title 10 NYCRR.

Statutory authority: Public Health Law, sections 2800 and 2803

Subject: Extended Mammography Hours for General Hospitals and Hospital Extension Clinics.

Purpose: Requires those general hospitals and hospital extension clinics that offer mammography services to have extended hours.

Text of proposed rule: A new section 405.33 is added as follows:

405.33 Mammography services

(a) Applicability. This section shall apply to any general hospital or extension clinic that is certified as a mammography facility pursuant to the Mammography Quality Standards Act (MQSA).

(b) Extended service hours. Any general hospital or extension clinic certified as a mammography facility pursuant to the MQSA shall provide extended hours, i.e. in the early mornings, evenings, or on weekends, for mammography services. Specifically, such services shall be provided on at least two days each week, for at least two consecutive hours each day offered, for a total of at least four hours each week, including but not limited to the following times:

(1) Monday through Friday, between the hours of 7:00 a.m. and 9:00 a.m.;

(2) Monday through Friday, between the hours of 5:00 p.m. and 7:00 p.m.; or

(3) Saturday or Sunday, between the hours of 9:00 a.m. and 5 p.m.

(c) Waiver.

(1) A facility may submit an application for a waiver from the requirements of this section, in whole or in part, if it can demonstrate, to the Department's satisfaction, that the facility:

(i) does not have sufficient staff to provide extended hours for mammography services in accordance with this section, and that it is making diligent efforts to obtain staffing such that it can provide extended hours;

(ii) is in the process of discontinuing mammography services, as part of a consolidation or similar change; or

(iii) is subject to such other hardships as the Department deems appropriate.

(2) The Department may deny, grant or extend a waiver for 90 days, or more if the Department determines appropriate, in its sole discretion.

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:

Public Health Law ("PHL") Section 2800 provides that "hospital and related services including health-related service of the highest quality, efficiently provided and properly utilized at a reasonable cost, are of vital concern to the public health. In order to provide for the protection and promotion of the health of the inhabitants of the state. . ., the department of health shall have the central, comprehensive responsibility for the development and administration of the state's policy with respect to hospital related services. . ."

PHL Section 2803 authorizes the Public Health and Health Planning Council ("PHHPC") to adopt rules and regulations to implement the purposes and provisions of PHL Article 28, and to establish minimum standards governing the operation of health care facilities.

Legislative Objectives:

The legislative objectives of PHL Article 28 include the protection of the health of the residents of the State, by promoting the availability of high quality health services at a reasonable cost.

Needs and Benefits:

In 2014, nearly 22% of women in New York State (NYS) aged 50-74 reported not receiving mammograms at least every other year. Breast cancer is the most commonly diagnosed cancer and the second leading cause of cancer death among women in New York State. Each year, approximately 15,000 women in New York State are newly diagnosed with breast cancer, and approximately 2,640 die from the disease. Some subpopulations who are less likely to have been screened include women without health insurance (61.7% screened) and women without a regular health care provider (63.0% screened). Screening for breast cancer can increase the likelihood of identifying cancer at an early stage, when treatment is most successful. Once screened, follow-up diagnostic testing is critical to ensuring women receive necessary, potentially life-saving treatment.

Women may not get screened because they are afraid that mammography may be painful, they do not know what screening guidelines are, they do not know where to go for screening, they may have transportation barriers, or they may think screening is unaffordable. When women need follow-up testing and treatment, they can be overwhelmed. They may need help with accessing services, navigating complex health systems, and managing treatment decisions. The Community Preventive Services Task Force, an independent panel of experts appointed by the Centers for Disease Control and Prevention (CDC), has recommended reducing structural barriers as an intervention to improve breast cancer screening. Reducing structural barriers includes modifying hours of service to meet client needs.

There are approximately 600 certified mammography facilities in New York State: 210 are hospital-based (152 hospital locations, plus 58 hospital extension clinic sites); 18 free-standing diagnostic and treatment centers; and 372 other non-hospital based mammography facilities. A survey of 36 contractors in the Cancer Services Program, which provides cancer screening for the uninsured, found that the majority (95%) had at least one mammography provider (either hospital or nonhospital based) that offered extended hours. A recent review of the 160 of 210 hospital-based mammography facilities in NYS found that 70% offer one or a combination of alternative hours of services (early morning, evening, or weekend), and 30% do not.

Costs:

Costs to the State Government:

The proposed rule does not impose any new costs on state government.

Costs to Local Government:

The proposed rule does not impose any new costs on local governments, with the exception of four general hospitals that are operated by local governments. The cost to local governments that operate general hospitals are the same as the costs to private regulated parties, as described below.

Costs to Private Regulated Parties:

Both the Affordable Care Act and the NYS Insurance Law require insurers to cover mammography. Facilities already obtain third-party payment for mammograms through Medicaid and other insurers, thereby reducing the cost to regulated parties. Further, these proposed rules are not expected to impose any additional costs on those hospitals and diagnostic and treatment centers that are already in compliance, and the 70% of hospital-based facilities that already offer some form of extended hours.

The primary cost for those facilities that will be required to extend or change their hours for mammography services, assuming they are not already offering such hours, is the cost of ensuring staff, such as technicians, radiologists, and intake and support staff, are available to satisfy the extended hour requirement. The Department expects that most hospitals and hospital extension clinics that currently offer extended hours can modify the work hours of existing staff or use flex time to avoid incurring additional staff costs. Those facilities that need to modify their appointment hours to comply with these regulations may be able to use similar scheduling strategies to avoid incurring any new costs.

Costs to the Regulatory Agency:

The proposed rule does not impose any new costs on any regulatory agency.

Local Government Mandates:

The four general hospitals that are operated by local governments will be required to comply with this regulations, as discussed above.

Paperwork:

The proposed rule imposes no new reporting requirements, forms, or other paperwork upon regulated parties.

Duplication:

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

Alternatives:

There were no significant alternatives to be considered during the regulatory process. The serious risk that breast cancer presents justifies requiring extended hours for mammography services.

Federal Standards

The proposed rule does not exceed any minimum standards of the federal government for the same or similar subject area. Although the Mammography Quality Standards Act (MQSA) governs certain aspects of mammography services, it does not govern the hours at which such services must be available.

Compliance Schedule:

The proposal will go into effect upon publication of the Notice of Adoption in the New York State Register.

Regulatory Flexibility Analysis

Effect of Rule:

The proposed rule will apply to the 152 hospitals and 58 hospital extension clinics providing mammography services in New York State. Of these, there are four hospitals run by a local government (county) and one hospital that qualifies as a small business. Facilities that are small businesses or operated by local governments will not be affected differently from other facilities.

Compliance Requirements:

Compliance requirements are applicable to the one hospital considered a small business as well as the four hospitals operated by local governments. Compliance requires providing extended hours for mammography services.

Professional Services:

As noted in the Regulatory Impact Statement, this regulation will require additional staffing or staffing adjustment to ensure that mammography services are available at the required hours.

Compliance Costs:

Compliance costs for small businesses and local governments would be the same as those described in the Regulatory Impact Statement.

Economic and Technological Feasibility:

It is economically and technologically feasible for facilities that are small businesses or operated by local governments to comply with this amended rule.

Minimizing Adverse Impact:

Approximately 70% of hospital-based mammography facilities already offer some form of extended services. By adopting a regulatory standard for which this is already a significant level of compliance, the Department has minimized the impact on regulated facilities. Additionally, the regulation includes a waiver provision for those facilities that can demonstrate hardship.

Small Business and Local Government Participation:

A copy of this notice of proposed rulemaking will be posted on the Department's website. The notice will invite public comments on the proposal and include instructions for anyone interested in submitting comments, including small businesses and local governments.

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

Types and Estimated Numbers of Rural Areas:

The proposed rule will apply to the 152 hospitals and 58 hospital extension clinics providing mammography services in New York State. The Department identified 57 hospitals and 13 hospital extension clinics providing mammography facilities located in rural areas of the State, defined as counties with less than a population of 200,000. A review of the hospital mammography services determined that 67% already offer some form of extended hours. Since this percentage is similar to the statewide percentage of approximately 70% of facilities already offering some form of extended hours, this proposed rule is not expected to have a disproportionate impact on rural areas.

Reporting, Recordkeeping, Other Compliance Requirements and Professional Services:

This regulation will require additional staffing or staffing adjustment to ensure that extended mammography services are available.

Costs:

Compliance costs for entities in rural areas would be the same as those described in the Regulatory Impact Statement.

Minimizing Adverse Impact:

Approximately 67% of facilities in rural areas are already offering some form of extended hours. By adopting a regulatory standard for which this is already a significant level of compliance, the Department has minimized the impact on facilities. Additionally, the regulation includes a time limited waiver provision for those facilities that can demonstrate hardship.

Rural Area Participation:

A copy of this notice of proposed rulemaking will be posted on the Department's website. The notice will invite public comments on the proposal and include instructions for anyone interested in submitting comments, including those from rural areas.

Job Impact Statement

No Job Impact Statement is included because the Department has concluded that the proposed regulatory amendments will not have a substantial adverse effect on jobs and employment opportunities. The basis for this conclusion is that requiring extended hours for mammography services does not reduce employment opportunities, and may create employment opportunities.

Lake George Park Commission

PROPOSED RULE MAKING HEARING(S) SCHEDULED

Mandatory Inspection of Trailered Vessels for Aquatic Invasive Species Prior to Launching into the Waters of Lake George Park

I.D. No. LGP-06-16-00006-P

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

Proposed Action: Amendment of Subpart 646-9 of Title 6 NYCRR.

Statutory authority: Environmental Conservation Law, sections 43-0117(4), 43-0107(8) and 43-0107(32)

Subject: Mandatory inspection of trailered vessels for aquatic invasive species prior to launching into the waters of Lake George Park.

Purpose: To prevent the introduction and spread of aquatic invasive species into the waters of the Lake George Park.

Public hearing(s) will be held at: 4:00 p.m., March 28, 2016 at Bolton Town Hall, Bolton Landing, NY.

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

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

Text of proposed rule: [A new] Subpart, 6 NYCRR Subpart 646-9: Prohibition of Aquatic Invasive Species Introduction [Into Lake George, is added to read as follows]:

Section 646-9.1 Purpose, Scope and Applicability.

Aquatic invasive species (AIS) pose a serious threat to the waters of Lake George *Park* and can cause significant detrimental impacts to the ecology and economy of the Lake George Park. This rule is intended to prohibit introduction of aquatic invasive species to Lake George *and the waters of the Lake George Park*, and to minimize spread of AIS from Lake George to other waterbodies. This Subpart creates a program whereby trailered vessels are inspected prior to launch into *the waters of the* Lake George *Park* and upon retrieval from [Lake George] *those waters*, to help ensure vessels are free from AIS.

[This Subpart will expire as of December 31, 2015. The Commission will reevaluate the effectiveness, cost and regulatory impact of the mandatory trailered boat inspection program during the second year after the adoption of this Subpart to determine whether to continue the program, with or without modifications.]

Section 646-9.2 Definitions.

The following terms shall have the stated meanings whenever used in this Subpart or in documents referenced or prepared by the Commission. Other terms defined in section 645-2.1 of this Title shall have the meanings set forth in that section.

(a) "Aquatic invasive species (AIS)" means an aquatic animal or plant species that is:

[(i)] *(1)* nonnative to the waters of *the* Lake George *Park*; and

[(ii)] *(2)* whose introduction causes or is likely to cause economic or environmental harm or harm to human health.

(b) "Boating season" shall mean [April 15] *May 1* to [December] *November* 1 of each calendar year.

(c) "Cleaned, Drained and Dry" means that a trailered vessel is cleaned of all visible plant and animal growth, has had all bilges and other areas capable of storing water drained and is fully dried.

(d) "Cleaned and drained" means that a trailered vessel is cleaned of all visible plant and animal growth and has had all bilges and other areas capable of storing water drained.

(e) "Decontamination" means High Pressure Hot Water (HPHW) wash of a vessel and/or trailer, or other method determined to be as effective by the Commission, to eliminate any threat of introduction of AIS to *the waters of the* Lake George *Park*.

(f) "Introduce" means the intentional or unintentional escape, release, dissemination or placement of a species into an ecosystem as the result of human activity.

(g) "Launch site" means any boat launch, ramp, hoist or other area on a lakefront lot that is or may be used to allow a trailered vessel to enter or launch into *the waters of the* Lake George *Park*.

(h) "Launch operator" means the owner of the private lakefront lot upon which a launch site is located, or the operator of such launch site.

(i) "Reasonable precautions" means intentional actions that prevent or minimize the transport or introduction of invasive species.

(j) "Trailered vessel" means any vessel as defined in section 645-2.1(ca) of this Title which is towed by another vehicle. The term includes a vessel's motor, trailer, compartments, and any other associated equipment or containers that routinely or reasonably could be expected to contain, or come into contact with, water. Trailered vessel does not include seaplanes, hand-launched rafts, kayaks, belly boards, float tubes, canoes, row boats, windsurfer boards, sail boards, inner tubes, standup paddleboards or similar devices.

(k) "Vehicle inspection station" means a location designated by the Commission where inspection and, if necessary, decontamination services will take place.

(l) "Vessel inspection control seal (VICS)" means a plunger seal which is certified by the Commission and applied by a VIT or authorized launch operator and which connects a vessel to its trailer, or other device determined by the Commission to be equally as effective, to verify that vessels have met the requirements of this Subpart.

(m) "Vessel inspection technician (VIT)" means a person who is certified by the Commission to provide services in the form of inspections only, or both inspection and decontamination.

(n) "Waters of Lake George Park" means Lake George and Trout Lake.

Section 646-9.3 Prohibitions.

(a) It shall be unlawful for any person to launch or attempt to launch a trailered vessel into the waters of *the* Lake George *Park* during the boating season without an intact VICS *or a vessel inspection completed by a Vessel Inspection Technician at the time and location of the launch*.

(b) It shall be unlawful for any person to leave a launch site during the boating season with a trailered vessel retrieved from the waters of *the* Lake George *Park* that has not been cleaned and drained in accordance with Section 646-9.4 of this Subpart.

(c) It shall be unlawful for any person to introduce an aquatic invasive species into the waters of *the* Lake George *Park* by any means including but not limited to aquaculture, aquarium dump, animal release, non-motorized vessels, docks, construction equipment, fishing equipment, and

bait, unless such person has taken reasonable precautions as defined in this Subpart.

(d) It shall be unlawful for any person to knowingly provide inaccurate or false information to Commission personnel or a VIT concerning prior launches, launch registration, or any other information required to be provided pursuant to this Subpart.

(e) It shall be unlawful for a launch operator to allow the launch of a trailered vessel into the waters of *the* Lake George *Park* during the boating season that is not equipped with an intact VICS applied by a VIT or authorized launch operator in accordance with this Subpart.

(f) It shall be unlawful for any person to alter or modify any VICS. This prohibition shall not apply to the removal of a VICS that has been properly installed pursuant to this Subpart prior to the vessel being launched into *the waters of the* Lake George *Park*.

(g) It shall be unlawful for any person to use, or attempt to secure a vessel to a its trailer, with an unauthorized VICS so as to avoid the requirements of this Subpart.

(h) Unless otherwise exempted by this Subpart, it shall be unlawful for any launch operator to operate a launch site without registering such launch site with the Commission and maintaining launch records as required by this Subpart.

Section 646-9.4 Vessel Inspections, Decontamination and Administration.

(a) Except for activities exempted by this Subpart, all trailered vessels shall be inspected by a VIT prior to launch into *the waters of the* Lake George *Park* during the boating season to determine that the vessel has met the clean, drained and dry standard. Trailered vessels identified by a VIT as meeting this standard shall receive a VICS.

(b) All vessels inspected pursuant to subdivision (a) of this section shall be subject to decontamination if determined not to meet the cleaned, drained and dry standard by any VIT prior to launching into *the waters of the* Lake George *Park* during the boating season. Trailered vessels decontaminated by a VIT shall receive a VICS.

(c) Upon retrieval from the waters of *the* Lake George *Park* during boating season, all trailered vessels must meet the cleaned and drained standard prior to leaving a launch site. Such vessels may receive a VICS by an authorized launch operator to demonstrate compliance with this Subpart. If intact, a VICS received from an authorized launch operator shall preclude the need for a trailered vessel to receive inspection by a VIT as described in subdivision (a) of this section.

(d) [Within 60 days of the effective date of these regulations, a] *A* launch operator must register the launch site with the Commission on such form as the Commission may prescribe. Following the initial registration, launch sites must be registered annually by the launch operator by May 15 of each year. [A launch site created after the enactment of these regulations must be registered with the Commission prior to any trailered vessels being launched or retrieved from that launch site.] This requirement shall not apply to any launch sites which are owned by a State or local government or which are staffed by Commission personnel.

(e) The Commission may enter into written agreements with public launch owners and operators to implement the trailered vessel inspection program on public launch sites.

(f) All launch operators required to register pursuant to this section shall keep true and accurate records during the boating season in a manner specified by the Commission showing the following: the boat registration number of each trailered vessel launched into or retrieved from the waters of *the* Lake George *Park* at its launch site; the VICS inventory maintained by the launch operator; the VICS removed by the launch operator prior to a trailered vessel being launched into the waters of *the* Lake George *Park*; the VICS applied to a trailered vessel by a launch operator upon retrieval at its launch site of a trailered vessel from the waters of *the* Lake George *Park*. These records shall be maintained on a daily basis and retained for a minimum of three years and shall be available for inspection upon request by the Commission.

(g) Launch operators shall maintain their launch sites in a manner authorized by the Commission so as to prevent trailered vessels not equipped with an intact VICS from launching into the waters of *the* Lake George *Park*.

(h) All VITs will be trained and certified annually by the Commission. A reasonable training fee may be charged to individuals taking the course. The Commission will identify the type and hours of training to be completed by VITs on an annual basis.

Section 646-9.5 Exemptions.

Compliance with this Subpart shall not apply to:

(a) Any person who has entered into or is subject to a written agreement with the Commission which provides for the substantial equivalent of the protections described in this Subpart.

Section 646-9.6 Severability.

If any provision of this Subpart or its application to any person or circumstance is determined to be contrary to law by a court of competent jurisdiction, such determination shall not affect or impair the validity of the other provisions of this Subpart or the application to other persons and circumstances.

Text of proposed rule and any required statements and analyses may be obtained from: David Wick, Executive Director, Lake George Park Commission, 75 Fort George Road, P.O. Box 749, Lake George, NY 12845, (518) 668-9347, email: dave@lgpc.state.ny.us

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

Public comment will be received until: Five days after the last scheduled public hearing.

Summary of Regulatory Impact Statement

This regulatory impact statement (RIS) has been prepared for the proposed regulation, 6 NYCRR Subpart 646-9, promulgated by the Lake George Park Commission (the "Commission"). Articles one and two of the State Administration Procedures Act (SAPA) contain procedural and substantive requirements with which the agencies must comply when proposing and adopting rules.

The Legislature established the Lake George Park Commission ("Commission") as an independent agency and delegated broad and expansive powers to protect enhance and regulate the resources of the Lake George Park, and particularly the waters of the Lake George Park. Environmental Conservation Law Section 43-0117(4) directs the Commission to promulgate regulations relative to the permitting of boats, the regulation of marinas, and regulation of recreational activities to protect and preserve the water quality of Lake George and further provides that no person "shall operate any boat or vessel, or undertake any regulated activity without complying with such regulations." Environmental Conservation Law 43-0107(8) provides that the Commission shall have the power to adopt, amend and repeal rules and regulations which are consistent with Title 43 of the Environmental Conservation Law, as it deems necessary to administer this article, and "to do any and all things necessary or convenient to carry out the purpose and policies of this article and to exercise all powers granted by law."

The proposed regulation is consistent with the legislative objects by regulating the use of boats on the waters of Lake George Park and by enhancing and preserving the quality of those waters for the public benefit. The proposed regulation is intended to protect the waters of Lake George Park from further infestation of Aquative Invasive Species (AIS) and to reduce the spread and proliferation of the 5 AIS that are currently found in Lake George.

The Lake George communities have already expended more than seven million dollars to manage three of these AIS in Lake George. It is estimated that failure to adopt appropriate measures to reduce the spread of AIS will result in more aggressive and unmanageable AIS from entering Lake George. The further spread of AIS into Lake George is estimated to result in significant losses of tourism and visits to Lake George, with a corresponding loss of approximately 9 Million to as much as 48 Million dollars to the local economies who depend on tourism. The Regulatory Impact Statement describes the threat of AIS in more detail.

The regulation was drafted after a two year outreach and study of possible methods to prevent the further spread of AIS into the waters of the Lake George Park. The outreach and study looked at methods to preserve the excellent water quality of Lake George and the economic and recreational benefits associated with the Lake George Park. The results of this study determined that the most effective means of reducing the spread and infestation of new AIS into the waters of Lake George Park was through a mandatory inspection program of all trailered vessels prior to being launched into the waters of the Lake George Park.

This current regulatory effort follows a two-year pilot mandatory boat inspection program on Lake George, and seeks a continuation of this successful program.

The regulation requires all trailered vessels to undergo mandatory inspection and possible decontamination prior to launch in the waters of the Lake George Park. The regulation requires trailered boats to visit a regional inspection station in the Lake George watershed, and undergo a 7-10 minute invasive species inspection of the vessel and trailer. The standard for boats to pass inspection would be that of the western states' model of "clean, drained and dry" (CDD), which would work to prevent both visible and non-visible aquatic invasive threats.

Inspectors would be authorized by the Commission to enter the interior of boats in order to complete the inspection of all hull compartments. As part of the boat inspection process, boat owners will also be required to drain the bilge and properly dispose of AIS prior to leaving the launch area to prevent Lake George from being a source of AIS to other water bodies.

Boats that do not meet the C-D-D inspection standard would have to be washed and decontaminated at the inspection station with High Pressure Hot Water, or to be cleaned to meet that standard through other means, prior to launching. Boats with ballast tanks and bilges will have to be

drained and possibly flushed with HPHW. Once the inspection and, if necessary, decontamination process is complete, the boat would be fitted with an inspection tag securing the boat to the trailer. Boats are then permitted to proceed to the marina of choice and launch into the waters of the Lake George Park. As long as the boat's inspection tag is secured/connected to the trailer the boat is allowed to launch. Boats that are leaving Lake George launches will also be fitted with inspection tags. These boats may re-launch into the waters of the Lake George Park without being re-inspected as long as the inspection tag is intact.

The proposed regulation avoids undue deleterious economic effects or overly burdensome impacts to boat owners because the inspection process is only expected to take 10 minutes and the Commission does not intend to charge a fee for such service. The regulation provides however that the Commission may establish a fee related to the Commission's costs of performing such services and other vessel inspection program costs and such fees may be necessary in the future. The pilot program model (2014 and 2015) utilized funding from a partnership between local municipalities, nonprofits, and funding from NY State's Environmental Protection Fund. This funding model is anticipated to be utilized for the next several years of the program.

Costs to launch operators are expected to be slight. Local governments and small businesses would be required to monitor boats entering and leaving their launches, to maintain records of launches from their properties and to secure their launches in some manner during off-hours. The regulation does not mandate the method by which the launches must be secured and businesses and launch operators may use the most cost-effective means to meet these requirements. Marinas and launch operators generally employee people to assist customers in the launching of their boats and it is expected that these same employees can perform the duties required by the regulation. Marinas and launch operators also require a fee from boaters prior to launching from their facilities and these facilities are usually closed during off hours. It is not expected that these businesses would incur much if any expense to implement this regulation. The reporting requirement is also expected to be minimal. The Commission has streamlined the process as much as possible by exempting boats whose last launch was in the waters of the Lake George Park from inspection.

The costs to the Commission for administering the regulation are expected to be approximately $550,000 annually. The Regulatory Impact Statement provides a description of these costs as well as a description of the cost of compliance on regulated parties. The Regulatory Impact Statement also describes the possible funding alternatives available for this program.

The Regulatory Impact Statement provides a description of the various alternatives to the regulation considered by the Commission and a description of the benefits and potential adverse impacts as a result of the Regulation, including a description of the potential adverse and beneficial impacts on tourism and the local economy.

The Regulatory Impact Statement describes the reporting and compliance requirements for the regulated parties and local governments. The Regulatory Impact Statement also describes the interaction with existing State and Local Laws, as well as the Commission's own regulations. The Regulatory Impact Statement also describes the expected interaction with DEC and other state and local agencies in implementing the regulation.

Regulatory Flexibility Analysis

1. Effect of the Rule:

The proposed regulation may impose some slight additional costs to small businesses who will be required to maintain records of launches from their properties and to secure their launches in some manner during off-hours. These costs are expected to be minor. The owner may determine the method by which the launches are secured, subject to Commission approval. The Commission has no authority over municipal launches, and cannot require local governments to secure their launches or keep records of launches. All three of the affected municipalities support this program and have chosen to secure their launches. The Towns of Hague and Putnam staff their launches and secure them when not staffed. The Town of Bolton launch is not well suited to trailered boat launching and is closed for trailered launching. Several local municipalities have also stepped forward to co-fund this program with NYS, resulting in a 50/50 cost sharing of this program between local and state government. Local municipalities believe in the importance of this program and have chosen to assist in its funding.

Under the program, an employee of a business or municipality would be expected to check each boat that is launched from the property to insure that the boat was tagged by a Commission Vessel Inspection Technician or that it was last launched in the waters of the Lake George Park. This employee would also be expected to tag any boats leaving the waters of the Lake George Park via that launch, at the boat owner's request. This person would also be expected to keep and maintain records of all boats that were launched from the facility and to keep all tags that were removed from the boats and those that were not used.

This regulation is not expected to impose a significant cost on local municipalities or businesses. There are only three public launches that are owned by municipalities. These are in the Town of Putnam, the Town of Hague and the Town of Bolton. The Town of Hague supports the program and has secured its launch with the use of launch attendants. During the pilot program, this cost was approximately $13,000 annually. The Town of Putnam also supports this program and hired launch attendants to staff their launch full time, at an annual cost of approximately $27,000. The Town of Bolton owns a minimally-used shallow public launch in Sawmill Bay, but has closed this launch to the public as opposed to staffing it.

Marinas and launch operators require a fee from boaters prior to launching from their facilities and these facilities are usually closed during off hours. It is expected that these businesses would incur minimal if any expense to implement this regulation.

Boats whose last launch was into the Lake George Park are exempt from further inspections. The rule may provide for an increase in local businesses, such as marinas and quick launches, for those boaters who only launch in Lake George.

There was concern that requiring boat inspections may result in some potential tourists choosing not to visit Lake George, or to visit less frequently. This would have impacts on tourism and regional economy. This was shown not to be the case under the two years of the pilot mandatory inspection program. In fact, in the first year of the inspection program (2014), the Commission actually saw a fairly significant increase (4%) in boater registrations on Lake George as compared to the previous year (2013). Weather for both seasons was similar, although 2013 actually had more sunny boating days than 2014. Despite a lower quality boating season, boating on Lake George increased during the pilot mandatory inspection program. Concerns about the regulations resulting in a decrease in boaters to Lake George were not realized. It is believed that this is due to the program having no direct cost to boaters, as the program has been subsidized by NYS and local entities.

The inconvenience and costs of the regulation are offset by the enormous benefit the regulation is expected to have on the quality of the waters of the Lake George Park and to the public health and recreation, the local economy and tourism in the Lake George area. There are currently 5 invasive species in Lake George and the Commission actively manages three of these: Eurasian Water Milfoil, zebra mussels and Asian clams. Without an effective prevention strategy, dozens of AIS may be introduced to the waters of the Lake George Park. The primary vector by which these species may arrive is trailered boats coming in from nearby waterways such as Lake Champlain, the Hudson River, and from the Great Lakes and Finger Lakes region. AIS have the potential to cause significant, long-term damage to Lake George and cost millions of dollars to control in the future. These negative impacts could extend to the local tax base and the robust tourism industry.

The cost of managing existing AIS is reported to be a minimum of 16:1 times higher than the cost of prevention (US Congress of Office of Technology Assessment, 1993). Over the last 26 years (1986-2014), it has cost the Lake George community an estimated $7.2 million dollars to combat EWM, zebra mussels and Asian clams. The future threat of new AIS introductions to the Lake George Park and Lake George itself is high and the outcome of large or extensive uncontrolled growth of AIS may result in significant impacts to the regional economy. Most AIS are most likely to occur in the "littoral zone" of the lake. This zone is described as the shallow water area extending from the shoreline to a point where water depth is approximately ten (10) meters in depth (Boylen and Kuliopulo, 1981). The littoral zone of Lake George comprises approximately 8,058 acres or twenty-nine percent (29%) of the overall water coverage area and is the area where activities such as boating, swimming, scuba diving, and much of the other recreational activities occur. This area also serves as the primary habitat for many game fish attracting recreational and sport fishermen or "anglers."

The adverse economic effect of future AIS invasions and outbreaks will be most felt along the 3,130 shoreline properties along Lake George and extending through eight (8) municipalities (the Towns of Dresden, Fort Ann, Putnam, Bolton, Hague, Lake George (inclusive of the Village of Lake George), Queensbury and Ticonderoga) within three (3) counties (Washington, Warren and Essex). Additionally, the economic impact of AIS may have implications to upland (off shore) properties. The proposed rule is needed to reduce the risk of introduction and spread of aquatic invasive species by subjecting all trailered vessels to inspection, and if determined necessary, decontamination prior to launch into the waters of Lake George Park. It is anticipated that a mandatory boat inspection program will have a net positive impact on the water quality, ecology, recreational uses and economic health of the Lake George Park by significantly reducing the threat of AS from being introduced to the waters in Lake George Park and causing new ecological impacts.

2. Compliance Requirements:

Local launches will be required to secure their launches in off hours in some fashion that is acceptable to the Commission. Most businesses al-

ready limit launches to business hours only and this will have little effect on these businesses.

Businesses and municipalities will also be expected to keep and maintain records of boats that launch from their facilities to ensure that such boats have been properly inspected prior to launch. Boats that have been properly inspected will be sealed to their trailers. The launch owner or operator will have to cut the seal from the boat's trailer prior to allowing the boat to launch in the lake. The launch owner or operator will also keep a record of this boat and the seal. The launch owner or operator will also re-seal any boat requesting to be re-sealed upon exiting the lake. Boats that are re-sealed upon leaving the lake may reenter the lake without being re-inspected. The launch owner or operator must also record any boats that leave the lake and are re-sealed and keep any unused seals. During the two years of the pilot mandatory inspection program, these record-keeping requirements were not found to be extensive or burdensome during the two year pilot program for these regulations. Most businesses that operate a launch already employ sufficient staff to perform these tasks. The Commission is committed to work with the affected businesses and municipalities to find the most cost-effective solution to implement the regulations. Local businesses currently are required to obtain authorization or permits from the Commission for their marina activities and to construct and install docks on their facilities. The additional interaction with the Commission required by this regulation has not been demonstrated to be burdensome.

3. Professional Services:

The Commission will contract with one personnel services vendor to staff the 50-60 inspector positions, resulting in a strong net gain in private sector jobs in the region. These positions are primarily labor, not professional services.

4. Compliance Costs:

The costs for compliance will be the cost of additional personnel, if any, to monitor launches and maintain records and the cost to secure the business or municipality's launch during off season hours. Each business or municipality is permitted to use whatever method it chooses, with the Commission's authorization, to secure its launch, thus allowing the property owner to use the most cost-effective means available to implement the rule. Compliance costs for private businesses (marinas and motels) has been found to be minimal under the two year pilot inspection program.

5. Economic and Technological Feasibility:

Compliance with the rule is both economic and technologically feasible. As set forth above, most marinas and other businesses offering launches already restrict launches to business hours and employ staff to assist customers in launching their boats. These staff members could perform the additional requirement of insuring that those boats launched from their facilities have been properly inspected prior to launch.

6. Minimizing Adverse Impact:

The proposed compliance requirement minimizes adverse impact to the potentially affected businesses and municipalities. The mandatory boat inspection program is the most feasible method to prevent the further spread of aquatic invasive species into the waters of the Lake George Park. There has been no demonstrated adverse impact to the boating population on Lake George as a result of this program. This program has been exceptionally well received by all parties including the boating public, local municipalities and businesses around the lake. The regulation also provides that boats that were last launched in the Lake George Park do not have to be re-inspected before launching and may provide a means whereby "frozen boats," i.e. boats which have been out in below-freezing temperatures for at least 3 weeks could be certified as invasives-free, and tagged as if they were inspected. The Commission estimates that approximately 2/3 of all boats that annually launch in Lake George only launch in Lake George.

7. Small Business and Local Government Participation:

The Commission has conducted many meetings with municipalities, local chambers of commerce, business groups and environmental groups related to the proposed regulation. These conversations included means and methods of preventing the spread of aquatic invasive species into the lake. No alternative methods have been discovered that would be less adverse to small businesses and, at the same time, meet the objective of the proposal. The municipalities and the majority of the businesses involved in these discussions have been strongly in favor of the regulation. The Commission will hold two additional public information meetings on the proposal, at a southern and northern location along Lake George. The Commission will provide educational information about the program on its web site and will continue to work with the local media, other not-for-profit groups and other agencies such as DEC and Parks and Recreation to continue a public outreach and education campaign.

Rural Area Flexibility Analysis

1. Types and estimated numbers of rural areas:

The Lake George Park is a rural area comprising some 300 square miles in land and water surface area. Of the approximately 255 miles of land surface, some 100 square miles is State-owned forest preserves. The whole area is located within the Adirondack Mountain region occupying an area at the south-eastern portion of the Adirondack Park. It is characterized by steeply sloped forested mountains and hillside areas with a number of streams and smaller lakes and ponds. Lake George is a 44 square mile glacially-formed lake that is 32 miles long, has an average width of 1.5 miles and an average depth of approximately 70 feet. Lake George includes approximately 131 miles of shoreline and is fed by more than 150 streams.

Development in the Lake George Park is concentrated along the lakeshore and nearby State highways of Route 9, 9L and 9N. There are fifteen local government entities, three counties and twelve municipalities all or partially within the Lake George Park. The population of the park expands by ten-fold in the summer months.

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

Local launches will be required to secure their launches in off-hours in some fashion that is acceptable to the Commission. Most businesses already limit launches to business hours only and this will have little effect on these businesses.

Businesses will also be expected to keep and maintain records of boats that launch from their facilities to ensure that such boats have been properly inspected prior to launch. Boats that have been properly inspected will be sealed to their trailers. The launch owner or operator will have to cut the seal from the boat's trailer prior to allowing the boat to launch in the lake. The launch owner or operator will also keep a record of this boat and the seal. The launch owner or operator will also re-seal any boat requesting to be re-sealed upon exiting the lake. Boats that are re-sealed upon leaving the lake may reenter the lake without being re-inspected. The launch owner or operator must also record any boats that leave the lake and are re-sealed and keep any unused seals. These record-keeping requirements have not been found to be extensive or burdensome under the 2014-2015 Lake George pilot mandatory boat inspection program. Most businesses that operate a launch already employ sufficient staff to perform these tasks. Moreover, the Commission is committed to work with the affected businesses and municipalities to find the most cost-effective solution to implement the regulations. Local businesses currently are required to obtain authorization or permits from the Commission for their marina activities and to construct and install docks on their facilities. The additional interaction with the Commission required by this regulation is not expected to be burdensome.

No professional services are anticipated to be necessary for any marina, launch operator or municipality to comply with the regulation.

3. Costs:

The proposed regulation may impose some slight additional costs to small businesses who would be required to monitor boats coming entering and leaving their launches, to maintain records of launches from their properties and to secure their launches in some manner during off-hours. These costs are expected to be minor, however. The regulation does not mandate the method by which the launches must be secured, only that the Commission approve the method of security. Only three municipal launches will be affected: one in the Town of Putnam, one in the Town of Hague, and one in the Town of Bolton. The Commission has no authority over municipal launches, and cannot require security of those launches. However, all three affected municipalities support this program and have chosen to secure their launches. The Towns of Hague and Putnam staff their launches and secure them when not staffed. The Town of Bolton launch is not well suited to trailered boat launching and has been closed to the public for trailered launching.

Marinas and launch operators also require a fee from boaters prior to launching from their facilities and these facilities are usually closed during off hours. It is not expected that these businesses would incur much if any expense to implement this regulation.

There was concern that requiring boat inspections may cause some potential tourists to stay away from Lake George or choose to visit the lake less frequently. This would have impacts on tourism and regional economy. This was shown not to be the case under the two years of the pilot mandatory inspection program. In fact, in the first year of the inspection program (2014), the LGPC actually saw a fairly significant increase (4%) in boater registrations on Lake George as compared to the previous year (2013). Weather for both seasons was similar, although 2013 actually had more sunny boating days than 2014. Even with a lower quality boating season, boating on Lake George actually increased during the pilot mandatory inspection program. Concerns about boaters avoiding Lake George due to the regulations were not realized. It is widely believed that this is due to the program having no direct cost to boaters, as the program has been subsidized by NYS and local entities.

The regulation might increase markets for boats that are only launched in the waters of the Lake George Park during a boating season. Such boaters will be exempt from inspection, if they can prove through their boats being sealed to their trailers or otherwise, that they last launched in the

waters of the Lake George Park. Overall, the program is expected to increase the quality of the water of Lake George and preserve the water of Trout Lake within the Park and thereby preserve and increase tourism and jobs for the area.

The regulation will increase costs and demands on the Commission staff due to the need for staffing 7 inspection and decontamination stations, increased public outreach and education, and enforcement of the regulation. The expected annual cost for staffing the program is anticipated to be $550,000.

4. Minimizing adverse impact:

The Commission has minimized unnecessary adverse impacts on New York State jobs by creating an inspection program designed to prevent the spread of AIS into the waters of the Lake George Park, preserving the quality of the water for health, recreational, economic and tourism activities. The Commission has minimized the adverse effect of the regulation by streamlining the inspection process as much as possible, minimizing the fees charged for the process and allowing launch operators to devise their own method of securing their launches to best suit their business model.

5. Rural area participation:

The Commission held more than 70 public meetings regarding this topic and intends to hold two more public information meetings around the Lake George Park to inform the public of the outcome of the two year pilot mandatory boat inspection program and the proposed long-term boat inspection program.

Job Impact Statement

1. Nature of impact:

The regulation is expected to have a positive impact on job numbers, due to the creation of 50 to 60 private sector inspector positions. The Commission contracts with a temporary staffing firm to hire individuals to staff the seven inspection stations, with a contract amount exceeding $500,000 per year. The two year pilot mandatory boat inspection program resulted in excess of $1 million dollars to private industry for the creation of these positions, resulting in a net increase in the regional economy.

There are some businesses, such as marinas, hotels and motels and quick launches, which will be required to keep monthly records of the launches from those facilities. These businesses will also be required to keep their launches secured during times when no inspectors are available, such as nighttime hours. This activity has not required additional staffing by private businesses to accommodate these regulations during the two years of the pilot mandatory inspection program, and therefore does not impact job numbers.

Requiring boat inspections during the two year pilot mandatory boat inspection program did not negatively affect boaters' usage of Lake George, as evidenced by the average 6% increase over previous years' registrations.

The inconvenience and costs of the regulation are offset by the enormous benefit the regulation is expected to have on the quality of the waters of the Lake George Park and to the public health and recreation, the local economy and tourism in the Lake George area. AIS have the potential to cause significant, long-term damage to the Lake George environment and cost millions of dollars to control in the future. These negative impacts could extend to the local tax base and the robust tourism industry.

The cost of managing existing AIS is extensive. Over the last 26 years (1986-2012), it has cost the Lake George community an estimated $7.2 million dollars to combat three different AIS in the Lake. The future threat of new AIS introductions to the Lake George Park and Lake George itself is high and the outcome of large or extensive uncontrolled growth of AIS may result in significant impacts to the regional economy. The areas where AIS are expected to proliferate are in the same areas where most recreational activities occur and most launches, docks and moorings are located. The adverse economic effect of future AIS invasions and outbreaks will be most felt along the 3,130 shoreline properties along Lake George and extending through eight (8) municipalities (the Towns of Dresden, Fort Ann, Putnam, Bolton, Hague, Lake George (inclusive of the Village of Lake George), Queensbury and Ticonderoga) within three (3) counties (Washington, Warren and Essex). The proliferation of additional AIS into the waters of the Lake George Park is expected to have a significant negative impact on tourism to the region, negatively impacting jobs in the area. If nothing is done to stop the spread of existing and new AIS into the waters of the Lake George Park, the loss in total annual tourism expenditures is estimated to range between $9.74 million to $48.7 million. The annual loss in visitor events is estimated to be approximately 146,600 to 733,000 events. Tourism-related employment is estimated to experience a net loss of approximately 162 to 800 jobs with a corresponding reduction in wages paid ranging from approximately $4.55 million to $22.74 million.

The proposed rule is the most efficient method of reducing the spread of existing AIS and preventing the introduction of new AIS into Lake George. The rule reduces the risk of introduction and spread of aquatic invasive species by subjecting all trailered vessels to inspection, and if determined necessary, decontamination prior to launch into the waters of Lake George Park. It is anticipated that a mandatory boat inspection program will have a net positive impact on the water quality, ecology, recreational uses and economic health of the Lake George Park by significantly reducing the threat of AIS from being introduced into the waters of the Lake George Park and causing new ecological impacts.

The overall impact on jobs will be positive, as the Commission will contract for the hiring of 50-60 staff to perform inspections and, if necessary, decontamination through a temporary staffing service. These are private sector jobs, with a fairly significant positive impact on the local economy of more than $500,000 annually.

2. Categories and numbers affected:

The jobs affected would primarily be laborer types, requiring some training, related to inspection and decontamination of boats. These jobs would be seasonal from May through the end of October.

3. Regions of adverse impact:

The regulations apply only to the waters of the Lake George Park.

4. Minimizing adverse impacts:

The Commission has minimized unnecessary adverse impacts on New York jobs by making the boat inspections as streamlined as possible and by providing a means by which boats that are only launched into the waters of the Lake George Park during a season would be exempt from inspections. While unlikely due to the ease of administering these regulations, local businesses and municipalities may also hire additional personnel to ensure that boats launched from these facilities have been properly tagged and are tagged as they leave the launch, if requested.

5. Self-employment opportunities:

This program does not offer any self-employment opportunities.

State Liquor Authority

PROPOSED RULE MAKING
NO HEARING(S) SCHEDULED

Alcohol Training and Awareness Program (ATAP) Application Processes and Program Requirements

I.D. No. LQR-06-16-00003-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 add Part 106 to Title 9 NYCRR.

Statutory authority: Alcoholic Beverage Code Law, section 18(10)

Subject: Alcohol Training and Awareness Program (ATAP) application processes and program requirements.

Purpose: To enact statutorily required Alcohol Training and Awareness Program (ATAP) application processes and program requirements.

Text of proposed rule: Title 9, Subtitle B, of the Official Compilation of Codes, Rules and Regulations of the State of New York (NYCRR), is hereby amended to include new Part 106.

Part 106 – Alcohol Training and Awareness Program

§ 106.1 Applicability of rule

This part shall apply to all Alcohol Training Awareness Program ("ATAP") school Certificates of Approval and student Certificates of Completion issued pursuant to the Alcoholic Beverage Control Law.

§ 106.2 Filing of applications for ATAP School Certificates of Approval

An application for an ATAP School Certificate of Approval must be made on a form designated by the Authority and contain such information as shall be required by the Authority, including but not limited to all proposed course curriculum materials. Each ATAP school applicant shall designate an individual to act as a Director, and the Director shall be responsible for filing the Application for ATAP School Certificate of Approval, administration of approved ATAP school curriculum, issuance of student Certificates of Completion, and maintaining all of the ATAP school records, as required by the Alcoholic Beverage Control Law and this part. Completed applications for ATAP School Certificates of Approval, program materials, and the statutorily required application fee as set forth in the Alcoholic Beverage Control Law must be forwarded to "New York State Liquor Authority, Alcohol Training Awareness Program, 80 South Swan Street, Suite 900, Albany, NY 12210." (Application fees must be in the form of a certified check or money order, and made payable to the "New York State Liquor Authority.")

§ 106.3 Minimum curriculum requirements for ATAP schools

Prior to approval of any classroom ATAP school Certificate of Approval, the Director of the proposed classroom school, or such employee as may be appointed by the Director, shall provide the Authority with copies of all written materials associated with the course, and shall perform a mock classroom presentation of proposed course curriculum materials for Authority staff (or in the case of online based classes shall provide Authority staff with electronic access to a complete proposed class for review.)

All applications for ATAP School Certificates of Approval must contain the following minimum curriculum requirements:

(a) The licensee's and server's responsibility to not sell, deliver or give alcohol to any person under 21 years of age, or to any person who appears visibly intoxicated;

(b) The licensee's and server's responsibility to reasonably supervise the licensed premises;

(c) The licensee's and server's right to refuse any sale of alcoholic beverages to any underage person, intoxicated person, or person without proper written evidence of age;

(d) The licensee's and server's responsibility to establish that any delivery of alcoholic beverages was made in a reasonable reliance upon written evidence of age;

(e) Information regarding those forms of identification which may legally be accepted as written evidence of age including key features of each form of identification;

(f) Information regarding detection techniques through which false and fraudulent forms of identification may be discovered;

(g) Information regarding the devices and manuals which may be used to aid in the detection of false and fraudulent written evidence of age, and information with regard to the manner in which such devices and manuals may be obtained;

(h) For on-premises licensees, the licensee's and server's responsibility to not allow redelivery to any person under 21 years of age, or to any person who appears visibly intoxicated;

(i) Information regarding criminal liability and penalties for the crime of Unlawfully Dealing with a Child (New York Penal Law Sec. 260.20);

(j) Information regarding civil liabilities, general liabilities, responsibility and general obligations relative to sale of alcoholic beverages (New York General Obligations Law Sections 11-100 and 11-101); and

(k) First hand accounts from the public, illustrating the consequences of the failure of licensees and/or servers to operate in a safe, legal and responsible manner.

§ 106.4 Scheduled session notification requirements for approved classroom ATAP schools

All approved classroom ATAP schools must provide the Authority with a minimum of 14 days prior notification in advance of all classroom sessions utilizing a form and containing such information as shall be designated by the Authority.

§ 106.5 Recordkeeping requirements for ATAP schools

At the conclusion of each classroom session for approved classroom ATAP schools, the Director or such employee as shall be designated by the Director, shall provide each student that has successfully completed the approved classroom ATAP curriculum with a Student Certificate of Completion on a form designated by the Authority. Within seven days after any ATAP school has held a session of an approved ATAP program (whether classroom or online), the school must transmit to the Authority a roster of all students who successfully completed said class, in a format as directed by the Authority. Within seven days after the completion of a session of any approved ATAP school (whether classroom or online), the school must transmit to each person who has successfully completed the approved ATAP curriculum a Certificate of Completion in a format as directed by the Authority.

(a) Approved classroom ATAP schools are required to maintain the following records at the school's business office, and shall be available for inspection by an employee of the Authority during business hours:

(1) A complete copy of the ATAP school's application to the Authority for a Certificate of Approval, together with copies of all items submitted in support thereof; and

(2) A list of all classroom teachers, which list shall contain with respect to each such teacher, the full name, residence address, residence telephone number, work address, work telephone number, and such other and additional information as the authority may require; and

(3) A folder for each classroom teacher, containing that teacher's employment application and all other documentary information considered by the school in employing the teacher to give a session of the approved ATAP program; and

(4) Copies of all approved "Scheduled Session" forms sent by the ATAP school to the Authority, which may be disposed of after having been maintained for a minimum of three years; and

(5) Copies of all student Certificates of Completion following each session of an approved ATAP program, which may be securely disposed of after having been maintained for a minimum of three years.

(b) Approved online ATAP schools are required to maintain the following records at the school's business office, and shall make same available for inspection by an employee of the Authority upon request:

(1) A complete copy of the ATAP school's application to the Authority for a Certificate of Approval, together with copies of all materials submitted in support thereof; and

(2) Copies of all Certificates of Completion following each session of the approved online ATAP program, which may be securely disposed of after having been maintained for a minimum of three years.

§ 106.6 Renewal of ATAP School Certificates of Approval

The Authority shall prescribe the form and manner of issuance of renewal applications for ATAP Certificates of Approval, which in all cases shall include an affidavit signed by the school's Director reporting on changes in any information included in the school's original application for an ATAP School Certificate of Approval. Each application for renewal shall include the statutorily required application fee as set forth in the Alcoholic Beverage Control Law and must be forwarded to "New York State Liquor Authority, Alcohol Training Awareness Program, 80 South Swan Street, Suite 900, Albany, NY 12210." (Application fees must be in the form of a certified check or money order, and made payable to the "New York State Liquor Authority.")

§ 106.7 Student Certificates of Completion

The Authority shall prescribe the form and manner of issuance of ATAP student Certificates of Completion, which shall be deemed expired three years after the date of the classroom or online ATAP session for which they were granted.

§ 106.8 Disapproval and Requests for Reconsideration

In the event that any application or renewal application pursuant to this Part is disapproved by the Authority, the applicant may seek reconsideration of the determination by the Members of the Authority. Requests for reconsideration must be submitted in writing to: Secretary to the Authority, 80 South Swan Street, Suite 900, Albany, NY 12210-8002. Such requests shall then be reviewed by a Member of the Authority and the determination by the Member of the Authority thereon shall be considered a final determination of the Authority.

§ 106.9 Hearings

ATAP School Certificates of Approval may be revoked by the Authority for failure to adhere to the Authority's rules and regulations. Revocation hearings arising under this Part shall be conducted pursuant to Parts 53 and 54 of the Authority's rules and regulations (9 N.Y.C.R.R. Parts 53 and 54.)

Text of proposed rule and any required statements and analyses may be obtained from: Paul Karamanol, Senior Attorney, State Liquor Authority, 80 South Swan Street, Suite 900, Albany, NY 12210, (518) 486-6743, email: paul.karamanol@sla.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 statement is being submitted pursuant to subparagraph (i) of paragraph (b) of subdivision (1) of section 202 of the State Administrative Procedure Act and in support of the New York State Liquor Authority's ("Authority") Notice of Proposed Rulemaking seeking to add new Part 106 of Title 9, Subtitle B, of the Official Compilation of Codes, Rules and Regulations of the State of New York (N.Y.C.R.R.)

It is apparent from the nature and purpose of this proposed rule that no person is likely to object to its adoption as written as it would merely implement or conform to non-discretionary statutory provisions under the Alcoholic Beverage Control Law ("ABCL"), and is otherwise non-controversial in nature. Part 106.1 sets forth filing applicability of the new part to all Alcohol Training Awareness Program ("ATAP") school Certificates of Approval and student Certificates of Completion issued pursuant to the ABCL. Part 106.2 sets forth ATAP school application processes. Part 106.3 establishes minimum curriculum requirements for ATAP school applicants as required by the ABCL and merely restates policies that the SLA has long utilized and has been posted online for several years without industry objection. Part 106.4 sets forth the 14 day minimum notification for approved ATAP classroom sessions that the SLA has long utilized and has been posted online for several years without industry objection. Part 106.5 sets forth recordkeeping requirements for ATAP schools that the SLA has long utilized and has been posted online for several years without industry objection. Part 106.6 sets forth renewal processes for ATAP school Certificates of Approval that the SLA has long utilized and has been posted online for several years without industry objection. Part 106.7 establishes SLA authority for issuance of standard student Certificates of Completion by every ATAP school, as has long been SLA policy and has been posted online for several years without industry objection. Part 106.8 establishes administrative reconsideration request procedures for denied applicants and renewal applicants under this

part. Part 106.9 sets forth revocation hearing procedures as required by ABCL Sec. 18(10).

Consistent with the definition of "consensus rule" as set forth in section 102(11) of the State Administrative Procedure Act, the Authority has determined that this proposal would merely implement or conform to non-discretionary statutory provisions under the Alcoholic Beverage Control Law ("ABCL"), and is otherwise non-controversial in nature and, therefore, no person is likely to object to its adoption as written.

Job Impact Statement

The proposed new Part 106 of Title 9, Subtitle B, of the Official Compilation of Codes, Rules and Regulations of the State of New York (9 N.Y.C.R.R. 106) would implement or conform to non-discretionary statutory provisions under the Alcoholic Beverage Control Law (ABCL), and is otherwise non-controversial in nature. New Part 106 would merely codify via regulation statutory policies contained in the ABCL that the Authority has been implementing for years without industry objection. As a result, and because it is evident from the nature of the proposed new Part 106 that it will have no substantial impact on any private or public sector jobs or employment opportunities in New York, no further steps were needed to ascertain negative impacts to job opportunities and none were taken by the Authority. Accordingly, a full Job Impact Statement is not required for the proposed new Part 106 and none has been prepared.

Public Employment Relations Board

NOTICE OF ADOPTION

Rules of Procedure Governing Matters Before the Public Employment Relations Board Pursuant to Labor Law, Art. 20

I.D. No. PRB-42-15-00014-A

Filing No. 117

Filing Date: 2016-01-21

Effective Date: 2016-02-10

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

Action taken: Amendment of Parts 250-258 of Title 12 NYCRR.

Statutory authority: Labor Law, art. 20, as amended by L. 2010, ch. 56, part O; L. 2013, ch. 148

Subject: Rules of Procedure governing matters before the Public Employment Relations Board pursuant to Labor Law, art. 20.

Purpose: To conform procedure under SERA to the 2010 and 2013 statutory changes, and harmonize with PERB rules.

Substance of final rule: The following adopted amendments align 12 NYCRR IV (A) (Part 250, et seq.) with the State Employment Relations Act ("SERA") (Labor Law Art. 20, as amended by L. 2010, ch. 56, Part O and L. 2013, ch.148). Due to the statutory changes to SERA, which abolished the State Employment Relations Board and transferred jurisdiction over cases arising under SERA to the Public Employment Relations Board ("PERB"), the rules formerly codified at this Part, promulgated by the State Employment Relations Board, were no longer consistent with SERA, requiring amendment.

L. 2010, ch. 56, § 11, directs PERB to "undertake a comprehensive review of all such regulations and opinions, which will address the consistency of such regulations and opinions among each other and will propose any regulatory changes necessitated by such review."

As a result of PERB's comprehensive review, the revised rules as amended conform the rules of procedure under SERA to the statutory changes enacted in 2010 and 2013, and harmonize the procedure before PERB under SERA with that in cases brought under the Public Employees Fair Employment Act (Civil Service Law, Art. 14, commonly known as the "Taylor Law"). For example, the 2013 statutory amendment relieved PERB of the duty to investigate and prosecute unlawful practice claims against employers under SERA, and thus preserved PERB's neutrality and its ability to mediate and resolve cases. The former rules codified at this Part, superseded by the adopted amended rules, assume PERB will fulfill an investigative and prosecutorial role, and accordingly do not comport with SERA. Additionally, the amended rules simplify procedure and reduce confusion.

The full text of the adopted amendment to this Part were made available on PERB's website during the public comment period.

Final rule as compared with last published rule: Nonsubstantive changes were made in sections 251.1, 251.4, 251.5 and 253.10.

Text of rule and any required statements and analyses may be obtained from: John F. Wirenius, Public Employment Relations Board, P.O. Box 2074, Empire State Plaza, Agency Bldg. 2, 18th Flr., Albany, New York 12220-0074, (518) 457-2578, email: perbinfo@perb.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 Regulatory Impact Statement, Regulatory Flexibility Analysis, Rural Area Flexibility Analysis and Job Impact Statement. The changes made represent clarification of issues that do not impact the statement.

Initial Review of Rule

As a rule that requires a RFA, RAFA or JIS, this rule will be initially reviewed in the calendar year 2019, which is no later than the 3rd year after the year in which this rule is being adopted.

Assessment of Public Comment

A Notice of Revised Rule Making was published in the New York State Register on October 21, 2015. The New York State Public Employment Relations Board (PERB) received several comments during the public comment period associated with the revised rulemaking. The issues and concerns raised in these comments are set forth below:

Comment: One comment was received pointing out typographical errors and inconsistent use of the definite article before the acronym SERA (for State Employment Relations Act).

Response: PERB appreciates the helpful comment. The identified typographical errors were removed, and all uses of the definite article preceding the acronym SERA removed as well.

Comment: One comment was received suggesting that the manner of delivery of arbitration awards should be revised to include electronic mail as an acceptable means of delivery to the parties.

Response: PERB believes that the proposed rules provide for sufficient flexibility to permit the parties to agree to receive arbitration awards via electronic mail, and notes that not all parties appearing in cases governed under the rules are represented by counsel and/or sufficiently familiar with electronic receipt of documents for such to be the default means of delivery. No changes were made to the proposed regulations in response to this comment.

Public Service Commission

NOTICE OF ADOPTION

Relief from Public Benefit Surcharges

I.D. No. PSC-25-14-00015-A

Filing Date: 2016-01-21

Effective Date: 2016-01-21

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

Action taken: On 1/21/16, the PSC adopted an order denying Multiple Intervenors' (MI) petition for expeditious relief from existing public benefit surcharges.

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

Subject: Relief from public benefit surcharges.

Purpose: To deny MI's petition for relief from public benefit surcharges.

Substance of final rule: The Commission, on January 21, 2016, adopted an order denying Multiple Intervenors' (MI) petition for expeditious relief from the System Benefits Charge, the Energy Efficiency Portfolio Standard and the Renewable Portfolio Standard surcharge for its large industrial, commercial and institutional customers, 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: John Pitucci, Public Service Commission, Three Empire State Plaza, Albany, New York 12223, (518) 486-2655, email: john.pitucci@dps.ny.gov An IRS employer ID no. or social security no. is required from firms or persons to be billed 25 cents per page. Please use tracking number found on last line of notice in requests.

Assessment of Public Comment

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

(07-M-0548SA80)

NOTICE OF ADOPTION

Clean Energy Fund Proposal

I.D. No. PSC-41-14-00011-A
Filing Date: 2016-01-21
Effective Date: 2016-01-21

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

Action taken: On 1/21/16, the PSC adopted an order approving New York State Energy Research and Development Authority's (NYSERDA) Clean Energy Fund (CEF) as a ten year, $5.322 billion proposal.

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

Subject: Clean Energy Fund proposal.

Purpose: To approve NYSERDA's Clean Energy Fund proposal.

Substance of final rule: The Commission, on January 21, 2016, adopted an order approving New York State Energy Research and Development Authority's Clean Energy Fund as a ten year, $5.322 billion commitment to clean energy programs in New York State, 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: John Pitucci, Public Service Commission, Three Empire State Plaza, Albany, New York 12223, (518) 486-2655, email: john.pitucci@dps.ny.gov An IRS employer ID no. or social security no. is required from firms or persons to be billed 25 cents per page. Please use tracking number found on last line of notice in requests.

Assessment of Public Comment

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

(14-M-0094SA3)

NOTICE OF ADOPTION

Funding and Management of the NY-Sun Portfolio Contained in the CEF Proposal

I.D. No. PSC-41-14-00012-A
Filing Date: 2016-01-21
Effective Date: 2016-01-21

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

Action taken: On 1/21/16, the PSC adopted an order approving New York State Energy Research and Development Authority's (NYSERDA) funding and management of the NY-Sun portfolio contained in the Clean Energy Fund (CEF) Proposal.

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

Subject: Funding and management of the NY-Sun portfolio contained in the CEF Proposal.

Purpose: To approve the funding and management of the NY-Sun portfolio contained in the CEF Proposal.

Substance of final rule: The Commission, on January 21, 2016, adopted an order approving New York State Energy Research and Development Authority's funding and management of the NY-Sun portfolio contained in the Clean Energy Fund Proposal, 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: John Pitucci, Public Service Commission, Three Empire State Plaza, Albany, New York 12223, (518) 486-2655, email: john.pitucci@dps.ny.gov An IRS employer ID no. or social security no. is required from firms or persons to be billed 25 cents per page. Please use tracking number found on last line of notice in requests.

Assessment of Public Comment

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

(14-M-0094SA4)

NOTICE OF ADOPTION

Funding and Management of the NYGB Portfolio Contained in the CEF Proposal

I.D. No. PSC-41-14-00013-A
Filing Date: 2016-01-21
Effective Date: 2016-01-21

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

Action taken: On 1/21/16, the PSC adopted an order approving New York State Energy Research and Development Authority's (NYSERDA) funding and management of the New York Green Bank (NYGB) portfolio contained in the Clean Energy Fund (CEF) Proposal.

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

Subject: Funding and management of the NYGB portfolio contained in the CEF Proposal.

Purpose: To approve the funding and management of the NYGB portfolio contained in the CEF Proposal.

Substance of final rule: The Commission, on January 21, 2016, adopted an order approving New York State Energy Research and Development Authority's funding and management of the New York Green Bank portfolio contained in the Clean Energy Fund Proposal, 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: John Pitucci, Public Service Commission, Three Empire State Plaza, Albany, New York, 12223, (518) 486-2655, email: john.pitucci@dps.ny.gov An IRS employer ID no. or social security no. is required from firms or persons to be billed 25 cents per page. Please use tracking number found on last line of notice in requests.

Assessment of Public Comment

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

(14-M-0094SA5)

NOTICE OF ADOPTION

Funding and Management of the MD Portfolio Contained in the CEF Proposal

I.D. No. PSC-41-14-00014-A
Filing Date: 2016-01-16
Effective Date: 2016-01-16

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

Action taken: On 1/21/16, the PSC adopted an order approving New York State Energy Research and Development Authority's (NYSERDA) funding and management of the Market Development (MD) portfolio contained in the Clean Energy Fund (CEF) Proposal.

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

Subject: Funding and management of the MD portfolio contained in the CEF Proposal.

Purpose: To approve the funding and management of the MD portfolio contained in the CEF Proposal.

Substance of final rule: The Commission, on January 21, 2016, adopted an order approving New York State Energy Research and Development Authority's funding and management of the Market Development portfolio contained in the Clean Energy Fund Proposal, 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: John Pitucci, Public Service Commission, Three Empire State Plaza, Albany, New York, 12223, (518) 486-2655, email: john.pitucci@dps.ny.gov An IRS employer ID no. or social security no. is required from firms or persons to be billed 25 cents per page. Please use tracking number found on last line of notice in requests.

Assessment of Public Comment

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

(14-M-0094SA6)

NOTICE OF ADOPTION

Funding and Management of the I&R Portfolio Contained in the CEF Proposal

I.D. No. PSC-41-14-00015-A
Filing Date: 2016-01-21
Effective Date: 2016-01-21

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

Action taken: On 1/21/16, the PSC adopted an order approving New York State Energy Research and Development Authority's (NYSERDA) funding and management of the Innovation & Research (I&R) portfolio contained in the Clean Energy Fund (CEF) Proposal.

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

Subject: Funding and management of the I&R portfolio contained in the CEF Proposal.

Purpose: To approve the funding and management of the I&R portfolio contained in the CEF Proposal.

Substance of final rule: The Commission, on January 21, 2016, adopted an order approving New York State Energy Research and Development Authority's funding and management of the Innovation & Research portfolio contained in the Clean Energy Fund Proposal, 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: John Pitucci, Public Service Commission, Three Empire State Plaza, Albany, New York 12223, (518) 486-2655, email: john.pitucci@dps.ny.gov An IRS employer ID no. or social security no. is required from firms or persons to be billed 25 cents per page. Please use tracking number found on last line of notice in requests.

Assessment of Public Comment

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

(14-M-0094SA7)

NOTICE OF ADOPTION

Establishment of a BCA Framework for the REV Proceeding

I.D. No. PSC-29-15-00016-A
Filing Date: 2016-01-21
Effective Date: 2016-01-21

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

Action taken: On 1/21/16, the PSC adopted an order approving the establishment of a Benefit Cost Analysis (BCA) Framework for the Reforming the Energy Vision (REV) proceeding.

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

Subject: Establishment of a BCA Framework for the REV proceeding.

Purpose: To approve the establishment of a BCA Framework for the REV proceeding.

Substance of final rule: The Commission, on January 21, 2016, adopted an order approving the establishment of a Benefit Cost Analysis Framework for considering and evaluating proposals made within the scope of the Reforming the Energy Vision proceeding, 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: John Pitucci, Public Service Commission, Three Empire State Plaza, Albany, New York 12223, (518) 486-2655, email: john.pitucci@dps.ny.gov An IRS employer ID no. or social security no. is required from firms or persons to be billed 25 cents per page. Please use tracking number found on last line of notice in requests.

Assessment of Public Comment

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

(14-M-0101SA12)

NOTICE OF ADOPTION

Electric Utility Energy Efficiency Program Budgets and Targets Plan for 2016-2018

I.D. No. PSC-31-15-00004-A
Filing Date: 2016-01-22
Effective Date: 2016-01-22

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

Action taken: On 1/21/16, the PSC adopted an order approving Consolidated Edison Company of New York, Inc.'s (Con Ed) Electric Utility Energy Efficiency Program Budgets and Targets Plan for 2016-2018.

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

Subject: Electric Utility Energy Efficiency Program Budgets and Targets Plan for 2016-2018.

Purpose: To approve Con Ed's Electric Utility Energy Efficiency Program Budgets and Targets Plan for 2016-2018.

Substance of final rule: The Commission, on January 21, 2016, adopted an order approving Consolidated Edison Company of New York, Inc.'s Electric Utility Energy Efficiency Program Budgets and Targets Plan for 2016-2018, 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: John Pitucci, Public Service Commission, Three Empire State Plaza, Albany, New York 12223, (518) 486-2655, email: john.pitucci@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-M-0252SA3)

NOTICE OF ADOPTION

Gas Utility Energy Efficiency Program Budgets and Targets Plan for 2016-2018

I.D. No. PSC-31-15-00005-A
Filing Date: 2016-01-22
Effective Date: 2016-01-22

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

Action taken: On 1/21/16, the PSC adopted an order approving Central Hudson Gas and Electric Corporation's (Central Hudson) Gas Utility Energy Efficiency Program Budgets and Targets Plan for 2016-2018.

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

Subject: Gas Utility Energy Efficiency Program Budgets and Targets Plan for 2016-2018.

Purpose: To approve Central Hudson's Gas Utility Energy Efficiency Program Budgets and Targets Plan for 2016-2018.

Substance of final rule: The Commission, on January 21, 2016, adopted an order approving Central Hudson Gas and Electric Corporation's Gas Utility Energy Efficiency Program Budgets and Targets Plan for 2016-2018, 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: John Pitucci, Public Service Commission, Three Empire State Plaza, Albany, New York 12223, (518) 486-2655, email: john.pitucci@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-M-0252SA2)

NOTICE OF ADOPTION

Electric Utility Energy Efficiency Program Budgets and Targets Plan for 2016-2018

I.D. No. PSC-31-15-00006-A
Filing Date: 2016-01-22
Effective Date: 2016-01-22

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

Action taken: On 1/21/16, the PSC adopted an order approving Central Hudson Gas and Electric Corporation's (Central Hudson) Electric Utility Energy Efficiency Program Budgets and Targets Plan for 2016-2018.

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

Subject: Electric Utility Energy Efficiency Program Budgets and Targets Plan for 2016-2018.

Purpose: To approve Central Hudson's Electric Utility Energy Efficiency Program Budgets and Targets Plan for 2016-2018.

Substance of final rule: The Commission, on January 21, 2016, adopted an order approving Central Hudson Gas and Electric Corporation's Electric Utility Energy Efficiency Program Budgets and Targets Plan for 2016-2018, 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: John Pitucci, Public Service Commission, Three Empire State Plaza, Albany, New York 12223, (518) 486-2655, email: john.pitucci@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-M-0252SA1)

NOTICE OF ADOPTION

Gas Utility Energy Efficiency Program Budgets and Targets Plan for 2016-2018

I.D. No. PSC-31-15-00013-A
Filing Date: 2016-01-22
Effective Date: 2016-01-22

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

Action taken: On 1/21/16, the PSC adopted an order approving Consolidated Edison Company of New York, Inc.'s (Con Ed) Gas Utility Energy Efficiency Program Budgets and Targets Plan for 2016-2018.

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

Subject: Gas Utility Energy Efficiency Program Budgets and Targets Plan for 2016-2018.

Purpose: To approve Con Ed's Gas Utility Energy Efficiency Program Budgets and Targets Plan for 2016-2018.

Substance of final rule: The Commission, on January 21, 2016, adopted an order approving Consolidated Edison Company of New York, Inc.'s Gas Utility Energy Efficiency Program Budgets and Targets Plan for 2016-2018, 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: John Pitucci, Public Service Commission, Three Empire State Plaza, Albany, New York 12223, (518) 486-2655, email: john.pitucci@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-M-0252SA4)

NOTICE OF ADOPTION

Gas Utility Energy Efficiency Program Budgets and Targets Plan for 2016-2018

I.D. No. PSC-31-15-00014-A
Filing Date: 2016-01-22
Effective Date: 2016-01-22

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

Action taken: On 1/21/16, the PSC adopted an order approving Orange and Rockland Utilities, Inc.'s (O&R) Gas Utility Energy Efficiency Program Budgets and Targets Plan for 2016-2018.

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

Subject: Gas Utility Energy Efficiency Program Budgets and Targets Plan for 2016-2018.

Purpose: To approve O&R's Gas Utility Energy Efficiency Program Budgets and Targets Plan for 2016-2018.

Substance of final rule: The Commission, on January 21, 2016, adopted an order approving Orange and Rockland Utilities, Inc.'s Gas Utility Energy Efficiency Program Budgets and Targets Plan for 2016-2018, 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: John Pitucci, Public Service Commission, Three Empire State Plaza, Albany, New York 12223, (518) 486-2655, email: john.pitucci@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-M-0252SA10)

NOTICE OF ADOPTION

Gas Utility Energy Efficiency Program Budgets and Targets Plan for 2016-2018

I.D. No. PSC-31-15-00015-A
Filing Date: 2016-01-22
Effective Date: 2016-01-22

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

Action taken: On 1/21/16, the PSC adopted an order approving National Fuel Gas Distribution Corporation's (NFG) Gas Utility Energy Efficiency Program Budgets and Targets Plan for 2016-2018.

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

Subject: Gas Utility Energy Efficiency Program Budgets and Targets Plan for 2016-2018.

Purpose: To approve NFG's Gas Utility Energy Efficiency Program Budgets and Targets Plan for 2016-2018.

Substance of final rule: The Commission, on January 21, 2016, adopted an order approving National Fuel Gas Distribution Corporation's Gas Utility Energy Efficiency Program Budgets and Targets Plan for 2016-2018, 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: John Pitucci, Public Service Commission, Three Empire State Plaza, Albany, New York 12223, (518) 486-2655, email: john.pitucci@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-M-0252SA11)

NOTICE OF ADOPTION

Electric Utility Energy Efficiency Program Budgets and Targets Plan for 2016-2018

I.D. No. PSC-31-15-00016-A
Filing Date: 2016-01-22
Effective Date: 2016-01-22

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

Action taken: On 1/21/16, the PSC adopted an order approving Niagara Mohawk Power Corporation d/b/a National Grid's (Niagara Mohawk) Electric Utility Energy Efficiency Program Budgets and Targets Plan for 2016-2018.

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

Subject: Electric Utility Energy Efficiency Program Budgets and Targets Plan for 2016-2018.

Purpose: To approve Niagara Mohawk's Electric Utility Energy Efficiency Program Budgets and Targets Plan for 2016-2018.

Substance of final rule: The Commission, on January 21, 2016, adopted an order approving Niagara Mohawk Power Corporation d/b/a National Grid's Electric Utility Energy Efficiency Program Budgets and Targets Plan for 2016-2018, 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: John Pitucci, Public Service Commission, Three Empire State Plaza, Albany, New York 12223, (518) 486-2655, email: john.pitucci@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-M-0252SA5)

NOTICE OF ADOPTION

Electric Utility Energy Efficiency Program Budgets and Targets Plan for 2016-2018

I.D. No. PSC-31-15-00017-A
Filing Date: 2016-01-22
Effective Date: 2016-01-22

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

Action taken: On 1/21/16, the PSC adopted an order approving New York State Electric and Gas Corporation (NYSEG) and Rochester Gas and Electric Corporation's (RG&E) Electric Utility Energy Efficiency Program Budgets and Targets Plan for 2016-2018.

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

Subject: Electric Utility Energy Efficiency Program Budgets and Targets Plan for 2016-2018.

Purpose: To approve NYSEG and RG&E's Electric Utility Energy Efficiency Program Budgets and Targets Plan for 2016-2018.

Substance of final rule: The Commission, on January 21, 2016, adopted an order approving New York State Electric and Gas Corporation and Rochester Gas and Electric Corporation's Electric Utility Energy Efficiency Program Budgets and Targets Plan for 2016-2018, 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: John Pitucci, Public Service Commission, Three Empire State Plaza, Albany, New York, 12223, (518) 486-2655, email: john.pitucci@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-M-0252SA7)

NOTICE OF ADOPTION

Gas Utility Energy Efficiency Program Budgets and Targets Plan for 2016-2018

I.D. No. PSC-31-15-00018-A
Filing Date: 2016-01-22
Effective Date: 2016-01-22

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

Action taken: On 1/21/16, the PSC adopted an order approving New York State Electric and Gas Corporation (NYSEG) and Rochester Gas and Electric Corporation's (RG&E) Gas Utility Energy Efficiency Program Budgets and Targets Plan for 2016-2018.

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

Subject: Gas Utility Energy Efficiency Program Budgets and Targets Plan for 2016-2018.

Purpose: To approve NYSEG and RG&E's Gas Utility Energy Efficiency Program Budgets and Targets Plan for 2016-2018.

Substance of final rule: The Commission, on January 21, 2016, adopted an order approving New York State Electric and Gas Corporation and Rochester Gas and Electric Corporation's Gas Utility Energy Efficiency Program Budgets and Targets Plan for 2016-2018, 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: John Pitucci, Public Service Commission, Three Empire State Plaza, Albany, New York, 12223, (518) 486-2655, email: john.pitucci@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-M-0252SA8)

NOTICE OF ADOPTION

Electric Utility Energy Efficiency Program Budgets and Targets Plan for 2016-2018

I.D. No. PSC-31-15-00019-A
Filing Date: 2016-01-22
Effective Date: 2016-01-22

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

Action taken: On 1/21/16, the PSC adopted an order approving Orange and Rockland Utilities, Inc.'s (O&R) Electric Utility Energy Efficiency Program Budgets and Targets Plan for 2016-2018.

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

Subject: Electric Utility Energy Efficiency Program Budgets and Targets Plan for 2016-2018.

Purpose: To approve O&R's Electric Utility Energy Efficiency Program Budgets and Targets Plan for 2016-2018.

Substance of final rule: The Commission, on January 21, 2016, adopted an order approving Orange and Rockland Utilities, Inc.'s Electric Utility Energy Efficiency Program Budgets and Targets Plan for 2016-2018, 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: John Pitucci, Public Service Commission, Three Empire State Plaza, Albany, New York 12223, (518) 486-2655, email: john.pitucci@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-M-0252SA9)

NOTICE OF ADOPTION

Gas Utility Energy Efficiency Program Budgets and Targets Plan for 2016-2018

I.D. No. PSC-31-15-00020-A
Filing Date: 2016-01-22
Effective Date: 2016-01-22

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

Action taken: On 1/21/16, the PSC adopted an order approving Niagara Mohawk Power Corporation d/b/a National Grid et. al.'s (Niagara Mohawk) Gas Utility Energy Efficiency Program Budgets and Targets Plan for 2016-2018.

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

Subject: Gas Utility Energy Efficiency Program Budgets and Targets Plan for 2016-2018.

Purpose: To approve Niagara Mohawk, et. al.'s Gas Utility Energy Efficiency Program Budgets and Targets Plan for 2016-2018.

Substance of final rule: The Commission, on January 21, 2016, adopted an order approving Niagara Mohawk Power Corporation d/b/a National Grid, KeySpan Gas East Corporation d/b/a National Grid and The Brooklyn Union Gas Company d/b/a National Grid's Gas Utility Energy Efficiency Program Budgets and Targets Plan for 2016-2018, 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: John Pitucci, Public Service Commission, Three Empire State Plaza, Albany, New York 12223, (518) 486-2655, email: john.pitucci@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-M-0252SA6)

NOTICE OF ADOPTION

Deferral of Incremental Storm Restoration Expense

I.D. No. PSC-35-15-00009-A
Filing Date: 2016-01-22
Effective Date: 2016-01-22

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

Action taken: On 1/21/16, the PSC adopted an order approving Central Hudson Gas and Electric Corporation (Central Hudson) to defer $5,284,073 of incremental storm restoration expense resulting from the 2014 Thanksgiving Storm.

Statutory authority: Public Service Law, sections 4(1), 65, 66(1), (9) and (12)

Subject: Deferral of incremental storm restoration expense.

Purpose: To approve Central Hudson's deferral of incremental storm restoration expense.

Substance of final rule: The Commission, on January 21, 2016, adopted an order approving Central Hudson Gas and Electric Corporation to defer $5,284,073 of incremental storm restoration expense resulting from the 2014 Thanksgiving Storm, 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: John Pitucci, Public Service Commission, Three Empire State Plaza, Albany, New York, 12223, (518) 486-2655, email: john.pitucci@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-0464SA1)

NOTICE OF ADOPTION

Issuance of Securities

I.D. No. PSC-37-15-00012-A
Filing Date: 2016-01-21
Effective Date: 2016-01-21

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

Action taken: On 1/21/16, the PSC adopted an order authorizing Corning Natural Gas Corporation (Corning) to issue up to $11,015,429 million of new long-term debt and enter into up to a $17.4 million debt consolidation loan no later than December 31, 2017.

Statutory authority: Public Service Law, section 69

Subject: Issuance of securities.

Purpose: To authorize Corning to issue long-term debt and enter into a consolidation loan.

Substance of final rule: The Commission, on January 21, 2016, adopted an order authorizing Corning Natural Gas Corporation to issue up to $11,015,429 million of new long-term debt and enter into up to a $17.4 million debt consolidation loan no later than December 31, 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: John Pitucci, Public Service Commission, Three Empire State Plaza, Albany, New York 12223, (518) 486-2655, email: john.pitucci@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-0460SA1)

NOTICE OF ADOPTION

Storm Hardening and Resiliency Collaborative Phase Three Report

I.D. No. PSC-38-15-00007-A
Filing Date: 2016-01-25
Effective Date: 2016-01-25

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

Action taken: On 1/21/16, the PSC adopted an order approving Consolidated Edison Company of New York, Inc.'s (Con Ed) Storm Hardening and Resiliency Collaborative Phase Three Report.

Statutory authority: Public Service Law, sections 4(1), 5(1), 65(1), (14), 66(1), (1-a), (2), (4), (12), 79(1), 80(1), (2), (3), (4) and (10)

Subject: Storm Hardening and Resiliency Collaborative Phase Three Report.

Purpose: To approve Con Ed's Storm Hardening and Resiliency Collaborative Phase Three Report.

Substance of final rule: The Commission, on January 21, 2016, adopted an order approving Consolidated Edison Company of New York, Inc.'s Storm Hardening and Resiliency Collaborative Phase Three Report, 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: John Pitucci, Public Service Commission, Three Empire State Plaza, Albany, New York 12223, (518) 486-2655, email: john.pitucci@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.

(13-E-0030SA10)

NOTICE OF ADOPTION

Amendments to P.S.C. No. 3 — Electricity, General Information Section No. 15 — Market Supply Charge

I.D. No. PSC-39-15-00013-A
Filing Date: 2016-01-25
Effective Date: 2016-01-25

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

Action taken: On 1/21/16, the PSC adopted an order approving Orange and Rockland Utilities Inc.'s (O&R) tariff amendments to P.S.C. No. 3 — Electricity, General Information Section No. 15 — Market Supply Charge.

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

Subject: Amendments to P.S.C. No. 3 — Electricity, General Information Section No. 15 — Market Supply Charge.

Purpose: To approve O&R's amendments to P.S.C. No. 3 — Electricity, General Information Section No. 15 — Market Supply Charge.

Substance of final rule: The Commission, on January 21, 2016, adopted an order approving Orange and Rockland Utilities Inc.'s tariff amendments to P.S.C. No. 3 — Electricity, General Information Section No. 15 — Market Supply Charge, 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: John Pitucci, Public Service Commission, Three Empire State Plaza, Albany, New York 12223, (518) 486-2655, email: john.pitucci@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-0519SA1)

NOTICE OF ADOPTION

Amendments to P.S.C. No. 10 — Electricity, General Rule No. 25.1 — Market Supply Charge

I.D. No. PSC-39-15-00014-A
Filing Date: 2016-01-25
Effective Date: 2016-01-25

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

Action taken: On 1/21/16, the PSC adopted an order approving Consolidated Edison Company of New York, Inc.'s (Con Ed) tariff amendments to P.S.C. No. 10 — Electricity, General Rule No. 25.1 — Market Supply Charge.

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

Subject: Amendments to P.S.C. No. 10 — Electricity, General Rule No. 25.1 — Market Supply Charge.

Purpose: To approve Con Ed's amendments to P.S.C. No. 10 — Electricity, General Rule No. 25.1 — Market Supply Charge.

Substance of final rule: The Commission, on January 21, 2016, adopted an order approving Consolidated Edison Company of New York, Inc.'s tariff amendments to P.S.C. No. 10 — Electricity, General Rule No. 25.1 — Market Supply Charge, 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: John Pitucci, Public Service Commission, Three Empire State Plaza, Albany, New York 12223, (518) 486-2655, email: john.pitucci@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-0518SA1)

NOTICE OF ADOPTION

Tariff Amendments Establishing GIS 45 — EZ Rate Contained in P.S.C. No. 15 — Electricity

I.D. No. PSC-41-15-00006-A
Filing Date: 2016-01-22
Effective Date: 2016-01-22

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

Action taken: On 1/21/16, the PSC adopted an order approving Central Hudson Gas and Electric Corporation's (Central Hudson) tariff amendments establishing General Information Section (GIS) 45 — Empire Zone (EZ) Rate contained in P.S.C. No. 15 — Electricity.

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

Subject: Tariff amendments establishing GIS 45 — EZ Rate contained in P.S.C. No. 15 — Electricity.

Purpose: To approve Central Hudson's tariff amendments establishing GIS 45 — EZ Rate contained in P.S.C. No. 15 — Electricity.

Substance of final rule: The Commission, on January 21, 2016, adopted an order approving Central Hudson Gas and Electric Corporation's amendments establishing General Information Section 45 — Empire Zone Rate contained in P.S.C. No. 15 — Electricity, 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: John Pitucci, Public Service Commission, Three Empire State Plaza, Albany, New York 12223, (518) 486-2655, email: john.pitucci@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-0569SA1)

NOTICE OF ADOPTION

Petition to Defer Lost Revenues from Implementing the EZ Rate

I.D. No. PSC-41-15-00008-A
Filing Date: 2016-01-22
Effective Date: 2016-01-22

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

Action taken: On 1/21/16, the PSC adopted an order approving Central Hudson Gas and Electric Corporation's (Central Hudson) petition to defer lost revenues from implementing the Empire Zone (EZ) Rate.

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

Subject: Petition to defer lost revenues from implementing the EZ Rate.

Purpose: To approve Central Hudson's petition to defer lost revenues from implementing the EZ Rate.

Substance of final rule: The Commission, on January 21, 2016, adopted an order approving Central Hudson Gas and Electric Corporation's petition to defer lost revenues from implementing the Empire Zone Rate, 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: John Pitucci, Public Service Commission, Three Empire State Plaza, Albany, New York, 12223, (518) 486-2655, email: john.pitucci@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-0569SA2)

NOTICE OF ADOPTION

Modifications to the DLC and RSAP Programs

I.D. No. PSC-44-15-00029-A
Filing Date: 2016-01-25
Effective Date: 2016-01-25

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

Action taken: On 1/21/16, the PSC adopted an order approving Consolidated Edison Company of New York, Inc.'s (Con Ed) modifications to the Direct Load Control (DLC) and Residential Small Appliance (RSAP) Programs.

Statutory authority: Public Service Law, sections 65(1), 66(1) and (12)

Subject: Modifications to the DLC and RSAP Programs.

Purpose: To approve Con Ed's modifications to the DLC and RSAP Programs.

Substance of final rule: The Commission, on January 21, 2016, adopted an order approving Consolidated Edison Company of New York, Inc.'s modifications to the Direct Load Control Program and Residential Small Appliance Program, hereafter referred to as the Connected Devices Pilot 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: John Pitucci, Public Service Commission, Three Empire State Plaza, Albany, New York 12223, (518) 486-2655, email: john.pitucci@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-0593SA1)

PROPOSED RULE MAKING
NO HEARING(S) SCHEDULED

Transfer of Water Supply Assets

I.D. No. PSC-06-16-00007-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 January 14, 2016 by Suez Water Owego-Nichols Inc. and Northeast Water Services for approval of a transfer of assets.

Statutory authority: Public Service Law, section 89-h

Subject: Transfer of water supply assets.

Purpose: To consider the sale of water supply assets of Northeast Water Services to Suez Water Owego-Nichols, Inc.

Text of proposed rule: The Public Service Commission is considering a joint petition filed January 14, 2016 by Suez Water Owego-Nichols, Inc. (Suez) and Northeast Water Services, which includes Forest Park Water Company Inc., Hilltop Meadows Water-Works Corp., and Misty Hill Water Corporation, for Approval of a Transfer of Assets Pursuant to Section 89-h of the Public Service Law. Suez currently provides water service and fire protection to approximately 1,669 customers in Owego and the Village and parts of the Town of Nichols. Northeast Water Services (the Companies) consists of 14 separate water systems that provide both metered and unmetered water service to approximately 974 customers. The Companies provide water service in the Town of Carmel, the Town of Southeast, including Hilltop Meadows Subdivision on Tonetta Lake Road and North Brewster Road, and the Development of Misty Hills in the Town of Patterson, Putnam County, and the Town of Lewisboro, Westchester County. The Companies do 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.

(16-W-0017SP1)

PROPOSED RULE MAKING
NO HEARING(S) SCHEDULED

Notice of Intent to Submeter Electricity

I.D. No. PSC-06-16-00008-P

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

Proposed Action: The Public Service Commission is considering the Notice of Intent, filed by 31 Lincoln Road Development LLC, to submeter electricity at 31-33 Lincoln Road, Brooklyn, New York 11225.

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

Subject: Notice of Intent to submeter electricity.

Purpose: To consider the Notice of Intent of 31 Lincoln Road Development LLC to submeter electricity at 31-33 Lincoln Road, Brooklyn, NY.

Substance of proposed rule: The Commission is considering the Notice of Intent, filed by 31 Lincoln Road Development LLC on January 7, 2016, to submeter electricity at 31-33 Lincoln Road, Brooklyn, New York, located in the service territory of Consolidated Edison Company of New York, Inc. 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.

(16-E-0011SP1)

PROPOSED RULE MAKING
NO HEARING(S) SCHEDULED

Minor Water Rate Filing

I.D. No. PSC-06-16-00009-P

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

Proposed Action: The Commission is considering a proposal filed by Rainbow Water Company, Inc. to increase its rates by approximately $16,248 or 20.7% to become effective July 1, 2016.

Statutory authority: Public Service Law, sections 4(1), 5(1)(f), 89-c(1), (3), (10)(a), (b) and (f)

Subject: Minor water rate filing.

Purpose: To consider an increase in Rainbow Water Company, Inc.'s annual water revenues by approximately $16,248 or 20.7%.

Substance of proposed rule: The Commission is considering a proposal filed by Rainbow Water Company, Inc. (Company) to increase its total annual revenues by approximately $16,248 or 20.7% with an effective date of July 1, 2016. The Company states the rate increase is necessary due to increases in operating expenses, most importantly: taxes, power, salaries, maintenance, insurance and water testing. These expenses have increased

significantly since the current rates went into effect on January 1, 2007. The Company is also requesting approval to increase its escrow account, from $8,640 to $14,400. According to the Company, the proposed increase in funding allows it to request a lower maintenance expense level and allow the Company to better manage its operations. In addition, the Company is requesting approval to combine both Rainbow Water Company, Inc. and Sunrise Ridge Water Company under one tariff and one escrow account (Rainbow Water Company, Inc.'s P.S.C. No. 3 – Water). The Commission may adopt, reject or modify, in whole or in part, the relief sought by the Company and may also 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.

(16-W-0019SP1)

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Lakewood Disputes National Grid's Revenue Assurance Calculations, Specifically the Duration Used

I.D. No. PSC-06-16-00010-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 Lakewood Products, Inc. against Niagara Mohawk Power Corporation d/b/a National Grid (National Grid) in regards to revenue assurance calculations for a new interconnection to serve incremental load.

Statutory authority: Public Service Law, sections 65 and 66

Subject: Lakewood disputes National Grid's revenue assurance calculations, specifically the duration used.

Purpose: To consider whether the revenue assurance National Grid is requiring of Lakewood for the new interconnection is appropriate.

Substance of proposed rule: The Public Service Commission is considering a petition filed on November 19, 2015 by Lakewood Products, Inc. regarding a revenue assurance calculation for a new interconnection to be constructed to accommodate the increased load. Lakewood disputes the revenue assurance requirement, specifically the contract duration, as calculated by Niagara Mohawk Power Corporation d/b/a National Grid (Company). The Commission will review the revenue assurance calculations to determine if the calculations are consistent with the Company's tariff. The Commission may grant, reject or modify, in whole or in part, the petition request 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-0500SP2)

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Continuation of Lightened Regulation for Electric Generating Plant

I.D. No. PSC-06-16-00011-P

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

Proposed Action: The Commission is considering a Verified Petition by AG-Energy LP for an order continuing a lightened regulatory regime.

Statutory authority: Public Service Law, sections 2(13), 5(1)(b), 68(1) and 70

Subject: Continuation of lightened regulation for electric generating plant.

Purpose: To consider the continuation of lightened regulation for electric generating plant.

Substance of proposed rule: The New York State Public Service Commission (Commission) is considering a Verified Petition filed by AG-Energy, L.P. (AG-Energy) on January 21, 2016. In its Verified Petition, AG-Energy proposes to restart an existing 81.588 MW electric generation facility (the Facility) located in Ogdensburg, New York. AG-Energy requests that the Commission continue the existing lightened regulatory regime applicable to the Facility so that the company may resume commercial operations there. AG-Energy also requests that the Commission issue a Certificate of Public Convenience and Necessity pursuant to Section 68(1) of the Public Service Law. 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.

(16-E-0033SP1)

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Inclusion of a Farm and Food Community Program in the Community Distributed Generation Program

I.D. No. PSC-06-16-00012-P

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

Proposed Action: The Commission is considering a Petition filed by Vanguard Renewables to include a Farm and Food Community program reliant on anaerobic digesters within the community distributed generation program.

Statutory authority: Public Service Law, sections 2(2-b), (13), 5(1)(b) and 66-j

Subject: Inclusion of a Farm and Food Community program in the community distributed generation program.

Purpose: To consider the inclusion of a Farm and Food Community program in the community distributed generation program.

Substance of proposed rule: The New York State Public Service Commission (Commission) is considering a Petition filed by Vanguard Renewables on January 14, 2016 requesting that the Commission establish a Farm and Food Community program reliant on anaerobic digesters within the community distributed generation program established by order issued on July 17, 2015 in Case 15-E-0082. 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-0082SP3)

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Continued Deferral of Approximately $16,000,000 in Site Investigation and Remediation Costs

I.D. No. PSC-06-16-00013-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 report filed by Orange and Rockland Utilities, Inc. regarding continued deferral of approximately $16,000,000 in site investigation and remediation costs.

Statutory authority: Public Service Law, sections 65 and 66

Subject: Continued deferral of approximately $16,000,000 in site investigation and remediation costs.

Purpose: To consider the continued deferral of approximately $16,000,000 in site investigation and remediation costs.

Substance of proposed rule: The Public Service Commission (Commission) is considering the report filed by Orange and Rockland Utilities, Inc. (O&R) on December 15, 2015. The report provides O&R's explanation of recently concluded litigation with Travelers Indemnity Co. (Travelers) regarding O&R's claims for insurance recovery related to site investigation and remediation (SIR) of pollution from manufactured gas plant sites. In the report, O&R asserts that it should not be penalized for the outcome of the litigation, which forecloses O&R from recovering a maximum of $16,000,000 in SIR costs from Travelers. The report was filed in response to the Commission's Order Adopting Terms of Joint Proposal and Establishing Electric and Gas Rate Plans, issued on October 16, 2015 in Cases 14-E-0493 and 14-G-0494, in which the Commission stated that "continued deferral of the SIR costs should only be allowed for a limited time to allow O&R "to make a filing, by December 15, 2015, explaining why the SIR costs that were the subject of the litigation over insurance coverage should be recovered through rates." The Commission may adopt, reject or modify, in whole or in part, the proposal by O&R, that O&R's SIR deferral balance continue to include rate recovery of the approximately $16,000,000, or may reduce O&R's SIR deferral balance by all or a portion of the approximately $16,000,000 that was the subject of the litigation with Travelers. The Commission may also 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-E-0493SP2)

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

MEGA's Proposed Demonstration CCA Program

I.D. No. PSC-06-16-00014-P

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

Proposed Action: The Commission is considering a petition filed by the Municipal Electric and Gas Alliance (MEGA) for approval of a demonstration Community Choice Aggregation (CCA) program.

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

Subject: MEGA's proposed demonstration CCA program.

Purpose: To consider MEGA's proposed demonstration CCA program.

Substance of proposed rule: The Public Service Commission is considering the Municipal Electric and Gas Alliance's (MEGA) Petition for Approval of a Two-Year Demonstration Community Choice Aggregation (CCA) Program, filed January 12, 2016. The Petition requests that the Commission authorize MEGA to operate a demonstration CCA program with characteristics as described in the Petition and its Exhibits. The Commission may adopt, reject or modify, in whole or in part, the relief requested 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.

(16-M-0015SP1)

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Notice of Intent to Submeter Electricity

I.D. No. PSC-06-16-00015-P

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

Proposed Action: The Public Service Commission is considering the Notice of Intent, filed by 31 Lincoln Road Development LLC, to submeter electricity at 510 Flatbush Avenue, Brooklyn, New York 11225.

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

Subject: Notice of Intent to submeter electricity.

Purpose: To consider the Notice of Intent of 31 Lincoln Road Development LLC to submeter electricity at 510 Flatbush Ave., Brooklyn, NY.

Substance of proposed rule: The Commission is considering the Notice of Intent, filed by 31 Lincoln Road Development LLC on January 7, 2016, to submeter electricity at 510 Flatbush Avenue, Brooklyn, New York, located in the service territory of Consolidated Edison Company of New York, Inc. 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.
(16-E-0010SP1)

Office of Temporary and Disability Assistance

EMERGENCY/PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Emergency Shelters

I.D. No. TDA-06-16-00016-EP
Filing No. 127
Filing Date: 2016-01-26
Effective Date: 2016-01-26

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

Proposed Action: Addition of section 352.37 to Title 18 NYCRR.

Statutory authority: Social Services Law, sections 17(a)-(b), (i), 20(2)-(3), 34, 460-c and 460-d; Executive Law, section 43(1); General Municipal Law, section 34; State Finance Law, section 109(4); New York City Charter, section 93; and Buffalo City Charter, ch. C, art. 7, section 7-4

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

Specific reasons underlying the finding of necessity: The Office of Temporary and Disability Assistance (OTDA) finds that immediate adoption of the rule is necessary for the preservation of the public health, public safety, and general welfare and, specifically, to assure that residents of emergency shelters are not subject to unhealthy or imminently dangerous conditions. The regulatory amendments would establish protections for residents of emergency shelters by clarifying OTDA's statutory authority to impose immediate emergency measures to address emergency shelters determined to be dangerous, hazardous, or imminently detrimental to the health, safety, and general welfare of residents. Recent inspections and visits conducted at a significant number of emergency shelters by officials from OTDA have confirmed that dangerous or unsanitary conditions have existed at some of these placements for sustained periods of time. Failing to expand OTDA's oversight in this area would endanger the health, safety and welfare of such residents. The rule will help ensure that emergency shelters are maintained in safer, more sanitary conditions, and that the welfare of residents is better protected than under current requirements. In the absence of this new rule, inspections have revealed that some operators have permitted their emergency shelters to deteriorate to a point where dangerous conditions exist. Under these circumstances, OTDA asserts that proposing this rule only as a "regular rule making" as provided by the State Administrative Procedure Act (SAPA) should not be required because to do so would be detrimental to the health and general welfare of the residents of these emergency shelters while permitting public funds to be expended to maintain conditions that are both dangerous and unhealthy. Recent investigations have confirmed such conditions and have underscored the imperative of acting quickly to assure that residents of these placements are safe and protected from unhealthy and dangerous conditions. Without this emergency regulation, some emergency shelters will simply maintain the status quo, thereby endangering individuals, families and children.

Subject: Emergency shelters.

Purpose: Emergency measures concerning shelters.

Text of emergency/proposed rule: New section 352.37 of Title 18 of the NYCRR is added to read as follows:

§ 352.37 Emergency Measures Concerning Shelters for the Homeless.

When the Office of Temporary and Disability Assistance (the Office) has knowledge, or has been advised, by announced or unannounced inspections, audits, or other methods with respect to emergency shelter made by any state or local entity authorized to conduct inspections or audits, including the Office and state or local Comptrollers, that there exists a violation of law, regulation, or code with respect to a building that provides emergency shelter to homeless persons, in which there are conditions that are dangerous, hazardous, imminently detrimental to life or health, or otherwise render the building not fit for human habitation, the Office may impose, with respect to all emergency shelters, immediate emergency measures, including, but not limited to: requiring the facility to take immediate measures to rectify any deficiencies, violations, or conditions; requiring additional security; directing the transfer of its residents to other temporary emergency housing; directing the social services district to cancel its operating contract and retain a new operator; seeking a receivership; or directing closure of the facility.

Nothing shall be construed as limiting the Office from taking additional enforcement action, including, but not limited to: limitation, suspension, or revocation of the facility's operating certificate; investigation and directing modifications to the operating certificate; appointment of a receiver; imposition of daily fines; legal actions against the social services district; withholding reimbursement of payments made under Part 352 of this Title; and withholding of reimbursement payments pursuant to statute and Parts 485 and 900 of this Title.

The Office is authorized to conduct unannounced inspections at any hour, without prior knowledge by or notification to either the shelter, operator, or the social services district. Interference with an inspection, refusal to allow admission, delay in allowing admission, or refusal to provide complete access to the facility will be deemed to be a violation and a basis to direct the immediate suspension of the shelter contract and operating agreement and/or immediate cessation of the social services district's reimbursement and operating authority. State and local Comptrollers, in inspecting, auditing, or reviewing emergency shelters are authorized, as agents of the Office, to take all actions set forth in this section.

This notice is intended: to serve as both a notice of emergency adoption and a notice of proposed rule making. The emergency rule will expire April 24, 2016.

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

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

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

Regulatory Impact Statement

1. Statutory Authority:

Social Services Law (SSL) § 17(a)-(b) and (i) provide, in part, that the Commissioner of the Office of Temporary and Disability Assistance (OTDA) shall "determine the policies and principles upon which public assistance, services and care shall be provided within the [S]tate both by the [S]tate itself and by the local governmental units …", shall "make known his policies and principles to local social services officials and to public and private institutions and welfare agencies subject to his regulatory and advisory powers …", and shall "exercise such other powers and perform such other duties as may be imposed by law."

SSL § 20(2) provides, in part, that the OTDA shall "supervise all social services work, as the same may be administered by any local unit of government and the social services officials thereof within the state, advise them in the performance of their official duties and regulate the financial assistance granted by the state in connection with said work." Pursuant to SSL § 20(3)(d) and (e), OTDA is authorized to promulgate rules, regulations, and policies to fulfill its powers and duties under the SSL and "to withhold or deny State reimbursement, in whole or in part, from or to any social services district [SSD] or any city or town thereof, in the event of their failure to comply with law, rules or regulations of [OTDA] relating to public assistance and care or the administration thereof."

SSL § 34(3)(c) requires OTDA's Commissioner to "take cognizance of the interests of health and welfare of the inhabitants of the [S]tate who lack or are threatened with the deprivation of the necessaries of life and of all matters pertaining thereto." Pursuant to SSL § 34(3)(f), OTDA's Commissioner must establish regulations for the administration of public assistance and care within the State by the SSDs and by the State itself, in accordance with the law. In addition, pursuant to SSL § 34(3)(d), OTDA's Commissioner must exercise general supervision over the work of all SSDs, and SSL § 34(3)(e) provides that OTDA's Commissioner must enforce the SSL and the State regulations within the State and in the local governmental units. Pursuant to SSL § 34(6), OTDA's Commissioner "may exercise such additional powers and duties as may be required for the effective administration of the department and of the [S]tate system of public aid and assistance."

SSL § 460-c confers authority upon OTDA to "inspect and maintain supervision over all public and private facilities or agencies whether [S]tate, county, municipal, incorporated or not incorporated which are in

receipt of public funds," which includes emergency shelters. SSL § 460-d confers enforcement powers upon the OTDA Commissioner, or any person designated by the OTDA Commissioner, to "undertake an investigation of the affairs and management of any facility subject to the inspection and supervision provision of this article, or of any person, corporation, society, association or organization which operates or holds itself out as being authorized to operate any such facility, or of the conduct of any officers or employers of any such facility."

Executive Law § 43(1) provides that ''[w]henever the comptroller may deem it necessary to enable him to perform the duties imposed upon him by law with regard to the inspection, examination and audit of the fiscal affairs of the state or of the several officers, departments, institutions, public corporations or political subdivisions thereof, he may assign the work of such inspection, audit and examination to any examiner or examiners appointed by him pursuant to law." The authority to ''inspect, examine and audit'' the fiscal affairs of political subdivisions would include investigating where and how funds administered by county agencies are spent.

General Municipal Law § 34 specifically provides that the comptroller has the authority to examine the financial affairs of every municipal corporation. Under General Municipal Law § 2, the term ''municipal corporation'' includes a county, a town, a city or a village.

State Finance Law § 109 (4) provides that "[t]he comptroller shall not approve for payment any expenditure from any fund except upon audit of such vouchers or other documents as are necessary to insure that such payment is lawful and proper.''

New York City Charter § 93 provides that the City comptroller has the power to "investigate all matters relating to or affecting the finances of the city, including without limitation the performance of contracts and the receipt and expenditure of city funds"; conduct "audits of entities under contract with the city as expeditiously as possible"; and "audit the operations and programs of city agencies to determine whether funds are being expended or utilized efficiently and economically and whether the desired goals, results or benefits of agency programs are being achieved."

Section 7-4 of Article 7 of Chapter C of the Buffalo City Charter provides that the City comptroller has "the power to conduct financial and performance audits of all agencies and other entities a majority of whose members are appointed by city officials or that derive at least fifty percent of their revenue, including the provision of goods, services, facilities or utilities, from the city." The City comptroller also has "the power to conduct performance audits of all bureaus, offices, departments, boards, commissions, activities, functions, programs, agencies and other entities or services of the city… to determine whether their activities and programs are: (i) conducted in compliance with applicable law and regulation; and (ii) conducted efficiently and effectively to accomplish their intended objectives."

2. Legislative Objectives:

It is the intent of the Legislature in enacting the above statutes that OTDA establish rules, regulations, and policies to provide for the health, safety and general welfare of vulnerable families and individuals who are placed in emergency shelters.

3. Needs and Benefits:

In response to numerous problematic reports concerning the health and safety of public assistance recipients residing in New York City's emergency shelters, OTDA has taken action to inspect these placements and to establish remedial protocols for SSDs so that these health and safety issues can be addressed immediately. These regulatory amendments would provide OTDA the authority when it has knowledge, or has been advised by an appropriate source, that there exists a violation of law, regulation, or code with respect to an emergency shelter which is dangerous, hazardous, or imminently detrimental to life or health, or otherwise renders the building not fit for human habitation, to impose immediate emergency measures. OTDA may take, but is not limited to, the following actions: requiring the facility to take immediate measures to rectify any deficiencies, violations, or conditions; requiring additional security; directing the transfer of its residents to other temporary emergency housing; directing the SSD to cancel its operating contract and retain a new operator; seeking a receivership; or directing closure of the facility.

These regulatory amendments clarify that OTDA is authorized to conduct unannounced inspections at any hour without prior knowledge by or notification to either the shelter, operator, or the SSD. Interference with an inspection, refusal to allow admission, delay in allowing admission, or refusal to provide complete access to the facility will be deemed to be a violation and a basis to direct the immediate suspension of the shelter contract and operating agreement and/or immediate cessation of the SSD's reimbursement and operating authority. State and local Comptrollers, in inspecting, auditing, or reviewing emergency shelters are authorized, as agents of OTDA, to take all actions set forth in this section.

These regulatory amendments are necessary to protect vulnerable, low-income individuals and families who have limited or no housing options and have placed their trust and well-being in a system that should help ensure that these persons have acceptable accommodations during their difficult times.

Additionally, these individuals and families are being placed in emergency shelters at great expense to the taxpayers of New York, who care about the needs of these people and want to help ensure that funds used to house these individuals and families provide safe, quality housing. It is important for OTDA and the SSDs to be fiscally prudent and to help ensure that State, federal and local funds are properly used when housing homeless individuals and families.

The regulatory amendments will allow OTDA full authority to take immediate action against facilities and SSDs that are not providing emergency shelters that comport with prescribed standards.

4. Costs:

An additional 25 Center for Specialized Services staff members will be needed to implement these regulations. It is estimated that the cost to the State will be approximately $2,181,473, not including fringe benefits or indirect costs.

The regulatory amendments will have a minimal impact on emergency shelters that are currently in compliance with existing health and safety standards. The regulatory amendments are merely attempting to correct violations under existing health and safety standards. Therefore, the cost to local governments will depend on their abilities to comply with these standards.

5. Local Government Mandates:

Local governments will be responsible for ensuring that the emergency shelters operating within their localities are in compliance with existing health and safety standards. If they are not, the local governments will be required to identify and/or provide suitable alternative emergency shelters.

6. Paperwork:

No additional paperwork is anticipated.

7. Duplication:

The regulatory amendments would not duplicate, overlap, or conflict with any existing State or federal regulations.

8. Alternatives:

Inaction would continue to jeopardize the health and safety of these vulnerable individuals and families by allowing existing infractions and violations to continue unaddressed and by failing to prevent future infractions and violations. OTDA does not consider this a viable alternative to the regulatory amendments.

9. Federal Standards:

The regulatory amendments would not conflict with federal statutes, regulations or policies.

10. Compliance Schedule:

To protect the public health, safety and general welfare of emergency shelter residents, these regulations would be effective immediately on their filing date.

Regulatory Flexibility Analysis

1. Effect of rule:

Pursuant to the State Administrative Procedure Act § 102(8), a "small business," in part, is any business which is independently owned and operated and employs 100 or fewer individuals. This rule will apply to small businesses that provide emergency shelters. This rule will also apply to all 58 social services districts (SSDs) in the State.

2. Compliance requirement:

The regulatory amendments will have a minimal impact on emergency shelters that are currently in compliance with existing health and safety standards.

3. Professional services:

It is anticipated that the need for additional professional services will be limited. The regulatory amendments are not adding new health and safety standards to the State regulations; instead, they are requiring that emergency shelters comply with existing obligations to provide safe housing in accordance with health and safety standards.

4. Compliance costs:

For local governments, the impact of the regulatory amendments will be insignificant as long as they are in compliance with existing health and safety standards. The regulatory amendments are merely attempting to correct violations under existing health and safety standards.

5. Economic and technological feasibility:

Emergency shelters and SSDs should already have the economic and technological abilities to comply with existing standards.

6. Minimizing adverse impact:

The regulatory amendments attempt to minimize any adverse economic impact on emergency shelters and SSDs by implementing existing standards. The regulations should not provide exemptions, because this would not serve the purposes of ensuring the health and safety of all emergency shelter residents and protecting these vulnerable residents from dangerous conditions.

7. Small business and local government participation:

It is anticipated that small businesses and SSDs will be dedicated to implementing the regulatory amendments and protecting the health, safety, and general welfare of residents of emergency shelters.

8. For rules that either establish or modify a violation or penalties associated with a violation:

Because the dangerous, hazardous conditions targeted by the regulatory amendments are imminently detrimental to life or health, in order to safeguard the health, safety, and general welfare of emergency shelter residents, no cure period is provided.

Rural Area Flexibility Analysis

1. Types and estimate numbers of rural areas:

The regulatory amendments will apply to the 44 rural social services districts (SSDs) and the emergency shelters located in those areas.

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

The regulatory amendments will have a minimal impact on emergency shelters in rural areas that are currently in compliance with existing health and safety standards.

It is anticipated that the need for additional professional services will be limited. The regulatory amendments are not fundamentally altering the responsibilities of the rural SSDs. In addition, the regulatory amendments are not adding new health and safety standards to the State regulations; instead, they are requiring that all emergency shelters, including those in rural areas, comply with existing obligations to provide safe housing in accordance with health and safety standards.

3. Costs:

For rural governments, the fiscal impact of the regulatory amendments is anticipated to be insignificant because relatively few rural SSDs have any emergency shelters, and the rural SSDs primarily pay for hotel/motel costs. Consequently, the fiscal impact upon the rural SSDs is expected to be insignificant.

The regulatory amendments will have a minimal impact on emergency shelters in rural areas that are currently in compliance with existing health and safety standards. The regulatory amendments are intended to address violations under existing health and safety standards.

4. Minimizing adverse impact:

The regulatory amendments attempt to minimize any adverse economic impact on emergency shelters and SSDs in rural areas by implementing existing health and safety standards. The regulations should not provide exemptions, because this would not serve the purposes of ensuring the health and safety of all emergency shelter residents and protecting these vulnerable residents from dangerous conditions.

5. Rural area participation:

It is anticipated that small businesses and SSDs in rural areas will be dedicated to implementing the regulatory amendments and protecting the health, safety, and general welfare of residents of emergency shelters.

Job Impact Statement

A Job Impact Statement is not required for this rule. The purpose of the rule is to establish protections for residents of emergency shelters by clarifying the Office of Temporary and Disability Assistance's (OTDA's) statutory authority to impose immediate emergency measures to address emergency shelters determined to be dangerous, hazardous, or detrimental to the health, safety, and general welfare of residents. It is apparent from the nature and the purpose of the regulatory amendments that they will not have a substantial adverse impact on jobs and employment opportunities in the private sector, in the social services districts, or in the State. To the contrary, the proposed regulatory amendments would have a positive impact on jobs and employment opportunities, because additional persons may need to be hired to implement the regulatory amendments.

Thus, the regulatory amendments will not have any adverse impact on jobs and employment opportunities in New York State.

Department of Transportation

NOTICE OF ADOPTION

Liability Insurance Policies Required for Highway Work Permits

I.D. No. TRN-45-15-00002-A
Filing No. 118
Filing Date: 2016-01-21
Effective Date: 2016-02-10

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

Action taken: Amendment of sections 127.1, 127.3 and 127.4 of Title 17 NYCRR.

Statutory authority: Transportation Law, section 14(18); Highway Law, section 52

Subject: Liability insurance policies required for Highway Work Permits.

Purpose: To make it easier and less costly for permittees to obtain the liability coverage necessary to obtain Highway Work Permits.

Text or summary was published in the November 10, 2015 issue of the Register, I.D. No. TRN-45-15-00002-P.

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

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

Revised Job Impact Statement

1. Nature of impact:

The proposed rule changes should not have any impact on jobs because the resulting permit activity should be unaffected. The New York State Department of Transportation (NYSDOT) is clarifying the type of insurance that is required for permit work and expanding the options for insurance that may be supplied. This insurance is available at little or no extra cost.

2. Categories and numbers affected:

NYSDOT issues between 6,500 and 7,500 highway work permits each year. Over half of these permits are issued for various utility activities and operations. Almost all of the utility permits are issued upon an "undertaking" procedure that will be unaffected by the changes in the regulations. Some of the remaining 3,250-3,750 permits are also issued by using an undertaking, however the existing regulations require the purchase of an insurance policy naming the State of New York as the only insured, or the payment if an "insurance fee." Changes in the regulations will clarify the requirements of the insurance policy and provide an alternative insurance policy for the State that the permittee can buy if they do not have the required insurance and don't want to buy it for themselves.

3. Regions of adverse impact:

No disparate adverse impact on jobs in any region is anticipated. There should be no impact on insurance cost even in the most densely urbanized areas where medical expenses are highest, where the attitude is more litigious and where the cost of insurance claims is correspondingly higher. This is because permittees already operate in this environment and the levels and costs of insurance that permittees are should already have is not expected to change.

4. Minimizing adverse impact:

The rule changes allow permittees to utilize a type of insurance that is generally available and frequently in place, and remove a requirement that permittees buy a policy of insurance that may be expensive and not commercially available.

Assessment of Public Comment

The agency received no public comment.