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.

State Commission of Correction

NOTICE OF ADOPTION

Manner in Which Significant Correctional Facility Incidents are Reported to the Commission of Correction

I.D. No. CMC-45-15-00024-A
Filing No. 5
Filing Date: 2016-01-05
Effective Date: 2016-01-20

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

Action taken: Amendment of sections 7022.3, 7022.4, 7406.3, 7406.4 and 7508.2 of Title 9 NYCRR.

Statutory authority: Correction Law, sections 45(6), (6-b), (15) and 47(2)

Subject: Manner in which significant correctional facility incidents are reported to the Commission of Correction.

Purpose: To allow electronic filing of reportable incidents to the Commission of Correction.

Text or summary was published in the November 10, 2015 issue of the Register, I.D. No. CMC-45-15-00024-P.

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

Text of rule and any required statements and analyses may be obtained from: Deborah Slack-Bean, Senior Attorney, New York State Commission of Correction, Alfred E. Smith State Office Building, 80 S. Swan Street, 12th Floor, Albany, New York 12210, (518) 485-2346, email: Deborah.Slack-Bean@scoc.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 agency received no public comment.

Division of Criminal Justice Services

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Victims of Human Trafficking

I.D. No. CJS-03-16-00002-P

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

Proposed Action: This is a consensus rule making to amend Part 6174 of Title 9 NYCRR.

Statutory authority: Executive Law, section 837(13); L. 2015, ch. 368, section 32

Subject: Victims of Human Trafficking.

Purpose: To conform to the ''Trafficking Victims Protection and Justice Act,'' as added by chapter 368 of the Laws of 2015.

Text of proposed rule: 1. A new subdivision (f) is added to section 6174.2 of 9 NYCRR to read as follows:

(f) The term statutory referral source shall mean either (i) the law enforcement agency or district attorney's office, or (ii) an established provider of social or legal services designated by the office, the Office for the Prevention of Domestic Violence, or the Office of Victim Services that, as soon as practicable after a first encounter with a person who reasonably appears to be a human trafficking victim, refers such human trafficking victim to the division and the office for assessment as a State-confirmed human trafficking victim.

2. Subdivision (a) of section 6174.3 of 9 NYCRR is amended to read as follows:

(a) As soon as practicable after a first encounter with a person who reasonably appears to a [law enforcement agency or a district attorney's office] *statutory referral source* to be a human trafficking victim, that agency or office shall notify the Human Trafficking Director and the Office on a form and in a manner prescribed by the Commissioner.

3. Subdivisions (e), (f) and (g) of section 6174.3 of 9 NYCRR are amended to read as follows:

(e) If the Human Trafficking Director determines that the person appears to meet the criteria for certification as a victim of a severe form of trafficking in persons, as defined in section 7105 of title 22 of the United States Code, or appears to be otherwise eligible for any Federal, State or local benefits and services, he or she shall immediately notify the Office in writing which shall thereafter notify the victim and the [referring law enforcement agency or district attorney's office] *statutory referral source*, and the Office may assist the victim and [referring law enforcement agency or a district attorney's office] *statutory referral source* in making services available to the victim.

(f) If the Human Trafficking Director determines that the person does not appear to meet the criteria for certification as a victim of a severe form of trafficking in persons, as defined in section 7105 of title 22 of the United

States Code, or does not appear to be otherwise eligible for any Federal, State or local benefits and services, he or she shall immediately notify in writing the victim, the [referring law enforcement agency or district attorney's office] *statutory referral source*, and the Office.

(g) The Human Trafficking Director shall issue to the victim, the Office, and [referring law enforcement agency or district attorney's office] *statutory referral source* a written explanation setting forth the basis for his or her determination within 10 business days of receipt of the referral.

4. Subdivision (c) of section 6174.4 of 9 NYCRR is amended to read as follows:

(c) The Commissioner, after consultation with the Office, shall issue a written response to the appellant, the Office, and the [referring law enforcement agency or district attorney's office] *statutory referral source* within 15 business days of receipt of the written appeal. If the Commissioner determines that the appellant does appear to either meet the criteria for certification as a victim of a severe form of trafficking in persons as defined in section 7105 of title 22 of the United States Code or be otherwise eligible for any Federal, State, or local benefits and services, the Office may assist the victim and [referring law enforcement agency or district attorney's office] *statutory referral source* in receiving services.

5. Section 6174.5 of 9 NYCRR is amended to read as follows:

The Division shall consult with the Office regarding the confirmation of human trafficking victims pursuant to Social Services Law, section 483-cc, including, but not limited to, the form and manner in which a [law enforcement agency or district attorney's office] *statutory referral source* shall refer a person who reasonably appears to be a human trafficking victim.

Text of proposed rule and any required statements and analyses may be obtained from: Natasha M. Harvin, Esq., NYS Division of Criminal Justice Services, Alfred E. Smith Building, 80 South Swan Street, Albany, New York 12210, (518) 457-8413, email: natasha.harvin@dcjs.ny.gov

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

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

Consensus Rule Making Determination

The ''Trafficking Victims Protection and Justice Act,'' as added by Chapter 368 of the Laws of 2015, amends Social Services Law § 483-cc (a), as added by Chapter 74 of the Laws of 2007, to provide that, as soon as practicable after a first encounter with a person who reasonably appears to be a human trafficking victim, an established provider of social or legal services designated by the Office of Temporary and Disability Assistance, the Office for the Prevention of Domestic Violence or the Office of Victim Services, in addition to a law enforcement agency or district attorney's office, shall notify the Office of Temporary and Disability Assistance and the Division of Criminal Justice Services that such person may be eligible for or consents to services.

This proposal merely implements or conforms to the statutory provisions. Accordingly, the Division of Criminal Justice Services has determined that no person is likely to object to the rule as written.

Job Impact Statement

The ''Trafficking Victims Protection and Justice Act,'' as added by Chapter 368 of the Laws of 2015, amends Social Services Law § 483-cc (a), as added by Chapter 74 of the Laws of 2007, to provide that, as soon as practicable after a first encounter with a person who reasonably appears to be a human trafficking victim, an established provider of social or legal services designated by the Office of Temporary and Disability Assistance, the Office for the Prevention of Domestic Violence or the Office of Victim Services, in addition to a law enforcement agency or district attorney's office, shall notify the Office of Temporary and Disability Assistance and the Division of Criminal Justice Services that such person may be eligible for or consents to services.

This proposal merely implements or conforms to the statutory provisions. As such, it is apparent from the nature and purpose of the proposal that it will have no substantial adverse impact on jobs and employment opportunities.

Department of Environmental Conservation

NOTICE OF ADOPTION

Incorporation by Reference of Federal NSPS and NESHAP Rules

I.D. No. ENV-27-15-00004-A
Filing No. 2
Filing Date: 2016-01-05
Effective Date: 30 days after filing

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

Action taken: Amendment of Part 200 of Title 6 NYCRR.

Statutory authority: Environmental Conservation Law, sections 1-0101, 3-0301, 19-0103, 19-0105, 19-0107, 19-0301, 19-0303 and 19-0305

Subject: Incorporation by reference of Federal NSPS and NESHAP rules.

Purpose: Incorporation by reference of Federal NSPS and NESHAP rules.

Text or summary was published in the July 8, 2015 issue of the Register, I.D. No. ENV-27-15-00004-P.

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

Text of rule and any required statements and analyses may be obtained from: Steve Yarrington, NYSDEC Division of Air Resources, 625 Broadway, Albany, NY 12233-3254, (518) 402-8403, email: Air.Regs@dec.ny.gov

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

Initial Review of Rule

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

Assessment of Public Comment

The agency received no public comment.

Department of Financial Services

EMERGENCY/PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Standard Financial Aid Award Information Sheet for Institutions of Higher Education

I.D. No. DFS-03-16-00003-EP
Filing No. 1150
Filing Date: 2015-12-31
Effective Date: 2015-12-31

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

Proposed Action: Addition of Part 421 to Title 3 NYCRR.

Statutory authority: Banking Law, section 9-w

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

Specific reasons underlying the finding of necessity: I determined that it is necessary for the preservation of the general welfare that this regulation be adopted on an emergency basis as authorized by section 202(6) of the State Administrative Procedure Act, effective immediately upon filing with the Department of State.

This regulation is adopted as an emergency measure because time is of the essence. Banking Law Section 9-w requires schools to use a standard financial aid information letter in responding to all financial aid applicants for the 2016-2017 academic year and thereafter. Schools will be sending

award packages shortly and the regulations provide important clarity for schools adopting the newly published model financial aid information letter. In order to give schools sufficient time to comply, these rules are being adopted on an emergency basis.

Subject: Standard financial aid award information sheet for institutions of higher education.

Purpose: Provides guidance to institutions of higher education for the implementation of a financial aid award information sheet.

Text of emergency/proposed rule:

PART 421

FINANCIAL AID AWARD INFORMATION SHEET

§ 421.1 Scope and application of this Part

Section 9-w of the Banking Law authorizes the superintendent to adopt rules and regulations for the implementation of a standard financial aid award letter.

§ 421. 2 Definitions

For purposes of this Part, unless otherwise stated herein, terms shall have the same meaning as set forth in section 601 of New York State Education Law.

§ 421.3 Content and Delivery of Financial Aid Award Information Sheet On or After May 15, 2016

(a) In responding to an incoming or prospective student's financial aid application on or after May 15, 2016, a college, vocational institution or other institution that offers an approved program as defined in section 601 of the Education Law shall provide the letter required in section 9-w of the Banking Law, hereby referred to as the "Financial Aid Award Information Sheet", in the form available at www.dfs.ny.gov/studentprotection.

(b) For purposes of the Financial Aid Award Information Sheet, the term "Campus" shall mean an institution affiliated with a single U.S. Department of Education Office of Postsecondary Education Identification code.

§ 421.4 Content and Delivery of Financial Aid Award Information Sheet Prior to May 15, 2016

(a) In responding to an incoming or prospective student's financial aid application prior to May 15, 2016, a college, vocational institution or other institution that offers an approved program as defined in section 601 of the Education Law shall provide the Financial Aid Award Information Sheet in accordance with section 421.3 of this Part or satisfy the requirements in subsections 421.4(b) and 421.4(c) of this Part.

(b) Beginning on or before February 1, 2016, and ending on or after September 1, 2016, a college, vocational institution or other institution that offers an approved program as defined in section 601 of the Education Law shall publish online an "Interim Period Financial Aid Award Information Sheet" in the form available at www.dfs.ny.gov/studentprotection.

(c) In responding to an incoming or prospective student's financial aid application before May 15, 2016, a college, vocational institution or other institution that offers an approved program as defined in section 601 of the Education Law shall include in, or accompany with, the response a clear and conspicuous disclosure stating "Additional Information Including Estimated Cost of Attendance Can be Found On the Web Page Below" and setting forth the URL address of the webpage that includes a completed Interim Period Financial Aid Award Information Sheet. For responses to an incoming or prospective student's financial aid application between January 1, 2016 and February 1, 2016, this disclosure shall be provided by February 1, 2016.

(d) For purposes of the Interim Period Financial Aid Award Information Sheet, the term "Campus" shall mean an institution affiliated with a single U.S. Department of Education Office of Postsecondary Education Identification code.

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 March 29, 2016.

Text of rule and any required statements and analyses may be obtained from: Max Dubin, Department of Financial Services, One State Street, New York, NY 10004, (212) 480-7232, email: FSLreg@dfs.ny.gov

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

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

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

Regulatory Impact Statement

1. Statutory Authority: The Superintendent of Financial Services' ("Superintendent") authority for the promulgation of this rule derives from New York Banking Law § 9-w, which calls on the Superintendent to promulgate regulations implementing that section.

2. Legislative Objectives: The Legislature called on the Superintendent to issue this rule to implement New York Banking Law § 9-w, which requires all New York schools to use a uniform financial aid award letter. The Legislature mandated a uniform financial aid letter to give students a better understanding of the costs of a particular school and the options to pay for the education. The uniform letter will also help students to easily compare costs and financial aid options between schools.

3. Needs and Benefits: DFS consulted the New York State Higher Education Services Corporation for thoughts and challenges associated with implementing the form required in Banking Law § 9-w. The rule is required by New York Banking Law § 9-w. The rule provides needed guidance to institutions of higher education, including when and to whom schools must provide the financial aid award letter.

4. Costs: This rule does not create any additional costs to regulated parties or state and local governments. Any costs incurred by higher education institutions in implementing a standard financial aid award information sheet, including building any information technology infrastructure to generate and send the award sheets, were imposed by the Legislature by statute. No new costs are created by this rule, which simply implements New York Banking Law § 9-w.

5. Local Government Mandates: The rule does not create any new local government mandates.

6. Paperwork: There are no new paperwork requirements created by the rule.

7. Duplication: Some institutions of higher education have volunteered to, and in some cases are required, to use a standard student shopping sheet developed by the U.S. Department of Education when responding to financial aid applications. DFS consulted with U.S. Department of Education and designed a model shopping sheet that would meet federal and state requirements. New York schools already committed to using the federal form can add a supplement to their existing form to meet both requirements and avoid duplicative financial aid award information sheets.

8. Alternatives: No significant alternatives to the rule were considered.

9. Federal Standards: The rule does not exceed any federal standards.

10. Compliance Schedule: The proposed rule should not take any time to implement. The proposed rule is also being adopted as an emergency rule to take effect immediately in order to assist schools in implementing New York Banking Law § 9-w, which requires that schools provide specific information when responding to financial aid applicants for the upcoming school year.

Regulatory Flexibility Analysis

The rule will not impose any new adverse economic impact or reporting, record keeping or other compliance requirements on small businesses and local governments. The rule implements Banking Law § 9-w. Some of the covered educational institutions may be small businesses. Any costs or compliance requirements were created statutorily by the Legislature and this rule does not create any additional costs or requirements.

Rural Area Flexibility Analysis

The rule will not impose any new adverse economic impact on rural areas or reporting, record keeping or other compliance requirements on public or private entities in rural areas. The rule implements Banking Law § 9-w. Some of the covered educational institutions are located in rural areas. However, the rule does not impose any new costs or compliance requirements. Any costs or compliance requirements were created statutorily by the Legislature.

Job Impact Statement

The rule should have no adverse impact on jobs and employment opportunities in New York. The rule implements Banking Law § 9-w. It does not create any new burden or costs to businesses that are not already required by statute.

Department of Health

NOTICE OF ADOPTION

Computed Tomography (CT) Quality Assurance

I.D. No. HLT-18-15-00008-A

Filing No. 4

Filing Date: 2016-01-05

Effective Date: 2016-01-20

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

Action taken: Amendment of section 16.25; and addition of section 16.59 to Title 10 NYCRR.

Statutory authority: Public Health Law, section 225

Subject: Computed Tomography (CT) Quality Assurance.

Purpose: To protect the public from the adverse effects of ionizing radiation.

Text or summary was published in the May 6, 2015 issue of the Register, I.D. No. HLT-18-15-00008-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

Public comments were submitted to the NYS Department of Health (DOH) in response to the regulation. The public comment period for this regulation ended on June 22, 2015. The Department received a total of 6 comments from 5 different individuals representing the medical physics community as well as comments from the Public Health and Health Planning Council members during the May 21, 2015 meeting.

The majority of the comments were from licensed medical physicists requesting clarification on specific wording or expressions used in the regulations.

COMMENT: A licensed medical physicist asked what types of CT equipment (diagnostic, simulator, dental cone beam, etc.) are covered by the annual audit requirement and what type of equipment is included in the accreditation requirement.

RESPONSE: The accreditation requirement applies to medical equipment used for diagnostic imaging. Therapy simulator, biopsy only and attenuation correction computed tomography units would not be covered by the accreditation requirement. Most of the other provisions would apply to all medical use equipment, but dental CBCT would not be required to meet the provisions of these regulations.

COMMENT: Several physicists asked where they could find the written definition of "under the direction of" used in section 16.59(d)(1).

RESPONSE: There is no formal definition for this term. The Department will issue updated guidance on CT QA requirements and will include additional clarifications at that time.

COMMENT: A licensed medical physicist asked if personnel who fit the ACR's criteria (but who are not licensed as a medical physicist in NYS) would be able to test the CT unit during annual evaluations.

RESPONSE: New York State has licensed the practice of medical physics for about 15 years and has determined that certain activities described in these regulations must be performed by a licensed medical physicist. Where the regulations state that an activity must be performed "by a licensed medical physicist", the individual performing the activity must actually be a licensed medical physicist. Other sections use the phrase "by or under the supervision of", which allows non-licensed medical physicist to perform functions.

COMMENT: A licensed medical physicist asked if every misadministration (CT of a wrong patient, CT of a wrong body part) must be reported to the Department in writing. For those facilities other than Article 28 locations that are required to report to NYPORTS, the physicist further suggested that the regulations require that the facility record misadministrations and demonstrate corrective action, but that the facility need only report the misadministration if there is a high dose to the recipient (such as 5 rem whole body) or adverse effects are observed (such as hair loss or erythema).

RESPONSE: With respect to the reporting of all CT errors, this is required to ensure that the Department can improve its understanding of the frequency and nature of such errors. Article 28 facilities report all events in NYPORTS, while other facilities can make direct reports to BERP by fax, email, or letter.

COMMENT: A licensed medical physicist (LMP) asked what the term "evaluated" meant in section 16.59(e)(2)—specifically, whether it means performed or something else. The LMP also asked whether the section should state "only a licensed and qualified Medical Physicist (ACR) should be allowed to perform these annual QA tests and dose calibrations."

RESPONSE: An LMP must evaluate the QA testing to determine if it is acceptable, but another individual may have actually made the measurements. The regulations do not reference specific accrediting body requirements since these vary and may change over time. NYS Education Law (Article 166) defines the requirements to practice as a physicist in NYS. Any questions of scope of practice should be directed to the State Education Department.

COMMENT: A licensed medical physicist asked if the NY State CT QA Guidelines should be an acceptable method for establishing a CT QA program. The commenter asked whether this rule now obviates the need to adhere to the Department of Health's CT QA Guidelines.

RESPONSE: The requirements of 16.23(a) are still in place as referenced in 16.59(e)(1). The CT QA Guidelines will be updated to reflect changes that are in regulations, but the quality assurance program described in that guidelines are still required. These regulations are in addition to the requirements of 16.23.

COMMENT: A licensed medical physicist asked whether a radiologist is competent to write a quality assurance program.

RESPONSE: The radiologist has the final responsibility for patient imaging and is allowed to develop the quality assurance program if they are competent to do so.

COMMENT: A licensed medical physicist commented on 16.59(f)(5): "The dose received by a patient shall be recorded as organ dose." The commenter asked how patient doses will be recorded because no scanners to date record patient dose, and because patient dose can only be estimated from dose to a phantom and utilization of very broad scaling factors.

RESPONSE: The wording of that section indicates that "reference dose delivered to a phantom or the dose received by a patient" must be recorded. The "dose delivered" that is being referred to in the following sentence can be either reference dose or actual dose.

COMMENT: A licensed medical physicist commented that with regards to the requirement of CT accreditation, that general hospital accreditation by the Joint Commission on Accreditation of Healthcare Organizations (JCAHO) does not meet the amendment's requirement that the accrediting organization perform a review that includes the physical layout of the facility, policy and procedures, quality assurance and image assessment as it is related to CT. The commenter stated that there is a specific JCAHO accreditation that would mimic, for example, the American College of Radiology's criteria.

RESPONSE: This is reflected in the language of the regulation 16.59(f)(7), which states that the accreditation must be in CT scanning or an equivalent as determined by the Department.

COMMENT: A licensed medical physicist commented that the proposed regulation states that CT specific misadministration does not use a dose threshold for CT errors, which is inconsistent with other diagnostic imaging error reporting.

RESPONSE: With respect to the reporting of CT errors without regard to patient dose, this is required to ensure that the Department can make a determination as to the frequency and nature of CT errors. Article 28 facilities report all events in NYPORTS, while other facilities can make direct reports to BERP either by fax, email, or letter.

COMMENT: A member of the Public Health and Health Planning Council commented that there have been discussions in the past about how difficult it is to come up with a cumulative radiation exposure dose because all the CT scans operate in slightly different ways. The member asked whether it would be possible within the context of these regulations to use the SHIN-NY or some other mechanism to keep track of patient dose.

RESPONSE: Currently CT scanners are not capable of tracking patient dose but rather use a reference dose. Reference dose can vary significantly from the actual patient dose due to patient size/weight. It is our understanding that the CT manufacturers are developing scanners that can input these variables to derive a patient dose. We plan to look at this issue when this capability becomes available.

COMMENT: A commenter asked if dose information is accessible to the ordering clinician or patient when they receive the results.

RESPONSE: The reference dose will be accessible, but a patient specific dose is not available. The actual dose can vary significantly from the reference dose.

Division of Homeland Security and Emergency Services

EMERGENCY RULE MAKING

Registration of Manufacturers, Distributors, Wholesalers, Various Retailers of Sparkling Devices

I.D. No. HES-32-15-00002-E

Filing No. 1

Filing Date: 2016-01-04

Effective Date: 2016-01-04

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

Action taken: Addition of Part 225 to Title 9 NYCRR.

Statutory authority: Executive Law, sections 156(20) and 156-h; L. 2014, ch. 477

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

Specific reasons underlying the finding of necessity: Executive Law section 156-h requires that the Office of Fire Prevention and Control promulgate rules regarding registration of manufacturers, distributors, wholesalers, specialty retailers, permanent retailers and temporary seasonal retailers of sparkling devices. Registration is required prior to the legal sale of such sparkling devices. This rule includes the registration processes, fees and reporting requirements. Accordingly, this rule must be adopted on an emergency basis in order to ensure that such procedures are in effect to assure the public's safety and general welfare.

Subject: Registration of manufacturers, distributors, wholesalers, various retailers of sparkling devices.

Purpose: Establish the registration process, fees and reporting requirements related to sparkling devices.

Substance of emergency rule: PART 225

SPARKLING DEVICES

Section 225.1 Definitions

Establishes definitions of sparkling devices according to new statutory language. Establishes that "Sparkling Devices" are consumer fireworks for the purpose of the Uniform Fire Prevention and Building Code and National Fire Protection Association standard 1124 (2006).

Section 225.2 Registration

Requires every manufacturer, distributor, wholesaler, specialty retailer, or permanent retailer of sparkling devices to annually register with the Office of Fire Prevention and Control. Requires temporary (seasonal) retailers to register with the Office of Fire Prevention and Control each selling season. Establishes the registration process and related documentation required as part of the registration package.

Section 225.3 Fees

Establishes application fees; the revenue of which goes to the Office of Fire Prevention and Control to be used for firefighter safety and training programs as well as for the registration process, consistent with Executive Law § 156-h. A manufacturer, distributor, or wholesaler must pay an annual registration fee of $5,000; a specialty retailer must pay an annual registration fee of $2,500; a permanent retailer must pay an annual registration fee of $200 for each location; and a temporary seasonal retailer must pay a registration fee of $250 per season for each location.

Section 225.4 Certification

The Office of Fire Prevention and Control is responsible to issue a certification valid for one year to manufacturers, distributors, and wholesalers. Certificates issued to temporary seasonal retailers will be valid for 30 days before through 30 days after the dates of the selling season specified in General Business Law § 392-j. Non-compliance with any of the requirements set forth may result in a revocation of the certificate of registration, as determined by the Office of Fire Prevention and Control. Revocation shall remain in effect until the manufacturer, distributor, wholesaler, specialty retailer, permanent retailer, or temporary seasonal retailer provides evidence of compliance acceptable to the Office of Fire Prevention and Control.

Section 225.5 Records and Reports

Manufacturers, distributors, wholesalers, specialty retailers, permanent retailers and temporary seasonal retailers shall maintain, and make available to the Office of Fire Prevention and Control, records regarding the name and quantity of any sparkling devices produced in, imported to, exported from, or sold in New York. Establishes the Office of Fire Prevention and Control's authority to inspect to assure compliance with the terms of registration/certification.

Section 225.6 Reporting of incidents

Requires manufacturers, distributors, wholesalers, specialty retailers, permanent retailers, and temporary seasonal retailers to report basic information regarding incidents of fires or explosions, including accidental discharge of sparkling devices that occur on premises, to the Office of Fire Prevention and Control within 24 hours if no injury or death; or within 1 hour, or as soon as practicable if injury or death is involved. The Office of Fire Prevention and Control is responsible to share information with local code enforcement officials, as appropriate.

Section 225.7 General Requirements

Requires posting of documentation in each location of business, to include: copy of the Office of Fire Prevention and Control certification for such location; the list, as most recently published by the New York State Police, of counties and cities that have opted by local law to legalize the use of sparkling devices; a copy of any Federal Permit(s) (if applicable); a copy of the Insurance Certificate; and a copy of a sparkling device safety pamphlet produced by the Office of Fire Prevention and Control.

This notice is intended to serve only as a notice of emergency adoption. This agency intends to adopt the provisions of this emergency rule as a permanent rule, having previously submitted to the Department of State a notice of proposed rule making, I.D. No. HES-32-15-00002-EP, Issue of August 12, 2015. The emergency rule will expire March 3, 2016.

Text of rule and any required statements and analyses may be obtained from: Elisha S. Tomko, Division of Homeland Security and Emergency Services, 1220 Washington Avenue, State Office Campus, Bldg. 7A, Albany, NY, (518) 474-6746, email: elisha.tomko@dhses.ny.gov

Regulatory Impact Statement

1. Statutory Authority

Section 156(20) of the Executive Law authorizes the Office of Fire Prevention and Control ("OFPC") to register the manufacturers, distributors, wholesalers, specialty retailers, permanent retailers, and temporary seasonal retailers of sparkling devices who wish to do business in New York State. Section 156-h of the Executive Law requires that the OFPC promulgate rules regarding registration of manufacturers, distributors, wholesalers, specialty retailers, permanent retailers and temporary seasonal retailers of sparkling devices.

2. Legislative Objectives

The legislative objective behind section 156(20) and section 156-h is to assure that the proper processes are in place prior to the sale of sparkling devices. Registration with the OFPC is required prior to the sale of such sparkling devices, pursuant to General Business Law 392-j.

3. Needs and Benefits

Section 156-h of the Executive Law requires that the OFPC promulgate rules regarding registration of manufacturers, distributors, wholesalers, specialty retailers, permanent retailers, and temporary seasonal retailers of sparkling devices, to include the registration process and requirements, fees and reporting requirements.

4. Costs

The rule establishes application fees, consistent with section 156-h of the Executive Law. A manufacturer, distributor, or wholesaler must pay an annual registration fee of $5,000; A specialty retailer must pay an annual registration fee of $2,500; a permanent retailer must pay an annual registration fee of $200 for each location; and a temporary seasonal retailer must pay a registration fee of $250 per season to the OFPC for each location.

The cost to the OFPC for the implementation of the rule is approximately $850,000 per year for administration, inspection and investigative costs. Section 156-h requires that revenue generated from registration fee payments must be used for firefighter safety and training programs as well as for the registration process.

In developing its cost estimates associated with the implementation and execution of the registration, inspection and investigation aspects of this new responsibility, the OFPC consulted with state fire marshal offices in other states that have recently legalized sparkling devices and/or consumer fireworks in an effort to learn what their work load experiences have been. OFPC extrapolated the data and applied it to its specific costs (i.e., personnel and equipment).

There will be no costs to local governments for the implementation of this rule.

5. Local Government Mandates

This rule will not impose any program, service, duty or responsibility upon local governments. This rule regulates the manufacturers, distributors, wholesalers, specialty retailers, permanent retailers, and temporary seasonal retailers of sparkling devices.

6. Paperwork

The OFPC will be required to develop and make available registration forms, certification forms, and a sparkling device safety pamphlet. Manufacturers, distributors, wholesalers, specialty retailers, permanent retailers and temporary seasonal retailers shall maintain, and make available to the OFPC, records regarding the name and quantity of any sparkling devices produced in, imported to, exported from, or sold in this State. Retailers will be required to post documentation in each location of business, to include: copy of the OFPC certification for such location; the list, as most recently published by the New York State Police, of counties and cities that have opted by local law to legalize the use of sparkling devices; copy of any Federal Permit(s) (if applicable); copy of the Insurance Certificate; and copy of a sparkling device safety pamphlet produced by the OFPC.

7. Duplication

At the time of this rule making, no rules or other legal requirements of the state or federal government exist which duplicate, overlap, or conflict with the rule.

8. Alternatives

The OFPC does not have statutory authority to consider any alternative other than to adopt a rule addressing these issues.

9. Federal Standards

Any person importing, manufacturing for commercial use, dealing in,

transporting or causing to be transported, or otherwise receiving certain fireworks must obtain an ATF Federal explosives license or permit for the specific activity. Federal explosives licensees and permittees must comply with all applicable regulations under 27 CFR, Part 555. Any person manufacturing consumer fireworks for commercial use must obtain a Federal explosives manufacturers license. This rule does not exceed or conflict with such requirements.

10. Compliance Schedule

Manufacturers, distributors, wholesalers, specialty retailers, permanent retailers, and temporary seasonal retailers of sparkling devices can comply with the requirements of the rule once a city or county opts to legalize the sale and use of sparkling devices.

Regulatory Flexibility Analysis

1. Effect of rule

The rule does not affect local governments. The rule affects small businesses, including manufacturers, distributors, wholesalers, specialty retailers, permanent retailers, and temporary seasonal retailers of sparkling devices.

2. Compliance requirements

This rule does not impose any reporting, recordkeeping or other affirmative acts on local governments.

Small business manufacturers, distributors, wholesalers, specialty retailers, permanent retailers and temporary seasonal retailers will be required to meet registration requirements and maintain, and make available to the Office of Fire Prevention and Control ("OFPC"), records regarding the name and quantity of any sparkling devices produced in, imported to, exported from, or sold in New York. Small business specialty retailers, permanent retailers, and temporary seasonal retailers will be required to post documentation in each location of business, to include: a copy of the Office of Fire Prevention and Control certification for such location; the list, as most recently published by the New York State Police, of counties and cities that have opted by local law to legalize the use of sparkling devices; a copy of any Federal Permit(s) (if applicable); a copy of the Insurance Certificate; and a copy of a sparkling device safety pamphlet produced by the Office of Fire Prevention and Control.

Small business manufacturers, distributors, wholesalers, specialty retailers, permanent retailers and temporary seasonal retailers also need to report to the Office of Fire Prevention and Control, any fire or explosion that results in injury or death within one hour of its occurrence or as soon as practicable.

3. Professional services

Neither locals governments or small business affected by this rule will require professional services in order to comply with the rule.

4. Compliance costs

There would be no initial capital costs associated with compliance with the rule. The annual costs for continuing compliance are the required fees: a manufacturer, distributor, wholesaler must pay an annual registration fee of $5,000; Specialty retailer must pay an annual registration fee of $2,500; Permanent retailer must pay an annual registration fee of $200 for each location; and Temporary seasonal retailer must pay a registration fee of $250 per season to the Office of Fire Prevention and Control for each location.

5. Economic and technological feasibility

The rule sets forth the registration and reporting requirements for small business manufacturers, distributers, wholesalers, and retailers of sparkling devices, both of which are economically and technologically feasible.

6. Minimizing adverse impact

The rule establishes the registration process for including manufacturers, distributors, wholesalers, specialty retailers, permanent retailers and temporary seasonal retailers of sparkling devices. The fees contained in the rule are created by statute; therefore, the rule does not impose any adverse economic impact and no alternatives were considered.

7. Small business and local government participation

Small business and local government did not participate in the emergency rulemaking process. Small business and local governments, through their respective associations, will be able to participate in the proposed rulemaking process.

Rural Area Flexibility Analysis

1. Types and estimated numbers of rural areas:

The rule would apply to counties and cities, outside of New York City, that opted to legalize the sale and use of sparkling devices, including those located in rural areas as that term is defined in section 102(10) of the State Administrative Procedure Act ("SAPA").

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

This rule making will not impose any reporting, recordkeeping or other affirmative acts on local governments in rural areas.

In counties and cities, in rural areas, that opt to legalize the sale and use of sparkling devices, manufacturers, distributors, wholesalers, specialty retailers, permanent retailers, and temporary seasonal retailers will be required to meet registration requirements and maintain, and make available to the Office of Fire Prevention and Control ("OFPC"), records regarding the name and quantity of any sparkling devices produced in, imported to, exported from, or sold in New York. Specialty retailers, permanent retailers and temporary seasonal retailers will be required to post documentation in each location of business, to include: copy of the Office of Fire Prevention and Control certification for such location; the list, as most recently published by the New York State Police, of counties and cities that have opted by local law to legalize the use of sparkling devices; copy of any Federal Permit(s) (if applicable); copy of the Insurance Certificate; and copy of a sparkling device safety pamphlet produced by the Office of Fire Prevention and Control.

Manufacturers, distributors, wholesalers, specialty retailers, permanent retailers and temporary seasonal retailers also need to report to the Office of Fire Prevention and Control, any fire or explosion that results in injury or death within one hour of its occurrence or as soon as practicable.

In rural areas, professional services are not required to comply with the rule.

3. Costs:

In rural areas, there would be no initial capital costs associated with compliance with the rule. The annual costs for continuing compliance are the required fees: a manufacturer, distributor, wholesaler must pay an annual registration fee of $5,000; Specialty retailer must pay an annual registration fee of $2,500; Permanent retailer must pay an annual registration fee of $200 for each location; and Temporary seasonal retailer must pay a registration fee of $250 per season to the Office of Fire Prevention and Control for each location.

4. Minimizing adverse impact:

The rule establishes the registration process for including manufacturers, distributors, wholesalers, specialty retailers, permanent retailers and temporary seasonal retailers of sparkling devices. The fees, contained in the rule, are created by statute and therefore, the rule does not impose any adverse economic impact and no alternatives were considered.

5. Rural area participation:

Representatives of rural areas did not participate in this emergency rulemaking process. Businesses and local governments, in rural areas, through their respective associations, will be able to participate in the proposed rulemaking process.

Job Impact Statement

1. Nature of impact

The nature of the impact that the rule will have on jobs and employment opportunities is expected to be minimal based on the seasonal/limited selling season of June first and July fifth and December twenty-sixth through January second of each year.

2. Categories and numbers affected

The rule may result in part-time seasonal/temporary retail jobs in those counties and cities that have opted to legalize the sale and use of sparkling devices during the limited selling season of June first and July fifth and December twenty-sixth through January second of each year.

3. Regions of adverse impact

The minimal impact that the rule will have on jobs and employment opportunities will not result in a disproportionate impact on any region of the State.

4. Minimizing adverse impact

The rule would not have any adverse impact on existing jobs.

Assessment of Public Comment

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

REVISED RULE MAKING
NO HEARING(S) SCHEDULED

Registration of Manufacturers, Distributors, Wholesalers, Various Retailers of Sparkling Devices

I.D. No. HES-32-15-00002-RP

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

Proposed Action: Addition of Part 225 to Title 9 NYCRR.

Statutory authority: Executive Law, sections 156(20) and 156-h; L. 2014, ch. 477

Subject: Registration of manufacturers, distributors, wholesalers, various retailers of sparkling devices.

Purpose: Establish the registration process, fees and reporting requirements related to sparkling devices.

Substance of revised rule: PART 225

SPARKLING DEVICES

Section 225.1 Definitions

Establishes definitions of sparkling devices, consistent with Executive Law § 156-h and provides that "Sparkling Devices" are consumer fireworks for the purpose of application of the Uniform Fire Prevention and Building Code.

Section 225.2 Registration

Requires every manufacturer, distributor, wholesaler, specialty retailer, or permanent retailer of sparkling devices to annually register with the Office of Fire Prevention and Control (OFPC). Requires temporary (seasonal) retailers to register with the OFPC each selling season. Establishes the registration process and required documentation.

Section 225.3 Fees

Establishes application fees; the revenue of which goes to the OFPC to be used for firefighter safety and training programs as well as for the support of the registration process, consistent with Executive Law § 156-h. A manufacturer, distributor, or wholesaler must pay an annual registration fee of $5,000; a specialty retailer must pay an annual registration fee of $2,500 for each location; a permanent retailer must pay an annual registration fee of $200 for each location; and a temporary seasonal retailer must pay a registration fee of $250 per season for each location.

Section 225.4 Certification

The OFPC is responsible to issue a certification valid for one year to manufacturers, distributors, and wholesalers. Certificates issued to temporary seasonal retailers will be valid for the dates of sale, authorized in and limited by General Business Law § 392-j and Executive Law § 156-h. Non-compliance with any of the requirements set forth may result in a revocation of the certificate of registration, as determined by the OFPC. Revocation shall remain in effect until the manufacturer, distributor, wholesaler, specialty retailer, permanent retailer, or temporary seasonal retailer provides evidence of compliance acceptable to the OFPC.

Section 225.5 Records and Reports

Manufacturers, distributors, wholesalers, specialty retailers, permanent retailers and temporary seasonal retailers shall maintain, and make available to the OFPC, records regarding the name and quantity of any sparkling devices produced in, imported to, exported from, or sold in New York. Establishes the OFPC's authority to inspect to assure compliance with the terms of registration/certification.

Section 225.6 Reporting of incidents

Requires manufacturers, distributors, wholesalers, specialty retailers, permanent retailers, and temporary seasonal retailers to report basic information regarding incidents of fires or explosions, including accidental discharge of sparkling devices that occur on premises, to the OFPC within 24 hours if no injury or death; or within 1 hour, or as soon as practicable, if injury or death is involved. The OFPC is responsible to share information with local code enforcement officials, as appropriate.

Section 225.7 General Requirements

Sets forth the dates of sale consistent with General Business Law § 392-j and Executive Law 156-h. Requires posting of documentation in each location of business, to include: copy of the Office of Fire Prevention and Control certification for such location; the list, as most recently published by the New York State Police, of counties and cities that have opted by local law to legalize the use of sparkling devices; and a copy of a sparkling device safety pamphlet produced by the Office of Fire Prevention and Control.

Revised rule compared with proposed rule: Substantive revisions were made in sections 225.2, 225.4 and 225.7.

Text of revised proposed rule and any required statements and analyses may be obtained from Elisha S. Tomko, Division of Homeland Security and Emergency Services, 1220 Washington Avenue, State Office Campus, Bldg. 7A, Albany, NY 12242, (518) 474-6746, email: elisha.tomko@dhses.ny.gov

Data, views or arguments may be submitted to: Paul Martin, Division of Homeland Security and Emergency Services, 1220 Washington Avenue, State Office Campus, Bldg. 7A, Albany, NY 12242, (518) 474-6746, email: paul.martin@dhses.ny.gov

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

Revised Regulatory Impact Statement

1. Statutory Authority

Section 156(20) of the Executive Law authorizes the Office of Fire Prevention and Control ("OFPC") to register the manufacturers, distributors, wholesalers, specialty retailers, permanent retailers, and temporary seasonal retailers of sparkling devices who wish to do business in New York State. Section 156-h of the Executive Law requires that the OFPC promulgate rules regarding registration of manufacturers, distributors, wholesalers, specialty retailers, permanent retailers and temporary seasonal retailers of sparkling devices.

2. Legislative Objectives

The legislative objective behind section 156(20) and section 156-h of the Executive Law are to assure that the proper processes are in place prior to the sale of sparkling devices. Registration with the OFPC is required prior to the sale of such sparkling devices, pursuant to General Business Law 392-j.

3. Needs and Benefits

Section 156-h of the Executive Law requires that the OFPC promulgate rules regarding registration of manufacturers, distributors, wholesalers, specialty retailers, permanent retailers, and temporary seasonal retailers of sparkling devices, to include the registration process and requirements, fees and reporting requirements.

4. Costs

The rule establishes application fees, consistent with section 156-h of the Executive Law. A manufacturer, distributor, or wholesaler must pay an annual registration fee of $5,000; A specialty retailer must pay an annual registration fee of $2,500 for each location; a permanent retailer must pay an annual registration fee of $200 for each location; and a temporary seasonal retailer must pay a registration fee of $250 per season to the OFPC for each location.

The cost to the OFPC for the implementation of the rule is approximately $850,000 per year for administration, inspection and investigative costs. Section 156-h requires that revenue generated from registration fee payments must be used for firefighter safety and training programs as well as for the support of the registration process.

In developing the cost estimates associated with the implementation and execution of the registration, inspection and investigation aspects of this new responsibility, the OFPC consulted with state fire marshal offices in other states that have legalized sparkling devices and/or consumer fireworks in an effort to learn what their work load experiences have been. OFPC extrapolated the data and applied it to its specific costs (i.e., personnel and equipment).

There will be no costs to local governments for the implementation of this rule.

5. Local Government Mandates

This rule will not impose any program, service, duty or responsibility upon local governments. This rule regulates the manufacturers, distributors, wholesalers, specialty retailers, permanent retailers, and temporary seasonal retailers of sparkling devices.

6. Paperwork

The OFPC will be required to develop and make available registration forms, certification forms, and a sparkling device safety pamphlet. Manufacturers, distributors, wholesalers, specialty retailers, permanent retailers and temporary seasonal retailers shall maintain, and make available to the OFPC, records regarding the name and quantity of any sparkling devices produced in, imported to, exported from, or sold in this State. Retailers will be required to post documentation in each location of business, to include: copy of the OFPC certification for such location; the list, as most recently published by the New York State Police, of counties and cities that have opted by local law to legalize the use of sparkling devices; and copy of a sparkling device safety pamphlet produced by the OFPC.

7. Duplication

At the time of this rule making, no rules or other legal requirements of the state or federal government exist which duplicate, overlap, or conflict with the rule.

8. Alternatives

The OFPC does not have statutory authority to consider any alternative other than to adopt a rule addressing these issues.

9. Federal Standards

Any person importing, manufacturing for commercial use, dealing in, transporting or causing to be transported, or otherwise receiving certain fireworks must obtain an ATF Federal explosives license or permit for the specific activity. Federal explosives licensees and permittees must comply with all applicable regulations under 27 CFR, Part 555. Any person manufacturing consumer fireworks for commercial use must obtain a Federal explosives manufacturers license. This rule does not exceed or conflict with such requirements.

10. Compliance Schedule

Manufacturers, distributors, wholesalers, specialty retailers, permanent retailers, and temporary seasonal retailers of sparkling devices can comply with the requirements of the rule once a city or county opts to legalize the sale and use of sparkling devices.

Revised Regulatory Flexibility Analysis

1. Effect of rule

The rule does not affect local governments. The rule affects small businesses, including manufacturers, distributors, wholesalers, specialty retailers, permanent retailers, and temporary seasonal retailers of sparkling devices.

2. Compliance requirements

This rule does not impose any reporting, recordkeeping or other affirmative acts on local governments.

Small business manufacturers, distributors, wholesalers, specialty retailers, permanent retailers and temporary seasonal retailers will be required to meet registration requirements and maintain, and make available to the Office of Fire Prevention and Control ("OFPC"), records regarding the name and quantity of any sparkling devices produced in, imported to, exported from, or sold in New York. Small business specialty retailers, permanent retailers, and temporary seasonal retailers will be required to post documentation in each location of business, to include: a copy of the OFPC certification for such location; the list, as most recently published by the New York State Police, of counties and cities that have opted by local law to legalize the use of sparkling devices; and a copy of a sparkling device safety pamphlet produced by OFPC.

Small business manufacturers, distributors, wholesalers, specialty retailers, permanent retailers and temporary seasonal retailers also need to report to OFPC, any fire or explosion that results in injury or death within one hour of its occurrence or as soon as practicable.

3. Professional services

Neither local governments or small business affected by this rule will require professional services in order to comply with the rule.

4. Compliance costs

There would be no initial capital costs associated with compliance with the rule. The annual costs for continuing compliance are the required fees: a manufacturer, distributor, or wholesaler must pay an annual registration fee of $5,000; Specialty retailer must pay an annual registration fee of $2,500 for each location; Permanent retailer must pay an annual registration fee of $200 for each location; and Temporary seasonal retailer must pay a registration fee of $250 per season to OFPC for each location.

5. Economic and technological feasibility

The rule sets forth the registration and reporting requirements for small business manufacturers, distributers, wholesalers, and retailers of sparkling devices, both of which are economically and technologically feasible.

6. Minimizing adverse impact

The rule establishes the registration process for manufacturers, distributors, wholesalers, specialty retailers, permanent retailers and temporary seasonal retailers of sparkling devices. The fees contained in the rule are created by statute; therefore, the rule does not impose any adverse economic impact and no alternatives were considered.

7. Small business and local government participation

Small businesses and local governments were given an opportunity to publically comment on the rule as part of the propose rulemaking. However, neither small businesses nor local governments participated in the public comment process. The OFPC has been responsive to inquiries from small businesses and local governments and provided assistance when requested.

8. The penalty for non-compliance with the requirements of the rule is revocation of registration. This revocation remains in effect until the manufacturer, distributor, wholesaler, specialty retailer, permanent retailer, or temporary seasonal retailer provides evidence of compliance. Revocation will only occur if and when an inspector identifies a violation of the requirements of this rule and the registrant is unable or refuses to comply with such. One purpose for the registration of manufacturers, distributors, wholesalers, specialty retailers, permanent retailers and temporary seasonal retailers of sparkling devices is to assure public safety (i.e. compliance with the fire safety codes), and therefore, the rule does not set forth a specific cure period; the length of revocation period will be dependent on the actions or inaction of the registrant.

Revised Rural Area Flexibility Analysis

1. Types and estimated numbers of rural areas:

The rule would apply to counties and cities, outside of New York City, that opted to legalize the sale and use of sparkling devices, including those located in rural areas as that term is defined in section 102(10) of the State Administrative Procedure Act ("SAPA").

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

This rule making will not impose any reporting, recordkeeping or other affirmative acts on local governments in rural areas.

In counties and cities, in rural areas, that opted to legalize the sale and use of sparkling devices, manufacturers, distributors, wholesalers, specialty retailers, permanent retailers and temporary seasonal retailers will be required to meet registration requirements and maintain, and make available to the Office of Fire Prevention and Control (OFPC), records regarding the name and quantity of any sparkling devices produced in, imported to, exported from, or sold in New York. Specialty retailers, permanent retailers and temporary seasonal retailers will be required to post documentation in each location of business, to include: copy of the OFPC certification for such location; the list, as most recently published by the New York State Police, of counties and cities that have opted by local law to legalize the use of sparkling devices; and copy of a sparkling device safety pamphlet produced by the OFPC.

Manufacturers, distributors, wholesalers, specialty retailers, permanent retailers and temporary seasonal retailers also need to report to the OFPC, any fire or explosion that results in injury or death within one hour of its occurrence or as soon as practicable.

Professional services are not required to comply with the rule.

3. Costs:

In rural areas, there would be no initial capital costs associated with compliance with the rule. The annual costs for continuing compliance are the required fees: a manufacturer, distributor, or wholesaler must pay an annual registration fee of $5,000; Specialty retailer must pay an annual registration fee of $2,500 for each location; Permanent retailer must pay an annual registration fee of $200 for each location; and Temporary seasonal retailer must pay a registration fee of $250 per season to the OFPC for each location.

4. Minimizing adverse impact:

The rule establishes the registration process for manufacturers, distributors, wholesalers, specialty retailers, permanent retailers and temporary seasonal retailers of sparkling devices. The fees, contained in the rule, are created by statute and therefore, the rule does not impose any adverse economic impact and no alternatives were considered.

5. Rural area participation:

Public and private sector entities, in rural areas, were given an opportunity to publically comment on the rule as part of the propose rulemaking. However, neither public nor private sector entities, in rural areas, participated in the public comment process. The OFPC has been responsive to inquiries and request for meetings, from public and private sector entities located in rural areas, and provided assistance when requested.

Revised Job Impact Statement

1. Nature of impact

The nature of the impact that the rule will have on jobs and employment opportunities is expected to be minimal based on the seasonal/limited selling season of June first and July fifth and December twenty-sixth through January second of each year.

2. Categories and numbers affected

The rule may result in part-time seasonal/temporary retail jobs in those counties and cities that have opted to legalize the sale and use of sparkling devices during the limited selling season of June first and July fifth and December twenty-sixth through January second of each year.

3. Regions of adverse impact

The minimal impact that the rule will have on jobs and employment opportunities will not result in a disproportionate impact on any region of the State.

4. Minimizing adverse impact

The rule would not have any adverse impact on existing jobs.

Assessment of Public Comment

The agency received no public comment.

Division of Human Rights

NOTICE OF ADOPTION

Gender Identity Discrimination

I.D. No. HRT-44-15-00033-A
Filing No. 6
Filing Date: 2016-01-05
Effective Date: 2016-01-20

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

Action taken: Addition of section 466.13 to Title 9 NYCRR.

Statutory authority: Executive Law, section 295.5

Subject: Gender Identity Discrimination.

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

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

466.13 Discrimination on the basis of gender identity.

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

(b) Definitions.

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

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

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

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

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

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

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

(d) Discrimination on the basis of gender dysphoria or other condition meeting the definition of disability in the Human Rights Law set out below is disability discrimination.

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

(2) The term "disability" when used in the Human Rights Law includes gender dysphoria or other condition meeting the definition of disability in the Human Rights Law set out above.

(3) The prohibitions contained in the Human Rights Law against discrimination on the basis of disability, in all areas of jurisdiction where disability is a protected category, also prohibit discrimination on the basis of gender dysphoria or other condition meeting the definition of disability in the Human Rights Law set out above.

(4) Refusal to provide reasonable accommodation for persons with gender dysphoria or other condition meeting the definition of disability in the Human Rights Law set out above, where requested and necessary, and in accordance with the Divisions regulations on reasonable accommodation found at 9 NYCRR § 466.11, is disability discrimination.

(5) Harassment on the basis of a person's gender dysphoria or other condition meeting the definition of disability in the Human Rights Law set out above is harassment on the basis of disability.

Final rule as compared with last published rule: Nonsubstantive changes were made in sections 466.13(b)(2), (3), (d), (d)(2), (3), (4) and (5).

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

Revised Regulatory Impact Statement

Nonsubstantial changes were made to the text of the adopted rule. Gender neutral language replaced the pronouns "him" and "her." In addition, it was clarified that any gender related condition meeting the definition of disability in the Human Rights Law necessarily would be covered under the disability provisions of the Human Rights Law. A revised RIS is not required because the nonsubstantial changes merely state the requirements under the disability provisions of the Human Rights Law.

Revised Regulatory Flexibility Analysis

Nonsubstantial changes were made to the text of the adopted rule. Gender neutral language replaced the pronouns "him" and "her." In addition, it was clarified that any gender related condition meeting the definition of disability in the Human Rights Law necessarily would be covered under the disability provisions of the Human Rights Law. A revised RFA is not required because the changes have no impact on the previously published RFA. The adoption of this rule, and these nonsubstantial changes, clarify the Division's practice and policy with regard to complaints of transgender individuals and do not impose any new requirements.

Revised Rural Area Flexibility Analysis

Nonsubstantial changes were made to the text of the adopted rule. Gender neutral language replaced the pronouns "him" and "her." In addition, it was clarified that any gender related condition meeting the definition of disability in the Human Rights Law necessarily would be covered under the disability provisions of the Human Rights Law. A revised RAFA is not required because the changes have no impact on the previously published RAFA. The adoption of this rule, and these nonsubstantial changes, clarify the Division's practice and policy with regard to complaints of transgender individuals and do not impose any new requirements.

Revised Job Impact Statement

Nonsubstantial changes were made to the text of the adopted rule. Gender neutral language replaced the pronouns "him" and "her." In addition, it was clarified that any gender related condition meeting the definition of disability in the Human Rights Law necessarily would be covered under the disability provisions of the Human Rights Law. A revised JIS is not required because the changes have no impact on the previously published JIS. The adoption of this rule, and these nonsubstantial changes, will not have any adverse impact on jobs and employment opportunities.

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 Rule Making was published in the State Register on November 4, 2015. The Division of Human Rights (DHR or Division) received comments associated with the rule making during the public comment period. Many comments were supportive of the proposal, some were supportive but suggested various changes, and many were opposed. The major issues and concerns raised in the comments are summarized below. DHR's response is provided for each issue or concern.

Comment: The regulation should avoid the use of gendered pronouns.

Response: The final regulation as adopted has removed gendered pronouns.

Comment: The regulation should explicitly include other diagnoses in addition to gender dysphoria, including transsexualism, gender identity disorder, intersex conditions or any other medical diagnosis stemming from having a gender identity different than that typically associated with one's sex assigned at birth.

Response: The final regulation as adopted has been amended to clarify that any individual who has a medical diagnosis or condition that meets the current statutory definition of disability set out in the HRL is protected from discrimination on that basis by the various disability provisions of the HRL, including employment, housing and places of public accommodation.

Comment: The definition of gender identity should be amended to ensure that individuals who do not identify as transgender, such as gender non-conforming individuals, continue to benefit from the protections under the Human Rights Law.

Response: It is unnecessary to include a specific reference to gender non-conforming individuals. Issues involving gender non-conforming individuals is addressed by the existing law on sex stereotyping, which is a well-established aspect of sex discrimination law. See the Division's Regulatory Impact Statement for further detail on sex stereotyping.

Comment: The regulation should provide more specific guidance on what types of actions would be considered sex or disability discrimination as they pertain to gender identity, gender expression, or gender dysphoria.

Response: Whether conduct constitutes discrimination or harassment is a fact-intensive inquiry that depends on the circumstances of a case and the applicable legal standards. Pursuant to the statutory language of the HRL, in the area of employment, individuals are entitled to equal treatment with regard to hiring, firing, compensation, or in terms, conditions or privileges of employment. Exec. L. § 296.1. In the area of housing, individuals are entitled to equal access to buy, rent, lease, or otherwise access housing, and to equal terms, conditions or privileges of the sale, rental or lease of housing. Exec. L. § 296.2-a and § 296.5. In the area of public accommodations, individuals may not be denied an accommodation, or the advantages, facilities or privileges thereof, or be subject to statements or other behavior indicating that any protected characteristic of an individual is unwelcome, objectionable or not acceptable, desired or solicited. Exec. L. § 296.2. In addition, the HRL provides that reasonable accommodation for persons with disabilities is specifically required in all of these areas. Exec. L. §§ 296.2(c)-(e), 296.2-a(d); 296.3, 296.18.

Comment: The regulation should provide specific guidance on what types of accommodations are needed by persons with gender dysphoria.

Response: As noted above, whether a particular accommodation is reasonable is a fact-intensive inquiry that depends on the circumstances in a case, including the medical needs of the individual as documented by the person's medical professional(s), and applicable legal standards. In addition, guidance on determining reasonable accommodation in the employment context is provided by 9 NYCRR 466.11.

Comment: The regulation should make explicit reference to "sex stereotyping."

Response: It is unnecessary to include a specific reference to sex stereotyping, which is a well-established aspect of sex discrimination law. See the Division's Regulatory Impact Statement for further detail on sex stereotyping.

Comment: The regulation should explicitly state that "actual or perceived" and/or "past or present" gender dysphoria is included.

Response: The definition of gender identity includes reference to "perceived" gender identity. With regard to gender dysphoria, or other condition meeting the statutory definition of disability set out in the HRL, the definition of "disability" under the HRL includes "a condition regarded by others as" a disability. Thus, all perceived disabilities, including perceived gender dysphoria, entitle the individual to the protection of the disability provisions. Also, the definition of disability under the HRL includes having "a record of" a disability, thus including those with a history of gender dysphoria (or other disability) regardless of whether the individual currently has a disability.

Comment: The regulation should explicitly include "gender expression" in addition to "gender identity."

Response: The regulation's definition of gender identity includes "expression." Variations in gender expression are an issue that is addressed by the existing law on sex stereotyping.

Comment: Various commenters suggested changes to the definition of gender identity (at (b)(1)), and to the explanations of the meaning of "sex" (at (c)(1)) and "disability" (at (d)(2)).

Response: Some suggested changes were stylistic rather than substantive. Some were substantive and advocated broader definitions and more inclusive language. The regulation has been written to state the protections afforded by current discrimination law. Some of the suggested changes may be encompassed in current law, and some of these have been specifically addressed elsewhere in this document. Others may go beyond current law, and should be addressed only on a case-by-case basis under current law, and/or should be determined by the legislature.

Comment: Some commenters suggested the addition of specific language relative to the purpose of the regulation.

Response: The purpose of the regulation, as explained fully in the accompanying Regulatory Impact Statement, is to clarify, consistent with interpretation by New York Courts and the Division's practice and policy, that the Human Rights Law's prohibition against sex discrimination includes discrimination based on gender identity and the status of being transgender, and the prohibition against disability discrimination includes discrimination based on gender dysphoria.

Comment: This regulation is ambiguous and unclear; imposes burdensome new costs and mandates upon employers; misinterprets existing law; and exceeds the Division's authority.

Response: The rule clarifies the Division's practice and policy with regard to complaints of transgender individuals. As set out in the Division's Regulatory Impact Statement, the Division's practice and policy are entirely consonant with the case law that has developed in this area with regard to the statutory prohibitions against sex and disability discrimination set out in the HRL. As these requirements already exist, there are no new costs or mandates. Pursuant to Executive Law § 295.5, it is a power and a duty of the Division to adopt, promulgate, amend and rescind suitable rules and regulations to carry out the provisions of the HRL.

Comment: The proposed regulation would force New York employers to change their workplaces to accommodate cross-dressing employees and would make businesses liable for supposed transgressions upon a civil right to "gender identity or expression."

Response: As noted above, the implementation of this rule clarifies the Division's practice and policy with regard to complaints of transgender individuals on the bases of sex and/or disability provisions of the HRL and imposes no new liabilities on employers or businesses.

Comment: The Division of Human Rights lacks the authority to revise the definitions of "sex" and "disability" set forth in the HRL.

Response: As noted above, this rule clarifies the Division's practice and policy with regard to complaints of transgender individuals, in accordance with the interpretation by New York courts of the sex and disability provisions of the HRL. There are no revisions to the definitions of "sex" and "disability."

Comment: The proposed rule will compromise the privacy and safety of females, undermine the rights of females to have space free from males and permit intact biological males to have access to women's restrooms and locker rooms.

Response: As noted above, the HRL prohibits sex and disability discrimination in employment, housing and places of public accommodation, and this rule clarifies how persons falling within those bases are protected by the Law. Only persons who meet the standards of the HRL are protected. General conjecture or speculation that the provisions might be misused cannot trump this legitimate need for protection from unlawful discrimination. No examples were given of such misuse in any jurisdiction in the United States where gender identity protection has been adopted.

Comment: The proposed rule would adopt a definition of "gender identity" that is entirely subjective. The proposed definition of "gender identity" does not require any objective proof. Gender identity should be defined as "a person's identification with the sex opposite her or his physiology or assigned sex at birth, which can be shown by providing evidence including, but not limited to, medical history, care or treatment of a transsexual medical condition, gender dysphoria, or related condition, as deemed medically necessary by the American Medical Association or American Psychiatric Association."

Response: The HRL defines disability broadly. It includes, but is not limited to, impairments or conditions that are "demonstrable by medically accepted clinical or laboratory diagnostic techniques." The definition also includes any condition that is "regarded by others as such an impairment" or "a record of such an impairment." Requiring objective proof, as part of the definition of disability, would place an additional burden on persons with gender dysphoria in establishing the status of having a disability that is not required under the HRL for other kinds of disabilities. The existence of the disability claimed in any particular case (or its perception or record) may be part of evidence required to prove a discrimination claim when a case is filed under the HRL, but requiring a different standard to meet the definition of disability would alter the legislatively imposed definition of disability, and would be beyond the Division's regulatory authority.

Comment: The proposed rule is inconsistent with the holding in State Div. of Human Rights ex rel. Johnson v Oneida County Sheriff's Department, which recognized a right to privacy on the basis of sex. Also, the HRL provides an exception that rooming houses may be limited to only one sex, and that the Division may grant exemptions for single sex public accommodations based on public policy considerations.

Response: The resolution of issues involving sex-based privacy, in the narrow circumstances in which it may be available, would be considered as part of the legal analysis of a sex discrimination claim and will be determined on a case-by-case basis. All existing law on this subject will be relevant to such resolutions, which will also involve the recognition that gender-identity discrimination is sex and/or disability discrimination.

Comment: Gender identity should not be included in the definition of "sex," as "gender identity" is wholly different from sex and, instead, is more analogous to sex stereotypes.

Response: Consistent with the case law cited in the accompanying Regulatory Impact Statement, the Division has interpreted the term "sex" as encompassing "gender identity."

Comment: Protections for the disabled under the HRL are aimed at seeking modifications of policies and was created specifically to address the legitimate needs of persons with disabilities. The disability basis should not be misused by those seeking legal protections for non-disability situations.

Response: Not all persons claiming gender identity discrimination allege that they are disabled within the meaning of the HRL. However, those who do, and who meet the HRL definition, are protected by the Law's disability provision.

Comment: Including gender identity under the category of "disability" is a serious threat to the religious liberty of religious organizations.

Response: The HRL contains exemptions for religious institutions at Executive Law § 296(11) and § 292(9). Moreover, enforcement of the HRL's prohibition against employment discrimination is circumscribed by the "ministerial exception" that the Supreme Court articulated in Hosanna-Tabor Evangelical-Lutheran Church and School v. EEOC (U.S. 2012).

Department of Labor

PROPOSED RULE MAKING
NO HEARING(S) SCHEDULED

Employer Imposed Limitations on the Inquiry, Discussion, and Disclosure of Wages

I.D. No. LAB-03-16-00009-P

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

Proposed Action: Addition of Part 194 to Title 12 NYCRR.

Statutory authority: Labor Law, sections 21, 194 and 199

Subject: Employer Imposed Limitations on the Inquiry, Discussion, and Disclosure of Wages.

Purpose: This regulation sets forth standards for limitations on inquiry, discussion, or the disclosure of wages amongst employees.

Text of proposed rule: *Part 194 Pay Equity*

Subpart-1 General Provisions

§ 194-1.1 Prohibited Practices

No employer shall prohibit an employee from inquiring about, discussing, or disclosing the wages of such employee or other employee, except as otherwise provided herein.

§ 194-1.2 Definitions

For the purposes of this part:

(a) The terms employee and employer shall be as those terms are defined in Section 190 of the Labor Law.

(b) Consent shall mean an express, advance, authorization given voluntarily by the employee, and consent may be withdrawn by an employee at any time.

194-1.3 Employer Imposed Limitations on the Inquiry, Discussion, and Disclosure of Wages

An employer may, in a written policy provided to an employee either electronically, through publicly available posting, or by paper copy, place reasonable limitations on the time, place and manner that an employee may inquire about, discuss, or disclose wages. Such limitations must be justified without reference to the content of the regulated speech, narrowly tailored to serve a significant interest, and leave open ample alternative channels for the communication of information. An employer shall not impose restrictions on employees in such a way that unreasonably prohibit inquiry, discussion, or disclosure of wages at the worksite and/or during work hours, directly or in practice. An employer may prohibit an employee from discussing or disclosing the wages of another employee unless the other employee provides verbal or written consent, either directly or indirectly. An employer may not avail itself to the affirmative defense contained in Section 194(4)(c) of the Labor Law, unless the employer can demonstrate that the written policy was provided to the relevant employee(s) in accordance with this Part. Copies of written policies must be maintained by the employer during the period of the applicability and for six years following such period.

194-1.4 Federal and State Law

The provisions of this Part shall not be construed to diminish or waive any rights or obligations of any employee pursuant to any other law, regulation, or collective bargaining agreement.

194-1.5 Severability

If any provision of this Part or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of this Part which can be given effect without the invalid provisions or applications. To this end, the provisions of this Part are declared to be severable.

Text of proposed rule and any required statements and analyses may be obtained from: Michael Paglialonga, NYS Department of Labor, Building 12, State Office Campus, Room 509, Albany, NY 12240, (518) 457-4380, email: regulations@labor.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: Labor Law §§ 21(11), § 194(4)(b), § 199.

Legislative Objectives: Sections 21(11) and 199 of the Labor Law provide the Commissioner with the authority to adopt regulations to carry out the provisions of the Labor Law. Section 194(4)(b) of the Labor Law directs the Commissioner to adopt standards for reasonable workplace and workday limitations on the time, place, and manner for inquiries, discussion of, or the disclosure of wages. This regulation sets forth such standards.

Needs and Benefits: This rulemaking is directed by the Legislature in Section 194 of the Labor Law, which was amended by Chapter 362 of the Laws of 2015, and provides employers with standards for limitations on inquiry, discussion, or disclosure of wages amongst employees. Employees will benefit significantly from the protections now afforded to the inquiry, discussion, or disclosure of wages.

Costs: The Department estimates that there will be no significant or direct costs to the regulated community to implement this rulemaking. The Department does not anticipate any significant increased costs as a result of this rulemaking.

Local Government Mandate: This rulemaking does not impose any mandate upon local governments or municipalities as they are excluded from the coverage of this rule.

Paperwork: This rulemaking does not impact any governmental reporting requirements currently required in either statute or regulation. Employers who have policies establishing limitations on the inquiry, discussion, or disclosure of wages will be required to communicate such policies in writing. Employers will also be required to maintain a copy of policies for six years, consistent with the recordkeeping requirements in Article 6 of the Labor Law.

Duplication: This rulemaking does not duplicate, overlap or conflict with any other State or federal requirements.

Alternatives: There were no significant alternatives considered. The Department is carrying out the directive of the Legislature in adopting Chapter 362 of the Laws of 2015 amending Section 194 of the Labor Law.

Federal Standards: This rulemaking is unrelated to any Federal rule or standard.

Compliance Schedule: This rulemaking shall become effective upon publication of its adoption in the State Register.

Regulatory Flexibility Analysis

Effect of rule: This regulation sets forth standards for reasonable workplace and workday limitations on the time, place, and manner for inquiries, discussion of, or the disclosure of wages.

Compliance requirements: This rulemaking does not impact any governmental reporting requirements currently required in either statute or regulation. Employers who have policies establishing limitations on the inquiry, discussion, or disclosure of wages will be required to communicate such policies in writing. Employers will also be required to maintain a copy of policies for six years, consistent with the recordkeeping requirements in Article 6 of the Labor Law.

Professional services: No professional services would be required to effectuate the purposes of this rulemaking.

Compliance costs: This rulemaking will not impose any costs or impact local governments. The Department estimates that there will be no significant or direct costs to small businesses to implement this rulemaking. The Department does not anticipate any significant increased governmental costs as a result of this rulemaking.

Economic and technological feasibility: The rulemaking does not require any use of technology to comply.

Minimizing adverse impact: The Department does not anticipate that this rulemaking will adversely impact small businesses or local government. Since no adverse impact to small business or local government will be realized, it was unnecessary for the Department to consider approaches for minimizing adverse economic impacts as suggested in SAPA § 202-b(1).

Small business and local government participation: The Department will ensure that small businesses and local governments will have an opportunity to participate in the rule-making process. The Department will elicit input from small businesses and local governments during the public comment period.

Initial review of the rule pursuant to SAPA § 207: Initial review of this rulemaking shall occur no later than the third calendar year in which it is adopted.

For rules that either establish or modify a violation or penalties associated with a violation: While this rule does not establish a violation or modify a violation or penalties associated with a violation, it is worth noting that Chapter 362 of the Laws of 2015, which directs the promulgation of this rule, increases liquidated damages for violations associated with this rulemaking to 300 percent of the wages found to be due.

Rural Area Flexibility Analysis

1. Types and estimated numbers of rural areas: The Department of Labor (hereinafter "Department") anticipates that the adoption of this rulemaking will have a positive or neutral impact upon all areas of the State; there is no adverse impact anticipated upon any rural area of the State resulting from this rulemaking.

2. Reporting, recordkeeping and other compliance requirements: This rulemaking does not impact any governmental reporting requirements currently required in either statute or regulation. Employers who have policies establishing limitations on the inquiry, discussion, or disclosure of wages will be required to communicate such policies in writing. Employers will also be required to maintain a copy of policies for six years, consistent with the recordkeeping requirements in Article 6 of the Labor Law.

3. Professional services: No professional services will be required to comply with this rule.

4. Costs: The Department estimates that there will be no significant or direct costs on employers and their agents in rural areas in the State to implement this rulemaking. The Department does not anticipate any significant increased costs as a result of this rulemaking.

5. Minimizing adverse impact: The Department does not anticipate that the adopted changes will have an adverse impact upon any region of the state. As such, different requirements for rural areas were not necessary.

6. Rural area participation: The Department has ensured that employers from all regions of the State, including rural areas, will have an opportunity to participate in the rule-making process. The Department will continue to elicit input from members of the regulated community in rural areas during the public comment period.

Job Impact Statement

Nature of impact: The Department of Labor (hereinafter "Department") projects there will be no adverse impact on jobs or employment opportuni-

ties in the State of New York as a result of this proposed rulemaking. This rulemaking sets forth standards for reasonable workplace and workday limitations on the time, place, and manner for inquiries, discussion of, or the disclosure of wages.

Categories and numbers affected: The Department does not anticipate that this rulemaking will have an adverse impact on jobs or employment opportunities in any category of employment.

Regions of adverse impact: The Department does not anticipate that adoption of this rulemaking an adverse impact upon jobs or employment opportunities statewide or in any particular region of the State.

Minimizing adverse impact: Since the Department does not anticipate any adverse impact upon jobs or employment opportunities resulting from this rulemaking, no measures to minimize any unnecessary adverse impact on existing jobs or to promote the development of new employment opportunities are required.

Self-employment opportunities: The Department does not foresee a measureable impact upon opportunities for self-employment resulting from adoption of this rulemaking.

Initial review of the rule pursuant to SAPA § 207: Initial review of this rulemaking shall occur no later than the third calendar year in which it is adopted.

Department of Motor Vehicles

NOTICE OF ADOPTION

Hearings for Persons Who Persistently Evade the Payment of Tolls

I.D. No. MTV-46-15-00003-A

Filing No. 3

Filing Date: 2016-01-05

Effective Date: 2016-01-20

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

Action taken: Amendment of Part 127 of Title 15 NYCRR.

Statutory authority: Vehicle and Traffic Law, sections 215 and 510(3)(d)

Subject: Hearings for persons who persistently evade the payment of tolls.

Purpose: To hold hearings for persons subject to a registration suspension due to persistently evading the payment of tolls.

Text or summary was published in the November 18, 2015 issue of the Register, I.D. No. MTV-46-15-00003-P.

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

Text of rule and any required statements and analyses may be obtained from: Heidi Bazicki, Department of Motor Vehicles, 6 Empire State Plaza, Rm. 526, Albany, NY 12228, (518) 474-0871, email: heidi.bazicki@dmv.ny.gov

Assessment of Public Comment

The Department of Motor Vehicles received several comments in response to its proposed rulemaking regarding the suspension of registrations, after an opportunity to be heard, for those individuals who fail to pay tolls, fees and other charges. The DMV appreciates all of the comments submitted.

Comment: Three commenters expressed support for the regulation. Two of those, including State Senator David Carlucci, noted that the proposed fails to address the problem of out-of-state registrants who persistently evade paying tolls in New York State.

Response: The DMV agrees that the regulation does not address the issue of out-of-state registrants. As Senator Carlucci wrote, legislation permitting the DMV to enter into reciprocal agreements with other jurisdictions to address this matter is necessary.

Comment: Two commenters, one from Fairport, NY, expressed concern that the proposed rule would not afford due process to those registrants whose registrations could be suspended. One of the commenters explained her difficulties in resolving a dispute with a tolling authority.

Response: Prior to the DMV issuing a notice of hearing and pending suspension to the registrant, the tolling authority will have given the registrant ample opportunity to pay and/or dispute the tolls and fees. The registrant will have received multiple notifications from the tolling authorities about the outstanding tolls and fees. The DMV will only issue a notice of hearing and pending suspension if the registrant has not responded to the tolling authority's notices. The DMV will not suspend the registration if the registrant requests a hearing before an Administrative Law Judge. If the registrant pays all outstanding tolls and fees prior to the hearing, the hearing will be cancelled and the suspension will not take effect.

If the registrant wishes to dispute a notice of non-payment from a tolling authority for any reason, including that his or her vehicle did not go through a tolling site on a specific date, such registrant will have the opportunity to do so prior to the matter being transferred to the DMV for appropriate action.

Comment: A commenter from Clinton Corners, NY expressed concerns about tolling authorities charging persons with rental or loaner vehicles.

Response: The proposed regulation would only apply to registered owners of the vehicles. Public Authorities Law section 2985(1) provides that that the owner of a leased or rental vehicle may provide the operator's information in order for the operator to be responsible for tolls incurred during their lease or rental period.

If a person rents a vehicle and is also an E-ZPass account holder, he/she may use their E-ZPass tag in a rental vehicle of the same class as their tag. If the person is not an E-ZPass account holder, they can choose to utilize the E-ZPass rental options available through the larger rental companies at the time of their car rental.

Nevertheless, if an E-ZPass account holder rents a vehicle and he/she adds the license plate of a rental vehicle to his/her account for use during a specified time, it is the E ZPass account holder's responsibility to remove the license plate number from the account once the rental vehicle use is discontinued in order to prevent toll invoices or violations being issued. If the license plate is not removed from the account and a problem arises, the account holder should contact the tolling authority, via the NY Customer Service Center (CSC), who will work with the account holder to resolve the matter.

Comment: A commenter expressed concerns about: the suspension of the driver's license; a suspension for failure to pay a relatively small amount in tolls; whether the person may not know he or she has committed five or more violations; what happens if the E-ZPass transmitter may fail; and if there is sufficient notice about failure to pay.

Response: The proposed rule does not provide for the suspension of a driver's license, only a vehicle registration. The rule deals with persistent violators, even if such violations do not result in a significant amount of tolls owed. The proposed rule does accommodate failure of an E-ZPass transmitter. A registered owner of a vehicle will be aware of violations because toll invoices and / or violation notices will be mailed to the vehicle and provide such owner with the option to utilize the dispute/appeal process. This process allows for the opportunity to resolve notices based on issues with a transponder. There will be a minimum of two notices, with at least thirty days between each notice, prior to the tolling authority making a recommendation to DMV to suspend a registration.

Comment: A commenter suggests that all toll lanes should have arms that go up and down.

Response: The DMV appreciates the comment but it is outside the scope of this rule.

Comment: One commenter expressed frustration about being re-routed on a trip during the Pope's recent visit to the United States. She apparently had to pay tolls that she had not planned on paying.

Response: The DMV appreciates the comment but it is outside the scope of this rule.

Comment: A commenter writing on behalf of Enterprise, National and Alamo Rent-A-Car requested an amendment to the regulation stating that such amendment would not apply to a rental vehicle company "when any such company has in place, a transfer of responsibility protocol with a tolling authority relating to the non-payment of tolls."

Response: The Department appreciates this suggestion. However, the proposed language is not necessary because it represents the current practices and procedures of the tolling authorities.

PROPOSED RULE MAKING
NO HEARING(S) SCHEDULED

Use of the Vehicle Electronic Reassignment and Integrated Facility Inventory System

I.D. No. MTV-03-16-00005-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 78.9 to Title 15 NYCRR.

Statutory authority: Vehicle and Traffic Law, sections 215(a) and 415

Subject: Use of the Vehicle Electronic Reassignment and Integrated Facility Inventory system.

Purpose: To require dealers to use the Vehicle Electronic Reassignment and Integrated Facility Inventory system.

Text of proposed rule: A new section 78.9 is added to read as follows:

78.9 Electronic recordkeeping and transmission of information related to the sale of vehicles

(a) Vehicle Electronic Reassignment and Integrated Facility Inventory system. Except as provided in subdivision (c) of this section, dealers are required to use the Vehicle Electronic Reassignment and Integrated Facility Inventory (VERIFI) system to transfer ownership of all vehicles and record vehicle sales. Dealers are required to:

(1) Sign a facility participation agreement with a vendor selected by the commissioner;

(2) Use the VERIFI system, as prescribed in the vendor's facility participation agreement;

(3) Electronically transmit the information set forth in the book of registry, records of paper MV-50 forms, and records of paper temporary certificates of registration;

(4) When an electronic MV-50 cannot be issued due to the nature of the sales transaction, such as a sale to a party in another state, use a paper MV-50 pursuant to the terms in the facility participation agreement, and record required data in the VERIFI system via the methods prescribed by the VERIFI facility participation agreement. Data recorded on any paper MV-50 must be entered into the VERIFI system no later than the time of issuance of the paper MV-50 to the buyer;

(5) Maintain an active and valid account with the VERIFI vendor, per the terms of the facility participation agreement, in order to issue electronic MV-50s and to receive and issue paper MV-50s. Failure to maintain an active and valid account with the VERIFI vendor and follow the procedures set forth in the facility participation agreement shall be a violation of this subdivision.

(b) Fees: The fee for each electronic Retail or Wholesale Certificate of Sale (MV-50 or MV-50W) shall be the same as the fee for the paper version of the form, as set forth in Vehicle and Traffic Law section 415(6). Dealers must pay a per transaction fee to the vendor, as set forth in the facility participation agreement.

(c) Exemptions:

(1) The Commissioner may, upon written request, in a form prescribed by the Commissioner, exempt a dealer from the requirement to use the VERIFI system as required by subdivision (a) of this section, provided the dealer:

(i) sells fewer than ten vehicles per year, and

(ii) has two or fewer dealer demonstration and/or transporter plates, and

(iii) is not enrolled in Dealer Partnering Program or a participant in the Dealer Plate Issuance Program, and

(iv) has not had a dealer registration suspended or revoked since the effective date of this section.

(2) Dealers granted an exemption under this section must sign a facility participation agreement with the vendor and pay the appropriate transaction fee for each sale of a vehicle. Within five (5) days of the date of sale of the vehicle, dealers must report required data recorded on an MV-50 or MV-50W to the vendor via paper or by telephone, as specified in the VERIFI facility participation agreement. Failure to maintain an active and valid account with the VERIFI vendor and follow the procedures set forth in the facility participation agreement shall be a violation of this subdivision and shall result in the withdrawal of any exemption previously granted to such dealer.

(3) If a dealer registration is suspended or revoked on or after the effective date of this section, any exemption granted to such dealer under this section shall be deemed void and of no effect.

(d) Exemption from Recordkeeping Regulations:

Notwithstanding any other provision of this Part, a dealer who has not been granted an exemption under subdivision (c) of this section, and who complies with the provisions of this section regarding the filing of records via the VERIFI system, shall be exempt from retaining and filing the paper record of the MV-50 form and the temporary certificate of registration for transactions conducted in the VERIFI system as set forth in this Part.

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

Data, views or arguments may be submitted to: Ida L. Traschen, Department of Motor Vehicles, 6 Empire State Plaza, Rm. 522A, Albany, NY 12228, (518) 474-0871, email: heidi.bazicki@dmv.ny.gov

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

Regulatory Impact Statement

1. Statutory authority: Vehicle and Traffic Law (VTL) section 215(a) provides that the Commissioner of Motor Vehicles may enact rules and regulations that regulate and control the exercise of the powers of the Department. VTL section 415 controls the registration, rights and responsibilities of dealers. VTL section 415(6) provides that " [i]f the commissioner issues to dealers a document which is required to be used by a dealer to sell or transfer a vehicle, the fee for the issuance of each such document shall be five dollars."

2. Legislative objectives: Article 16 of the VTL authorizes the Commissioner of Motor Vehicles to regulate motor vehicle dealers. The objective of this Article is to allow dealers to conduct their business in an efficient manner, while granting the Commissioner regulatory authority to ensure that consumers are protected. This regulation, which requires the use of electronic recordkeeping and vehicle sales by dealers, accords with this legislative objective by increasing efficiencies for dealers and enhancing the Commissioner's ability to audit dealer compliance with laws and regulations.

3. Needs and benefits: The proposed rule is necessary to increase dealer efficiencies in tracking motor vehicle sales and to benefit consumers by enhancing the Department of Motor Vehicles'(DMV) and other entities' ability to ensure dealer compliance with laws and regulations.

Currently, New York State dealers maintain records of vehicle ownership, sales and dealer plate issuance through paper based processes. Dealers are required to 1) keep a paper inventory log of vehicles in their possession, 2) use paper MV-50s (Certificates of Sale) to transfer ownership of a vehicle owned or controlled by the dealer, and 3) issue paper temporary registrations. Dealers report that the paper inventory system is cumbersome, burdensome and outdated. In addition, they report that they lose money when the paper MV-50 must be voided due to dealer error when completing the form. The DMV charges five dollars per MV-50s, as required by VTL section 415(6).

These proposed amendments will require dealers to record vehicle sales through the Vehicle Electronic Reassignment and Integrated Facility Inventory (VERIFI) system. The Commissioner will select a vendor via the Request for Proposal/bidding process and such vendor will enter into agreements with dealers for the electronic transmission of information related to motor vehicle ownership and sales.

Under this regulation, NYS dealers, via the VERIFI system, will electronically record their vehicle inventory and transfer of ownership, eliminating the need for paper MV-50s. If an error is made while completing the electronic MV-50, the dealer will not have to void the entire document, but rather, will be able to make an immediate correction. Although the dealers will still have to pay five dollars for each electronic MV-50, their costs will decrease due to the reduction in voided documents. In addition, the DMV and other users of the MV-50s will be able to readily review the electronic MV-50s, and by running queries, more easily detect non-compliance and reduce fraudulent uses of these documents. Further, entities such as the New York State Tax & Finance Department will be able to use the electronic MV-50s to monitor compliance with sales tax collection laws. Currently, the Tax Department has to manually review hundreds of paper MV-50s to monitor sales tax compliance. With the use of electronic MV-50s, the Tax Department will be able to efficiently detect sales tax non-compliance through the use of system queries.

The Book of Registry, which records all vehicles in the dealer's inventory, will be maintained electronically, as will the logbook of plates issued by dealers. It is anticipated that this will be a web based system that could be accessed by designated facility employees. Further, many dealerships manage their inventory and sales through a Dealership Management System (DMS). The vendor will be required to provide connections to DMS system vendors so that these systems may integrate with VERIFI thereby creating time savings by pre-populating fields with data that dealers are already collecting in the DMS's.

Finally, the DMV recognizes that it may not be cost effective for dealers with small businesses (sell fewer than 10 vehicles annually) to participate in the electronic transaction and recordkeeping program. Therefore, section 78.9(c) carves out an exemption for such dealers.

4. Costs:

a. To regulated parties: The dealers will continue to pay the DMV five dollars for each MV-50, as required by VTL section 415(6). In addition, the dealers will pay the VERIFI vendor a fee for processing MV-50 transactions. Dealers will need a computer and a printer to process electronic transactions. The printer is needed to print a receipt for the customer. The regulation permits, but does not require, the dealer to pass along the cost to its customers.

b. Cost to the State, the agency and local governments: This proposed rule will have no fiscal impact on the DMV. DMV will contract with a vendor who will charge the dealers for processing electronic transactions. In addition, it will not impact local governments, since the regulation concerns electronic recordkeeping by dealers.

c. Source: The Department's Office of Vehicle Safety provided this information.

5. Local government mandates: The proposed rule will not impact local governments, since it concerns electronic recordkeeping by dealers.

6. Paperwork: The proposed rule will require dealers to electronically process motor vehicle sales and to maintain electronic records of their inventory.

7. Duplication: This proposed regulation does not duplicate or conflict with any State or Federal rule.

8. Alternatives: The Department sought comments from the New York State Automobile Dealers Association, the Greater New York Automobile Dealers Association, the Eastern New York Coalition of Automotive Retailers, the Rochester Automobile Dealers Association, the Syracuse Automobile Dealers Association, and the Niagara Frontier Automobile Dealers Association, regarding the proposed regulation.

The New York State Automobile Dealers Association noted that the proposed regulation would require the dealers to pay the VERIFI vendor a fee for each transaction. They requested that they be given the authority to pass the cost along to the dealer's customers. The proposed regulation does not prohibit a dealer from passing along the cost to its customers.

The Greater New York Automobile Dealers Association mistakenly assumed that the VERIFI system would generate a paper MV-50 for exempt dealers. This is not correct. The DMV will continue to issue paper MV-50s to exempt dealers and to non-exempt dealers; they will not be generated from the VERIFI system. Non-exempt dealers will use paper MV-50s because they will not participate in the VERIFI system. Non-exempt dealers will use paper MV-50s in connection with sales to out-of-state residents and in the event of an outage that renders the VERIFI system inoperable.

The Greater New York Automobile Dealers Association also noted that the proposed regulation could undermine their attempt to centralize recordkeeping processes. To the contrary, entry of MV-50 data into the VERIFI system could be done at a central location, as long as the entry is related to the specific facility that sold the vehicle.

9. Federal standards: The rule does not exceed any Federal standards.

10. Compliance schedule: The Department will work with the VERIFI vendor to create an implementation schedule, gradually absorbing dealers into this new program.

Regulatory Flexibility Analysis

1. Effect of rule: There are currently over 11,800 dealers in New York State, the majority of which are small businesses. This proposed regulation would have no impact on local governments.

2. Compliance requirements: These proposed amendments will require dealers to record vehicle sales through the Vehicle Electronic Reassignment and Integrated Facility Inventory (VERIFI) system. The Commissioner will select a vendor via the Request for Proposal/bidding process and such vendor will enter into agreements with dealers for the electronic transmission of information related to motor vehicle ownership and sales. NYS dealers, via the VERIFI system, will electronically record their vehicle inventory and transfer of ownership, largely eliminating the need for paper MV-50s.

3. Professional services: This regulation will require dealers to contract with the vendor who operates the VERIFI system.

4. Compliance costs: The dealers will continue to pay the DMV five dollars for each MV-50, as required by VTL section 415(6). In addition, the dealers will pay the VERIFI vendor a fee for processing MV-50 transactions. The regulation that would permit, but not require, dealers to pass along this cost to its customers. Dealers would need a computer and a printer to process electronic transactions. The printer is needed to print a receipt for the customer.

5. Economic and technological feasibility: The proposal is economically and technologically feasible for dealers to comply with because they will only need a computer and printer to connect to the VERIFI vendor. Most dealers already own such equipment.

6. Minimizing adverse impact: The Department sought comments from the New York State Automobile Dealers Association, the Greater New York Automobile Dealers Association, the Eastern New York Coalition of Automotive Retailers, the Rochester Automobile Dealers Association, the Syracuse Automobile Dealers Association, and the Niagara Frontier Automobile Dealers Association, regarding the proposed regulation.

The New York State Automobile Dealers Association noted that the proposed regulation would require the dealers to pay the VERIFI vendor a fee for each transaction. They requested that they be given the authority to pass the cost along to the dealer's customers. The proposed regulation does not prohibit the dealer from passing along the cost to its customers.

The Greater New York Automobile Dealers Association mistakenly assumed that the VERIFI system would generate a paper MV-50 for exempt dealers. This is not correct. The DMV will continue to issue paper MV-50s to exempt dealers and to non-exempt dealers; they will not be generated from the VERIFI system. Non-exempt dealers will use paper MV-50s because they will not participate in the VERIFI system. Non-exempt dealers will use paper MV-50s in connection with sales to out-of-state residents and in the event of an outage that renders the VERIFI system inoperable.

The Greater New York Automobile Dealers Association also noted that the proposed regulation could undermine their attempt to centralize recordkeeping processes. To the contrary, entry of MV-50 data into the VERIFI system could be done at a central location, as long as the entry is related to the specific facility that sold the vehicle.

7. Small business and local government participation: See response to number 6 above.

Rural Area Flexibility Analysis and Job Impact Statement

A rural area flexibility analysis, and a job impact statement are not required for this rulemaking proposal because it will not adversely affect rural areas or job development.

This proposed rule requires dealers to join the electronic VERIFI system through which they will record vehicle ownership and transfers, replacing the current paper-based system. This will have no disproportionate or adverse impact on rural areas or on job development.

Public Service Commission

PROPOSED RULE MAKING
NO HEARING(S) SCHEDULED

Proposal to Use Certain Deferred Credits to Offset Costs Associated with Incremental Capital Expenditures

I.D. No. PSC-03-16-00006-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 Niagara Mohawk Power Corporation d/b/a National Grid to use certain deferred credits to offset costs associated with incremental capital expenditures in its electric and gas tariff schedules.

Statutory authority: Public Service Law, section 66

Subject: Proposal to use certain deferred credits to offset costs associated with incremental capital expenditures.

Purpose: To consider the use of certain deferred credits to offset costs associated with capital expenditures and other related relief.

Substance of proposed rule: The Public Service Commission (Commission) is considering a petition filed by Niagara Mohawk Power Corporation d/b/a National Grid (Niagara Mohawk or the Company) to retain up to $41.266 million of deferred credits to offset revenue requirement associated with its proposed capital expenditures for its electric operations for the twelve months ending March 31, 2017 and up to $83.064 million of deferred credits for the same purpose for the twelve months ending March 31, 2018. Under the Company's proposal, Section 43.5 of the General Information provisions of its electric tariff would need to be revised to permit the use of deferred credits arising from the Transmission Recovery Adjustment to offset a portion of the revenue requirement associated with the electric transmission-related revenue requirement for the twelve months ending March 31, 2017 and 2018. The Company's proposal would also permit it to retain up to $8.360 million of deferred credits to offset the revenue requirement associated with its proposed capital expenditures for its gas operations for the twelve months ending March 31, 2017 and up to $18.743 million of deferred credits for the same purpose for the twelve months ending March 31, 2018. The Company also proposes to modify its Gas Safety Metrics to require the Company to replace increased levels of leak prone pipe in order to avoid negative revenue adjustments. The Commission may adopt, modify, or reject, in whole or in part, the relief proposed and may resolve related matters.

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

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

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

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

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

(15-M-0744SP1)

PROPOSED RULE MAKING
NO HEARING(S) SCHEDULED

Petition to Submeter Electricity

I.D. No. PSC-03-16-00007-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 the Petition, filed by Longhouse Cooperative, to submeter electricity at 772 Elm Street Extension, Ithaca, New York.

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

Subject: Petition to submeter electricity.

Purpose: To consider the Petition of Longhouse Cooperative to submeter electricity at 772 Elm Street Extension, Ithaca, New York.

Substance of proposed rule: The Commission is considering the Petition, filed by Longhouse Cooperative on December 17, 2015, to submeter electricity at 772 Elm Street Extension, Ithaca, New York, located in the service territory of New York State Electric and Gas Corporation. 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-0736SP1)

PROPOSED RULE MAKING
NO HEARING(S) SCHEDULED

Petition to Submeter Electricity

I.D. No. PSC-03-16-00008-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 Petition filed by 910 Fifth Avenue Corporation, to submeter electricity at 910 Fifth Avenue, New York, New York.

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

Subject: Petition to submeter electricity.

Purpose: To consider the request of 910 Fifth Avenue Corporation to submeter electricity at 910 Fifth Avenue, New York, New York.

Substance of proposed rule: The Commission is considering the Petition, filed by 910 Fifth Avenue Corporation on December 1, 2015, to submeter electricity at 910 Fifth Avenue, New York, 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.

(15-E-0695SP1)

Department of Taxation and Finance

EMERGENCY
RULE MAKING

Metropolitan Transportation Business Tax Surcharge

I.D. No. TAF-03-16-00004-E

Filing No. 1151

Filing Date: 2015-12-31

Effective Date: 2015-12-31

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

Action taken: Addition of Part 9 to Title 20 NYCRR.

Statutory authority: Tax Law, subdivision First of section 171 and subdivision First of section 209-B; L. 2014, ch. 59, part A, section 7

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

Specific reasons underlying the finding of necessity: Specific reasons underlying the finding of necessity: Section 7 of Part A of Chapter 59 of the Laws of 2014 made certain changes that authorize the Commissioner to adjust the thresholds at which a corporation is deemed to be deriving receipts from activity in the Metropolitan Commuter Transportation District for purposes of imposing the metropolitan transportation business tax surcharge, after reviewing, at the end of each year, the cumulative percentage change in the consumer price index and adjusting such receipts thresholds if the consumer price index has changed by 10 percent or more since January 1, 2015 or since the date that the thresholds were last adjusted by the Commissioner, under paragraph (e) of subdivision (1) of section 209-B of the Tax Law.

These rules are being adopted on an emergency basis in accordance with the requirement that rules be adopted and effective as soon as practicable and consistent with the statutory requirement that employers must withhold amounts substantially equivalent to the tax reasonably estimated to be due for the taxable year. These rules are being adopted on an emergency basis in order to have the rates for Tax Year 2016 in place on January 1, 2016.

Subject: Metropolitan Transportation Business Tax Surcharge.

Purpose: To provide metropolitan transportation business tax thresholds and rate for tax year 2016.

Text of emergency rule: Section 1. Subchapter A of Title 20 of the Codes, Rules and Regulations of the State of New York is amended to add a new Part 9, entitled Metropolitan Transportation Business Tax Surcharge.

Section 9-1.1 Deriving Receipts Thresholds. [Tax Law, section 209-B(1)(a) and (e)]

(a) Pursuant to paragraph (e) of subdivision (1) of section 209-B of the Tax Law, the Commissioner of Taxation and Finance shall annually review the thresholds, set forth in subdivision (1) of section 209-B of the Tax Law, at which a corporation is deemed to be deriving receipts from activity in the Metropolitan Commuter Transportation District for purposes of imposing the metropolitan transportation business tax surcharge, and shall adjust such thresholds if the Commissioner finds that the cumulative percentage change in the Consumer Price Index since January 1, 2015, or since the thresholds were last adjusted, is 10 percent or more.

(b) In December of each year, the Commissioner shall ascertain the Consumer Price Index available at the end of the year from the United States Department of Labor, Bureau of Labor Statistics, as published during such month. If the Consumer Price Index has changed by 10 percent or more from the Consumer Price Index available on January 1, 2015, or since the thresholds were last adjusted, then the Commissioner shall adjust the receipts thresholds by the same percentage as the change in the Consumer Price Index and rounded up to the nearest $1,000 level. The Commissioner shall publish on the Department's Web site the newly

adjusted receipts thresholds and such other information as may deemed necessary and proper by the Commissioner.

Section 9-1.2 Tax Rate. [Tax Law, section 209-B(1)(a) and (f)]

(a) Pursuant to paragraph (f) of subdivision (1) of section 209-B of the Tax Law, the Commissioner of Taxation and Finance is authorized to determine the rate of the metropolitan transportation business tax surcharge for taxable years beginning on or after January 1, 2016, under paragraph (f) of subdivision (1) of section 209-B of the Tax Law.

(b) The metropolitan transportation business tax surcharge will be computed at the rate of 28 percent of the tax imposed under section 209 of the Tax Law for taxable years beginning on or after January 1, 2016 and before January 1, 2017. The rate used to compute the metropolitan transportation business tax surcharge, as determined by the Commissioner, will remain the same in any succeeding taxable year, unless the Commissioner, pursuant to the authority in paragraph (f) of subdivision (1) of section 209-B of the Tax Law, determines a new rate.

This notice is intended to serve only as a notice of emergency adoption. This agency intends to adopt this emergency rule as a permanent rule and will publish a notice of proposed rule making in the *State Register* at some future date. The emergency rule will expire March 29, 2016.

Text of rule and any required statements and analyses may be obtained from: Kathleen D. O'Connell, Tax Regulations Specialist 1, Department of Taxation and Finance, Taxpayer Guidance Division, Building 9, W.A. Harriman Campus, Albany, NY 12227, (518) 530-4153, email: Kathleen.OConnell@tax.ny.gov

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

A Regulatory Impact Statement, Regulatory Flexibility Analysis, Rural Area Flexibility Analysis and Job Impact Statement are not submitted, but will be published in the*Register* within 30 days of the rule's effective date.

Assessment of Public Comment

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

Office of Temporary and Disability Assistance

PROPOSED RULE MAKING
NO HEARING(S) SCHEDULED

Referrals of Human Trafficking Victims from Established Providers of Social or Legal Services

I.D. No. TDA-03-16-00001-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 765.1 and 765.2(d)-(e); renumbering of section 765.2(f)-(g) to section 765.2(g)-(h); and addition of section 765.2(f) to Title 18 NYCRR.

Statutory authority: Social Services Law, section 20(3)(d); L. 2015, ch. 368; L. 2011, ch. 24; L. 2007, ch. 74

Subject: Referrals of human trafficking victims from established providers of social or legal services.

Purpose: Conform State regulations to referral requirements of chapter 368 of the Laws of 2015.

Text of proposed rule: Section 765.1 is amended to read as follows:

§ 765.1 Scope.

The provisions of this Part shall govern the process and protocols for the Office of Temporary and Disability Assistance in assessing, and the social services districts in identifying, an individual as a State-confirmed human trafficking victim in New York State. In conjunction with the Division of Criminal Justice Services and Part 6174 of Title 9 NYCRR, *the Office of Victim Services, and the Office for the Prevention of Domestic Violence,* this Part shall also include defining the participant parties, the victim, the nature of the consultative role in the confirmation and appeal processes, and the process for required notifications, referrals and assistance to the prescribed parties.

§ 765.2 Definitions.

Subdivision (d) of § 765.2 is amended to read as follows:

(d) The term subject of referral shall mean a human trafficking victim referred by a statutory referral source under section [483-CC(A)] *483-cc(a)* of the Social Services Law to the division and the office for assessment as a State-confirmed human trafficking victim.

Subdivision (e) of § 765.2 is amended to read as follows:

(e) The term statutory referral source shall mean either (i) the law enforcement agency or district attorney's office*, or (ii) an established provider of social or legal services designated by the office, the Office for the Prevention of Domestic Violence, or the Office of Victim Services* that, as soon as practicable after a first encounter with a person who reasonably appears to be a human trafficking victim, refers such human trafficking victim to the division and the office for assessment as a State-confirmed human trafficking victim.

Subdivisions (f) and (g) of § 765.2 are re-lettered subdivisions (g) and (h), and a new subdivision (f) is added to § 765.2 to read as follows:

(f) The term established provider of social or legal services shall include public agencies, county or municipal governments, or any subdivisions thereof; not-for-profit corporations, including charitable organizations incorporated, registered and in good standing with the charities bureau of the New York State Attorney General's Office; faith-based organizations; and educational institutions.

(g) The term State-confirmed human trafficking victim shall mean a human trafficking victim referred by a statutory referral source who appears to meet the criteria for certification as a victim of a severe form of trafficking in persons pursuant to the federal Trafficking Victims Protection Act set forth in section 7105 of 22 U.S.C. (United States Code Annotated, Title 22, section 7105; Thomson West, West Headquarters, 610 Opperman Drive, Eagan, MN 55123. Copies may be obtained from the Office of Temporary and Disability Assistance, Public Information Office, 40 North Pearl Street, Albany, New York 12243-0001) or appears to be otherwise eligible for any Federal, State, or local benefits and services, in the judgment of the division, in consultation with the office and statutory referral source.

(h) The term case management provider shall mean [and] *an* entity under contract with the office pursuant to section [483-BB(B)] *483-bb(b)* of the Social Services Law to provide services to certain State-confirmed human trafficking victims.

Text of proposed rule and any required statements and analyses may be obtained from: Richard P. Rhodes, Jr., New York State Office of Temporary and Disability Assistance, 40 North Pearl Street, 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) § 20(3)(d) authorizes the Office of Temporary and Disability Assistance (OTDA) to promulgate regulations to carry out its powers and duties.

Section 14 of Chapter 74 of the Laws of 2007 amended the Penal Law, the Criminal Procedure Law, the Correction Law, the SSL, and the Executive Law relating to human trafficking, and was amended by Chapter 24 of the Laws of 2011. Chapter 368 of the Laws of 2015 (the Trafficking Victims Protection and Justice Act) provides for the addition, amendment and/or repeal of any rule or regulation necessary for the timely implementation of the provisions of Article 10-D of the SSL. Chapter 368 of the Laws of 2015 will become effective on January 19, 2016.

2. Legislative objectives:

It was the intent of the Legislature in enacting the above statutes that OTDA establish rules, regulations and policies to improve the State's response to human trafficking by enhancing the protection of and assistance to victims of human trafficking. These statutes give OTDA the authority to promulgate regulations concerning the scope of entities authorized to refer a person who reasonably appears to be a human trafficking victim to OTDA and the New York State Division of Criminal Justice Services (DCJS) for confirmation as a victim of human trafficking.

3. Needs and benefits:

The proposed regulatory amendments to 18 NYCRR Part 765 would conform State regulations with Chapter 368 of the Laws of 2015, authorizing OTDA and DCJS to accept referrals of apparent human trafficking victims from established providers of social or legal services designated by OTDA, the Office for the Prevention of Domestic Violence (OPDV) or the Office of Victim Services (OVS). State regulations presently limit such referrals to law enforcement agencies and district attorneys throughout the State. The purpose of the proposed regulations is to also clearly define the participant agencies statutorily authorized to participate in the referral process. While the law will authorize referrals of apparent human trafficking victims by designated "established providers of social and legal services", the law lacks a statutory definition of the term. The proposed regulatory amendments would not only define the term "established provider of social or legal services" in State regulations, but would also clarify the rules for the designation of such providers.

4. Costs:

OTDA costs for personnel would remain the same as those currently in place — one Trafficking Coordinator staff position and one Program Manager staff position.

Costs to the social services districts (SSDs) would reflect the number of human trafficking victims served. Adult human trafficking victims who are United States (U.S.) citizens or nationals, qualified aliens, or persons residing under color of law (PRUCOL) would be eligible for benefits and services to the same degree as any other U.S. citizen or national, qualified alien, or PRUCOL, if otherwise eligible; unfortunately, however, it is impossible to cite definitively reliable estimates of the status of human trafficking victims who may be ultimately served by the SSDs. Therefore, the cost of additions to the local adult or family caseload resulting from implementation of the proposed regulatory amendments would be equivalent to additions to the caseload of any other citizen or qualified alien adult or families.

The appropriate SSD will be notified of all minors referred for confirmation, whether they are unaccompanied or are with their families, in accordance with current procedures. Unaccompanied minors will continue to be assessed by the SSD for services and benefit eligibility under current guidelines. As with adults, child welfare costs for minors placed in care resulting from the implementation of the proposed regulatory amendments would be equivalent to the costs for any other minor placed in a corresponding level of care.

5. Local government mandates:

The proposed regulatory amendments would not impose any new programs or requirements on the SSDs.

6. Paperwork:

The proposed regulatory amendments would not produce new form or reporting requirements, insofar as OTDA will continue to receive referrals via facsimile on the prescribed form. However, the prescribed form will be revised to include the newly-added statutory referral sources. Upon State confirmation of a human trafficking victim, the OTDA program office, the Bureau of Refugee and Immigrant Assistance (BRIA), will mail written notifications of confirmation to the referral source, the human trafficking victim, and the provider of services and benefits; these written notifications will be similar to each other, with only slight variations in the addressees. OTDA anticipates that, due to new referral sources, there may be an increase in the number of written notifications of confirmation upon implementation of the proposed regulatory amendments. These written notifications will serve to alert the locality that there is a person who may qualify for services in the SSD or under the State's Response to Human Trafficking Program. The proposed regulatory amendments would not impose additional obligations upon the SSDs.

7. Duplication:

The proposed regulatory amendments would not duplicate, overlap, or conflict with any existing State or federal regulations. Chapter 368 of the Laws of 2015 is designed, in part, to address human trafficking victims that have not yet been certified by the federal Office of Refugee Resettlement (ORR) as a victim of a severe form of human trafficking. The addition of "established legal and social service providers" as referral sources is designed to allow human trafficking victims access to vital services through those providers prior to federal certification. Therefore, there would be no duplication with regard to the identification of human trafficking victims or the confirmation or notification processes.

8. Alternatives:

The alternative to the proposed regulatory amendments would be to answer provider questions on the meaning of the "statutory referral source" on a case-by-case basis. However, this is not a viable option, because, under this alternative, the current State regulatory provision will not accurately reflect the statutory amendments contained in Chapter 368 of the Laws of 2015 upon the law's effective date of January 19, 2016.

9. Federal standards:

The proposed regulatory amendments would not conflict with federal standards governing the provision of services to victims of human trafficking. As indicated above, Chapter 368 of the Laws of 2015 is designed to address the needs of human trafficking victims prior to federal certification. Human trafficking victims whose status is confirmed by the State would be eligible for State benefits and services while they await federal certification, which oftentimes can be a lengthy process. Allowable expenditures by OTDA regional contractors for benefits and services are established at rates equivalent to, but not exceeding, those allowed for cash assistance recipients.

10. Compliance schedule:

The proposed regulatory amendments would be effective on the date the notice of adoption for this regulatory proposal is published in the New York State Register.

Regulatory Flexibility Analysis

1. Effect of rule:

The proposed regulatory amendments would not impact small businesses, but they may impact the 58 social services districts (SSDs) in New York State, as the SSDs will receive written notifications of certain individuals who may be eligible for services.

2. Compliance requirements:

While the SSDs may experience slight increases in referrals, the proposed regulatory amendments would not impose any additional compliance requirements upon small businesses or local governments.

3. Professional services:

The proposed amendments would not require SSDs to obtain additional professional services. The number of State-confirmed aliens or citizens who may have been eligible for services and benefits at SSDs since 2007 totals only 234 individuals. While this number may increase slightly upon implementation of the proposed regulatory amendments due to increased referral sources, based on the currently low number of referrals eligible for benefits at SSDs, the Office of Temporary and Disability Assistance (OTDA) believes it would be unlikely that SSDs would need to procure additional professional services and/or additional staffing unless particular SSDs experience significant caseload expansions.

4. Compliance costs:

The proposed regulatory amendments would not require additional compliance costs for small businesses or local governments. There would be no appreciable initial capital costs for SSDs, and continuing capital costs would be limited to those SSDs that experience significant future expansions of their caseloads of human trafficking victims.

5. Economic and technological feasibility:

Due to anticipated small caseloads Statewide, the difficulty in predicting the specific SSDs that may be affected by implementation of the proposed regulatory amendments, and the low technology requirements necessary for compliance with the proposed regulatory amendments upon implementation, OTDA believes that compliance with the proposed regulatory amendments is economically and technologically feasible.

6. Minimizing adverse impact:

OTDA anticipates that the minimal expectations for additional recording and reporting beyond that which is already required of SSDs, combined with the anticipated low caseloads, would minimize the potential adverse impacts on SSDs resulting from implementation of the proposed regulatory amendments.

7. Small business and local government participation:

OTDA plans to provide a General Information System (GIS) message release to the SSDs when Chapter 368 of the Laws of 2015 becomes effective on January 19, 2016. The GIS release will be posted to OTDA's internet website. SSDs will have an opportunity to provide comments to OTDA relative to the implementation of Chapter 368 of the Laws of 2015 (the Trafficking Victims Protection and Justice Act). OTDA will also provide SSDs with a contact at OTDA's Bureau of Refugee and Immigrant Assistance (BRIA) who will address any questions, concerns, or other issues relative to the implementation of Chapter 368 of the Laws of 2015 raised by the SSDs.

Rural Area Flexibility Analysis

1. Types and estimated numbers of rural areas:

Potentially all rural areas of the State may be affected by the proposed regulatory amendments.

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

No additional reporting or recordkeeping would be required by the rural social services districts (SSDs). SSDs already must receive written notification of any minor found in the SSD that has been referred to the New York State Division of Criminal Justice Services (DCJS) and the New York State Office of Temporary and Disability Assistance (OTDA) as a human trafficking victim. SSDs already must continue to receive written notification of any State-confirmed human trafficking victims who are United States (U.S.) citizens or nationals, qualified aliens, individuals determined to be persons residing under color of law (PRUCOL), or who have a satisfactory immigration status.

For all State-confirmed human trafficking victims referred to SSDs, the SSDs must continue to conduct the routine eligibility determination process that they do for all applicants. For all State-confirmed human trafficking victims, the SSDs must continue to prepare a Human Trafficking Victim Disposition Report and submit it to OTDA through the Bureau of Refugee and Immigrant Assistance (BRIA). For those human trafficking victims determined to be eligible and who are enrolled in services or benefit programs, including child welfare programs, the SSDs must then continue to follow the usual appropriate system reporting requirements.

The estimated number of qualified aliens, U.S. nationals, citizens, individuals determined to be PRUCOL, or individuals having a satisfactory immigration status whom would be confirmed as trafficking victims has been increasing since 2007, but remains comparatively low in rural areas. Minors in rural areas have also not been readily identified.

Rural SSDs may receive several referrals during the course of a year attributable to the additional referral sources, but, due to the comparatively

low numbers of human trafficking victims confirmed in rural areas since 2007, OTDA anticipates that the majority of rural SSDs would not experience significant increases in referrals. Consequently, OTDA does not anticipate that implementation of the proposed regulatory amendments would require rural SSDs to procure additional professional services and/or additional staffing unless particular rural SSDs experience significant caseload expansions.

3. Costs:

The regulated parties include OTDA and the SSDs. Costs to the SSDs in rural areas would be reflective of the number of individuals served by the rural SSDs. Adult human trafficking victims who are U.S. citizens or nationals, qualified aliens, or PRUCOL would be eligible for benefits and services to the same degree as any other U.S. citizen or national, qualified alien, or PRUCOL, if otherwise eligible. Therefore, the cost of additions to the local adult or family caseload resulting from implementation of the proposed regulatory amendments would be equivalent to additions to the caseload of any other citizen or qualified alien adult or families.

The appropriate rural SSD will be notified of all minors who are referred for confirmation, whether they are unaccompanied or are with their families, in accordance with current procedures. Unaccompanied minors will continue to be assessed by the rural SSD for services and benefit eligibility under current guidelines. As with adults, child welfare costs for minors placed in care resulting from the implementation of the proposed regulatory amendments would be equivalent to the costs for any other minor placed in a corresponding level of care.

4. Minimizing adverse impact:

OTDA anticipates that the minimal expectations for additional recording and reporting, beyond that already required of rural SSDs, combined with the anticipated low caseloads in rural SSDs, would minimize potential adverse impacts on rural SSDs resulting from the implementation of the proposed regulatory amendments.

5. Rural area participation:

OTDA plans to provide a General Information System (GIS) release to the rural SSDs when Chapter 368 of the Laws of 2015 becomes effective on January 19, 2016. The GIS release will be posted to OTDA's internet website. Rural SSDs will have an opportunity to provide comments to OTDA relative to the implementation of Chapter 368 of the Laws of 2015. OTDA will also provide rural SSDs with a contact at OTDA BRIA who will address any questions, concerns, or other issues relative to the implementation of Chapter 368 of the Laws of 2015 raised by the rural SSDs.

Job Impact Statement

A Job Impact Statement is not required for the proposed regulatory amendments. It is apparent from the nature and the purpose of the proposed regulatory amendments that they would neither substantially nor adversely impact upon jobs and employment opportunities in the State. Based on the current number of cases Statewide, it is expected that most local areas would not be affected by this rule and that any affected area would have minimal impact on employment. It is noted that the New York State Office of Temporary and Disability Assistance Bureau of Refugee and Immigrant Assistance will continue to employ one Human Trafficking Coordinator and one Human Trafficking Program Manager.