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.

New York State Athletic Commission

PROPOSED RULE MAKING
NO HEARING(S) SCHEDULED

Conduct and Regulation of Authorized Combative Sports

I.D. No. ATH-28-16-00018-P

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

Proposed Action: Repeal of Parts 205 through 217; and addition of new Parts 206, 207, 208, 209, 210, 211, 212, 213 and 214 to Title 19 NYCRR.

Statutory authority: L. 2016, ch. 32, sections 2 and 11

Subject: Conduct and regulation of authorized combative sports.

Purpose: To implement the provisions of ch. 32 of the Laws of 2016, effective September 1, 2016, authorizing certain combative sports.

Substance of proposed rule (Full text is posted at the following State website:http://www.dos.ny.gov/athletic/index): Chapter 32 of the laws of 2016, establishing a new Article 41 in the General Business Law entitled "Combative Sports," effective September 1, 2016, provides that combative sports legally undertaken in this state are subject to the licensing and regulatory authority of the State Athletic Commission. Additionally within the purview of the Commission is professional wrestling. Section 11 of chapter authorizes the Commission to promulgate rules "necessary for the implementation of this act...to be made on or before" the September 1 effective date.

In providing a framework for the licensure and regulation of authorized combative sports and professional wrestling, the legislature repealed the existing statutory structure related to "boxing, sparring and wrestling" and replaced it with a more comprehensive scheme for the regulation of those endeavors as well as, among others, professional and amateur mixed martial arts, kickboxing, and other combative sports. Additionally, the legislation seeks to protect combatants in all combative endeavors by establishing insurance minimums for some and vesting in the Commission the discretion to establish them for others. This proposal would effectuate such statutory scheme by providing rules intended to ensure appropriate protections for the health and safety of combative sports athletes, to ensure integrity in athletic competition, to prevent abuses in the business practices within the covered industries, and to provide reasonable requirements for the licensure of professional boxing and mixed martial arts promoters, ringside personnel and combatants. Additionally, it provides for the authorization of third party entities to oversee the conduct of certain authorized combative sports including, kickboxing, wrestling (which is distinguished from "professional wrestling" as defined in section 1017 of Article 41 of the General Business Law), amateur mixed martial arts, and the martial arts of Judo, Tae Kwon Do, Karate and Kempo.

These rules are necessary to effectuate the regulation of combative sports and professional wrestling so that they may be safely conducted while contributing to the economy and general prosperity of New York State.

Text of proposed rule and any required statements and analyses may be obtained from: James Leary, Esq., NYS Department of State, One Commerce Plaza, 99 Washington Ave., 11th Fl., Albany, NY 12232-0001, (518) 474-6740, email: James.Leary@dos.ny.gov

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

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

Regulatory Impact Statement

1. Statutory authority: Chapter 32 of the laws of 2016, which established a new Article 41 in the General Business Law entitled "Combative Sports," effective September 1, 2016, provides that combative sports legally undertaken in this state are subject to the licensing and regulatory authority of the State Athletic Commission. Professional wrestling is also within the purview of the Commission. Section 11 of Chapter 32 authorizes the Commission to promulgate rules "necessary for the implementation of this act. . .to be made on or before" the September 1 effective date. The new Article 41 also provides general rulemaking authority in the Commission for its effectuation (GBL § 1003(2)) and explicit rulemaking authority relevant to: "licensing standards (GBL § 1003(2)); training facilities (GBL § 1009(2)(a); fees for temporary working permits (GBL § 1011); the "conduct of authorized professional combative sports" (GBL § 1014); and the adjustment of "minimum limits" of required insurance and financial guarantees (GBL § 1015(11)).

2. Legislative objectives: In providing a framework for the licensure and regulation of authorized combative sports and professional wrestling, the legislature repealed the existing statutory structure related to "boxing, sparring and wrestling" and replaced it with a more comprehensive scheme for the regulation of those endeavors as well as, among others, professional and amateur mixed martial arts, kickboxing, and other combative sports. Additionally, the legislation seeks to protect combatants in all combative endeavors by establishing insurance minimums for some and vesting in the Commission the discretion to establish them for others. This proposal would effectuate the purpose of the statute by providing rules intended to ensure appropriate protections for the health and safety of combative sports athletes, to ensure integrity in athletic competition, to prevent abuses in the business practices within the covered industries, and to provide reasonable requirements for the licensure of professional boxing and mixed martial arts promoters, ringside personnel and combatants.

The proposal also provides for the authorization of third party entities to oversee the conduct of certain authorized combative sports including kickboxing, wrestling (which is distinguished from "professional wrestling" as defined in section 1017 of Article 41 of the General Business Law), amateur mixed martial arts, and the martial arts of Judo, Tae Kwon Do, Karate and Kempo. It should be noted, however, that these regulations do not apply to amateur training or instructional activities conducted by a business entity for the purposes of providing instruction and evaluation in a combative sport to customers for the purposes of health and fitness, personal development, self-defense or preparation for participation in amateur events conducted by an authorized sanctioning entity, as Section 1021 of the General Business Law expressly exempts such activities from the regulatory jurisdiction of the State Athletic Commission.

3. Needs and benefits: Existing law (Chapter 912 of the Laws of 1920, as amended, and the regulations promulgated pursuant thereto) vests in the Commission regulatory authority for the conduct of "boxing, sparring and professional wrestling." As of September 1, 2016, the effective date of Chapter 32 of the laws of 2016, such authority is repealed and replaced with Article 41 of the General Business Law, which provides a more inclusive scheme for the regulation of professional wrestling and authorized combative sports, comprised of "amateur and professional boxing, wrestling, sparring, kick boxing, single discipline martial arts and mixed martial arts." (GBL § 1001). In addition to newly authorizing and providing for the regulation of mixed martial arts, the legislation provides explicit requirements related to the protection of combatants with respect to their physical safety and economic needs in the event of an injury sustained while engaged in combat. These rules are necessary to effectuate the regulation of combative sports and professional wrestling regulation so that they may be safely conducted while contributing to the economy and general prosperity of New York State.

4. Costs:

a. Costs to regulated parties: New Article 41 provides a path for the sanctioning and conduct of professional mixed martial arts in New York State. Such activities will be new to this state, and the cost of compliance with regulatory requirements will be absorbed within the industry's business models and offset by revenue. The regulatory requirements set forth in new Article 41 and clarified in this proposal are in substantial conformance with those of other major market states which have historically permitted the conduct of mixed martial arts.

With respect to both the boxing and professional wrestling industries, compliance costs will be similar to current costs. Application fees for boxing licensure are statutorily frozen until September 1, 2018, and will thus continue unchanged. However, there will be additional costs associated the provision of enhanced insurance coverage requirements for boxers. Adhering to the new Article 41 minimums, this proposal would require at least $50,000 for medical, surgical and hospital expenses, a $50,000 death benefit and $1,000,000 for the treatment of any "life-threatening brain injury." The Department estimates that the cost of such a policy's premium would be between $7,500 and $9,000. There is no anticipated cost increase for professional wrestling promotions.

With respect to a professional kickboxing and other professional single discipline martial arts events conducted under the oversight of an authorized sanctioning entity, this proposal would require at least $50,000 for medical, surgical and hospital expenses and a $50,000 death benefit, costing between $3,000 and $6,000 per event. The promoter of an amateur combative sport match or exhibition is required to maintain a $10,000 policy at an anticipated cost of approximately $800 - $1,000 per event.

b. Costs to the Department of State, the State and local governments: Presently, the cost of administering the program with its limited jurisdiction is approximately $1M. With the addition of mixed martial arts, this figure is expected to increase. There will be no cost to local governments.

c. Cost methodology: The Department has estimated the resources necessary to implement the new licensing/regulatory programs sanctioned by new Article 41. It has projected the need for additional staff and nonpersonal resources by extrapolation from the resources necessary to administer its current licensing/regulatory responsibilities.

5. Local government mandates: The proposal does not impose any program, service, duty or responsibility upon any county, city, town, village, school district or other special district.

6. Paperwork: The proposal requires the completion of licensing applications by promoters, individual professional combatants and third party sanctioning entities. Promoters and sanctioning entities are required to maintain documents and records associated with the conduct of events, matches and exhibitions.

7. Duplication: No other state or federal rule or legal requirement duplicates, overlaps or conflicts with this rule.

8. Alternatives: The proposal provides comprehensive policy and procedure for the licensing and conduct of combative sports and professional wrestling in New York State. An alternative considered was to provide less specific guidance, leaving much of the administration of the program to be set forth in unofficial policy and practice. This was rejected as unhelpful to the regulated industries.

9. Federal standards: The federal "Professional Boxing Safety Act of 1996" as amended by the "Mohammad Ali Boxing Reform Act of 2000" (15 USC 6301, et seq.) requires the approval of a "host state's" boxing commission for the conduct of a professional boxing event. Additionally, it sets forth certain minimum health and safety standards for the protection of boxers, and establishes standards for contracts and disclosures designed to protect boxers from unfair and coercive contracts. This proposal is fully consistent with Federal requisites.

10. Compliance schedule: Immediate upon effective date of new Article 41, which is September 1, 2016.

Regulatory Flexibility Analysis

1. Effect of rule: Currently, there are approximately 50 licensed promoters of professional boxing events and 40 licensed promoters of professional wrestling. Professional kickboxing is legally hosted by only one active statutorily authorized entity. A majority of such promoters service small venues and would be considered small businesses. With the introduction of professional mixed martial arts and a proposed process for the licensure of third party sanctioning entities, it is expected that a number of new small businesses will enter the market.

2. Compliance requirements: The proposal requires the completion of licensing applications by promoters, managers, seconds/trainers, matchmakers, referees, judges, individual professional combatants and third party sanctioning entities. Promoters and sanctioning entities are required to maintain documents and records associated with the conduct of events, matches and exhibitions.

3. Professional services: No professional services are likely to be required as a result of this rule.

4. Compliance costs: New Article 41 provides a path for the sanctioning and conduct of professional mixed martial arts in New York State. Such activities will be new to this state, and it is anticipated that the cost of compliance with regulatory requirements will be absorbed within the industry's business models and offset by revenue. It is of note that the regulatory requirements set forth in new Article 41 and clarified in this proposal are in substantial conformance with those of other major market states which have historically permitted the conduct of mixed martial arts.

With respect to both the boxing and professional wrestling industries, nearly all compliance costs will be similar to current costs. Application fees for boxing licensure are statutorily frozen until September 1, 2018, and will thus continue unchanged. However, there will be additional costs associated with the statutory mandate of enhanced insurance minimums for professional boxers. Adhering to the new Article 41 minimums, this proposal would require at least $50,000 for medical, surgical and hospital expenses, a $50,000 death benefit and a minimum of $1,000,000 in coverage for the treatment of any "life-threatening brain injury." The Department estimates that the cost of such a policy for a professional boxing promoter would be between $7,500 and $9,000 to provide requisite coverage to all participants on a ten bout professional boxing card. There is no anticipated cost increase for professional wrestling promoters.

With respect to events undertaken by an authorized sanctioning entity, this proposal would require at least $50,000 for medical, surgical and hospital expenses and a $50,000 death benefit for a professional kickboxing or other professional single discipline martial arts event. The cost for such insurance, per event, is estimated to range between $3,000 and $6,000. The promoter of an amateur combative sport match or exhibition is required to maintain a $10,000 policy at a cost of $800 - $1,000 per event.

5. Economic and technological feasibility: Some small businesses conducting professional boxing and kickboxing events in smaller venues may find the increased insurance costs problematic.

6. Minimizing adverse impact: The Department considered the downward adjustment of statutorily prescribed and newly imposed insurance minimums, but determined that such action would not be in the best interests of the combatants and contrary to legislative intent.

7. Small business and local government participation: The Department has discussed these matters with promoters and other interested parties.

8. For rules that either establish or modify a violation or penalties associated with a violation: Disciplinary action, including reprimand, fine, suspension or revocation, may be taken against licensees for violations of Article 41 of the General Business Law. A licensee may contest such action and is afforded an opportunity to be heard in the matter. Such disciplinary jurisdiction is necessary to protect the integrity of athletic competition, to deter and appropriately penalize foul play and unsportsmanlike conduct, and to provide for suspensions and revocations in the interest of health and safety.

Rural Area Flexibility Analysis

1. Types and estimated numbers of rural areas: Statewide.

2. Reporting, recordkeeping and other compliance requirements; and

professional services: The rule requires the completion of licensing applications by promoters, individual professional combatants and third party sanctioning entities. Promoters and sanctioning entities are required to maintain documents and records associated with the conduct of events, matches and exhibitions. No professional services are likely to be required as a result of this rule.

3. Costs: New Article 41 provides a path for the sanctioning and conduct of professional mixed martial arts in New York State. These activities will be new to this state, and the cost of compliance with regulatory requirements will be absorbed within the industry's business models and offset by revenue. The regulatory requirements set forth in new Article 41 and clarified in this proposal are in substantial conformance with those of other major market states which have historically permitted the conduct of mixed martial arts.

With respect to both the boxing and professional wrestling industries, compliance costs will be similar to current costs. Application fees for boxing licensure are statutorily frozen until September 1, 2018 and thus, will continue unchanged. However, there will be additional costs associated the provision of enhanced insurance minimums and requirements for boxers. Adhering to the new Article 41 minimums, this proposal would require at least $50,000 for medical, surgical and hospital expenses, a $50,000 death benefit and $1,000,000 for the treatment of any "life-threatening brain injury." The Department estimates that the cost of such a policy would be between $7,500 and $9,000. There will be no cost increase for insurance required for professional wrestling.

With respect to events undertaken by an authorized sanctioning entity, this proposal would require at least $50,000 for medical, surgical and hospital expenses and $50,000 death benefit for a professional kickboxing or other professional single discipline martial arts event. The cost for such insurance, per event, is estimated to range between $5,000 and $6,000. The promoter of an amateur combative sport match or exhibition is required to maintain a $10,000 policy at a cost of $800 - $1,000 per event.

The above described costs will not differ between rural and non-rural areas.

4. Minimizing adverse impact: The Department considered the downward adjustment of statutorily prescribed and newly imposed insurance minimums, but determined that such action would not be in the best interests of the combatants and contrary to legislative intent.

5. Rural area participation: The Department has discussed these matters with promoters and other interested parties at small venue events. The proposed rulemaking process provides additional opportunity for public participation and comment.

Job Impact Statement

1. Nature of impact: The rule provides a path for the sanctioning and conduct of professional mixed martial arts in New York State. This industry is new to New York State and will result in significant economic opportunities and growth.

2. Categories and numbers affected: The professional mixed martial arts industry will provide new jobs in relation to the conduct of live professional events, large and small, throughout the State. More significantly, collateral economic activity surrounding professional mixed martial arts events, both large and small, will be substantial, leading to the creation of jobs in diverse sectors, including those associated with athletic training, merchandizing, dining, entertainment, and tourism. The positive economic impact is estimated to be in the millions.

3. Regions of adverse impact: Promotions holding low-revenue generating professional boxing or professional kickboxing events may be negatively impacted as a result of the anticipated $3,000 to $5,000 incurred in increased costs per event for the purchase of requisite accident insurance coverage for combatants, which may not be readily absorbed in the cost structure of such for-profit events.

4. Minimizing adverse impact: The Department considered the downward adjustment of statutorily prescribed and newly imposed insurance minimums, but determined that such action would not be in the best interests of the combatants.

Department of Civil Service

NOTICE OF ADOPTION

Jurisdictional Classification

I.D. No. CVS-34-15-00008-A
Filing No. 615
Filing Date: 2016-06-22
Effective Date: 2016-07-13

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

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

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

Subject: Jurisdictional Classification.

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

Text or summary was published in the August 26, 2015 issue of the Register, I.D. No. CVS-34-15-00008-P.

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

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

Assessment of Public Comment

The agency received no public comment.

Department of Environmental Conservation

EMERGENCY/PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Regulations Governing the Recreational Harvest of Black Sea Bass

I.D. No. ENV-28-16-00002-EP
Filing No. 616
Filing Date: 2016-06-23
Effective Date: 2016-06-23

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

Proposed Action: Amendment of Part 40 of Title 6 NYCRR.

Statutory authority: Environmental Conservation Law, sections 11-0303, 13-0105 and 13-0340-f

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

Specific reasons underlying the finding of necessity: This rulemaking is necessary for New York to remain in compliance with the National Marine Fisheries Service's (NMFS) and the Atlantic States Marine Fisheries Commission's (ASMFC) required limits for the coast-wide recreational harvest of black sea bass. NMFS set the 2016 coast-wide recreational harvest limit (RHL) for black sea bass at 2.82 million pounds in October of 2015. In mid-February 2016, harvest estimates for the entire 2015 fishing year became available. Based upon coast-wide fishery performance, ASMFC then determined that each northern member state (Massachusetts through New Jersey) must reduce recreational black sea bass harvest by 23% in order to not exceed the 2016 RHL. Once all data was available and the required reduction known, DEC Division of Marine Resources (DMR) developed several regulatory options that would result in the required reduction. DEC made these options available to the public for review and consulted with members of New York's fishing public for feedback. This rulemaking contains the option that DEC has selected in an effort to provide New York's anglers with appropriate and equitable access to this popular recreational fishery.

DEC is adopting these changes by emergency rulemaking in order to protect the general welfare. The regulations currently in place for recreational harvest of black sea bass were developed for the previous fishing year, and are not restrictive enough for the current fishing year. Current black sea bass regulations do not satisfy the latest reduction mandated by the ASMFC, and leaving them unchanged would likely result in the over-harvest of black sea bass by New York anglers. Falling out of compliance with the ASMFC requirements could result in federal sanctions and closure of the black sea bass fishery. In addition, the normal rulemaking process would not promulgate these regulations in time for the proposed season opening on June 27. This would result in the loss of fishing days and unnecessarily disadvantage New York's anglers and associated businesses.

Subject: Regulations governing the recreational harvest of black sea bass.

Purpose: To reduce recreational black sea bass harvest in New York State.

Text of emergency/proposed rule: Existing subdivision 40.1 (f) of 6 NYCRR is amended to read as follows:

Species Striped bass through Scup remain the same. Species Black sea bass is amended to read as follows:

40.1(f) Table A – Recreational Fishing.

Species	Open Season	Minimum Length	Possession Limit
Black sea bass	*June 27-Aug. 31*	*15" TL*	*3*
	[July 15]*Sept.*	[14]*15*" TL	8
	1-Oct. 31	[14]*15*" TL	10
	Nov. 1-Dec. 31		

Species Anadromous river herring through Oyster toadfish remain the same.

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 September 20, 2016.

Text of rule and any required statements and analyses may be obtained from: Stephen Heins, New York State Department of Environmental Conservation, 205 North Belle Mead Road, Suite 1, East Setauket, NY 11733, (631) 444-0435, email: steve.heins@dec.ny.gov

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

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

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

Regulatory Impact Statement

1. Statutory authority:

Environmental Conservation Law (ECL) sections 11-0303, 13-0105, and 13-0340-f authorize the Department of Environmental Conservation (DEC or the department) to establish by regulation the open season, size, catch limits, possession and sale restrictions and manner of taking for black sea bass.

2. Legislative objectives:

It is the objective of the above-cited legislation that DEC manages marine fisheries to optimize resource use for commercial and recreational harvesters in a manner that is consistent with marine fisheries conservation and management policies and interstate fishery management plans.

3. Needs and benefits:

This rulemaking is necessary for New York to remain in compliance with the National Marine Fisheries Service's (NMFS) and the Atlantic States Marine Fisheries Commission's (ASMFC) required limits for the coast-wide recreational harvest of black sea bass. NMFS set the 2016 coast-wide recreational harvest limit (RHL) for black sea bass at 2.82 million pounds in October of 2015. In mid-February 2016, harvest estimates for the entire 2015 fishing year became available. Based upon coast-wide fishery performance, ASMFC then determined that each northern member state (Massachusetts through New Jersey) must reduce recreational black sea bass harvest by 23% in order to not exceed the 2016 RHL. Once all data was available and the required reduction known, DEC Division of Marine Resources (DMR) developed several regulatory options that would result in the required reduction. DEC made these options available to the public for review and consulted with members of New York's fishing public for feedback. This rulemaking contains the option that DEC has selected in an effort to provide New York's anglers with appropriate and equitable access to this popular recreational fishery.

DEC is adopting these changes by emergency rulemaking in order to protect the general welfare. The regulations currently in place for recreational harvest of black sea bass were developed for the previous fishing year, are not restrictive enough for the current fishing year. Current black sea bass regulations do not satisfy the latest reduction mandated by the ASMFC, and leaving them unchanged would likely result in the over-harvest of black sea bass by New York anglers. Falling out of compliance with the ASMFC requirements could result in federal sanctions and closure of the black sea bass fishery. In addition, the normal rulemaking process would not promulgate these regulations in time for the proposed season opening on June 27. This would result in the loss of fishing days and unnecessarily disadvantage New York's anglers and associated businesses.

This rulemaking is intended to reduce the harvest of black sea bass by increasing the size limit and reducing the possession limit. However, the proposed amendments will also increase the open season by 19 days which will provide some relief to New York State recreational anglers.

4. Costs:

There are no new costs to state and local governments from this action. The department will incur limited costs associated with both the implementation and administration of these rules, including the costs relating to notifying recreational harvesters, party and charter boat operators and other recreational fishing associated businesses of the new rules.

5. Local government mandates:

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

6. Paperwork:

None.

7. Duplication:

The amendment does not duplicate any state or federal requirement.

8. Alternatives:

The management measures proposed in this rulemaking were developed by DMR staff working with a group of anglers and recreational fishing industry members. Twelve options were developed through the manipulation of minimum size limits, possession limits, and length of fishing seasons to achieve the required harvest reduction. These options were made publicly available through the Marine Resource Advisory Council (MRAC) website. They were also available on several local fishing websites. After consulting with the public, DEC is moving to adopt regulations that provide New York's anglers with appropriate and equitable access to this popular recreational fishery.

"No action" alternative: If New York were to not adopt regulations that reduced recreational black sea bass harvest in 2016, the State would be out of compliance with ASMFC and NMFS requirements and subject to federal sanctions.

9. Federal standards:

The amendments to Part 40 are in compliance with the ASMFC and the Mid-Atlantic Fishery Management Council fishery management plan for black sea bass.

10. Compliance schedule:

These regulations are being adopted by emergency rulemaking and therefore will take effect immediately upon filing with Department of State. Regulated parties must comply immediately and will be notified of the changes to the regulations through appropriate news releases, by mail, and through DEC's website.

Regulatory Flexibility Analysis

1. Effect of rule:

The proposed amendment will implement more restrictive fishing rules for New York recreational anglers targeting black sea bass. The proposed rule will adopt the following provisions: increase the minimum size by 1 inch, from 14 to 15 inches, for the entire season; reduce the possession limit from 8 fish to 3 fish from June 27-August 31; open the recreational fishing season 19 days earlier than current regulations, moving the start of the season from July 15 to June 27. The possession limits and open fishing season for dates after August 31 will remain the same as in the current regulations.

The proposed rule is more restrictive than last year's regulations. In 2015, there were 488 licensed party and charter businesses in New York State. There were also a number of retail and wholesale marine bait and tackle shop businesses operating in New York. The 1-inch increase in size limit and 5-fish decrease in possession limit during the summer months may decrease angler interest in targeting black sea bass and may impact businesses dependent upon these trips. The new size limit will not impact all anglers in the same manner; small boat owners, inshore anglers, and anglers from the western portions of Long Island will be less likely to catch black sea bass of legal size than those fishing offshore and in eastern portions of Long Island.

This rulemaking is intended to reduce the harvest of black sea bass by increasing the size limit and reducing the possession limit. However, the proposed amendments will also increase the open season by 19 days which will provide some relief to New York State recreational anglers.

2. Compliance requirements:

None.

3. Professional services:

None.

4. Compliance costs:

There are no initial capital costs that will be incurred by a regulated business or industry that complies with the emergency rule.

5. Economic and technological feasibility:

The emergency regulations do not require any expenditure on the part of affected businesses in order to comply with the changes. The emergency regulations may decrease the income of party and charter businesses, marinas and marine bait and tackle shops that depend heavily upon the recreational black sea bass fishery, especially in areas where larger fish are less available.

6. Minimizing adverse impact:

The promulgation of this regulation is necessary for DEC to reduce recreational black sea bass harvest in order to maintain compliance with the Atlantic States Marine Fisheries Commission (ASMFC) while providing New York's anglers with appropriate and equitable access to this

popular recreational fishery. These proposed amendments are consistent with the required harvest reduction, and DEC anticipates that New York State will therefore remain in compliance with ASMFC and federal requirements.

Ultimately, the maintenance of long-term sustainable fisheries will have a positive effect on employment for the fisheries in question, including party and charter boat fisheries as well as wholesale and retail bait and tackle shops and other support industries for recreational fisheries. Failure to comply and take required actions to protect our natural resources could cause the collapse of a stock and have a severe, adverse impact on the commercial and recreational fisheries for that species as well as the supporting industries for those fisheries.

7. Small business and local government participation:

The management measures proposed in this proposed rulemaking were developed by DEC staff working with a group of anglers and recreational fishing industry members. Twelve options were developed through the manipulation of minimum size limits, possession limits, and length of fishing seasons to achieve the required harvest reduction. These options were made publicly available through the Marine Resource Advisory Council (MRAC) website. They were also available on several local fishing websites. After consulting with the public—including commercial fishing interests, recreational fishing organizations, party and charter boat owners and operators, retail and wholesale bait and tackle shop owners, recreational anglers and state law enforcement personnel—the DEC is moving to adopt regulations that provide New York's anglers with appropriate and equitable access to this popular recreational fishery.

8. Cure period or other opportunity for ameliorative action:

Pursuant to the State Administrative Procedure Act § 202-b(1-a)(b) (SAPA), a cure period is not included in the rule because of the potential adverse impact on the resource. Cure periods for the illegal taking of fish or wildlife are neither desirable nor recommended. Immediate compliance is required to ensure that the general welfare of the public and the resource are both protected.

9. Initial review of rule:

The department will conduct an initial review of the rule within three years as required by SAPA § 207(1)(b).

Rural Area Flexibility Analysis

The Department of Environmental Conservation has determined that this rule will not impose an adverse impact on rural areas. There are no rural areas within the marine and coastal district. The black sea bass fishery directly affected by the proposed rule is entirely located within the marine and coastal district and is not located adjacent to any rural areas of the state. Further, the proposed rule does not impose any reporting, record-keeping, or other compliance requirements on public or private entities in rural areas. Since no rural areas will be affected by the proposed amendments of 6 NYCRR Part 40, a Rural Area Flexibility Analysis is not required.

Job Impact Statement

1. Nature of impact:

The proposed amendment will implement more restrictive fishing rules for recreational anglers targeting black sea bass. The proposed rule will adopt the following provisions: increase the minimum size by 1 inch, from 14 to 15 inches for the entire season; reduce the possession limit from 8 fish to 3 fish from June 27-August 31; and open the recreational fishing season 19 days earlier than current regulations, moving the start of the season from July 15 to June 27. The possession limits and open fishing season for dates after August 31 will remain the same as in the current regulations.

2. Categories and numbers affected:

In 2015, there were 488 licensed party and charter businesses in New York State. There were also a number of marinas, retail and wholesale marine bait and tackle shop businesses operating in New York. According to the American Sportfishing Association, in 2011 New York had an estimated 800,811 marine recreational anglers that spent $1,194,493,042 on saltwater fishing, generating $144,539,079 in state and local tax revenue. In 2015 New York anglers took an estimated 330,715 fishing trips targeting black sea bass, the most trips in any of the last 5 years.

3. Regions of adverse impact:

The proposed regulation will impact recreational fishing anglers and associated businesses throughout most of New York's Marine and Coastal District. The more restrictive black sea bass possession limit, reduced from 8 fish to 3 fish, will likely reduce the number of trips anglers take in pursuit of this species, thereby decreasing the amount of money they spend on bait, tackle, fares, and gas. This decrease in spending will have a negative impact upon those businesses (e.g. bait and tackle retail, party and charter operations, gas docks, marinas, etc.) that cater to recreational anglers. Also, the lower possession limit during the time of the year (June 27-August 31) when most people and boat owners are on the water may discourage anglers from pursuing black sea bass as anything more than a bycatch fishery.

The 1-inch increase in minimum size will not impact all anglers in the same manner. Anglers fishing from the western south shore or in western and central Long Island Sound have less access to large fish. In addition, large fish are more available further offshore, especially later in the season. This proposed rule will have greater impacts on small boat owners, inshore fishermen, and anglers who fish the western shores of Long Island.

4. Minimizing adverse impact:

The promulgation of this regulation is necessary for DEC to reduce recreational black sea bass harvest in order to maintain compliance with the Atlantic States Marine Fisheries Commission and avoid federal sanctions.

DEC staff, working with a group of anglers and recreational fishing industry members, developed the management measures put forth in this proposed rulemaking. They developed twelve options through the manipulation of minimum size limits, possession limits, and length of fishing seasons to achieve the required harvest reduction. These options were made publicly available through the Marine Resource Advisory Council (MRAC) website. They were also available on several local fishing websites. After consulting with the public, DEC is moving to adopt regulations that provide New York's anglers with appropriate and equitable access to this popular recreational fishery.

Ultimately, the maintenance of long-term sustainable fisheries will have a positive effect on employment for the fisheries in question, including party and charter boat fisheries as well as wholesale and retail bait and tackle shops and other support industries for recreational fisheries.

5. Self-employment opportunities:

The party and charter boat businesses, the bait and tackle shops, and marinas are, for the most part, small businesses, owned and often operated by a single owner. The recreational fishing industry is mostly self-employed. This rule will likely have a negative effect upon opportunities for businesses related to the recreational harvest of black sea bass. However, failing to adopt this rulemaking and comply with ASMFC requirements could lead to federal closure of New York's black sea bass fishery.

6. Initial review of the rule, pursuant to the State Administrative Procedure Act § 207 (SAPA):

The department will conduct an initial review of the rule within three years as required by SAPA § 207(b).

NOTICE OF ADOPTION

Croton Gorge Unique Area

I.D. No. ENV-17-16-00001-A

Filing No. 621

Filing Date: 2016-06-28

Effective Date: 2016-07-13

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

Action taken: Addition of section 190.10(g) to Title 6 NYCRR.

Statutory authority: Environmental Conservation Law, sections 1-0101(3)(b), 3-0301(1)(b), (2)(m), 9-0105(1) and (3)

Subject: Croton Gorge Unique Area.

Purpose: To protect public safety and the natural resources on the Croton Gorge Unique Area.

Text of final rule: A new subdivision (g) is added to 6 NYCRR section 190.10 to read as follows:

(g) Croton Gorge Unique Area. Description: For the purposes of this section, Croton Gorge Unique Area, referred to in this section as "the area", means all those state lands located in Westchester County in the Town of Cortlandt, in a portion of the Cortlandt Patent.

(1) All camping shall be prohibited.

(2) Public use of the property will be allowed from sunrise to sunset only.

(3) The use of any type of fire shall be prohibited including the use of charcoal or gas grills.

(4) Possession or consumption of alcoholic beverages shall be prohibited.

(5) No person shall play a musical instrument or audio device, including, but not limited to radios, tape players, compact disc or digital players, unless the noise is rendered inaudible to the public by personal noise-damping devices such as headphones or earbuds.

Final rule as compared with last published rule: Nonsubstantive changes were made in section 190.10(g)(5).

Text of rule and any required statements and analyses may be obtained from: Jeff Wiegert, NYS DEC, 21 South Putt Corners Road, New Paltz, New York 12561, (845) 256-3084, email: jeffrey.wiegert@dec.ny.gov

Additional matter required by statute: A Short EAF has been prepared in compliance with Article 8 of the Environmental Conservation Law.

Revised Regulatory Impact Statement

1. Statutory authority:

Environmental Conservation Law ("ECL") section 1-0101(3)(b) directs the Department of Environmental Conservation (Department) to guarantee "that the widest range of beneficial uses of the environment is attained without risk to health or safety, unnecessary degradation or other undesirable or unintentional consequences." ECL section 3-0301(1)(b) gives the Department the responsibility to "promote and coordinate management of...land resources to assure their protection, enhancement, provision, allocation, and balanced utilization...and take into account the cumulative impact upon all such resources in promulgating any rule or regulation." ECL section 9-0105(1) authorizes the Department to ''[e]xercise care, custody, and control'' of state lands. ECL section 3-0301(2)(m) authorizes the Department to adopt rules and regulations "as may be necessary, convenient or desirable to effectuate the purposes of [the ECL]," and ECL 9-0105(3) authorizes the Department to "[m]ake necessary rules and regulations to secure proper enforcement of [ECL Article 9]."

2. Legislative objectives:

In adopting various articles of the ECL, the legislature has established that forest, fish, and wildlife conservation are policies of the state and has empowered the Department to exercise care, custody, and control over certain state lands and other real property. Consistent with these statutory interests, the proposed regulations will protect natural resources and the safety and welfare of those who engage in recreational activities within the Croton Gorge Unique Area. The Department has also been authorized by the state legislature to manage state owned lands (see ECL section 9-0105(1)), and to promulgate rules and regulations for the use of such lands (see ECL sections 3-0301(2)(m) and 9-0105(3)).

3. Needs and benefits:

The Croton Gorge Unique Area ("the Area") is located in the town of Cortlandt in Westchester County and was acquired in 1978 by the state because of its natural beauty. As early as 1965, Westchester County identified this stretch of the Croton River for public acquisition in its open space program. In 1974, discussions involving the Department, Westchester County officials, the Nature Conservancy, and various local and regional conservationists culminated in the formal submission of a nomination of a portion of the Croton Gorge for acquisition by the Department with Environmental Quality Bond Act funds under the unique category for inclusion in the State Nature and Historical Preserve. In 1976, the Board of the State Nature and Historical Preserve Trust advised the commissioner of the Department of Environmental Conservation that "the Croton River and Gorge from the New Croton Dam to the River's confluence with the Hudson qualifies as a "Unique Area" in the natural beauty category; that the Board recommend that the commissioner explore and report on means of protecting the entire Gorge either by State, County, private or municipal acquisition or other method of protection; and that as a first step the commissioner acquire by easement or fee title up to 40 acres in the section designated…." Original parcels identified for acquisition included lands owned by (a) the Village of Croton-on-Hudson, (b) the Union Free School District #2, (c) Towns of Cortlandt and Yorktown, and (d) three private landowners. An internal memo described the acquisition as "one of the grandest hemlock gorges in the State, and the finest immediately adjacent to the Tidal Hudson. Despite the propinquity to New York City, the tract is largely undisturbed." The same memo proposed that an emergency action was required "in order to secure a crucial portion from adverse development."

In 1978, the Department acquired 19.2 acres in three separate parcels east of the Croton River in the Town of Cortlandt, from two willing private sellers. The 19.2 acre acquisition by the Department became the Croton Gorge Unique Area. Part 190 of Title 6 of the Official Compilation of Codes, Rules and Regulations of the State of New York ("6 NYCRR") contain the general regulations concerning the public's use of state lands, but it does not adequately address the majority of management issues confronting this property including overuse, alcohol consumption, campfires, and camping.

Due to the large influx of public users to this small property in the summer months, there is degradation to the natural resources of the Area and an increase in public safety issues. These include the trampling of vegetation resulting in areas of compacted soil and bare ground, damage to trees resulting from limb removal for fire use, littering, and graffiti. In addition, trespassing onto neighboring private properties is an issue. In the case of wildfire, efforts to contain a blaze by local first responders would be hampered with the lack of fire hydrants near the property and the rugged terrain. Another problem are loud noises that reverberate throughout the gorge from audio devices used on the Area.

The proposed regulations will improve public safety by prohibiting the consumption of alcohol and the use of fire on the property. By prohibiting camping and restricting hours of use, it is anticipated that litter, trespass and other degradation problems will be reduced or eliminated. In contrast to other similar regulations, the proposed regulations specify the start and end of hours of public use as sunrise and sunset, rather than times of day. This language will help to ensure that users leave the area while there is still sufficient daylight to safely navigate the steep trail that is the only means of ingress and egress from the property.

Local government is very supportive of this regulatory proposal and are expected to assist the Department with enforcement. Local law enforcement and public safety officials are the first responders to incidents on this property. A Task Force composed of local municipal leaders, neighbors, law enforcement and public safety officials has been formed to address management issues on the Croton Gorge Unique Area. The Task Force has requested that the Department promulgate regulations to increase public safety and address overuse while still providing a quality outdoor recreational experience for users of the property. It has been pointed out that Department lands are the only publicly managed lands along the Croton River that allow alcohol consumption, campfires and camping. Consistency in permitted uses on publicly managed lands along the Croton River is desired. The uniqueness of the area and its uses require some additional restrictions on Department lands. For these and other reasons the Department seeks to promulgate regulations for the Croton Gorge Unique Area. The Department has concluded that it is reasonable and appropriate to develop regulations to regulate the activities at the Croton Gorge Unique Area in order to protect the Area's natural resources given its unique character and level of public use.

Department staff attended a Task Force meeting on October 2, 2014 to listen to concerns and issues with public use of the Croton Gorge Unique Area. This is a continuation of meetings the Department has attended since 2006. Attendees at this meeting included Town Supervisors from Cortlandt and Ossining, the Mayor of Croton-on-Hudson, the Director of Environmental Services for the Town of Cortlandt, police and emergency personnel from Westchester County and the above municipalities, interested members of the public, users of the property and neighbors. At that meeting Department staff agreed to a field visit to the property which occurred on November 8, 2014. A handful of people showed up including the Director of Environmental Services for the Town of Cortlandt and a couple of neighbors. The content of the proposed Unique Area regulations was discussed.

Information regarding the Department's intent to propose a regulation, the content of the regulation and the public process associated with the rulemaking will appear in a widely- distributed Spanish-language newspaper in the area. In addition, a public meeting in the local community will be held during the formal regulatory comment period. All regulatory documents will appear on the Department's website.

4. Costs:

There will be no increased staffing, construction or compliance costs projected for state or local governments or to private regulated parties as a result of this rulemaking. Costs to local governments and Department enforcement personnel will not increase as a result of increased patrols since patrol levels will remain the same. Costs to the Department will be minimal and are estimated to be approximately $500.00 for necessary signage for the property explaining the new regulations.

5. Local government mandates:

This proposal will not impose any program, service, duty or responsibility upon any county, city, town, village, school district or fire district.

6. Paperwork:

The proposed regulations will not impose any reporting requirements or other paperwork on any private or public entity.

7. Duplication:

There is no duplication, conflict, or overlap with state or federal regulations.

8. Alternative approaches:

The no-action alternative is not feasible since it does not adequately protect the Croton Gorge Unique Area from overuse and abuse. Reliance on current Part 190 regulations for State Forest lands does not provide adequate public safety or law enforcement protections that are necessary for the protection of the Croton Gorge Unique Area because of its unique characteristics and geographic location.

9. Federal standards:

There is no relevant federal standard governing the use of state lands.

10. Compliance schedule:

The regulations will become effective on the date of publication of the rulemaking in the New York State Register. Once the regulations are adopted they are effective immediately. The Department will educate the public about the regulations through information posted on the Departments' web site, signage posted on the property, and by working with the Task Force to help disseminate information regarding the regulations.

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

A non-substantive change was made to the regulation that did not necessitate revision to the previously published statement for the Revised

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

Initial Review of Rule

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

Assessment of Public Comment

Croton Gorge Unique Area Regulations Change

Comment: Happy and supportive of the regulations. Feels that the regulations will help deter abuse and overuse of the property. (6 Comments)

Response: Thank you.

Comment: An additional regulation should be added to address the noise issues on the property, especially loud music from boom boxes. The noise echoes in the gorge and is quite disruptive to the surrounding property owners on both sides of the river. Several other meeting attendees also nodded their heads in agreement on the additional noise regulation.

At a meeting with police officers before the public meeting, the issue was also brought up by local law enforcement, who agreed that an additional regulation intended to limit noise would help.

Response: An additional regulation will be added in an attempt to limit noise.

Comment: Who is responsible for enforcing the new regulations? Can the Village of Croton-on-Hudson police be empowered to write tickets per the new regulations?

Response: The Croton Gorge Unique Area is a DEC property managed under Environmental Conservation Law (ECL), so DEC has the main jurisdiction. However, any police officer has the ability to write tickets against ECL and DEC is working with the New York State Police and the Westchester County Sherriff's Office to enforce the new regulations. The Village of Croton-on-Hudson Police have stated that the property is outside of their jurisdictional area.

Comment: Is there anything that would prevent DEC from putting up the Special Regulations prior to formal adoption?

Response: Such action at this time would be a departure from the public process that has been started. Signs with the new regulations will be put up after the new regulations are final.

Comment: Commenter would like to see the parking area lot reopened.

Response: The parking area is not on DEC property. Supervisor Puglisi (Town of Cortlandt), who was in attendance, stated that half the parking lot is open now.

Comment: Any discussion regarding limiting the number of people who use the property on a given day?

Response: Limiting the number of people on the property is not being discussed at present. The new regulations are intended to help reduce natural resource damage by addressing the types of uses, not the number of users. If this approach is unsuccessful, limiting the number of users could be considered.

Numerous comments on the new regulations are consolidated and summarized below.

Comments: Need to stress the importance of clear and plentiful signage. Realize it will be an educational process to get the word out about the regulations to those who use the property. Village of Croton police have a mega phone to use while out on the water. Provide ECO's with brochures detailing the proposed regulations to give out during their patrols of the property. It may be a good idea to reach out to members of St. Anne's church in Ossining. Many of the population that use this property may attend this particular church and they have a website. Special Regulations should be posted on DEC's website. Hoping Special Regulations will allow users to have a quality experience when they visit the property.

Response: The Department is interested in getting the word out about the new regulations also. Signage with the new regulations will be posted on the property, in English and Spanish. The regulations will also be posted on the Department's website.

Department of Financial Services

EMERGENCY RULE MAKING

Public Retirement Systems

I.D. No. DFS-28-16-00001-E
Filing No. 614
Filing Date: 2016-06-22
Effective Date: 2016-06-22

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

Action taken: Amendment of Part 136 (Regulation 85) of Title 11 NYCRR.

Statutory authority: Financial Services Law, sections 202 and 302; Insurance Law, sections 301, 314, 7401(a) and 7402(n)

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

Specific reasons underlying the finding of necessity: The Second Amendment to 11 NYCRR 136 (Insurance Regulation 85), effective November 19, 2008, established new standards of behavior with regard to investment of the assets of the New York State Common Retirement Fund ("Fund"), conflicts of interest, and procurement. In addition, it created new audit and actuarial committees, and greatly strengthened the investment advisory committee. The Second Amendment also set high ethical standards, strengthened internal controls and governance, enhanced the operational transparency of the Fund, and strengthened supervision by the Department.

Nevertheless, recent events surrounding how placement agents conduct business on behalf of their clients with regard to the Fund compel the Superintendent to conclude that the mere strengthening of the Fund's control environment is insufficient to protect the integrity of the state employees' retirement systems. Rather, only an immediate ban on the use of placement agents will ensure sufficient protection of the Fund's members and beneficiaries and safeguard the integrity of the Fund's investments.

This regulation was previously promulgated on an emergency basis on June 18, 2009, September 16, 2009, January 5, 2010, April 2, 2010, May 28, 2010, July 29, 2010, September 23, 2010, November 19, 2010, January 18, 2011, March 21, 2011, May 19, 2011, August 16, 2011, November 10, 2011, February 7, 2012, May 7, 2012, August 3, 2012, October 31, 2012, January 28, 2013, April 26, 2013, July 24, 2013, October 21, 2013, January 17, 2014, April 16, 2014, July 14, 2014, October 10, 2014, January 7, 2015, April 6, 2015, July 3, 2015, September 30, 2015, December 28, 2015, and March 25, 2016.

Subject: Public Retirement Systems.

Purpose: To ban the use of placement agents by investment advisors engaged by the State Employees' Retirement Systems.

Text of emergency rule: Section 136-2.2 is amended to read as follows:

§ 136-2.2 Definitions.

The following words and phrases, as used in this Subpart, unless a different meaning is plainly required by the context, shall have the following meanings:

[(a) Retirement system shall mean the New York State and Local Employees' Retirement System and the New York State and Local Police and Fire Retirement System.]

[(b) Fund shall mean the New York State Common Retirement Fund, a fund in the custody of the Comptroller as trustee, established pursuant to Section 422 of the Retirement and Social Security Law, which holds the assets of the retirement system.]

[(c)]*(a)* Comptroller shall mean the Comptroller of the State of New York in his capacity as administrative head of the Retirement System and the sole trustee of the [fund] *Fund*.

[(d) OSC shall mean the Office of the State Comptroller.]

[(e)]*(b)* Consultant or advisor shall mean any person (other than an OSC employee) or entity retained by the [fund] *Fund* to provide technical or professional services to the [fund] *Fund* relating to investments by the [fund] *Fund*, including outside investment counsel and litigation counsel, custodians, administrators, broker-dealers, and persons or entities that identify investment objectives and risks, assist in the selection of [money] *investment* managers, securities, or other investments, or monitor investment performance.

(c) Family member shall mean any person living in the same household as the Comptroller, and any person related to the Comptroller within the third degree of consanguinity or affinity.

(d) Fund shall mean the New York State Common Retirement Fund, a fund in the custody of the Comptroller as trustee, established pursuant to Section 422 of the Retirement and Social Security Law ("RSSL"), which holds the assets of the Retirement System.

[f]*(e)* Investment manager shall mean any person (other than an OSC employee) or entity engaged by the Fund in the management of part or all of an investment portfolio of the [fund] *Fund*. "Management" shall include, but is not limited to, analysis of portfolio holdings, and the purchase, sale, and lending thereof. For the purposes hereof, any investment made by the Fund pursuant to RSSL § 177(7) shall be deemed to be the investment of the Fund in such investment entity (rather than in the assets of such investment entity).

(f) Investment policy statement shall mean a written document that, consistent with law, sets forth a framework for the investment program of the Fund.

(g) OSC shall mean the Office of the State Comptroller.

[(g)]*(h)* Placement agent or intermediary shall mean any person or entity*, including registered lobbyists, directly or indirectly* engaged *and compensated* by an investment manager (other than [an] *a regular* employee of the investment manager) to *promote investments to or solicit investment by* [assist the investment manager in obtaining investments by the fund, or otherwise doing business with] the [fund] *Fund*, whether compensated on a flat fee, a contingent fee, or any other basis. Regular employees of an investment manager are excluded from this definition unless they are employed principally for the purpose of *securing or influencing the decision to secure a particular transaction or investment by the Fund.* [obtaining investments or providing other intermediary services with respect to the fund.] *For purpose of this paragraph, the term "employee" shall include any person who would qualify as an employee under the federal Internal Revenue Code of 1986, as amended, but shall not include a person hired, retained or engaged by an investment manager to secure or influence the decision to secure a particular transaction or investment by the Fund.*

[(h) Investment policy statement shall mean a written document that, consistent with law, sets forth a framework for the investment program of the fund.]

[(i) Third party administrator shall mean any person or entity that contractually provides administrative services to the retirement system, including receiving and recording employer and employee contributions, maintaining eligibility rosters, verifying eligibility for benefits or paying benefits and maintaining any other retirement system records. Administrative services do not include services provided to the fund relating to fund investments.]

(i) Retirement System shall mean the New York State and Local Employees' Retirement System and the New York State and Local Police and Fire Retirement System.

(j) Third party administrator shall mean any person or entity that contractually provides administrative services to the Retirement System, including receiving and recording employer and employee contributions, maintaining eligibility rosters, verifying eligibility for benefits, paying benefits or maintaining any other Retirement System records. "Administrative services" do not include services provided to the Fund relating to Fund investments.

[(j)]*(k)* Unaffiliated Person shall mean any person other than: (1) the Comptroller or a family member of the Comptroller, (2) an officer or employee of OSC, (3) an individual or entity doing business with OSC or the [fund] *Fund*, or (4) an individual or entity that has a substantial financial interest in an entity doing business with OSC or the [fund] *Fund*. For the purpose of this paragraph, the term "substantial financial interest" shall mean the control of the entity, whereby *"*control*"* means the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of the entity, whether through the ownership of voting securities, by contract (except a commercial contract for goods or non-management services) or otherwise; but no individual shall be deemed to control an entity solely by reason of his being an officer or director of such entity. Control shall be presumed to exist if any individual directly or indirectly owns, controls or holds with the power to vote ten percent or more of the voting securities of such entity.

[(k) Family member shall mean any person living in the same household as the Comptroller, and any person related to the Comptroller within the third degree of consanguinity or affinity.]

Section 136-2.4(d) is amended to read as follows:

(d) Placement agents or intermediaries: In order to preserve the independence and integrity of the [fund] *Fund*, to [address] *preclude* potential conflicts of interest, and to assist the Comptroller in fulfilling his or her duties as a fiduciary to the [fund] *Fund*, [the Comptroller shall maintain a reporting and review system that must be followed whenever the fund] *the Fund shall not* [engages, hires, invests with, or commits] *engage, hire, invest with or commit* to[,] an outside investment manager who is using the services of a placement agent or intermediary to assist the investment manager in obtaining investments by the [fund] *Fund*. [, or otherwise doing business with the fund. The Comptroller shall require investment managers to disclose to the Comptroller and to his or her designee payments made to any such placement agent or intermediary. The reporting and review system shall be set forth in written guidelines and such guidelines shall be published on the OSC public website.]

Section 136-2.5(g) is amended to read as follows:

(g) The Comptroller shall:

(1) file with the superintendent an annual statement in the format prescribed by Section 307 of the Insurance Law, including the [retirement system's] *Retirement System's* financial statement, together with an opinion of an independent certified public accountant on the financial statement;

(2) file with the superintendent the Comprehensive Annual Financial Report within the time prescribed by law, but no later than the time it is published on the OSC public website;

(3) disclose on the OSC public website, on at least an annual basis, all fees paid by the [fund] *Fund* to investment managers, consultants or advisors, and third party administrators;

[(4) disclose on the OSC public website, on at least an annual basis, instances where an investment manager has paid a fee to a placement agent or intermediary;]

[(5)]*(4)* disclose on the OSC public website the [fund's] *Fund's* investment policies and procedures; and

[(6)]*(5)* require fiduciary and conflict of interest reviews of the [fund] *Fund* every three years by a qualified unaffiliated person.

This notice is intended to serve only as an emergency adoption, to be valid for 90 days or less. This rule expires September 19, 2016.

Text of rule and any required statements and analyses may be obtained from: Mark McLeod, New York State Department of Financial Services, One State Street, New York, NY 10004, (212) 480-4937, email: mark.mcleod@dfs.ny.gov

Regulatory Impact Statement

1. Statutory authority: The Superintendent's authority for the adoption of the rule to 11 NYCRR 136 is derived from sections 202 and 302 of the Financial Services Law ("FSL") and sections 301, 314, 7401(a), and 7402(n) of the Insurance Law.

FSL section 202 establishes the office of the Superintendent and designates the Superintendent to be the head of the Department of Financial Services ("DFS").

FSL section 302 and Insurance Law section 301, in material part, authorize the Superintendent to effectuate any power accorded to him by the Insurance Law, the Banking Law, the Financial Services Law, or any other law of this state and to prescribe regulations interpreting the Insurance Law.

Insurance Law section 314 vests the Superintendent with the authority to promulgate standards with respect to administrative efficiency, discharge of fiduciary responsibilities, investment policies and financial soundness of the public retirement and pension systems of the State of New York, and to make an examination into the affairs of every system at least once every five years in accordance with Insurance Law sections 310, 311 and 312. The implementation of the standards is necessarily through the promulgation of regulations.

As confirmed by the Court of Appeals in Matter of Dinallo v. DiNapoli, 9 N.Y. 3d 94 (2007), the Superintendent functions in two distinct capacities. The first is as regulator of the insurance industry. The second is as statutory receiver of financially distressed insurance entities. Article 74 of the Insurance Law sets forth the Superintendent's role and responsibilities in this latter capacity.

Insurance Law section 7401(a) sets forth the entities, including the public retirement systems, to which Article 74 applies.

Insurance Law section 7402(n) provides that it is a ground for rehabilitation if an entity subject to Article 74 has failed or refused to take such steps as may be necessary to remove from office any officer or director whom the Superintendent has found, after appropriate notice and hearing, to be a dishonest or untrustworthy person.

2. Legislative objectives: Insurance Law section 314 authorizes the Superintendent to promulgate and amend, after consultation with the respective administrative heads of public retirement and pension systems and after a public hearing, standards with respect to the public retirement and pension systems of the State of New York.

This rule, which in effect bans the use of an investment tool that has been found to be untrustworthy, is consistent with the public policy objectives that the Legislature sought to advance in enacting Insurance Law section 314, which provides the Superintendent with the powers to promulgate standards to protect the New York State Common Retirement Fund (the "Fund").

3. Needs and benefits: The Second Amendment to 11 NYCRR 136 (Regulation 85), effective November 19, 2008, established new standards

with regard to investment of the assets of the Fund, conflicts of interest and procurement. In addition, the Second Amendment created new audit and actuarial committees, and greatly strengthened the investment advisory committee. The Second Amendment also set high ethical standards, strengthened internal controls and governance, enhanced the operational transparency of the Fund, and strengthened supervision by the Department.

Nevertheless, recent allegations regarding "pay to play" practices, whereby politically connected individuals reportedly sold access to investment opportunities with the Fund, compel the Superintendent to conclude that the mere strengthening of the Fund's control environment is insufficient to protect the integrity of the state employees' retirement systems. The Third Amendment to Regulation 85 will adopt an immediate ban on the use of placement agents to ensure sufficient protection of the Fund's members and beneficiaries, and safeguard the integrity of the Fund's investments. Further, the rule defines "placement agent or intermediary" in a manner that both thwarts evasion of the ban while ensuring that such ban not extend to persons otherwise acting lawfully on behalf of investment managers.

4. Costs: The rule does not impose any additional requirements on the Comptroller, and no additional costs are expected to result from the implementation of the ban imposed by this rule. There are no costs to the Department or other state government agencies or local governments. Investment managers, consultants and advisors who provide services to the Fund, which are required to discontinue the use of placement agents in connection with investment services they provide to the Fund, may lose opportunities to do business with the Fund.

5. Local government mandates: The rule imposes no new programs, services, duties or responsibilities on any county, city, town, village, school district, fire district or other special district.

6. Paperwork: No additional paperwork should result from the prohibition imposed by the rule.

7. Duplication: This rule will not duplicate any existing state or federal rule.

8. Alternatives: The Superintendent considered other ways to limit the influence of placement agents, including a partial ban, increased disclosure requirements, and adopting alternative definitions of placement agent or intermediary. The Department considered limiting the ban to include intent on the part of the party using placement agents, or defining "placement agent" in more general terms.

In developing the rule, the Superintendent and State Comptroller not only consulted with one another, but also briefed representatives of: (1) New York State and New York City Public Employee Unions; (2) New York City Retirement and Pension Funds; (3) the Borough Presidents of the five counties of New York City; and (4) officials of the New York City Mayor's Office, Comptroller's Office and Finance Department. These entities agreed with the concerns expressed by the Department and intend to explore remedies most appropriate to the pension funds that they represent.

Initially, the Superintendent concluded that only an immediate total ban on the use of placement agents could provide sufficient protection of the Fund's members and beneficiaries and safeguard the integrity of the Fund's investments. The proposed rule was published in the State Register on March 17, 2010. A Public Hearing was held on April 28, 2010. The following comments were received:

Blackstone Group, a global investment manager and financial advisor, wrote to oppose the proposed ban on the use of placement agents by investment advisors engaged by the New York State Common Retirement Fund ("The Fund"). It stated that the rule would lessen the number of investment opportunities brought before the Fund, adversely affect small, medium-sized and women-and minority-owned investment firms seeking to do business with the Fund, and adversely affect a number of New York-headquartered financial institutions doing business as placement agents.

Blackstone suggested the inclusion of the following provisions in the rule instead:

- A ban on political contributions by any employee of any placement agent seeking to do business with the Fund;
- A requirement that any placement agent seeking do to business with the Fund be registered as a broker dealer with the SEC and ensure that its professionals have passed the appropriate Series qualifications administered by Financial Industry Regulatory Authority ("FINRA");
- A requirement that any placement agent seeking to do business in New York register with the Department; and
- A requirement that any placement agent representing an investment manager before the Fund fully disclose the contractual arrangement between it and the manager, including the fee arrangement and the scope of services to be provided.

The Securities Industry and Financial Markets Association ("SIFMA"), representing hundreds of securities firms, banks, and asset managers, commented that the proposed rule (1) inadvertently limits the access of smaller fund managers to the Fund; (2) restricts the number and types of advisers that could be utilized by the Fund; (3) creates an inherent conflict between federal and state law that would make it impossible to do business with the Fund while complying with both; and (4) adds duplicative regulation in an area already substantially regulated at the state level and that is primed for further federal regulation through the imminent imposition of a federal pay-to-play regime on all registered broker-dealers acting as placement agents. In addition, SIFMA provided language that it believes would be consistent with the existing federal requirements on the use of placement agents. SIFMA requested that the Department either exclude from the proposed rule those placement agents who are registered as broker-dealers under the Securities Exchange Act of 1934 or delay the enactment of the proposed rule until the federal and state placement agent initiatives are finalized.

The Superintendent did consider other ways to limit the influence of placement agents, including a partial ban, increased disclosure requirements, and adopting alternative definitions of placement agent or intermediary. The Department considered limiting the ban to include intent on the part of the party using placement agents, or defining "placement agent" in more general terms. At the time, the Superintendent concluded that only an immediate, total ban on the use of placement agents could provide sufficient protection of the Fund's members and beneficiaries and safeguard the integrity of the Fund's investments.

9. Federal standards: The Securities and Exchange Commission issued a "Pay-To-Play" regulation for financial advisors on July 1, 2010, which may have an impact on the issues addressed in the proposed rule.

10. Compliance schedule: The emergency adoption of this regulation on June 18, 2009 ensured that the ban would become enforceable immediately. The ban needs to remain in effect on an emergency basis until such time as an amended regulation can be made permanent.

Regulatory Flexibility Analysis

1. Effect of the rule: This rule strengthens standards for the management of the New York State and Local Employees' Retirement System and New York State and Local Police and Fire Retirement System (collectively, "the Retirement System"), and the New York State Common Retirement Fund ("the Fund").

The Second Amendment to 11 NYCRR 136 (Insurance Regulation 85), effective November 19, 2008, established new standards with regard to investment of the assets of the Fund, conflicts of interest and procurement. In addition, the Second Amendment created new audit and actuarial committees, and greatly strengthened the investment advisory committee. The Second Amendment also set high ethical standards, strengthened internal controls and governance, enhanced the operational transparency of the Fund, and strengthened supervision by the Department.

Nevertheless, recent allegations regarding "pay to play" practices, whereby politically connected individuals reportedly sold access to investment opportunities with the Fund, compel the Superintendent to conclude that the mere strengthening of the Fund's control environment is insufficient to protect the integrity of the state employees' retirement systems. The Third Amendment to Insurance Regulation 85 will adopt an immediate ban on the use of placement agents to ensure sufficient protection of the Fund's members and beneficiaries, and safeguard the integrity of the Fund's investments. Further, the rule defines "placement agent or intermediary" in a manner that both thwarts evasion of the ban while ensuring that such ban not extend to persons otherwise acting lawfully on behalf of investment managers.

These standards are intended to assure that the conduct of the business of the Retirement System and the Fund, and of the State Comptroller (as administrative head of the Retirement System and as sole trustee of the Fund), are consistent with the principles specified in the rule. Most among all affected parties, the State Comptroller, as a fiduciary whose responsibilities are clarified and broadened, is impacted by the rule. The State Comptroller is not a "small business" as defined in section 102(8) of the State Administrative Procedure Act.

This rule will affect investment managers and other intermediaries (other than OSC employees) who provide technical or professional services to the Fund related to Fund investments. The rule will prohibit investment managers from using the services of a placement agent unless such agent is a regular employee of the investment manager and is acting in a broader capacity than just providing specific investment advice to the Fund. In addition, the rule is also directed to placement agents, who as a result of this rule, will no longer be engaged directly or indirectly by investment managers that do business with the Fund. Some investment managers and placement agents may come within the definition of "small business" set forth in section 102(8) of the State Administrative Procedure Act, because they are independently owned and operated, and employ 100 or fewer individuals.

The rule bans the use of placement agents in connection with investments by the Fund. This may adversely affect the business of placement agents, who will lose opportunities to earn profits in connection with investments by the Fund. Nevertheless, as a result of recent allegations

regarding "pay to play" practices, whereby politically connected individuals reportedly sold access to investment opportunities with the Fund, the Superintendent has concluded that an immediate ban on the use of placement agents is necessary to protect the Fund's members and beneficiaries and to safeguard the integrity of the Fund's investments.

This rule will not impose any adverse compliance requirements or result in any adverse impacts on local governments. The basis for this finding is that this rule is directed at the State Comptroller; employees of the Office of State Comptroller; and investment managers, placement agents, consultant or advisors - none of which are local governments.

2. Compliance requirements: None.

3. Professional services: Investment managers, consultants and advisors who provide services to the Fund, and are required to discontinue the use of placement agents in connection with investment services they provide to the Fund, may need to employ other professional services.

4. Compliance costs: The rule does not impose any additional requirements on the Comptroller, and no additional costs are expected to result from the implementation of the ban imposed by this rule. There are no costs to the Department of Financial Services or other state government agencies or local governments. However, investment managers, consultants and advisors who provide services to the Fund, which are required to discontinue the use of placement agents in connection with investment services they provide to the Fund, may lose opportunities to do business with the Fund.

5. Economic and technological feasibility: The rule does not impose any economic and technological requirements on affected parties, except for placement agents who will lose the opportunity to earn profits in connection with investments by the Fund.

6. Minimizing adverse impact: The costs to placement agents are lost opportunities to earn profits in connection with investments by the Fund. The Superintendent considered other ways to limit the influence of placement agents, including a partial ban, increased disclosure requirements, and adopting alternative definitions of placement agent or intermediary. But in the end, the Superintendent concluded that only an immediate total ban on the use of placement agents could provide sufficient protection of the Fund's members and beneficiaries and safeguard the integrity of the Fund's investments.

7. Small business and local government participation: In developing the rule, the Superintendent and State Comptroller not only consulted with one another, but also briefed representatives of: (1) New York State and New York City Public Employee Unions; (2) New York City Retirement and Pension Funds; (3) the Borough Presidents of the five counties of New York City; and (4) officials of the New York City Mayor's Office, Comptroller's Office and Finance Department.

A public hearing was held on April 28, 2010. Comments were received from two entities recommending that the total ban on the use of placement agents be modified. The Department will continue to assess the comments that have been received and any others that may be submitted.

Rural Area Flexibility Analysis

1. Types and estimated numbers of rural areas: Investment managers, placement agents, consultants or advisors that do business in rural areas as defined under State Administrative Procedure Act Section 102(10) will be affected by this rule. The rule bans the use of placement agents in connection with investments by the New York State Common Retirement Fund ("the Fund"), which may adversely affect the business of placement agents and of other entities that utilize placement agents and are involved in Fund investments.

2. Reporting, recordkeeping and other compliance requirements, and professional services: This rule will not impose any reporting, recordkeeping or other compliance requirements on public or private entities in rural areas, with the exception of requiring investment managers, consultants and advisors who provide services to the Fund to discontinue the use of placement agents.

3. Costs: The costs to placement agents are lost opportunities to earn profits in connection with investments by the Fund.

4. Minimizing adverse impact: The rule does not adversely impact rural areas.

5. Rural area participation: A public hearing was held on April 28, 2010. Comments were received from two entities recommending that the total ban on the use of placement agents be modified. The Department will continue to assess the comments that have been received and any others that may be submitted.

Job Impact Statement

The Department of Financial Services finds that this rule will have little or no impact on jobs and employment opportunities. The rule bans investment managers from using placement agents in connection with investments by the New York State Common Retirement Fund ("the Fund"). The rule may adversely affect the business of placement agents, who could lose the opportunity to earn profits in connection with investments by the Fund. Nevertheless, in view of recent events about how placement agents conduct business on behalf of their clients with regard to the Fund, the Superintendent has concluded that an immediate ban on the use of placement agents is necessary to protect the Fund's members and beneficiaries, and to safeguard the integrity of the Fund's investments.

REVISED RULE MAKING
NO HEARING(S) SCHEDULED

Standard Financial Aid Award Information Sheet for Institutions of Higher Education

I.D. No. DFS-03-16-00003-RP

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

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

Statutory authority: Banking Law, section 9-w

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 revised 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

(a) 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.

(b) "Financial Aid Award Information Sheet" means standard financial aid award letter required by section 9-w of the Banking Law.

§ 421.3 Content and Delivery of Financial Aid Award Information Sheet

(a) In responding to an incoming or prospective undergraduate student's financial aid application, a college, vocational institution or other institution that offers an approved program as defined in section 601 of the Education Law shall provide a Financial Aid Award Information Sheet. The Financial Aid Award Information Sheet shall be delivered in the same manner in which the school responds to a financial aid award application.

(b) The Financial Aid Award Information Sheet shall be in the form available at www.dfs.ny.gov/studentprotection. Colleges, vocational institutions or other institutions that offer an approved program as defined in section 601 of the Education Law may make reasonable changes to the language or design of the Financial Aid Award Information Sheet if necessary to more accurately reflect a student's cost of education or financial aid award, provided that the information in the Financial Aid Award Information Sheet is of such size, color, and contrast and is so presented as to be readily noticed, read and understood by the recipient.

(c) 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.

Revised rule compared with proposed rule: Substantial revisions were made in sections 421.3 and 421.4.

Text of revised proposed 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: 30 days after publication of this notice.

Revised Regulatory Impact Statement

The revised rule does no change the regulatory impact of the rule. The rule implements Banking Law § 9-w and the revisions clarify the content and delivery requirements of the financial aid information sheet.

Revised Regulatory Flexibility Analysis

The revised rule will not impose any new adverse economic impact or reporting, recordkeeping or other compliance requirements on small busi-

nesses and local governments. The rule implements Banking Law § 9-w and the revisions clarify the content and delivery requirements of the financial aid information sheet.

Revised Rural Area Flexibility Analysis

The revised rule will not impose any new adverse economic impact on rural areas or reporting, recordkeeping or other compliance requirements on public or private entities in rural areas. The rule implements Banking Law § 9-w and the revisions clarify the content and delivery requirements of the financial aid information sheet.

Revised Job Impact Statement

The revised rule should have no adverse impact on jobs and employment opportunities in New York. The rule implements Banking Law § 9-w and the revisions clarify the content and delivery requirements of the financial aid information sheet.

Assessment of Public Comment

The following is a summary of comments the Department received regarding proposed rule 3 NYCRR 421. The comments are from New York universities as well as associations representing New York colleges and universities.

Some comments objected to the state adopting a uniform information sheet. They pointed out that undergraduate, graduate and other types of higher education are structured differently and information relevant to one audience is not necessarily relevant to another. For example, some types of financial aid on the proposed form are only available to undergraduate students. The final rule allows for some additional flexibility however the Banking Law § 9-w mandates that the letter contain certain information.

Commenters suggested limiting the required recipients of the Financial Aid Information Sheet. Recommendations included limiting recipients to undergraduate students or to admitted students, instead of all financial aid applicants. The final rule incorporates changes to Banking Law § 9-w that only requires the letter for undergraduates.

Commenters requested that schools using the federal Student Shopping Sheet should not be required to adopt any changes to their financial aid award letters. They believe using the federal form should be sufficient to meet their requirements under Banking Law § 9-w. Banking Law § 9-w requires schools to provide information that is not included on the federal Student Shopping Sheet.

Commenters asked for assistance in automating any required forms including encouraging education software vendors to incorporate the required form into their software so schools do not need to develop their own systems.

Finally, some commenters suggested that including estimates of the cost of attendance for all years needed to obtain a degree, instead of the cost of one year, will alarm students and families regarding the cost of their education. This information is required by statute.

New York State Gaming Commission

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Criteria and Procedures for Patron Exclusion at a Gaming Facility

I.D. No. SGC-28-16-00006-P

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

Proposed Action: Addition of Part 5327 to Title 9 NYCRR.

Statutory authority: Racing, Pari-Mutuel Wagering and Breeding Law, sections 104(19), 1307(1), 1342(1), (3) and (4)

Subject: Criteria and procedures for patron exclusion at a gaming facility.

Purpose: To establish criteria and procedures for patron exclusion at a gaming facility.

Text of proposed rule: PART 5327

Excluded Persons

§ 5327.1. Maintenance of the excluded persons list.

(a) The commission shall maintain a list of persons to be excluded or ejected from the gaming facility. The commission shall maintain such list on the commission's website. Such list shall not be deemed all-inclusive.

(b) Each gaming facility licensee shall exclude from its premises any person who such gaming facility licensee knows meets the exclusion criteria of Racing, Pari-Mutuel Wagering and Breeding Law section 1342 and section 5327.2 of this Part.

(c) The following information shall be provided on the list for each excluded individual:

(1) the full name and all aliases the person is believed to have used;

(2) a description of the person's physical appearance, including height, weight, type of build, color of hair and eyes and other physical characteristics that may assist in the identification of the person;

(3) the person's date of birth;

(4) the effective date of the order mandating the exclusion of the person; and

(5) photograph, if obtainable, and the date thereof.

(d) Each gaming facility licensee shall ensure that it reviews the excluded persons list on a regular basis and that such list is made available to all employees of the gaming facility.

§ 5327.2. Criteria for exclusion.

A person shall be placed on the excluded persons list if the commission determines that the person meets one or more of the following criteria:

(a) is a career or professional offender, whose presence in a gaming facility would, in the opinion of the commission, be contrary to the interests of New York State or of casino gaming therein, or both;

(b) has a known relationship or connection with a career or professional offender whose presence in a licensed facility would be contrary to the interest of New York State or of casino gaming therein, or both;

(c) has been convicted of a gambling offense under the laws of any state or the United States that is punishable by more than 12 months in a state prison, a house of correction or any comparable incarceration, a crime of moral turpitude or a violation of the gaming laws of any state;

(d) has a notorious or unsavory reputation that would adversely affect public confidence and trust that casino gaming is free from criminal or corruptive elements;

(e) poses, by presence in a gaming facility, the potential of injurious threat to the interests of New York State if the person is permitted in a gaming facility. In determining whether a person poses a potential of injurious threat, the commission may consider whether the person:

(1) is a gaming cheat;

(2) has had a license or registration issued in accordance with Parts 5303 through 5307 of this Subchapter, or a like license or registration issued by another jurisdiction, suspended or revoked or has been otherwise subjected to adverse action;

(3) poses a threat to the safety of the patrons or employees of a gaming facility;

(4) has a documented history of conduct involving the undue disruption of gaming operations in any jurisdiction;

(5) is subject to an order of a court of competent jurisdiction in New York State excluding those persons from a gaming facility;

(6) is subject to a no trespass order at any casino or gaming facility in any jurisdiction;

(7) is excluded from any video lottery facility in New York State;

(8) is excluded from any Indian gaming facility in New York State;

(9) is excluded from any horse racing track or off-track betting facility in New York State for any misconduct or behavior involving wagering or wagering integrity; or

(10) has pending charges or indictments for a gaming crime or a crime related to the integrity of gaming operations in New York State or any other jurisdiction.

§ 5327.3. Placement on the excluded persons list.

The placement of a person on the excluded persons list shall have the effect of requiring the exclusion or ejection of the excluded person from all New York State licensed gaming facilities.

§ 5327.4. Petition to remove name from the excluded persons list.

(a) An excluded person may file a petition with the secretary of the commission to request a hearing for removal of his or her name from the excluded persons list after five years have elapsed from the day of placement of his or her name on the excluded persons list.

(b) Any petition pursuant to this section shall be signed by the excluded person, contain supporting affidavits and state specific grounds believed by the excluded person to constitute good cause for removal from the excluded persons list.

Text of proposed rule and any required statements and analyses may be obtained from: Kristen Buckley, New York State Gaming Commission, One Broadway Center, 6th Floor, Schenectady, NY 12305, (518) 388-3407, email: kristen.buckley@gaming.ny.gov

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

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

Regulatory Impact Statement

1. STATUTORY AUTHORITY: Racing, Pari-Mutuel Wagering and Breeding Law ("Racing Law") section 104(19) grants authority to the Gaming Commission ("Commission") to promulgate rules and regulations that it deems necessary to carry out its responsibilities. Racing Law section 1307(1) authorizes the Commission to adopt regulations that it deems necessary to protect the public interest in carrying out the provisions of Racing Law Article 13.

Racing Law section 1342(1) authorizes the Commission to establish a list of persons who are required to be excluded from any licensed gaming facility and to define the standards for the exclusion of persons from the premises of a licensed gaming facility.

Racing Law section 1342(3) mandates the licensed gaming facilities exclude or eject from the premises any person placed by the Commission on the list of persons to be excluded or ejected.

Racing Law section 1342(4) mandates the Commission establish classifications of persons required to be excluded from the gaming facility premises by the licensed gaming facility.

2. LEGISLATIVE OBJECTIVES: The above referenced statutory provisions carry out the legislature's stated goal "to tightly and strictly" regulate casinos "to guarantee public confidence and trust in the credibility and integrity of all casino gambling in the state and to prevent organized crime from any involvement in the casino industry" as set forth in Racing Law section 1300(10).

3. NEEDS AND BENEFITS: The proposed rules implement the above listed statutory directives regarding the exclusion of persons whose presence in a licensed gaming facility would be inimical to the interests of the state or to licensed gaming. The rules specify with respect to the above listed statutory directives to assure certain persons are not permitted upon the premises of any licensed gaming facility in New York State. The rules set forth the criteria upon which a person is considered inimical to the state or licensed gaming, their placement on the exclusion list, and the duty of the licensed facility to exclude the person from the premises.

4. COSTS:

(a) Costs to the regulated parties for the implementation of and continuing compliance with these rules: There are no costs to the regulated parties as a result of these regulations.

(b) Costs to the regulating agency, the State, and local governments for the implementation of and continued administration of the rule: The Commission currently conducts hearings in lottery, video lottery gaming and horse racing and maintains an excluded persons list for video lottery gaming. Based on that experience, the Commission anticipates that the costs associated with the proposed rules would be negligible.

(c) The information, including the source or sources of such information, and methodology upon which the cost analysis is based: The cost estimates are based on the Commission's experience regulating racing and gaming activities within the State.

5. LOCAL GOVERNMENT MANDATES: There are no local government mandates associated with these rules.

6. PAPERWORK: These rules do not impose paperwork burdens on the regulated parties. The paperwork burden is born by the Commission with the responsibility to maintain the exclusion list with all criteria stated in the regulations.

7. DUPLICATION: These rules do not duplicate, overlap or conflict with any existing State or federal requirements.

8. ALTERNATIVES: The Commission consulted stakeholders and reviewed other gambling jurisdiction best practices and regulation. Alternatives were discussed and considered with stakeholders and compared to other jurisdictions regulations. This included providing clarification on a gaming facility licensee's knowledge of patrons on the Commission's excluded persons list. The Commission is also required to promulgate these rules pursuant to Racing Law sections 1342(1), 1342(3) and 1342(4).

9. FEDERAL STANDARDS: There are no federal standards applicable to the licensing of gaming facilities in New York; it is purely a matter of New York State law.

10. COMPLIANCE SCHEDULE: The Commission anticipates that the affected parties will be able to achieve compliance with these rules upon adoption.

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

These rules will not have any adverse impact on small businesses, local governments, jobs or rural areas. These rules are intended to promote public confidence and trust in the credibility and integrity of casino gambling in New York State. These rules will ensure that licensed gaming facilities exclude from their premises persons known to be inimical to the interest of the state or of licensed gaming.

These rules apply solely to licensed gaming facilities and therefore the rules do not impact local governments or small businesses as it is not expected that any local government or small business will hold a gaming facility license.

These rules impose no adverse impact on rural areas. These rules apply uniformly throughout the state and apply solely to licensed gaming facilities.

These rules will have no adverse impact on job opportunities.

These rules will not adversely impact small businesses, local governments, jobs, or rural areas. Accordingly, a full Regulatory Flexibility Analysis, Rural Area Flexibility Analysis, and Job Impact Statement are not required and have not been prepared.

PROPOSED RULE MAKING
NO HEARING(S) SCHEDULED

Definitions of Terms Used Throughout Subchapter B, Casino Gaming

I.D. No. SGC-28-16-00007-P

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

Proposed Action: Amendment of section 5300.1 of Title 9 NYCRR.

Statutory authority: Racing, Pari-Mutuel Wagering and Breeding Law, sections 104(19) and 1307(1)

Subject: Definitions of terms used throughout Subchapter B, Casino Gaming.

Purpose: To define terms applicable to Subchapter B, Casino Gaming.

Text of proposed rule: § 5300.1. Definitions.

Unless the context indicates otherwise, the following definitions and the definitions set forth in Racing, Pari-Mutuel Wagering and Breeding Law section 1301 are applicable throughout this Subchapter:

(a) Ancillary casino vendor means a vendor providing goods or services to a gaming facility applicant or licensee that are ancillary to gaming activity.

(b) Casino vendor means a vendor providing goods or services to a gaming facility applicant or licensee that directly relate to gaming activity.

(c) Career *or professional offender* means any person whose behavior is pursued in an occupational manner or context for the purpose of economic gain, using such methods as are deemed criminal violations of the public policy of this State.

(d) Career offender cartel means any group of persons who operate together as career offenders.

(e) Commission means the commissioners, staff and designees of the New York State Gaming Commission.

(f) Credit slip means a form used to record either the return of chips from a gaming table to the cage or the transfer of markers or negotiable checks from a table game to a cage or bankroll.

(g) Dealer means a person assigned to operate games.

(h) Drop box means the box attached to a table game that is used to collect the following items:

(1) currency;

(2) coin;

(3) cash equivalents;

(4) damaged chips; and

(5) all other forms used by the gaming facility and deposited in the drop box as part of the audit trail.

[(f)]*(i)* Excluded person means a person who is excluded from a gaming facility pursuant to Part 5326 of this Subchapter.

(j) Fill means a transaction whereby a supply of chips or coins is transferred from a bankroll to a table.

(k) Gaming cheat means a person who is engaging in or attempting to engage in, or who is suspected of cheating, theft, embezzlement, a violation of this Subchapter or other illegal activities, or activities that are deemed a violation under Penal Law article 225 or equivalent violations in other jurisdictions, including a person who is required to be excluded or ejected from the licensed facility under Racing, Pari-Mutuel Wagering and Breeding Law section 1342 or Part 5327 of this Subchapter.

[g]*(l)* Gaming facility means the premises approved under a gaming license, which includes a gaming area and any other nongaming structure related to the gaming area and may include, without limitation, hotels, restaurants and other amenities.

(m) Hand means either one game in a series, one deal in a card game or the cards held by a player in a card game, as the context requires.

(n) Match-play coupon means a coupon with a fixed, stated value that is issued and redeemed and the stated value of which, when presented by a patron with chips that are equal to or greater in value to the stated value

of the coupon, is included in the amount of the patron's wager in determining the payout on any winning bet at an authorized game.

[h]*(o)* Material change means modification to physical or financial aspects in a manner that creates an inconsistency with the application submitted by a licensee or applicant for license. Physical aspects impact the proposed gaming facility or project site through addition, removal or alteration of the quality and nature of gaming and non-gaming amenities. Financial aspects impact the capital and financing structure through addition, removal or alteration of financing source or sources, schedule of financing source or sources and arrangement or agreements of financing plan.

[i]*(p)* Non-gaming employee means any natural person, not otherwise included in the definition of casino key employee or gaming employee, who is employed by a gaming facility licensee or an affiliate, intermediary, subsidiary or holding company of a gaming facility licensee.

[j]*(q)* Passive investor means an investor owning, holding or controlling up to 25 percent of the publicly traded securities issued by a gaming facility licensee or applicant or holding, intermediate or parent company of a licensee in the ordinary course of business for investment purposes only and who does not, nor intends to, exercise influence or control over the affairs of the issuer of such securities, nor over any licensed subsidiary of the issuer of such securities.

(r) Pit means the area enclosed or encircled by the arrangement of table games in which gaming facility personnel administer and supervise the live games played at the tables by patrons located outside the perimeter of such area.

(s) Promotional gaming chip and promotional coupon mean non-cashable instruments that may be used for game play.

[k]*(t)* Qualified institutional investor means an institutional investor holding up to 15 percent of the publicly traded securities of a gaming facility applicant or licensee, or holding, intermediary or subsidiary company thereof, for investment purposes only and does not, nor intends, to exercise influence or control over the affairs of the issuer of such securities, nor over any licensed subsidiary of the issuer of such securities. To qualify as an institutional investor, an investor, other than a State or Federal pension plan, must meet the requirements of a qualified institutional buyer as defined in regulations of the United States Securities and Exchange Commission. A qualified institutional investor includes, without limitation, any of the following:

(1) a bank as defined under Federal securities laws;

(2) an insurance company as defined under Federal investment company laws;

(3) an investment company registered under Federal investment company laws;

(4) an investment advisor registered under Federal investment company laws;

(5) collective trust funds as defined under Federal investment company laws;

(6) an employee benefit plan or pension fund subject to the Employee Retirement Income Security Act, subject to certain exclusions;

(7) a State or Federal government pension plan; and

(8) such other persons as the commission many determine for reasons consistent with policies of the commission.

[l]*(u)* Qualifier means a related party in interest to an applicant, including, without limitation, a close associate or financial resource of such applicant. Qualifiers may include, without limitation:

(1) if the gaming facility applicant is a corporation:

(i) each officer;

(ii) each director;

(iii) each shareholder holding five percent or more of the common stock of such company; and

(iv) each lender;

(2) if the gaming facility applicant is a limited liability corporation:

(i) each member;

(ii) each transferee of a member's interest;

(iii) each director;

(iv) each manager; and

(v) each lender;

(3) if the gaming facility applicant is a limited partnership:

(i) each general partner;

(ii) each limited partner; and

(iii) each lender;

(4) if the gaming facility applicant is a partnership:

(i) each partner; and

(ii) each lender;

(5) any gaming facility licensee manager or operator;

(6) any direct and indirect parent entity of a gaming facility applicant or licensee, including any holding company;

(7) any entity having a beneficial or proprietary interest of five percent or more in a gaming facility applicant or licensee;

(8) any other person or entity that has a business association of any kind with the gaming facility applicant or licensee; and

(9) any other person or entity that the commission may designate as a qualifier.

(v) Shift means the normal daily work period of a group of employees administering and supervising the operations of live gaming devices.

(w) Supervisor means a person employed in the operation of the authorized games in a gaming facility in a supervisory capacity or empowered to make discretionary decisions that regulate gaming facility operations, including without limitation, pit managers, floorpersons, gaming facility shift managers, the assistant gaming facility manager and the gaming facility manager.

[m]*(x)* Temporary service provider means a vendor, a vendor's agents, servants and employees engaged by a gaming facility licensee to perform temporary services at a gaming facility for no more than 30 days in any 12-month period.

[n]*(y)* Vendor registrant means any vendor that offers goods and services to a gaming facility applicant or licensee that is not a casino vendor or an ancillary casino vendor.

Text of proposed rule and any required statements and analyses may be obtained from: Kristen Buckley, New York State Gaming Commission, One Broadway Center, 6th Floor, Schenectady, NY 12305, (518) 388-3407, email: kristen.buckley@gaming.ny.gov

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

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

Regulatory Impact Statement

1. STATUTORY AUTHORITY: Racing, Pari-Mutuel Wagering and Breeding Law ("Racing Law") section 104(19) grants authority to the Gaming Commission ("Commission") to promulgate rules and regulations that it deems necessary to carry out its responsibilities. Racing Law section 1307(1) grants rule making authority to the Commission to implement, administer and enforce the provisions of Racing Law Article 13.

2. LEGISLATIVE OBJECTIVES: This rule making carries out the legislative objectives of the above-referenced statutes.

3. NEEDS AND BENEFITS: This rule making is necessary to establish the definitions of specific terms used throughout the New York State Gaming Commission Rules and Regulations, Chapter IV, Subchapter B, thereby enabling the Commission to implement Article 13 of the Racing Law and help New York State to capitalize on the economic development potential of legalized gambling, create thousands of well-paying jobs and increase revenue to the State. In addition this rule making is necessary to promote public confidence and trust in the credibility and integrity of casino gambling in New York State.

Section 5300.1 sets forth the definitions applicable to the New York State Gaming Commission Rules and Regulations, Chapter IV, Subchapter B. The proposed amendments contain the addition of new definitions necessitated by the promulgation of new rules by the Commission under Subchapter B.

4. COSTS:

(a) Costs to the regulated parties for the implementation of and continuing compliance with these rules: The rule sets forth definitions for specific terms used throughout the New York State Gaming Commission Rules and Regulations, Chapter IV, Subchapter B. The rule will not impose any additional costs on the regulated parties.

(b) Costs to the regulating agency, the State, and local governments for the implementation of and continued administration of the rule: The rule sets forth definitions for specific terms used throughout the New York State Gaming Commission Rules and Regulations, Chapter IV, Subchapter B. The rule will not impose any additional costs on the regulatory agency, the State or local governments.

(c) The information, including the source or sources of such information, and methodology upon which the cost estimate is based: This rule solely defines specific terms used throughout Subchapter B; no source or methodology was used to determine the costs imposed by this rule.

5. LOCAL GOVERNMENT MANDATES: The rule does not impose any mandatory program, service, duty, or responsibility upon local government.

6. PAPERWORK: The rule is not expected to impose any significant paperwork or reporting requirements for regulated entities.

7. DUPLICATION: The rule does not duplicate, overlap or conflict with any existing State or federal requirements.

8. ALTERNATIVES: The Commission consulted stakeholders and reviewed other gambling jurisdiction best practices and regulations. Alternatives were discussed and considered with stakeholders and compared to other jurisdiction regulations. These included changing bankroll to fill bank in the credit slip definition, adding table before game in the dealer definition, deleting tokens from the fill definition and deleting issued, used and redeemed from the match-play coupon definition.

9. FEDERAL STANDARDS: There are no federal standards applicable to the rule. It is purely a matter of New York State law.

10. COMPLIANCE SCHEDULE: The Commission anticipates that affected parties will be able to achieve compliance with the rule upon adoption.

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

This rule will not have any adverse impact on small businesses, local governments, jobs or rural areas. The rule sets forth the definitions applicable to the New York State Gaming Commission Rules and Regulations, Chapter IV, Subchapter B. This rule amendment proposes the addition of definitions for specific terms used throughout Subchapter B and imposes no obligations or restrictions on any regulated party, local government or small business. Therefore this rule amendment will not impact local governments or small businesses.

This rule imposes no adverse impact on rural areas. This rule applies uniformly throughout the state.

This rule will have no impact on job opportunities.

This rule will not adversely impact small businesses, local governments, jobs, or rural areas.

These rules will not adversely impact small businesses, local governments, jobs, or rural areas. Accordingly, a full Regulatory Flexibility Analysis, Rural Area Flexibility Analysis, and Job Impact Statement are not required and have not been prepared.

PROPOSED RULE MAKING
NO HEARING(S) SCHEDULED

Regulation of Table Game Equipment

I.D. No. SGC-28-16-00008-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 5322 to Title 9 NYCRR.

Statutory authority: Racing, Pari-Mutuel Wagering and Breeding Law, sections 104(19), 1307(1), (2)(g), 1335(4) and (11)

Subject: Regulation of table game equipment.

Purpose: To set forth the physical characteristics, inspection, use, storage and destruction of table game equipment.

Substance of proposed rule (Full text is posted at the following State website:www.gaming.ny.gov/): The addition of Part 5322 of Subtitle T of Title 9 NYCRR will allow the New York State Gaming Commission ("Commission") to prescribe requirements for the inspection, use, storage and destruction of table game equipment. The rule also prescribes the physical characteristics for certain table game equipment.

Section 5322.1 sets forth the definitions applicable to the Part. Section 5322.2 establishes the physical characteristics of gaming chips. Section 5322.3 establishes the procedure for reserve gaming chip use. Section 5322.4 sets forth the procedure for the exchange and redemption of gaming chips and table game promotional coupons. Section 5322.5 sets forth the procedure for the receipt, security, storage and destruction of gaming chips. Sections 5322.6 and 5322.7 set forth the physical characteristics and use of tournament chips and plaques. Sections 5322.8 and 5322.9 set forth the physical characteristics of big wheels and roulette equipment. Section 5322.10 establishes the inspection and storage requirements for manual or automated shakers. Sections 5322.11 through 5322.13 set forth the physical characteristics, use, storage, inspection and destruction requirements for dice and pai gow tiles. Sections 5322.14 and 5322.15 set forth the physical characteristics, use, storage, inspection and destruction requirements for playing cards. Section 5322.16 establishes procedures for the pre-shuffle and pre-inspection of playing cards. Sections 5322.17 through 5322.19 establish requirements for the use of card readers, dealing shoes, automated dealing devices and automated card shuffling devices.

Text of proposed rule and any required statements and analyses may be obtained from: Kristen Buckley, New York State Gaming Commission, One Broadway Center, 6th Floor, Schenectady, NY 12305, (518) 388-3407, email: kristen.buckley@gaming.ny.gov

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

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

Regulatory Impact Statement

1. STATUTORY AUTHORITY: Racing, Pari-Mutuel Wagering and Breeding Law ("Racing Law") section 104(19) grants authority to the Gaming Commission ("Commission") to promulgate rules and regulations that it deems necessary to carry out its responsibilities. Racing Law section 1307(1) authorizes the Commission to adopt regulations that it deems necessary to protect the public interest in carrying out the provisions of Racing Law Article 13.

Racing Law section 1307(2)(g) authorizes the Commission to regulate the devices permitted for use at a table game.

Racing Law section 1335(4) requires the Commission to regulate the physical characteristics of chips used within a gaming facility.

Racing Law section 1335(11) authorizes the Commission to regulate the use of automated dealing devices.

2. LEGISLATIVE OBJECTIVES: The above referenced statutory provisions carry out the legislature's stated goal "to tightly and strictly" regulate casinos "to guarantee public confidence and trust in the credibility and integrity of all casino gambling in the state and to prevent organized crime from any involvement in the casino industry" as set forth in Racing Law section 1300(10).

3. NEEDS AND BENEFITS: The proposed rules implement the above listed statutory directives regarding the utilization of table game equipment. The rules represent best practices in defining the physical characteristics, inspection, use, storage and destruction of table game equipment. Best practices addressed in the proposed rules include detailing the physical characteristics of gaming chips, pai gow tiles, plaques, big wheels, roulette wheels, dice and playing cards. The proposed rules also establish procedures for the inspection, storage and destruction of dice, pai gow tiles and playing cards. In addition, the proposed rules establish procedures for the use of automated dealing and card shuffling devices.

4. COSTS:

(a) Costs to the regulated parties for the implementation of and continuing compliance with these rules: One of the three gaming facility licensees has indicated that the anticipated costs of implementing and complying with the proposed regulations will be approximately $50,000 to $65,000 per year.

(b) Costs to the regulating agency, the State, and local governments for the implementation of and continued administration of the rule: The costs to the Commission for the implementation of and continued administration of the rule will be negligible given that all such costs are the responsibility of the gaming facility. These rules will not impose any additional costs on local governments.

(c) The information, including the source or sources of such information, and methodology upon which the cost analysis is based: The cost estimates are based on the Commission's experience regulating racing and gaming activities within the State.

5. LOCAL GOVERNMENT MANDATES: There are no local government mandates associated with these rules.

6. PAPERWORK: These rules impose paperwork burdens on gaming facility licensees. Examples of paperwork burdens on the gaming facility licensees include the submission of the following to the Commission: a chip inventory ledger; the gaming facility's chip redemption procedures applicable to employees; gaming equipment destruction logs; samples of table game promotional coupons; playing card designs; employee training procedures regarding inspection of playing cards; and procedures for the use automated card shuffling devices.

7. DUPLICATION: These rules do not duplicate, overlap or conflict with any existing State or federal requirements.

8. ALTERNATIVES: The Commission consulted stakeholders and reviewed other gambling jurisdiction best practices and regulation. These included the appropriate chip and plaque denominations; the permissible anti-counterfeiting measures for value chips; the use of value chips for food and beverage purchase; the appropriate inventory controls for value chips; the use of reconstructed tile sets; the appropriate standard for the destruction of tile sets; the appropriate procedure for replacing damaged cards; the appropriate procedure for using pre-inspected and pre-shuffled cards and the appropriate use of hand deals. The Commission is also required to promulgate these rules pursuant to Racing Law sections, 1307(2)(g), 1335(4) and 1335(11).

9. FEDERAL STANDARDS: There are no federal standards applicable to the licensing of gaming facilities in New York; it is purely a matter of New York State law.

10. COMPLIANCE SCHEDULE: The Commission anticipates that the affected parties will be able to achieve compliance with these rules upon adoption.

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

These rules will not have any adverse impact on small businesses, local governments, jobs or rural areas. These rules are intended to promote public confidence and trust in the credibility and integrity of casino gambling in New York State. The rules will ensure that licensed gaming facilities possess and maintain table game equipment that is authorized and trustworthy. The rules establish the physical characteristics and procedures for the inspection, use, storage and destruction of table game equipment.

These rules do not impact local governments or small businesses as it is not expected that any local government or small business will hold a gaming facility license.

These rules impose no adverse impact on rural areas. These rules apply uniformly throughout the state and solely apply to licensed gaming facilities.

These rules will have no adverse impact on job opportunities.

These rules will not adversely impact small businesses, local governments, jobs, or rural areas. Accordingly, a full Regulatory Flexibility Analysis, Rural Area Flexibility Analysis, and Job Impact Statement are not required and have not been prepared.

PROPOSED RULE MAKING
NO HEARING(S) SCHEDULED

Licensing and Registration of Junkets and Junket Enterprises

I.D. No. SGC-28-16-00009-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 5308 to Title 9 NYCRR.

Statutory authority: Racing, Pari-Mutuel Wagering and Breeding Law, sections 104(19), 1307(1), 1328(2), (3) and (11)

Subject: Licensing and registration of junkets and junket enterprises.

Purpose: To govern the licensing and registration of junkets and junket enterprises.

Text of proposed rule: *PART 5308*

Junket Operator Licensing

§ 5308.1. Permissible junket activity.

A junket, junket enterprise or junket representative, as such terms are defined in Racing, Pari-Mutuel Wagering and Breeding Law sections 1301(29), (30) and (31), shall be organized or participate with a gaming facility licensee only in accordance with Racing, Pari-Mutuel Wagering and Breeding Law section 1328.

§ 5308.2. License or registration of junket operator.

(a) A junket representative who is employed by a gaming facility licensee, an applicant for a gaming facility license or an affiliate of a gaming facility licensee, is required to be licensed as, and meet the qualifications of, a casino key employee in accordance with Part 5304 of this Subchapter, except that a junket representative does not need to fulfill the residency requirement of a casino key employee.

(b) A junket enterprise and any junket representative not employed by a gaming facility licensee, applicant for a gaming facility license or junket enterprise, is required to be licensed as, and meet the qualifications of, an ancillary casino vendor as set forth in Part 5307 of this Subchapter.

(c) A non-supervisory employee of a junket enterprise or junket representative is required to be registered as, and meet the qualifications of, a non-gaming employee as set forth in Part 5306 of this Subchapter.

(d) In addition to the requirements set forth in subdivisions (a) and (b) of this section, such applicants must submit a statement in writing affirming the applicant's agreement to submit to the jurisdiction of, and service of process in, the State of New York.

§ 5308.3. Waiver.

Upon petition by a gaming facility licensee in accordance with Racing, Pari-Mutuel Wagering and Breeding Law section 1328(13), the commission may exempt arrangements otherwise included within the definition of "junket" from compliance with this Part.

§ 5308.4. Agreement.

(a) A gaming facility licensee shall participate in a junket pursuant to a junket operator agreement with a junket representative or junket enterprise licensed in accordance with section 5308.2 of this Part. The junket operator agreement shall be filed with the commission prior to the commencement of the junket.

(b) The term of a junket operator agreement shall not exceed the expiration date of the junket representative or junket enterprise license or registration related thereto.

(c) A gaming facility licensee must notify the commission of any change to a junket operator agreement no later than three days before the commencement of the first junket arrangement subject to the revised terms.

(d) A gaming facility licensee must notify the commission of the termination of any junket operator agreement no later than five days after such termination.

§ 5308.5. Reporting.

(a) Junket operator report. A gaming facility licensee shall submit a quarterly report to the commission describing the operation of any junket representative or junket enterprise engaged on its premises, which report shall include:

(1) name of each licensed junket representative or junket enterprise;

(2) status of current relationship with each junket representative or junket enterprise;

(3) compensation paid in that quarter to each junket representative or junket enterprise;

(4) number of preferred guests attributed to each junket representative or junket enterprise;

(5) arrival and departure time and date of each junket representative or junket enterprise;

(6) list of gaming facility licensee employees acting as junket representatives; and

(7) such other information the commission may require.

(b) Patron list. A gaming facility licensee, junket representative and junket enterprise shall submit a quarterly report to the commission identifying any list of junket patrons or potential junket patrons purchased directly or indirectly by the gaming facility licensee, junket representative or junket enterprise, which report shall include:

(1) name and address of the person or enterprise selling the list;

(2) purchase price paid for the list or any other terms of compensation related to the transaction;

(3) date of purchase of the list; and

(4) zip codes of all junket patrons or potential junket patrons.

(c) Junket patron report. The junket patron report shall be made available to the on-site commission staff. The report shall include:

(1) information relating to each junket patron, including without limitation:

(i) name;

(ii) date of birth;

(iii) citizenship;

(iv) address of usual place of residence; and

(v) identity card, passport, taxpayer identification or any other government-issued identity document as evidence of such patron's nationality or residence and bearing a photograph of the individual;

(2) date and time of arrival of each patron when on a junket at the gaming facility;

(3) name and license number of each junket representative accompanying a patron; and

(4) amount and type of commission, rebate or complimentary given to each patron.

§ 5308.6. Junket operator prohibitions.

No junket enterprise or junket representative or person acting as a junket representative may engage in the activities set forth in Racing, Pari-Mutuel Wagering and Breeding Law 1328(14).

Text of proposed rule and any required statements and analyses may be obtained from: Kristen Buckley, New York State Gaming Commission, One Broadway Center, 6th Floor, Schenectady, NY 12305, (518) 388-3407, email: kristen.buckley@gaming.ny.gov

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

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

Regulatory Impact Statement

1. STATUTORY AUTHORITY: Racing, Pari-Mutuel Wagering and Breeding Law ("Racing Law") section 104(19) grants authority to the Gaming Commission ("Commission") to promulgate rules and regulations that it deems necessary to carry out its responsibilities. Racing Law section 1307(1) authorizes the Commission to adopt regulations that it deems necessary to protect the public interest in carrying out the provisions of Racing Law Article 13.

Racing Law section 1328(2) authorizes the Commission to regulate and license junket representatives as casino key employees.

Racing Law section 1328(3) authorizes the Commission to regulate and license junket enterprises as ancillary vendors.

Racing Law section 1328(11) mandates the Commission prescribe methods, procedures and forms for the delivery and retention of information concerning the conduct of junkets by gaming facility licensees.

2. LEGISLATIVE OBJECTIVES: The above referenced statutory provisions carry out the legislature's stated goal "to tightly and strictly" regulate casinos "to guarantee public confidence and trust in the credibility and integrity of all casino gambling in the state and to prevent organized crime from any involvement in the casino industry" as set forth in Racing Law section 1300(10).

3. NEEDS AND BENEFITS: The proposed rules implement the above listed statutory directives regarding the licensing requirements and procedures for registration of junkets. The rules provide specificity with respect to the above listed statutory directives to assure registration, notification and reporting requirements of all junkets. In addition, this rule making is necessary to promote public confidence and trust in the credibility and integrity of casino gambling in New York State.

4. COSTS:

(a) Costs to the regulated parties for the implementation of and continuing compliance with these rules: gaming facility licensees are responsible for the fees associated with employee applications, which will include the applications of a junket representative as a casino key employee. Vendors are responsible for the fees associated with the vendor application which will include ancillary vendor applications for junket enterprises.

(b) Costs to the regulating agency, the State, and local governments for the implementation of and continued administration of the rule: These rules will impose costs on the division of state police and the Commission for reviewing and investigating junket representative and enterprise applications. These rules will not impose any additional costs on local governments.

(c) The information, including the source or sources of such information, and methodology upon which the cost analysis is based: The costs associated with licensing junket representatives as casino key employees and junket enterprises as ancillary vendors will be based on hourly rates for the division of state police to conduct background investigations and on the Commission's administrative cost to process and issue such licenses and registrations. These costs will vary depending on the individual employee or vendor applicant and thus no estimate of cost is available.

5. LOCAL GOVERNMENT: There are no local government mandates associated with these rules.

6. PAPERWORK: These rules impose paperwork burdens on junkets to apply for licensure and/or registration. Junkets are required to report quarterly to the Commission.

7. DUPLICATION: These rules do not duplicate, overlap or conflict with any existing State or federal requirements.

8. ALTERNATIVES: The Commission consulted stakeholders and reviewed other gambling jurisdiction best practices and regulation. Alternatives were discussed and considered with stakeholders and compared to other jurisdictions regulations. These included providing clarification on the following: permissible junket activity, affiliate of a gaming facility licensee and submission and terms used in a junket patron report. The Commission is also required to promulgate these rules pursuant to Racing Law sections 1328(2), 1328(3) and 1328(11).

9. FEDERAL STANDARDS: There are no federal standards applicable to the licensing of gaming facilities in New York; it is purely a matter of New York State law.

10. COMPLIANCE SCHEDULE: The Commission anticipates that the affected parties will be able to achieve compliance with these rules upon adoption.

Regulatory Flexibility Analysis

1. EFFECT OF RULE: These rules provide for the licensure of junket representatives and junket enterprises. Small business junket enterprises seeking to be licensed will be impacted by these rules. Local government will not be affected by these rules.

2. COMPLIANCE REQUIREMENTS: These rules require all junket representatives and junket enterprises to apply for licensure with the Commission.

3. PROFESSIONAL SERVICES: No new or additional professional services are required in order to comply with these rules.

4. COMPLIANCE COSTS: Junket representatives and junket enterprises need to apply for licensure with the Commission and will incur costs associated with the application and licensure. The costs for a junket representative to be licensed as a key employee will be born by the gaming facility. The junket enterprise required to be licensed as an ancillary vendor will bear the costs for licensure. The costs for the application will be based on the hourly rates for the division of state police to conduct background investigations and a license fee may be incurred based upon the Commission's administrative costs to process and issue such licenses.

5. ECONOMIC AND TECHNOLOGICAL FEASIBILITY: These rules will not impose any technological costs on small businesses or local government.

6. MINIMIZING ADVERSE IMPACT: These rules do not impose adverse impacts on small businesses or local government.

7. SMALL BUSINESS AND LOCAL GOVERNMENT PARTICIPATION: Small businesses and host local governments will have the opportunity to participate in the rule making process during the public comment period which will commence when these rules are formally proposed.

Several of the development zone regions authorized to host a licensed gaming facility, as contemplated by Racing, pari-Mutuel Wagering and Breeding Law section 1310, are located within "rural areas" as that term is defined in Executive Law section 481(7). The decision to locate a licensed gaming facility in a rural area will not have an adverse economic impact. These rules have the potential to boost economic development within rural areas. Accordingly, a rural flexibility analysis is not required and one has not been prepared.

Rural Area Flexibility Analysis

Several of the development zone regions authorized to host a licensed gaming facility, as contemplated by Racing, pari-Mutuel Wagering and Breeding Law section 1310, are located within "rural areas" as that term is defined in Executive Law section 481(7). The decision to locate a licensed gaming facility in a rural area will not have an adverse economic impact. These rules have the potential to boost economic development within rural areas. Accordingly, a rural flexibility analysis is not required and one has not been prepared.

Job Impact Statement

1. NATURE OF IMPACT: The Commission has determined that these rules will not have a substantial adverse impact on jobs and employment opportunities. To the contrary, these rules are intended to create jobs.

2. CATEGORIES AND NUMBERS AFFECTED: It is anticipated that up to four gaming facilities, as contemplated by Racing, Pari-Mutual Wagering and Breeding Law Article 13, would generate numerous employment opportunities for junket representatives and employees of junket enterprises.

3. REGIONS OF ADVERSE IMPACT: The Commission does not anticipate regions of the state to suffer a disproportionate adverse impact in regards to jobs or employment opportunities.

4. MINIMIZING ADVERSE IMPACT: These rules do not create any unnecessary adverse impact on existing jobs. A positive impact on jobs and employment is anticipated.

PROPOSED RULE MAKING
NO HEARING(S) SCHEDULED

Registration of Labor Organizations

I.D. No. SGC-28-16-00010-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 5310 to Title 9 NYCRR.

Statutory authority: Racing, Pari-Mutuel Wagering and Breeding Law, sections 104(19), 1307(1), 1330(1) and (2)

Subject: Registration of labor organizations.

Purpose: To govern the registration of labor organizations.

Text of proposed rule: *PART 5310*

Labor Organization Registration

§ 5310.1. Labor organization registration.

(a) A labor organization, union or affiliate seeking to represent employees who are employed in a gaming facility by a gaming facility licensee, shall file biennially with the commission a labor organization registration statement the commission supplies and may amend when necessary.

(b) A labor organization registration statement shall include, without limitation, the following:

(1) names and addresses of labor organizations, unions or affiliates associated with the registrant;

(2) information as to whether the registrant is involved or seeking to be involved actively, directly or substantially in the control or direction of the representation of any employee licensed by the commission and employed by a gaming facility licensee;

(3) information as to whether the registrant holds, directly or indirectly, any financial interest whatsoever in the gaming facility licensee;

(4) names of any pension and welfare systems maintained by the registrant and all officers and agents of such organizations and systems;

(5) names of all officers, agents and principal employees of the registrant; and

(6) such other information the commission may require.

(c) A labor organization, union or affiliate may satisfy the requirements of paragraphs (1) through (6) of subdivision (b) of this section by providing the commission a copy of a report, or relevant portion thereof, filed with the United States Secretary of Labor pursuant to 29 USC 431 et seq. (Labor-Management Reporting and Disclosure Act).

(d) A labor organization, union or affiliate that meets the exemptions set forth in Racing, Pari-Mutuel Wagering and Breeding Law section 1330(1) may, upon petition to the commission, be exempted from the registration requirements set forth in subdivisions (a) and (b) of this section.

§ 5310.2. Labor organization officers, agents and principal employees.

(a) Each officer, agent and principal employee of a labor organization, union or affiliate registered or required to be registered pursuant to this Part shall:

(1) file with the commission a labor organization individual disclosure form the commission supplies and may amend from when necessary; and

(2) be qualified in accordance with criteria set forth in Racing, Pari-Mutuel Wagering and Breeding Law section 1318, unless the commission waives such qualification in accordance with Racing, Pari-Mutual Wagering and Breeding Law section 1330(2).

(b) Notwithstanding subdivision (a) of this section, a labor organization individual disclosure form shall not be filed by an officer, agent or principal employee of a labor organization, union or affiliate who exercises no authority, discretion or influence over the operation of such labor organization with regard to any employment matters relating to licensed gaming facility employees.

§ 5310.3. Authorized representative access.

A gaming facility licensee shall grant authorized representatives of a labor organization, union or affiliate registered pursuant to this Part access to non-sensitive, back-of-house areas within the gaming facility to permit meetings with their members.

Text of proposed rule and any required statements and analyses may be obtained from: Kristen Buckley, New York State Gaming Commission, One Broadway Center, 6th Floor, Schenectady, NY 12305, (518) 388-3407, email: kristen.buckley@gaming.ny.gov

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

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

Regulatory Impact Statement

1. STATUTORY AUTHORITY: Racing, Pari-Mutuel Wagering and Breeding Law ("Racing Law") section 104(19) grants authority to the Gaming Commission ("Commission") to promulgate rules and regulations that it deems necessary to carry out its responsibilities. Racing Law section 1307(1) authorizes the Commission to adopt regulations that it deems necessary to protect the public interest in carrying out the provisions of Racing Law Article 13.

Racing Law section 1330(1) mandates the registration of labor organizations, unions, or affiliates seeking to represent employees who are employed by a gaming facility on a biennial basis.

Racing Law section 1330(2) requires the Commission investigate officers, agents, and principal employees of labor organizations for disqualifying criteria.

2. LEGISLATIVE OBJECTIVES: The above referenced statutory provisions carry out the legislature's stated goal "to tightly and strictly" regulate casinos "to guarantee public confidence and trust in the credibility and integrity of all casino gambling in the state and to prevent organized crime from any involvement in the casino industry" as set forth in Racing Law section 1300(10).

3. NEEDS AND BENEFITS: The proposed rules implement the above listed statutory directives regarding the licensing requirements and procedures for registration of labor organizations. The rules provide specificity with respect to the above listed statutory directives to assure registration, notification and reporting requirements of all labor organizations. In addition, this rule making is necessary to promote public confidence and trust in the credibility and integrity of casino gambling in New York State.

4. COSTS:

(a) Costs to the regulated parties for the implementation of and continuing compliance with these rules. Labor Organizations will be responsible for fees associated with the background investigations necessary for each officer, agent and principal employee.

(b) Costs to the regulating agency, the State, and local governments for the implementation of and continued administration of the rule: These rules will impose costs on the division of state police and the Commission for reviewing and investigating labor organizations. These rules will not impose any additional costs on local governments.

(c) The information, including the source or sources of such information, and methodology upon which the cost analysis is based: The costs associated with registering labor organizations will be based on hourly rates for the division of state police to conduct the necessary background investigations and on the Commission's administrative cost to process and issue such licenses and registrations. These costs will vary depending on the individuals involved in the organization and thus no estimate of cost is available.

5. LOCAL GOVERNMENT MANDATES: There are no local government mandates associated with these rules.

6. PAPERWORK: These rules impose paperwork burdens on labor organizations to apply for registration with the Commission. Labor organizations will file biennially and amend when necessary.

7. DUPLICATION: These rules do not duplicate, overlap or conflict with any existing State or federal requirements.

8. ALTERNATIVES: The Commission consulted stakeholders and reviewed other gambling jurisdiction best practices and regulation. Alternatives were discussed and considered with stakeholders and compared to other jurisdictions regulations. The Commission received no comments from stakeholders.

9. FEDERAL STANDARDS: There are no federal standards applicable to the licensing of gaming facilities in New York; it is purely a matter of New York State law.

10. COMPLIANCE SCHEDULE: The Commission anticipates that the affected parties will be able to achieve compliance with these rules upon adoption.

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

These rules establish the standards for the registration requirements for labor organizations and will not have any adverse impact on small businesses, local governments, jobs or rural areas.

These rules do not impact local governments or small businesses as it is not expected that any local government or small business will be required to register as a labor organization.

These rules impose no adverse impact on rural areas. These rules apply uniformly throughout the state.

These rules will have no adverse impact on job opportunities.

These rules will not adversely impact small businesses, local governments, jobs, or rural areas. Accordingly, a full Regulatory Flexibility Analysis, Rural Area Flexibility Analysis, and Job Impact Statement are not required and have not been prepared.

PROPOSED RULE MAKING
NO HEARING(S) SCHEDULED

To Set Forth the Practices and Procedures for the Conduct and Operation of Table Games

I.D. No. SGC-28-16-00011-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 5323 to Title 9 NYCRR.

Statutory authority: Racing, Pari-Mutuel Wagering and Breeding Law, sections 104(19), 1307(1), (2)(g), 1335(4) and (6)

Subject: To set forth the practices and procedures for the conduct and operation of table games.

Purpose: To regulate the conduct and operation of gaming tables.

Substance of proposed rule (Full text is posted at the following State website:www.gaming.ny.gov): The addition of Part 5323 of Subtitle T of Title 9 NYCRR will allow the New York State Gaming Commission ("Commission") to prescribe requirements for the conduct and operation of table games.

Section 5323.1 sets forth the definitions applicable to the Part. Section 5323.2 sets forth the requirement for table game staffing plans, table game equipment schematics and table game layouts to be submitted to the Commission for approval. Section 5323.3 requires a gaming facility licensee to establish a dealer training program as part of its system of internal controls. Sections 5323.4 through 5323.7 set forth the table inventory, opening, shift change and closing requirements for table games. Sections 5323.8 and 5323.9 establish requirements for the distribution and removal of chips and coins. Section 5323.10 sets forth the requirements for the acceptance and exchange of cash and coupons for gaming chips or plaques. Section 5323.11 requires a gaming facility licensee to receive commission approval for minimum and maximum table game wagers. Sections 5323.12 and 5323.13 require a gaming facility licensee to post payout odds and table game rules at a table game. Section 5323.14 requires gaming facility licensees to maintain and make available the complete text of authorized table game rules. Sections 5323.15 and 5323.16 set for the requirements for a progressive table game system and payment of progressive wagers. Section 5323.17 sets forth the requirements for the conduct of table game tournaments. Section 5323.18 requires a gaming facility licensee to submit new table games or new features to the Commission for approval. Section 5323.19 authorizes the temporary operation of a new table game or table game feature.

Text of proposed rule and any required statements and analyses may be obtained from: Kristen Buckley, New York State Gaming Commission, One Broadway Center, 6th Floor, Schenectady, NY 12305, (518) 388-3407, email: kristen.buckley@gaming.ny.gov

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

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

Regulatory Impact Statement

1. STATUTORY AUTHORITY: Racing, Pari-Mutuel Wagering and Breeding Law ("Racing Law") section 104(19) grants authority to the Gaming Commission ("Commission") to promulgate rules and regulations that it deems necessary to carry out its responsibilities. Racing Law sec-

tion 1307(1) authorizes the Commission to adopt regulations that it deems necessary to protect the public interest in carrying out the provisions of Racing Law Article 13.

Racing Law section 1307(2)(g) authorizes the Commission to regulate the operation and rules of authorized table games.

Racing Law section 1335(4) requires the Commission to regulate the minimum and maximum wagers at a table game.

Racing Law section 1335(6) requires the Commission to regulate the location of and access to table game rules and payout odds.

2. LEGISLATIVE OBJECTIVES: The above referenced statutory provisions carry out the legislature's stated goal "to tightly and strictly" regulate casinos "to guarantee public confidence and trust in the credibility and integrity of all casino gambling in the state and to prevent organized crime from any involvement in the casino industry" as set forth in Racing Law section 1300(10).

3. NEEDS AND BENEFITS: The proposed rules implement the above listed statutory directives regarding table game standards. The rules represent best practices in defining procedures for the conduct and operation of table games. Best practices addressed in the proposed rules include establishing a table game staffing plan and a dealer training program. In addition, the proposed rules set forth procedures for the opening and closing of table games; the acceptance, distribution and removal of chips and coins from table games; the posting of payout odds and table game rules; the setting of minimum and maximum wagers and the request to offer a new table game or feature.

4. COSTS:

(a) Costs to the regulated parties for the implementation of and continuing compliance with these rules: One of the three gaming facility licensees has indicated that the anticipated costs of implementing and complying with the proposed regulations will be initially $400,000 to $600,000 with an annual recurring expense of less than $200,000.

(b) Costs to the regulating agency, the State, and local governments for the implementation of and continued administration of the rule: The costs to the Commission for the implementation of and continued administration of the rule will be negligible given that all such costs are the responsibility of the gaming facility. These rules will not impose any additional costs on local governments.

(c) The information, including the source or sources of such information, and methodology upon which the cost analysis is based: The cost estimates are based on the Commission's experience regulating racing and gaming activities within the State.

5. LOCAL GOVERNMENT MANDATES: There are no local government mandates associated with these rules.

6. PAPERWORK: These rules impose paperwork burdens on gaming facility licensees. Examples of paperwork burdens on the gaming facility licensees include the submission of the following to the Commission: a table game staffing plan; table game equipment schematics; a dealer training program; a table game layout, table game minimum and maximum wagers; table game rule signs; a table game tournament schedule and a request to offer a new table game or feature.

7. DUPLICATION: These rules do not duplicate, overlap or conflict with any existing State or federal requirements.

8. ALTERNATIVES: The Commission consulted stakeholders and reviewed other gambling jurisdiction best practices and regulation. These included the appropriate time to review table game operation plans; the appropriate time to count chips and coins; the appropriate information in fill request; the appropriate use of a match-play coupon as a wager; the appropriate patron access to table game rules and the appropriate notice and certifications required for table game tournaments. The Commission is also required to promulgate these rules pursuant to Racing Law sections 1307(2)(g), 1335(4) and 1335(6).

9. FEDERAL STANDARDS: There are no federal standards applicable to the licensing of gaming facilities in New York; it is purely a matter of New York State law.

10. COMPLIANCE SCHEDULE: The Commission anticipates that the affected parties will be able to achieve compliance with these rules upon adoption.

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

These rules will not have any adverse impact on small businesses, local governments, jobs or rural areas. These rules are intended to promote public confidence and trust in the credibility and integrity of casino gambling in New York State. The rules will ensure that licensed gaming facilities conduct table games in a uniform manner. The rules establish the procedures for the opening and closing of table games; the acceptance, distribution and removal of chips and coins from table games; the posting of payout odds and table game rules; the setting of minimum and maximum wagers and the request to offer a new table game or feature.

These rules do not impact local governments or small businesses as it is not expected that any local government or small business will hold a gaming facility license.

These rules impose no adverse impact on rural areas. These rules apply uniformly throughout the state and solely apply to licensed gaming facilities.

These rules will have no adverse impact on job opportunities.

These rules will not adversely impact small businesses, local governments, jobs, or rural areas. Accordingly, a full Regulatory Flexibility Analysis, Rural Area Flexibility Analysis, and Job Impact Statement are not required and have not been prepared.

PROPOSED RULE MAKING
NO HEARING(S) SCHEDULED

Registration of Lobbyists

I.D. No. SGC-28-16-00012-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 5309 to Title 9 NYCRR.

Statutory authority: Racing, Pari-Mutuel Wagering and Breeding Law, sections 104(19), 1307(1) and 1329

Subject: Registration of lobbyists.

Purpose: To govern the registration of lobbyists.

Text of proposed rule: *PART 5309*

Lobbyist Registration

§ 5309.1. Registration of lobbyists.

A lobbyist seeking to engage in lobbying activity on behalf of a client or a client's interest before the commission shall, in advance of such activity and in accordance with Racing, Pari-Mutuel Wagering and Breeding Law section 1329, file a lobbying registration form the commission supplies and may amend from time to time.

§ 5309.2. Termination.

Upon the termination of a lobbyist's retainer, employment or designation, such lobbyist and the client on whose behalf such service has been rendered shall give written notice to the commission within 30 days after the lobbyist ceases the activity that required such lobbyist to file a lobbying registration form. Such lobbyist shall nevertheless comply with reporting requirements up to the date such activity has ceased, as required by Article 1-A of the Legislative Law.

Text of proposed rule and any required statements and analyses may be obtained from: Kristen Buckley, New York State Gaming Commission, One Broadway Center, 6th Floor, Schenectady, NY 12305, (518) 388-3407, email: kristen.buckley@gaming.ny.gov

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

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

Regulatory Impact Statement

1. STATUTORY AUTHORITY: Racing, Pari-Mutuel Wagering and Breeding Law ("Racing Law") section 104(19) grants authority to the Gaming Commission ("Commission") to promulgate rules and regulations that it deems necessary to carry out its responsibilities. Racing Law section 1307(1) authorizes the Commission to adopt regulations that it deems necessary to protect the public interest in carrying out the provisions of Racing Law Article 13.

Racing Law section 1329 mandates registration of lobbyists with the Secretary of the Commission.

2. LEGISLATIVE OBJECTIVES: The above referenced statutory provisions carry out the legislature's stated goal "to tightly and strictly" regulate casinos "to guarantee public confidence and trust in the credibility and integrity of all casino gambling in the state and to prevent organized crime from any involvement in the casino industry" as set forth in Racing Law section 1300(10).

3. NEEDS AND BENEFITS: The proposed rules implement the above listed statutory directives regarding the licensing requirements and procedures for registration of lobbyists. The rules provide specificity with respect to the above listed statutory directives to assure registration, notification and reporting requirements of all lobbyists. In addition, this rule making is necessary to promote public confidence and trust in the credibility and integrity of casino gambling in New York State.

4. COSTS:

(a) Costs to the regulated parties for the implementation of and continuing compliance with these rules: Lobbyist groups will have to file a form provided by the Commission for registration. There is no filing fee associated with the registration form and therefore no anticipated cost to the regulated party.

(b) Costs to the regulating agency, the State, and local governments for the implementation of and continued administration of the rule: These rules will not impose a cost to the Commission, State or local governments.

(c) The information, including the source or sources of such information, and methodology upon which the cost analysis is based: The cost estimates are based on the Commission's experience regulating racing and gaming activities within the State.

5. LOCAL GOVERNMENT MANDATES: There are no local government mandates associated with these rules.

6. PAPERWORK: These rules impose a paperwork burden on lobbyists to file a registration with the Commission on a form provided by the Commission. Lobbyists will report prior to engaging in any activity and upon termination.

7. DUPLICATION: These rules do not duplicate, overlap or conflict with any existing State or federal requirements.

8. ALTERNATIVES: The Commission consulted stakeholders and reviewed other gambling jurisdiction best practices and regulation. Alternatives were discussed and considered with stakeholders and compared to other jurisdictions regulations. The Commission received no comments from stakeholders.

9. FEDERAL STANDARDS: There are no federal standards applicable to the licensing of gaming facilities in New York; it is purely a matter of New York State law.

10. COMPLIANCE SCHEDULE: The Commission anticipates that the affected parties will be able to achieve compliance with these rules upon adoption.

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

These rules establish set forth the standards for lobbyist registration and will not have any adverse impact on small businesses, local governments, jobs or rural areas.

These rules do not impact local governments or small businesses as it is not expected that any local government or small business will be registered as a lobbyist with the Commission.

These rules impose no adverse impact on rural areas. These rules apply uniformly throughout the state.

These rules will have no adverse impact on job opportunities.

These rules will not adversely impact small businesses, local governments, jobs, or rural areas. Accordingly, a full Regulatory Flexibility Analysis, Rural Area Flexibility Analysis, and Job Impact Statement are not required and have not been prepared.

Department of Motor Vehicles

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Fees Charged for the Impaired Driving Program Course

I.D. No. MTV-28-16-00003-P

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

Proposed Action: Amendment of section 134.14 of Title 15 NYCRR.

Statutory authority: Vehicle and Traffic Law, sections 215(a), 1196(1) and (6)

Subject: Fees charged for the Impaired Driving Program course.

Purpose: To increase the fee for the Impaired Driving Program course, so that $20 may be directed to curriculum development.

Text of proposed rule: Subdivision (b) of Section 134.14 is amended to read as follows:

(b) Except as provided in subdivisions (c) and (d) of this section, the total fee for a rehabilitation program shall not exceed [$300] *$315*. Seventy-five dollars of any such total fee shall represent the reimbursement of costs for administrative expenses incurred by the Department of Motor Vehicles and sentencing courts. A participant in the program shall not be required to pay the $75 dollar fee to the department if such participant held a conditional license pending prosecution under section 134.18 of this Part, if such conditional license was not revoked, and such conditional license was issued as the result of the same violation on which participation in such program is based. The Commissioner may require that up to [$5] *$20* of the total fee for a rehabilitation program shall be used for reimbursement of costs for curriculum enhancements to be developed by the Department of Motor Vehicles and/or a third party authorized by the department. If the commissioner so requires, written notification of such requirement shall be sent to all rehabilitation programs, and such portion of the fee shall be paid by the program directly to such authorized third party.

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: David Cadalso, 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. Vehicle and Traffic Law § 1196(1) establishes the Alcohol and Drug Rehabilitation Program (also referred to as the Impaired Driver Program or ''IDP'') within the Department of Motor Vehicles. Vehicle and Traffic Law § 1196(6) provides that the Commissioner shall establish a schedule of fees to be paid by or on behalf of each participant in the program, and may from time to time, modify the fees.

2. Legislative objectives: Vehicle and Traffic Law § 1196(6) provides that the fees to be established by the Commissioner shall defray the ongoing expenses of the IDP. The proposed rule is in accord with the public policy objectives that the Legislature sought to advance by allowing the Commissioner to modify such fees in order to defray the expenses of the IDP, and, specifically, the cost of sustaining a successful evidence based curriculum to rehabilitate and educate persons convicted of alcohol and drugged driving related offenses.

3. Needs and benefits: This regulation is necessary to defray the costs of the IDP, specifically curriculum enhancements that are central to the IDP.

Upon conviction for a violation of alcohol-related offenses and driving while ability impaired by drugs, some defendants are, as part of their sentence, ordered to participate in the IDP; many others take the course voluntarily, in part, because participation is necessary to obtain a conditional license. Approximately 20,000 persons attend the IDP annually. A strong, evidence based curriculum is critical to the successful rehabilitation of these individuals.

Part 134.14 of the Commissioner's Regulations provides a schedule of fees to be paid by or on behalf of each participant in the IDP, which fees defray the ongoing expenses of the IDP. Part 134.14(b) provides that the total fee for the IDP shall not exceed $300.00 and that up to $5.00 of the total fee "shall be used for reimbursement of costs for curriculum enhancements to be developed by the Department of Motor Vehicles and/or a third party authorized by the Department." The diversion of $5.00 to curriculum enhancements was implemented about 12 years ago and is insufficient to sustain a high quality curriculum.

The current contract with the Department's third party IDP curriculum provider expires in February 2017. DMV is in the process of developing an Invitation for Bid (IFB) for a curriculum provider, to be issued in the fall of 2016. Based upon the experience in other states, it is unlikely the Department will be able to secure high quality bidders while offering a $5 fee for curriculum enhancement, which includes the cost of the student workbook. For example, of the 17 states in which the current IDP vendor is the sole program provider, New York has the lowest rate charged for the curriculum enhancements, with Alaska's rate being the highest at $30.00 and the next lowest rate being Hawaii at $15.00. By raising the IDP fee from $300 to $315, the Department will be able to direct $20 of such fee to the IDP curriculum provider, both insuring uninterrupted service to course participants and that qualified vendors will bid on the contract.

The curriculum provider not only develops the curriculum and publishes a workbook for course participants, but it provides training for the IDP instructors, a certification program and refresher courses. The current $5 fee is simply insufficient to attract a curriculum provider that will offer all of these services.

Although New York State has made significant strides in addressing the problem of driving while impaired by alcohol and/or drugs, drunk and drugged driving remain critical highway safety problems. Offering a strong, evidenced based curriculum in the IDP is a necessary part of the continuing battle to confront these problems.

4. Costs: a. The approximate cost to regulated parties: The proposed rule will not impose additional costs on those entities that provide the IDP, since it will allow them to charge an additional $15 to be paid by each participant in the program by increasing the total fee for the program from $300 to $315. The rule provides that a maximum of $20 of the total fee shall be paid by IDP providers to curriculum providers for curriculum enhancements. The program currently services approximately 20,000 motorists annually. If each enrollee were to be charged the additional $15, this would result in an overall increase estimated to be approximately $300,000 annually. The enrollees would pay these costs.

b. Costs to the agency, the State and local governments: None. State and local agencies are not affected by this rule, and therefore, the rule will not impose any costs on those agencies.

5. Local government mandates: This rule does not affect local governments, and therefore, imposes no mandates on local governments.

6. Paperwork: There are no additional reporting requirements associated with this rule.

7. Duplication: This rule does not duplicate, overlap, or conflict with any other State or federal statute or regulation.

8. Alternatives: Multiple alternatives were considered ranging from lowering the curriculum vendor requirements in order to increase the likelihood of viable bidders to DMV developing a proprietary IDP curriculum and instructor preparation program. A variety of fiscal alternatives were also considered, such as not raising the fee or reallocating existing funds in the DMV budget in order to subsidize a fee increase and reduce the burden on motorists.

The cost and time required for DMV to develop its own in-house curriculum or to contract with a third party to develop a DMV in-house curriculum would exceed what can be accomplished by increasing the amount allotted to a third party provider. Additionally, developing an in-house curriculum would not result in a ready-to-implement, evidence-based program.

None of the alternatives are achievable in the short term, nor do they ensure the quality and value that can be attained by contracting with a specialized curriculum provider at a fair market rate. Increasing the rate seems to be the only viable solution for securing a viable curriculum.

A no action alternative was not considered.

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

10. Compliance schedule: The Department of Motor Vehicles anticipates that affected IDP and curriculum providers will be able to comply with the proposed rule immediately.

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

A Regulatory Flexibility Analysis, Rural Area Flexibility Analysis and a Job Impact Statement are not required for this rulemaking proposal because it will not adversely affect small businesses, local governments, rural areas or job creation.

This proposal concerns the amount of reimbursement of costs for curriculum enhancements related to alcohol and drug rehabilitation programs for drivers. Due to its narrow focus, this rule will not impose an adverse economic impact on small businesses, local governments, rural areas or employment opportunities.

Office of Parks, Recreation and Historic Preservation

PROPOSED RULE MAKING
NO HEARING(S) SCHEDULED

Criteria Enabling Municipal Law Enforcement Agencies to Receive State Aid for Snowmobile Enforcement Duties

I.D. No. PKR-28-16-00004-P

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

Proposed Action: This is a consensus rule making to amend section 457.33(b) of Title 9 NYCRR.

Statutory authority: Parks, Recreation and Historic Preservation Law, sections 3.09(8) and 25.01

Subject: Criteria enabling municipal law enforcement agencies to receive State aid for snowmobile enforcement duties.

Purpose: To promote local snowmobile enforcement by easing restrictions on State aid eligibility.

Text of proposed rule: Subsection (b) of section 457.33 of Title 9 is amended as follows:

(b) Personnel [service, temporarily] assigned to snowmobile law enforcement. (1) The wages of personnel so assigned, authorized and paid by the county *or municipality*, during the period in which the person actually performs the duty of enforcing article 25 of the Parks, Recreation and Historic Preservation Law, shall be an authorized expenditure. If an officer is assigned to such duty, all wages earned during such period become part of a claim. If an officer is assigned snowmobile duties intermittently, an itemized account of such time [and the reasons therefor] must be submitted, and that portion of wages earned while actually engaged in snowmobile law enforcement shall be deemed an authorized expenditure. [However, in cases of intermittent duties in snowmobile law enforcement, no claim may be submitted unless each person involved has been engaged in the duty of snowmobile law enforcement for a total period of not less than 40 hours during the calendar year.]

[(2) Temporary personnel employed seasonally for the specific purpose of snowmobile enforcement. The total wages of persons in this category are an authorized expenditure. However, these persons shall be engaged exclusively in the duty of snowmobile law enforcement, and their period of employment shall not exceed the duration of the snowmobile season which is common to the county, city, town or village submitting the claim. A minimum total of 40 hours of snowmobile enforcement duty and completion of a State-sponsored law enforcement training school is required before a claim for reimbursement of wages may be submitted.]

Text of proposed rule and any required statements and analyses may be obtained from: Shari Calnero, Office of Parks, Recreation and Historic Preservation, 625 Broadway, Albany, NY 12207, (518) 486-5685, email: Shari.Calnero@parks.ny.gov

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

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

Consensus Rule Making Determination

The Office of Parks, Recreation and Historic Preservation (OPRHP) is proposing to amend, by a consensus rule making, the criteria allowing municipal law enforcement agencies to be eligible for state aid for personnel assigned to snowmobile enforcement as set forth in 9 NYCRR § 457.33(b).

The amendment will promote local snowmobile enforcement of OPRHP's snowmobile regulations by easing restrictions on state aid eligibility. Specifically, the rule, as amended, allows municipal law enforcement agencies to receive state aid for assigning personnel to snowmobile enforcement duties regardless of whether the personnel are permanent or seasonal employees and without the requirements that personnel log 40 hours of snowmobile enforcement duty per year or complete a State-sponsored law enforcement training.

No party is likely to object to the positive impacts that will result from this rule change. Moreover, this amendment will not have a negative impact because there is no change in the amount of state aid available for snowmobile enforcement, which amount is capped at $150,000. The amendment would likely have a positive impact because it will allow understaffed law enforcement agencies to utilize their snowmobile law enforcement personnel and resources more efficiently by making more snowmobile enforcement hours eligible for state aid. Additionally, these officers will be able to address the concerns of the snowmobiling public, such as the large presence of unregistered snowmobiles on the trails, and agencies will be able to allocate more officers to these concerns with the elimination of the training and 40 hour duty minimum. The proposed amendments would incentivize increased snowmobile law enforcement duty by making more personnel eligible for state aid. For the above reasons, the proposed rulemaking would not cause controversy, but rather have a positive impact on the law enforcement agencies and the safety of the snowmobiling public.

Job Impact Statement

A job impact statement is not submitted because this proposed rule will have no adverse impact on jobs or employment opportunities. In fact, the proposed amendments to 9 NYCRR 457.33(b) will likely create more jobs because they will promote local snowmobile enforcement by easing restrictions on state aid eligibility. Because law enforcement agencies would be able to allocate more officers for snowmobile law enforcement duty, there is no adverse impact on jobs or employment opportunities.

Public Service Commission

NOTICE OF ADOPTION

Increase in Annual Revenues and Tariff Revisions

I.D. No. PSC-04-16-00015-A

Filing Date: 2016-06-23

Effective Date: 2016-06-23

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

Action taken: On 6/22/16, the PSC adopted an order authorizing the Village of Fairport Electric Department (Fairport) to increase its annual revenues by $302,598, effective July 1, 2016 and is directed to file additional tariff revisions to implement the changes.

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

Subject: Increase in annual revenues and tariff revisions.

Purpose: To authorize Fairport to increase its annual revenues and direct the filing of additional tariff revisions.

Substance of final rule: The Commission, on June 22, 2016, adopted an order authorizing the Village of Fairport Electric Department (Fairport) to increase its annual revenues by $302,598, effective July 1, 2016, which amounts to an increase of approximately 1.42% in total revenues, or 1.62% in base revenues and directed Fairport to file additional tariff revisions to implement the changes, subject to the terms and conditions set forth in the order.

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

Text of rule may be obtained from: John Pitucci, Public Service Commission, Three Empire State Plaza, Albany, New York, 12223, (518) 486-2655, email: john.pitucci@dps.ny.gov An IRS employer ID no. or social security no. is required from firms or persons to be billed 25 cents per page. Please use tracking number found on last line of notice in requests.

Assessment of Public Comment

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

(16-E-0005SA1)

PROPOSED RULE MAKING HEARING(S) SCHEDULED

Major Water Rate Filing

I.D. No. PSC-28-16-00015-P

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

Proposed Action: The Commission is considering a proposal filed by New York American Water Company, Inc. to increase its revenues and make changes to rates, charges, rules and regulations as contained in its Schedule PSC No. 5 — Water, superseding PSC Nos. 1-4 — Water.

Statutory authority: Public Service Law, section 89-c(1) and (10)

Subject: Major water rate filing.

Purpose: To consider a proposal to increase revenues by approximately $8.49 million or 8.3% and consolidate tariffs and rates.

Public hearing(s) will be held at: 10:30 a.m., October 13, 2016 and continuing daily as needed at Department of Public Service, Three Empire State Plaza, 3rd Fl. Hearing Rm., Albany, NY (Evidentiary Hearing)*.

*On occasion, there are requests to reschedule or postpone evidentiary hearing dates. If such a request is granted, notification of any subsequent scheduling changes will be available at the DPS website (www.dps.ny.gov) under Case 16-W-0259.

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

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

Substance of proposed rule: The Commission is considering a proposal filed by New York American Water Company, Inc. (NYAW) to increase its annual revenues by approximately $8.49 million or 8.49% beginning April 1, 2017 and to consolidate its tariff schedules and rates, charges, rules and regulations. NYAW currently has four tariffs applicable to 12 districts. It proposes to utilize one set of general terms and conditions for all water districts in its service territory and to consolidate its rate tariffs into two service areas. Water districts within NYAW's service territory will not be uniformly impacted by the proposed changes. Some ratepayers would see bill increases while others would see bill reductions. 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: Five days after the last scheduled public hearing.

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

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

(16-W-0259SP1)

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Initial Tariff Schedule Which Includes Rates, Charges, Rules and Regulations for Water Service

I.D. No. PSC-28-16-00013-P

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

Proposed Action: The Public Service Commission is considering a tariff filing by Deans Corners Water Works, Inc. for its Initial Tariff Schedule, P.S.C. No. 1 — Water, to become effective October 1, 2016.

Statutory authority: Public Service Law, section 89-e(2)

Subject: Initial Tariff Schedule which includes rates, charges, rules and regulations for water service.

Purpose: To consider the proposed Initial Tariff Schedule and initial rate for water service.

Text of proposed rule: The Commission is considering a proposal filed by Deans Corners Water Works, Inc., (Deans Corners or the Company), for its Initial Tariff Schedule, P.S.C. No. 1 – Water, to become effective October 1, 2016, which sets forth the rates, charges, rules and regulations under which the Company will operate. Deans Corners currently has no customers but at full development will have 100 customers in portions of the Town of Southeast, Putnam County, New York. Deans Corners proposes a metered rate of $2.51 per thousand gallons with quarterly billing in arrears. The tariff defines when a bill will be considered delinquent and establishes a late payment charge of 1 1/2 percent per month, compounded monthly, and a returned check charge equal to the bank charge plus a handling fee of $5. The Company is proposing restoration of service charges of $25 during normal business hours Monday through Friday; $37.50 outside of normal business hours Monday through Friday; and $50 on weekends and public holidays. Details of the filing are available via the internet on the Commission's website at www.dps.ny.gov located under Water, Tariffs, Pending. The Commission may adopt, reject or modify, in whole or in part, the relief proposed and may resolve related matters.

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

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

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

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

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

(16-W-0374SP1)

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Consideration of CECONY and O&R's Implementation Plan for 36 Audit Recommendations

I.D. No. PSC-28-16-00014-P

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

Proposed Action: The Commission is considering the Implementation Plan submitted by Consolidated Edison Company of New York, Inc. and Orange and Rockland Utilities, Inc. and whether to order the implementation of audit recommendations.

Statutory authority: Public Service Law, section 66(19)(b)

Subject: Consideration of CECONY and O&R's Implementation Plan for 36 audit recommendations.

Purpose: To consider CECONY and O&R's Implementation Plan.

Substance of proposed rule: The Public Service Commission is considering an Implementation Plan filed by Consolidated Edison Company of New York, Inc. (CECONY) and Orange and Rockland Utilities, Inc. (O&R) on June 20, 2016, in Case 14-M-0001. CECONY and O&R's Implementation Plan addresses the 36 recommendations contained in the Final Report prepared by NorthStar Consulting Group as a result of its Comprehensive Management and Operations Audits of CECONY and O&R's electric, gas and steam businesses in New York State. The Commission is considering whether to adopt, reject or modify, in whole or in part, the Implementation Plan submitted by CECONY and O&R and may resolve related matters.

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

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

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

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

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

(14-M-0001SP1)

PROPOSED RULE MAKING
NO HEARING(S) SCHEDULED

Petition for Reconsideration of the Order Adopting a Ratemaking and Utility Revenue Model Policy Framework

I.D. No. PSC-28-16-00016-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 requesting reconsideration of the June 20, 2016 Order Adopting a Ratemaking and Utility Revenue Model Policy Framework in Case 14-M-0101 filed by the Joint Utilities on June 20, 2016.

Statutory authority: Public Service Law, sections 5(1)(b), (2), 22, 65(1), (2), (3), 66(2) and (5)

Subject: Petition for reconsideration of the Order Adopting a Ratemaking and Utility Revenue Model Policy Framework.

Purpose: To determine appropriate rules for and calculation of the distributed generation reliability credit.

Substance of proposed rule: The Public Service Commission is considering a petition requesting reconsideration of the June 20, 2016 Order Adopting a Ratemaking and Utility Revenue Model Policy Framework in Case 14-M-0101 filed by Central Hudson Gas & Electric Corporation, Consolidated Edison Company of New York, Inc., New York State Electric & Gas Corporation, Niagara Mohawk Power Corporation d/b/a National Grid, Orange and Rockland Utilities, Inc. and Rochester Gas and Electric Corporation (collectively, the Joint Utilities) on June 20, 2016. The petition seeks reconsideration regarding the calculation of a reliability credit for distributed generation (DG Reliability Credit) based on reductions in contract demand in two consecutive summers. Upon conducting its evaluation of the petition, the Commission may reaffirm its initial decision or adhere to it with additional rationale in denying the petition, modify or reverse the decision in granting the petition in whole or in part, or take such other or further action as it deems necessary with respect to the petition. However, the Commission will limit its review to the issues raised by the above-referenced petition.

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

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

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

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

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

(14-M-0101SP15)

PROPOSED RULE MAKING
NO HEARING(S) SCHEDULED

Petition for Rehearing of the Order Adopting a Ratemaking and Utility Revenue Model Policy Framework

I.D. No. PSC-28-16-00017-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 requesting rehearing of the June 20, 2016 Order Adopting a Ratemaking and Utility Revenue Model Policy Framework in Case 14-M-0101 filed by Cubit Power One, Inc. on June 20, 2016.

Statutory authority: Public Service Law, sections 5(1)(b), (2), 22, 65(1), (2), (3), 66(2) and (5)

Subject: Petition for rehearing of the Order Adopting a Ratemaking and Utility Revenue Model Policy Framework.

Purpose: To determine appropriate rules for and calculation of the distributed generation reliability credit.

Substance of proposed rule: The Public Service Commission is considering a petition requesting rehearing and clarification of the June 20, 2016 Order Adopting a Ratemaking and Utility Revenue Model Policy Framework in Case 14-M-0101 filed by Cubit Power One, Inc. (Cubit) on June 20, 2016. The petition seeks rehearing and clarification regarding the application of a reliability credit for distributed generation (DG Reliability Credit) to distributed generation (DG) projects that require little or no standby service. Upon conducting its evaluation of the petition, the Commission may reaffirm its initial decision or adhere to it with additional rationale in denying the petition, modify or reverse the decision in granting the petition in whole or in part, or take such other or further action as it deems necessary with respect to the petition. However, the Commission will limit its review to the issues raised by the above-referenced petition.

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

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

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

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

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

(14-M-0101SP16)

State University of New York

PROPOSED RULE MAKING
NO HEARING(S) SCHEDULED

State University of New York's Patents and Inventions Policy

I.D. No. SUN-28-16-00005-P

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

Proposed Action: This is a consensus rule making to repeal section 335.28 and add new section 335.28 to Title 8 NYCRR.

Statutory authority: Education Law, section 355(3)

Subject: State University of New York's Patents and Inventions Policy.

Purpose: Model best practices in the areas of innovation and technology transfer and comply with Federal law regarding intellectual property rights.

Text of proposed rule: *§ 335.28 Patents and Inventions Policy*

(a) Purpose of the Patents and Inventions Policy ("this Policy")

(1) The State University of New York ("SUNY") recognizes that the three primary missions of an educational institution are teaching, research, and public service. SUNY further recognizes that, in the course of performing its mission, innovations of public value will be developed under its auspices. It is the policy of SUNY to encourage such innovation and to take appropriate steps to aid Creators and ensure that the public receives the benefit of such innovation in accordance with its public service mission. Appropriate steps include securing research support, identifying and encouraging disclosure of Intellectual Property, securing appropriate protections, marketing Intellectual Property through licensing and other arrangements, and managing royalties and other related income, such as litigation proceeds. These activities are undertaken in a spirit of cooperation with governmental agencies and private industry as part of SUNY's contribution to the economic well-being of the State of New York and of the Nation.

(2) In implementing its policies, SUNY will take appropriate steps to ensure that its academic community may freely publish the results of scholarly research pursuant to SUNY's policy on unrestricted dissemination of research activities. In conformance with this principle, all concerned shall cooperate so that essential rights to Intellectual Property shall not be lost.

(3) All net proceeds realized from the commercialization or other monetization of SUNY Intellectual Property, after payment of the Creator's share as defined in subpart (e) of this Policy and other appropriate costs associated with the evaluation, marketing, development, protection, maintenance, or enforcement of Intellectual Property, shall be used for the support of SUNY research programs in a manner consistent with the Bayh-Dole Act and its implementing regulations. Campus net proceeds shall be applied in a manner consistent with local campus policies and procedures. Upon the request of a Creator, SUNY shall provide an accounting of the distribution of royalties earned from Intellectual Property of the Creator.

(b) Definitions

(1) Affiliate: For purposes of this Policy, Affiliates include The Research Foundation for The State University of New York ("The Research Foundation"), State University Construction Fund, all campus auxiliary service corporations, and all campus foundations.

(2) Created: Having conceived, authored, reduced to practice, designed, developed, or otherwise having contributed to the making of Intellectual Property.

(3) Creative and Course Content: Academic course content and materials Created by Personnel including, but not limited to syllabi, course materials and textbooks; other scholarly or creative works of authorship; instructional, dramatic, musical and artistic works; and manuscripts, articles, poetry, prose, short stories, digital shorts, novels, plays, screenplays, and creative writings.

(4) Creator: One who has Created Intellectual Property, in whole or in part.

(5) Incidental Use of SUNY Resources ("Incidental Use"): Any use of publicly or routinely-available SUNY resources, such as residence halls, common areas, meeting rooms, cafeterias, gymnasiums, libraries, office spaces, furnishings, office supplies, photocopiers, telephones, fax machines and other standard office equipment, personal-type computers, and commercially available software in use on such computers, computer and communications networks, including internet access and data storage, that is nonessential to the creation of Intellectual Property, and any use of SUNY resources by a Student in accordance with assigned coursework pursuant to that Student's academic curriculum.

(6) Intellectual Property: Patentable Inventions, tangible research materials, computer software, and any unique or novel innovation in the technical arts or any new and useful improvements thereof, including methods or processes for creating an object or result (a way of doing or making things), machines, devices, products of manufacture, product designs, or composition, maskworks or layout designs for printed circuit boards or integrated circuits, compositions of matter, materials, any variety of plant, and any know-how essential to the practice or enablement of such innovations and improvements, whether or not patentable.

(7) Inventor: One who contributes to the conception of a Patentable Invention under the patent laws of the United States or other relevant jurisdiction.

(8) Net Royalty: Royalty less reasonable out-of-pocket expenses incurred by SUNY and not reimbursed by licensees for the evaluation, marketing, development, protection, maintenance, and enforcement of the subject Intellectual Property.

(9) Partner: Any entity or individual who is neither Personnel nor Student, who engages with SUNY or a SUNY Affiliate through a contract or other business transaction that will facilitate the research, teaching, or public service missions of SUNY.

(10) Patentable Invention: Any art or process (way of doing or making things), machine, manufacture, design, or composition of matter, or any new and useful improvement thereof, or any variety of plant, which is or may be patentable under the patent laws of the United States or other relevant jurisdiction, and the patent applications or patents that embody them.

(11) Personnel: All full-time and part-time employees of SUNY and SUNY Affiliates, Student employees (including, but not limited to, research assistants, teaching assistants, fellows, post-doctoral scholars, and students providing services under sponsor agreements), and other persons holding any paid appointment or position with SUNY.

(12) Royalty: Cash, equity, or other value received by SUNY as consideration for use of rights to SUNY Intellectual Property.

(13) Students: Individuals enrolled in SUNY, including, but not limited to, continuing education, undergraduate, graduate and professional students, non-degree students, and not-for-credit students.

(14) Substantial Use of SUNY Resources ("Substantial Use"): Any use of SUNY resources that is more than Incidental Use, including, but not limited to, use of: financial support, funds and grants administered by SUNY or a SUNY Affiliate; inter-institutional collaborations facilitated by SUNY; equipment, facilities, services, laboratories, or space; computers and computer or communications networks not publicly or routinely-available; research, clinical, or other scientific instruments; time spent by Personnel, including secretarial, clerical, administrative staff, and research and teaching assistants; confidential information; Inventions and other proprietary or intellectual property owned by SUNY; and any privileged access as a result of a person's affiliation with SUNY.

(15) The State University of New York ("SUNY"): References to "SUNY" in this Policy may include Affiliates where appropriate under the contexts, whether or not specifically stated. In addition, at the request of SUNY, SUNY Ownership of Intellectual Property under subpart (d)(1) of this Policy may include ownership, management, promotion, licensing and other transfers, commercialization, and monetization of certain Intellectual Property by The Research Foundation.

(c) Scope

(1) This Policy applies to Intellectual Property Created, in whole or in part, by SUNY Personnel, Students, Affiliates, and Partners.

(2) This Policy sets forth the rights and responsibilities of SUNY and SUNY Personnel, Students, Partners, and Affiliates in the development, creation, ownership, protection, maintenance, dissemination, marketing, licensing, and monetization of Intellectual Property.

(3) Creative and Course Content is beyond the scope of this Policy.

(d) Ownership of Intellectual Property

(1) SUNY Ownership: Subject to the exceptions of (d)(2) below, SUNY shall own, and Creator shall promptly disclose and assign to The Research Foundation, Intellectual Property Created, in whole or in part:

(i) within the scope of the Creator's employment by SUNY; or

(ii) through the Substantial Use of SUNY Resources, unless otherwise agreed in writing.

(2) Creator Ownership: Ownership rights to Creative and Course Content shall be governed by SUNY's Copyright Policy A Creator who is Personnel may retain ownership rights to Intellectual Property that is not Creative and Course Content if:

(i) the Intellectual Property was Created exclusively outside the scope of the Creator's employment by SUNY; and

(ii) the Intellectual Property was Created through no more than Incidental Use of SUNY Resources; and

Creators of Intellectual Property satisfying (d)(2)(a) and (d)(2)(b) above shall submit an External Invention Disclosure Form as prescribed in SUNY's Procedures for Disclosure and Management of Patents and Inventions.

(3) Student Ownership: A Creator who is a Student and not also Personnel may retain ownership rights to Intellectual Property Created through no more than Incidental Use of SUNY Resources, subject to those restrictions that may be required by an external sponsor, if any. A Student shall own the copyright to his or her thesis unless an agreement supporting the underlying work specifies otherwise. Under all circumstances, SUNY shall have an unrestricted royalty-free license to reproduce and disseminate Student theses.

(4) Partner Ownership: Where SUNY intends that a Partner engage in Substantial Use of SUNY Resources, the ownership of Intellectual Property Created by or for the Partner in connection with the use or sponsorship of SUNY Resources shall be memorialized in a written agreement between the Partner and SUNY or an Affiliate.

(5) Joint Ownership: Intellectual Property may be subject to exercise of ownership rights by two or more parties, including SUNY, Affiliates, Personnel, Students, and Partners, in which case joint ownership may be appropriate.

(6) Questions as to Ownership: Where any dispute is raised as to ownership of Intellectual Property, patents, or patent applications under these provisions, the matter shall be referred to the Innovation Policy Board in a manner consistent with SUNY's Procedures for Disclosure and Management of Patents and Inventions.

(e) Royalty Income

(1) Patentable Inventions: With respect to any Patentable Invention obtained by or through SUNY or assigned to or as directed by SUNY in accordance with the foregoing provisions, SUNY, in recognition of the meritorious services of the Inventor and in consideration of the Inventor's assignment of the Patentable Invention to SUNY, will make provision entitling the Inventor and the Inventor's heirs or legatees to share in the proceeds from the management and licensing of such Patentable Invention to the extent of forty-five percent (45%) of the first $100,000 of Net Royalty received by SUNY and forty percent (40%) of Net Royalty thereafter, unless the Inventor and SUNY agree otherwise in a written and duly executed instrument, or if this exceeds the limits fixed by applicable regulations of the relevant sponsoring agency, which will control in such cases.

(2) Computer Software and Intellectual Property Other Than Patentable Inventions: With respect to any Intellectual Property that is not a Patentable Invention, including Computer Software that is not a Patentable Invention, Created in the performance of academic or research activities and obtained by or through SUNY or assigned to or as directed by SUNY in accordance with the foregoing provisions, SUNY, in recognition of the meritorious services of the Creator and in consideration of the Creator's assignment to SUNY, will make provision entitling the Creator and the Creator's heirs or legatees to share in the proceeds from SUNY's management and licensing to the extent of forty-five percent (45%) of the first $100,000 of Net Royalty received by SUNY and forty percent (40%) of Net Royalty thereafter, unless:

(i) the campus has adopted a local policy requiring reinvestment in support of university research programs, in which case no less than forty-five percent (45%) of the first $100,000 received by SUNY and forty percent (40%) of such income thereafter shall be directed to the program within which the Intellectual Property was Created; or

(ii) the Intellectual Property is a work for hire or subject to a conflicting obligation to a sponsor or a Partner; or

(iii) the Creator and SUNY agree otherwise in a written and duly executed instrument; or

(iv) if this exceeds the limits fixed by applicable regulations of the relevant sponsoring agency, which will control in such cases.

(f) Release and Waiver

(1) SUNY decisions regarding evaluation, marketing, development, protection, maintenance, or enforcement of Intellectual Property shall be made in consultation with the Creator(s). SUNY may, at the Creator's written request, release its ownership rights in Intellectual Property to the Creator(s), subject to those restrictions that may be required by an external sponsor, if any.

(2) SUNY shall make an initial determination regarding whether to retain title to Intellectual Property within one year of SUNY's acceptance of the Creator's fully disclosed, assigned and properly executed disclosure statement. SUNY shall proceed with patenting, development and marketing of the Intellectual Property as soon as practicable thereafter. If SUNY elects not to retain title or fails to make such an election within one year, all of SUNY's rights to the Intellectual Property shall be released upon written request to the Creator, subject to those restrictions that may be required by an external sponsor, if any.

(3) For any Intellectual Property so released to a Creator, SUNY shall receive ten (10) percent of the net proceeds to the Creator, in recognition of the contribution of the State and people of New York to the support of the research that resulted in the Intellectual Property. For purposes of this subpart, (f)(2), "net proceeds" means income realized by the Creator from commercialization or other monetization of the Intellectual Property less reasonable costs incurred directly by the Creator for the evaluation, marketing, development, protection, maintenance, or enforcement of the subject Intellectual Property.

(g) Innovation Policy Board

(1) The Chancellor shall establish and appoint an Innovation Policy Board of the State University of New York and designate the chair thereof in accordance with the procedures accompanying this Policy. The Innovation Policy Board shall have full powers of organization to undertake periodic review of this Policy and to create, revise and enhance guidelines and procedures to interpret and implement this policy.

(h) Applicability

(1) Intellectual Property which is fully disclosed and assigned in a properly executed new technology disclosure statement before the effective date of these regulations shall be subject to SUNY's prior Patents and Inventions Policy.

Text of proposed rule and any required statements and analyses may be obtained from: Lisa S. Campo, State University of New York, State University Plaza, S-325, Albany, NY 12246, (518) 320-1400, email: Lisa.Campo@SUNY.edu

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

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

Consensus Rule Making Determination

The State University of New York has determined that no person is likely to object to this rule as written because it is necessary for SUNY to model best practices in the areas of innovation and technology transfer and to comply with federal law relating to intellectual property rights.

Job Impact Statement

No job impact statement is submitted with this notice because the proposed rule does not impose any adverse economic impact on existing jobs, employment opportunities, or self-employment. This regulation governs the Patents and Inventions Policy of State University of New York and will not have any adverse impact on the number of jobs or employment.

Office of Temporary and Disability Assistance

EMERGENCY RULE MAKING

Emergency Shelters for the Homeless

I.D. No. TDA-06-16-00016-E
Filing No. 617
Filing Date: 2016-06-23
Effective Date: 2016-06-23

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

Action taken: Addition of section 352.37 to Title 18 NYCRR.

Statutory authority: Social Services Law, sections 17(a)-(b), (i), 20(2)-(3), 34, 460-c and 460-d; Executive Law, section 43(1); General Municipal Law, section 34; State Finance Law, section 109(4); New York City Charter, section 93; Buffalo City Charter, ch. C, art. 7, section 7-4

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

Specific reasons underlying the finding of necessity: The Office of Temporary and Disability Assistance (OTDA) finds that immediate adoption of the rule is necessary for the preservation of the public health, public safety, and general welfare and, specifically, to assure that residents of emergency shelters are not subject to unhealthy or imminently dangerous conditions. The emergency regulation continues protections for residents of emergency shelters by clarifying OTDA's authority, pursuant to the Social Services Law and State regulations, to take immediate emergency measures to address emergency shelters determined to be dangerous, hazardous, or imminently detrimental to the health, safety, and general welfare of residents. Recent inspections and visits conducted at a significant number of emergency shelters by officials from OTDA have confirmed that dangerous, hazardous, or unhealthy conditions have existed at some of these placements for sustained periods of time. Failing to continue OTDA's oversight in this area would endanger the health, safety and welfare of such residents. The emergency regulation helps ensure that emergency shelters are maintained in safer, healthy conditions, and that the welfare of residents is better protected than under current requirements. In the absence of this emergency regulation, inspections have revealed that some operators have permitted their emergency shelters to deteriorate to a point where dangerous, hazardous, or unhealthy conditions exist. Under these circumstances, OTDA asserts that proposing this rule only as

a "regular rule making" as provided by the State Administrative Procedure Act (SAPA) should not be required because to do so would be detrimental to the health and general welfare of the residents of these emergency shelters while permitting public funds to be expended to maintain conditions that are dangerous, hazardous, and unhealthy. Recent investigations have confirmed such conditions and have underscored the imperative of acting quickly to assure that residents of these placements are safe and protected from dangerous, hazardous, or unhealthy conditions. Without this emergency regulation, some emergency shelters will simply maintain the status quo, thereby endangering individuals, families and children.

Subject: Emergency shelters for the homeless.

Purpose: Emergency measures concerning shelters for the homeless.

Text of emergency rule: *§ 352.37 Emergency measures concerning shelters for the homeless.*

(a) When the Office of Temporary and Disability Assistance (the office) has knowledge, or has been advised, by announced or unannounced inspections, audits, or other methods with respect to emergency shelters made by any State or local entity authorized to conduct inspections or audits, including the office and State or local comptrollers, that there exists a violation of law, regulation, or code with respect to a building that provides emergency shelter to homeless persons, in which there are conditions that are dangerous, hazardous, imminently detrimental to life or health, or otherwise render the building not fit for human habitation, the office may take immediate emergency measures, including, but not limited to, one or more of the following: (1) issuing an order directing the facility to take immediate measures to rectify any defi- ciencies, violations, or conditions, requiring additional security, or directing the transfer of the facility's residents to other temporary emergency housing; or (2) temporarily suspending the facility's operating certificate or directing closure of the facility. For purposes of this section, ''emergency shelter'' shall mean any facility with overnight sleeping accommodations, the primary purpose of which is to provide temporary shelter to recipients of temporary housing assistance.

(b) Any order of the office issued with respect to any emergency shelter pursuant to paragraph (2) of subdivision (a) of this section shall be subject to the notice and expedited hearing process set forth in section 493.8 of this Title.

(c) Nothing in this section shall be construed as limiting the office from taking additional enforcement action authorized under the Social Services Law or any State regulation.

(d) The office is authorized to conduct unannounced inspections at any hour, without prior knowledge by or notification to the emergency shelter, the operator, or the social services district. Interference with an inspection, refusal to allow admission, delay in allowing admission, or refusal to provide complete access to the facility will be deemed to be a violation, and the office may take immediate enforcement action authorized under the Social Services Law or any State regulation. State and local comptrollers, in inspecting, auditing, or reviewing with respect to emergency shelters shall inform the office of any proposed violations of law, regulation, or code and shall provide recommendations as to any enforcement action.

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. TDA-06-16-00016-EP, Issue of February 10, 2016. The emergency rule will expire August 21, 2016.

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

Regulatory Impact Statement

1. Statutory Authority:

Social Services Law (SSL) § 17(a)-(b) and (i) provide, in part, that the Commissioner of the Office of Temporary and Disability Assistance (OTDA) shall "determine the policies and principles upon which public assistance, services and care shall be provided within the [S]tate both by the [S]tate itself and by the local governmental units …", shall "make known his policies and principles to local social services officials and to public and private institutions and welfare agencies subject to his regulatory and advisory powers …", and shall "exercise such other powers and perform such other duties as may be imposed by law."

SSL § 20(2) provides, in part, that the OTDA shall "supervise all social services work, as the same may be administered by any local unit of government and the social services officials thereof within the state, advise them in the performance of their official duties and regulate the financial assistance granted by the state in connection with said work." Pursuant to SSL § 20(3)(d) and (e), OTDA is authorized to promulgate rules, regulations, and policies to fulfill its powers and duties under the SSL and "to withhold or deny State reimbursement, in whole or in part, from or to any social services district [SSD] or any city or town thereof, in the event of their failure to comply with law, rules or regulations of [OTDA] relating to public assistance and care or the administration thereof."

SSL § 34(3)(c) requires OTDA's Commissioner to "take cognizance of the interests of health and welfare of the inhabitants of the [S]tate who lack or are threatened with the deprivation of the necessaries of life and of all matters pertaining thereto." Pursuant to SSL § 34(3)(f), OTDA's Commissioner must establish regulations for the administration of public assistance and care within the State by the SSDs and by the State itself, in accordance with the law. In addition, pursuant to SSL § 34(3)(d), OTDA's Commissioner must exercise general supervision over the work of all SSDs, and SSL § 34(3)(e) provides that OTDA's Commissioner must enforce the SSL and the State regulations within the State and in the local governmental units. Pursuant to SSL § 34(6), OTDA's Commissioner "may exercise such additional powers and duties as may be required for the effective administration of the department and of the [S]tate system of public aid and assistance."

SSL § 460-c confers authority upon OTDA to "inspect and maintain supervision over all public and private facilities or agencies whether [S]tate, county, municipal, incorporated or not incorporated which are in receipt of public funds," which includes emergency shelters. SSL § 460-d confers enforcement powers upon the OTDA Commissioner, or any person designated by the OTDA Commissioner, to "undertake an investigation of the affairs and management of any facility subject to the inspection and supervision provision of this article, or of any person, corporation, society, association or organization which operates or holds itself out as being authorized to operate any such facility, or of the conduct of any officers or employers of any such facility."

Executive Law § 43(1) provides that ''[w]henever the comptroller may deem it necessary to enable him to perform the duties imposed upon him by law with regard to the inspection, examination and audit of the fiscal affairs of the state or of the several officers, departments, institutions, public corporations or political subdivisions thereof, he may assign the work of such inspection, audit and examination to any examiner or examiners appointed by him pursuant to law." The authority to ''inspect, examine and audit'' the fiscal affairs of political subdivisions would include investigating where and how funds administered by county agencies are spent.

General Municipal Law § 34 specifically provides that the comptroller has the authority to examine the financial affairs of every municipal corporation. Under General Municipal Law § 2, the term ''municipal corporation'' includes a county, a town, a city or a village.

State Finance Law § 109(4) provides that "[t]he comptroller shall not approve for payment any expenditure from any fund except upon audit of such vouchers or other documents as are necessary to insure that such payment is lawful and proper.''

New York City Charter § 93 provides that the City comptroller has the power to "investigate all matters relating to or affecting the finances of the city, including without limitation the performance of contracts and the receipt and expenditure of city funds"; conduct "audits of entities under contract with the city as expeditiously as possible"; and "audit the operations and programs of city agencies to determine whether funds are being expended or utilized efficiently and economically and whether the desired goals, results or benefits of agency programs are being achieved."

Section 7-4 of Article 7 of Chapter C of the Buffalo City Charter provides that the City comptroller has "the power to conduct financial and performance audits of all agencies and other entities a majority of whose members are appointed by city officials or that derive at least fifty percent of their revenue, including the provision of goods, services, facilities or utilities, from the city." The City comptroller also has "the power to conduct performance audits of all bureaus, offices, departments, boards, commissions, activities, functions, programs, agencies and other entities or services of the city… to determine whether their activities and programs are: (i) conducted in compliance with applicable law and regulation; and (ii) conducted efficiently and effectively to accomplish their intended objectives."

2. Legislative Objectives:

It is the intent of the Legislature in enacting the above statutes that OTDA establish rules, regulations, and policies to provide for the health, safety and general welfare of vulnerable families and individuals who are placed in emergency shelters.

3. Needs and Benefits:

In response to numerous problematic reports concerning the health and safety of public assistance recipients residing in New York City's emergency shelters, OTDA has taken action to inspect these placements and to establish remedial protocols for SSDs so that these health and safety issues can be addressed immediately. The emergency regulation provides clarification by defining "emergency shelter" to mean "any facility with overnight sleeping accommodations, the primary purpose of which is to provide temporary shelter to recipients of temporary housing assistance."

The emergency regulation provides OTDA the authority when it has knowledge, or has been advised by an appropriate source, that there exists a violation of law, regulation, or code with respect to an emergency shelter which is dangerous, hazardous, or imminently detrimental to life or health, or otherwise renders the building not fit for human habitation, to take immediate emergency measures. Such emergency measures include, but are not limited to, one or more of the following: (1) issuing an order directing the facility to take immediate measures to rectify any deficiencies, violations, or conditions, requiring additional security, or directing the transfer of its residents to other temporary emergency housing; or (2) temporarily suspending the facility's operating certificate or directing closure of the facility.

The emergency regulation clarifies that OTDA is authorized to conduct unannounced inspections at any hour without prior knowledge by or notification to the shelter, the operator, or the SSD. Interference with an inspection, refusal to allow admission, delay in allowing admission, or refusal to provide complete access to the facility will be deemed to be a violation and a basis upon which OTDA may take immediate enforcement action authorized under the SSL or any State regulation. The emergency regulation also provides that State and local Comptrollers, in inspecting, auditing, or reviewing with respect to emergency shelters, shall inform OTDA of any violations of law, regulation, or code and provide recommendations as to enforcement actions.

The emergency regulation also clarifies that any order issued by OTDA temporarily suspending a facility's operating certificate or directing closure of a facility pursuant to 18 NYCRR § 352.37(a)(2) shall be subject to the notice and expedited hearing process set forth in 18 NYCRR § 493.8.

The emergency regulation is necessary to protect vulnerable, low-income individuals and families who have limited or no housing options and have placed their trust and well-being in a system that should help ensure that these persons have acceptable accommodations during their difficult times.

Additionally, these individuals and families are being placed in emergency shelters at great expense to the taxpayers of New York, who care about the needs of these people and want to help ensure that funds used to house these individuals and families provide safe, quality housing. It is important for OTDA and the SSDs to be fiscally prudent and to help ensure that State, federal and local funds are properly used when housing homeless individuals and families.

The emergency regulation allows OTDA full authority to take immediate emergency action against facilities and SSDs that are not providing emergency shelters that comport with prescribed standards.

4. Costs:

An additional 25 Center for Specialized Services staff members will be needed to implement the emergency regulation. It is estimated that the cost to the State will be approximately $2,181,473, not including fringe benefits or indirect costs.

The emergency regulation will have a minimal impact on emergency shelters that are currently in compliance with existing health and safety standards. The emergency regulation is merely attempting to correct violations under existing health and safety standards. Therefore, the cost to local governments will depend on their abilities to comply with these standards.

5. Local Government Mandates:

Local governments will be responsible for ensuring that the emergency shelters operating within their localities are in compliance with existing health and safety standards. If they are not, the local governments will be required to identify and/or provide suitable alternative emergency shelters.

6. Paperwork:

No additional paperwork is anticipated.

7. Duplication:

The emergency regulation would not duplicate, overlap, or conflict with any existing State or federal regulations.

8. Alternatives:

Inaction would continue to jeopardize the health and safety of these vulnerable individuals and families by allowing existing infractions and violations to continue unaddressed and by failing to prevent future infractions and violations. OTDA does not consider this a viable alternative to the emergency regulation.

9. Federal Standards:

The emergency regulation would not conflict with federal statutes, regulations or policies.

10. Compliance Schedule:

To protect the public health, safety and general welfare of emergency shelter residents, the emergency regulation would be effective immediately upon its filing date.

Regulatory Flexibility Analysis

1. Effect of rule:

Pursuant to the State Administrative Procedure Act § 102(8), a "small business," in part, is any business which is independently owned and operated and employs 100 or fewer individuals. This rule will apply to small businesses that provide emergency shelters. This rule will also apply to all 58 social services districts (SSDs) in the State.

2. Compliance requirement:

The emergency regulation will have a minimal impact on emergency shelters that are currently in compliance with existing health and safety standards.

3. Professional services:

It is anticipated that the need for additional professional services will be limited. The emergency regulation is not adding new health and safety standards to the State regulations; instead, it is requiring that emergency shelters comply with existing obligations to provide safe housing in accordance with health and safety standards.

4. Compliance costs:

For local governments, the impact of the emergency regulation will be insignificant as long as they are in compliance with existing health and safety standards. The emergency regulation is merely attempting to correct violations under existing health and safety standards.

5. Economic and technological feasibility:

Emergency shelters and SSDs should already have the economic and technological abilities to comply with existing standards.

6. Minimizing adverse impact:

The emergency regulation attempts to minimize any adverse economic impact on emergency shelters and SSDs by implementing existing standards. The emergency regulation should not provide exemptions, because this would not serve the purposes of ensuring the health and safety of all emergency shelter residents and protecting these vulnerable residents from dangerous conditions.

7. Small business and local government participation:

It is anticipated that small businesses and SSDs will be dedicated to implementing the emergency regulation and protecting the health, safety, and general welfare of residents of emergency shelters.

8. For rules that either establish or modify a violation or penalties associated with a violation:

The emergency regulation clarifies that that any order issued by OTDA temporarily suspending a facility's operating certificate or directing closure of a facility pursuant to 18 NYCRR § 352.37(a)(2) shall be subject to the notice and expedited hearing process set forth in 18 NYCRR § 493.8. Certain other orders are not subject to 18 NYCRR § 493.8 because the dangerous, hazardous conditions targeted by the emergency regulation are imminently detrimental to the health, safety, and general welfare of emergency shelter residents.

Rural Area Flexibility Analysis

1. Types and estimated numbers of rural areas:

The emergency regulation will apply to the 44 rural social services districts (SSDs) and the emergency shelters located in those areas.

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

The emergency regulation will have a minimal impact on emergency shelters in rural areas that are currently in compliance with existing health and safety standards.

It is anticipated that the need for additional professional services will be limited. The emergency regulation is not fundamentally altering the responsibilities of the rural SSDs. In addition, the emergency regulation is not adding new health and safety standards to the State regulations; instead, it is requiring that all emergency shelters, including those in rural areas, comply with existing obligations to provide safe housing in accordance with health and safety standards.

3. Costs:

For rural governments, the fiscal impact of the emergency regulation is anticipated to be insignificant because relatively few rural SSDs have any emergency shelters, and the rural SSDs primarily pay for hotel/motel costs. Consequently, the fiscal impact upon the rural SSDs is expected to be insignificant.

The emergency regulation will have a minimal impact on emergency shelters in rural areas that are currently in compliance with existing health and safety standards. The emergency regulation is intended to address violations under existing health and safety standards.

4. Minimizing adverse impact:

The emergency regulation attempts to minimize any adverse economic impact on emergency shelters and SSDs in rural areas by implementing existing health and safety standards. The emergency regulation should not provide exemptions, because this would not serve the purposes of ensuring the health and safety of all emergency shelter residents and protecting these vulnerable residents from dangerous conditions.

5. Rural area participation:

It is anticipated that small businesses and SSDs in rural areas will be dedicated to implementing the emergency regulation and protecting the health, safety, and general welfare of residents of emergency shelters.

Job Impact Statement

A Job Impact Statement is not required for this rule. The purpose of the emergency regulation is to continue protections for residents of emergency shelters by clarifying the Office of Temporary and Disability Assistance's (OTDA's) statutory authority to impose immediate emergency measures to address emergency shelters determined to be dangerous, hazardous, or detrimental to the health, safety, and general welfare of residents. It is apparent from the nature and the purpose of the emergency regulation that it will not have a substantial adverse impact on jobs and employment opportunities in the private sector, in the social services districts, or in the State. To the contrary, the emergency regulation would have a positive impact on jobs and employment opportunities, because additional persons may need to be hired to implement the emergency regulation.

Thus, the emergency regulation will not have any adverse impact on jobs and employment opportunities in New York State.

Assessment of Public Comment

The Office of Temporary and Disability Assistance (OTDA) received comments from one social services district ("SSD") relative to the emergency regulation. These comments have been reviewed and duly considered in this Assessment of Public Comment.

One comment requested that clarifying language be added to 18 NYCRR § 352.37(a) to identify all the local entities responsible for inspecting emergency shelters for the homeless, and to define the roles of SSDs relative thereto. OTDA notes that the language of the emergency regulation explicitly states that OTDA may be "advised by any State or local entity authorized to conduct inspections or audits, including [OTDA] and State or local comptrollers, that there exists a violation of law, regulation, or code with respect to a building that provides emergency shelter to homeless persons …." OTDA also asserts that further clarification as to the role of SSDs can be more effectively provided through issuance of an Administrative Directive (ADM), rather than through revision of the emergency regulatory language. Consequently, OTDA maintains that the addition of clarifying language is unnecessary.

One comment requested that 18 NYCRR § 352.37(b) be revised to include language requiring OTDA, when issuing any order with respect to any emergency shelter pursuant to 18 NYCRR § 352.37(a)(2), to provide notice to SSDs in addition to providing notice to the emergency shelters. OTDA believes that the procedures relating to the imposition of emergency measures can be more effectively addressed through the issuance of an ADM, rather than through revision of the emergency regulatory language. Consequently, OTDA maintains that the addition of clarifying language is unnecessary.

One comment requested that clarifying language be added to 18 NYCRR § 352.37(c) to list specific enforcement remedies that OTDA is authorized to take under the Social Services Law (SSL) or State regulations. OTDA notes that the emergency regulatory language already specifically states that OTDA may take "additional enforcement action authorized under the [SSL] or any State regulation," and asserts that the addition of further language reiterating those enforcement actions already identified in statute and State regulations is unnecessary.

One comment requested that 18 NYCRR § 352.37(d) be revised to require State and local comptrollers to inform SSDs, in addition to informing OTDA, of any proposed violations of law, regulation, or code and recommendations as to enforcement action. OTDA believes that the procedures relating to the imposition of emergency measures, including SSD notification, can be more effectively addressed through the issuance of an ADM, rather than through revision of the emergency regulatory language. Consequently, OTDA maintains that the addition of clarifying language is unnecessary.