RULE MAKING ACTIVITIES

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

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

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

Department of Agriculture and Markets

EMERGENCY/PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Species of Ash Trees, Parts Thereof and Products and Debris Therefrom Which Are at Risk for Infestation by the Emerald Ash Borer

I.D. No. AAM-25-16-00006-EP
Filing No. 528
Filing Date: 2016-06-06
Effective Date: 2016-06-06

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

Proposed Action: Repeal of section 141.2; and addition of new section 141.2 to Title 1 NYCRR.

Statutory authority: Agriculture and Markets Law, sections 18, 164 and 167

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

Specific reasons underlying the finding of necessity: The Emerald Ash Borer, Agrilus planipennis, an insect species non-indigenous to the United States, is a destructive wood-boring insect native to eastern Russia, northern China, Japan and the Korean peninsula. EAB can cause serious damage to healthy ash trees by boring through their bark, consuming cambium tissue, which contains growth cells, and phloem tissue, which is responsible for carrying nutrients throughout the tree. This boring activity results in loss of bark, or girdling, and ultimately causes the death of the tree within two years.

Ash trees, ash nursery stock, and material from ash trees such as logs, green lumber, firewood, stumps, roots, branches and debris are subject to infestation. Materials at risk of attack and infestation by EAB include the following species of North American ash trees: White Ash (Fraxinus Americana); Green Ash (Fraxinus pennsylvanica); Black Ash (Fraxinus nigra); and Blue Ash (Fraxinus quadrangulata). The movement of these materials poses a serious threat to susceptible ash trees in forests as well as in the urban landscape throughout the State.

EAB was first discovered in Michigan in June 2002, and has since spread to at least 15 other states as well as to two provinces in Canada. In 2009, EAB was detected in New York near the border of Cattaraugus and Chautauqua Counties. A quarantine of both counties was established pursuant to federal protocols for control of EAB. Since 2009, further detections were confirmed until ultimately, in 2014, 44 counties and portions of four others were placed under an EAB quarantine.

However, based upon ongoing surveys, it was determined that not all of the counties under quarantine were infested with EAB; instead, there were 14 areas in the State (Albany-Rensselaer; Bath; Binghamton; Buffalo; Livingstonville; Mid-Hudson; Montezuma; Nichols; Randolph; Rochester; Sheridan; Syracuse; Unadilla; and West Point) which were found to be infested with the pest. In response to these findings, in 2015, the Department adopted a rule which designated these areas restricted zones and established an EAB quarantine in each of these zones.

Since these restricted zones were established, further surveys and trapping have determined that EAB has continued to spread. This rule addresses this latest expansion of EAB by extending and combining the 14 restricted zones into eight restricted zones, as follows: Binghamton, Montezuma, Nichols, Syracuse and Unadilla remain unchanged; the City of Rome is a new restricted zone; Bath, Buffalo, Livingstonville, Randolph, Rochester and Sheridan are expanded and combined into a new Western Region; and Albany/Rensselaer, Mid-Hudson and West Point are expanded and combined into a new Hudson Valley Region.

These regulations are necessary to protect the general welfare, since the effective control of EAB in the restricted zones set forth in this rule is important to protect New York's nursery, forest products industry, urban and suburban street trees and forest resources. Establishment of these new restricted zones will help ensure that as control measures are undertaken, EAB does not spread beyond those areas via the movement of infested trees and materials.

The regulations are also necessary to balance pest risk against economic impacts as the EAB control program transitions to a management program. The immediate adoption of this rule is necessary to limit the human assisted spread of EAB through the unrestricted movement of infested material during flight season.

Based on the facts and circumstances set forth above, the Department has determined that the immediate adoption of this rule is necessary for the preservation of the general welfare and that compliance with 202(1) of the State Administrative Procedure Act would be contrary to the public interest.

Subject: Species of ash trees, parts thereof and products and debris therefrom which are at risk for infestation by the emerald ash borer.

Purpose: To expand and combine the 14 existing restricted zones where EAB infestations exist.

Text of emergency/proposed rule: See Appendix in this issue of the Register.

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 3, 2016.

Text of rule and any required statements and analyses may be obtained from: Christopher A. Logue, Director, Division of Plant Industry, NYS Department of Agriculture and Markets, 10B Airline Drive, Albany, New York 12235, (518) 457-2087, email: christopher.logue@agriculture.ny.gov

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

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

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

Regulatory Impact Statement

1. Statutory authority:

Section 18 of the Agriculture and Markets Law provides, in part, that the Commissioner may enact, amend and repeal necessary rules which shall provide generally for the exercise of the powers and performance of the duties of the Department as prescribed in the Agriculture and Markets Law and the laws of the State and for the enforcement of their provisions and the provisions of the rules that have been adopted to implement these laws.

Section 164 of the Agriculture and Markets Law provides, in part, that the Commissioner shall take such action as he may deem necessary to control or eradicate any injurious insects, noxious weeds, or plant diseases existing within the State.

Section 167 of the Agriculture and Markets Law provides, in part, that the Commissioner is authorized to make, issue, promulgate and enforce such order, by way of quarantines or otherwise, as he may deem necessary or fitting to carry out the purposes of Article 14 of said Law. Section 167 also provides that the Commissioner may adopt and promulgate such rules and regulations to supplement and give full effect to the provisions of Article 14 of the Agriculture and Markets Law.

2. Legislative objectives:

These regulations are consistent with the public policy objectives the Legislature sought to advance when enacting the statutory authority, namely, preventing the spread within the State of an injurious insect, the emerald ash borer (EAB).

3. Needs and benefits:

At present, there are 14 restricted zones throughout New York which have been shown to be infested with the emerald ash borer (EAB) through surveys and trapping. Due to new detections of this pest, this rule repeals the existing section 141.2 and replaces it with a new section 141.2. The new section 141.2 expands and combines the current 14 zones into eight zones which will now be under quarantine.

EAB, Agrilus planipennis, is a destructive wood-boring insect that is not indigenous to the United States. EAB causes serious damage to healthy ash trees by boring through their bark, which ultimately results in the death of the tree within two years. Ash trees, ash nursery stock, and material from ash trees like logs, green lumber, firewood, stumps, roots, branches and debris are subject to infestation. Materials at risk of attack and infestation by the EAB include the following species of North American ash trees: White Ash (Fraxinus Americana); Green Ash (Fraxinus pennsylvanica); Black Ash (Fraxinus nigra); and Blue Ash (Fraxinus quadrangulata). The movement of these materials poses a serious threat to susceptible ash trees in forests as well as in the urban landscape throughout the State.

EAB was first discovered in Michigan in June 2002, and has since spread to at least 15 other states as well as to two provinces in Canada. The initial detection of this pest in New York occurred on June 16, 2009 in the Town of Randolph, which is located in southwestern Cattaraugus County and is adjacent to Chautauqua County. A quarantine of both counties was established pursuant to federal protocols for control of EAB. Subsequent findings of the insect prompted additional expansions of the quarantine. By 2014, 44 counties and portions of four others were under quarantine.

In 2015, it was determined through ongoing surveys that all of the counties then under quarantine were not infested with EAB; instead, there were 14 areas in the State which were infested with the pest. This finding prompted the Department to adopt a rule establishing 14 restricted zones located in and around the following municipalities or areas: Albany-Rensselaer; Bath; Binghamton; Buffalo; Livingstonville; Mid-Hudson; Montezuma; Nichols; Randolph; Rochester; Sheridan; Syracuse; Unadilla; and West Point.

However, since these restricted zones were established, further surveys and trapping have revealed that EAB continues to spread. This rule addresses this latest expansion of EAB by extending and combining the 14 restricted zones into eight restricted zones, as follows: Binghamton, Montezuma, Nichols, Syracuse and Unadilla remain unchanged; the City of Rome is a new restricted zone; Bath, Buffalo, Livingstonville, Randolph, Rochester and Sheridan are expanded and combined into a new Western Region; and Albany/Rensselaer, Mid-Hudson and West Point are expanded and combined into a new Hudson Valley Region.

These regulations are necessary to protect the general welfare, since the effective control of EAB in the restricted zones set forth in this rule is important to protect New York's nursery, forest products industry, urban and suburban street trees and forest resources. Establishment of these new restricted zones will help ensure that as control measures are undertaken, EAB does not spread beyond those areas via the movement of infested trees and materials.

The regulations are also necessary to balance pest risk against economic impacts as the EAB control program transitions to a management program. The immediate adoption of this rule is necessary to meet Federal protocols for new detections as well as mitigate negative economic impacts that have resulted from the current configuration of the quarantine.

Based on the facts and circumstances set forth above, the Department has determined that the immediate adoption of this rule is necessary for the preservation of the general welfare and that compliance with 202(1) of the State Administrative Procedure Act would be contrary to the public interest.

4. Costs:

(a) Costs to regulated parties for the implementation of and continuing compliance with the rule: It is anticipated that costs will be minimal. There are 442 registered nursery growers and 473 registered nursery dealers in the expanded restricted zones. However, only a fraction of these regulated parties carry regulated articles. There is no approved protocol eliminating EAB from ash nursery stock that does not kill the nursery stock; as such, the EAB infestation has significantly reduced or eliminated the market for ash nursery stock as ornamental, street and park plantings.

Tree removal services would have the option to leave ash materials within the new restricted zones or transport them outside of the zones under a limited permit to a federal/state disposal site for processing.

(b) Costs to the agency, the state and local governments for the implementation and continuation of the rule: The Department will realize slightly higher costs and workload incident to conducting additional inspections in the expanded restricted zones. However, it is anticipated that the costs and workload will be minimal. Some local governments may face expenses in tree maintenance since ash trees have become popular trees to use to line streets. However, the rule does not require local governments to remove the trees from the restricted zones. Accordingly, local governments within a restricted zone will not incur any additional expenses.

(c) The information, including the sources of such information and the methodology upon which the cost analysis is based: The costs analysis set forth above is based upon observations of the industry.

5. Local government mandates:

None.

6. Paperwork:

Regulated articles inspected and certified to be free of EAB moving from the new restricted zone established by the rule will have to be accompanied by a state or federal certificate of inspection or a limited permit.

7. Duplication:

The New York State Department of Environmental Conservation (DEC) is implementing a regulation parallel to this one.

8. Alternatives:

One alternative was to eliminate the intra-state regulation of EAB, which has been done in a number of neighboring states. This alternative was rejected. Since the EAB infestation has not reached areas north of the Thruway and the areas south of the Thruway are approximately 47-percent infested with the pest, there are large areas of the State which are not infested with EAB. Failure to regulate the spread of this pest would facilitate a more rapid spread of EAB throughout New York.

Another approach considered was to place a quarantine only in those areas south of the Thruway. This option was rejected, however, since it would allow infested materials to move more freely in those regions, which would likely expedite the infestation of those areas currently not infested with EAB.

9. Federal standards:

The regulations do not exceed any minimum standards for the same or similar subject areas.

10. Compliance schedule:

This rule shall take effect immediately upon filing.

Regulatory Flexibility Analysis

1. Effect of rule:

It is anticipated that the expansion of the restricted zones will have minimal impact on nursery dealers, nursery growers and those handling ash wood, regardless of their size. The EAB infestation and current federal and state quarantines have significantly reduced or eliminated the market for ash nursery stock as ornamental, street, park plantings and ash wood.

Arborists and tree care companies would have the option of leaving regulated articles within the new restricted zones, chipping the material or transporting the articles outside the restricted zones to a federal/state disposal site for processing under a limited permit.

The greatest economic impact of the EAB regulation would continue to be on municipalities within the new restricted zones, as they deal with the costs to manage the effect of this pest through tree removals, treatments and assessments of existing ash inventories. However, the modifications of the EAB regulations would not alter that impact.

2. Compliance requirements:

All parties in the new restricted zones would be required to obtain certificates and limited permits (or enter into compliance agreements) to ship regulated articles (e.g. firewood and forest products) outside those areas.

As there is no approved protocol to diagnose or treat nursery stock (since approved methods of eliminating EAB would kill the plants), movement of ash nursery stock outside the new restricted zones is prohibited.

It is not anticipated that local governments would be involved in the shipment of regulated articles from the new restricted zones.

3. Professional services:

Those shipping regulated articles from the new restricted zones will need a compliance agreement or a limited permit issued by the Department.

It is not anticipated that local governments would be involved in the shipment of regulated articles from the new restricted zones.

4. Compliance costs:

(a) Initial capital costs that will be incurred by a regulated business or industry or local government in order to comply with the rule: None.

(b) Annual cost for continuing compliance with the rule: Tree removal services would have the option to leave ash materials within the new restricted zones or transport them outside of the zones under a limited permit to a federal/state disposal site for processing.

It is not anticipated that local governments would be involved in the shipment of regulated articles from the restricted zones.

5. Economic and technological feasibility:

The economic and technological feasibility of compliance with the rule by small businesses and local governments has been addressed and such compliance has been determined to be feasible. Regulated parties shipping regulated articles outside the new restricted zones would require an inspection and the issuance of a certificate of inspection. The majority of shipments would be made pursuant to compliance agreements, which would not require independent inspections.

6. Minimizing adverse impact:

The Department has designed the rule to minimize adverse economic impact on small businesses and local governments. By limiting the EAB quarantine to areas where infestations exist, the rule minimizes economic impacts while maintaining, without compromising, efforts to slow the spread of EAB.

Approaches for minimizing adverse economic impact required by section 202-a(1) of the State Administrative Procedure Act (SAPA) and suggested by section 202-b(1) of SAPA were considered. The Department has sought to minimize adverse impact of the EAB quarantine by continuing the use of compliance agreements between the Department and regulated parties --- agreements which permit the shipment of regulated articles without state or federal inspection and for which there is no charge. Given all of the facts and circumstances, the regulations minimize adverse economic impact as much as is currently possible.

7. Small business and local government participation:

On April 22, 2016, Department officials met with the Empire State Forest Products Association Board of Directors (Association) to discuss the expansion of the restricted zones. The Association outlined the impacts that the expanded quarantine would have on the forest products industry, including disruption of timber sales in the expanded quarantine area. The Association also outlined other issues which could make non-flight season harvests challenging, such as hunting restrictions, road weight restrictions and terrain that makes winter harvesting more dangerous to workers.

In response to these concerns, the Department and the DEC have established a limited permit system which will allow flight season harvest of material which is not infested and falls within restricted zones. This permit will only allow for the harvest and transport of high value ash logs that are not infested. The permit also requires processing of these logs within 72 hours of reaching their destination. This approach will limit lower value and infested materials from moving during flight season and will give the industry an opportunity to harvest and process high quality material which is not infested while it retains the highest value.

Movement of firewood continues to present a serious threat to spread EAB. State and federal entities are continuing aggressive outreach efforts in promoting the message “don’t move firewood.”

Rural Area Flexibility Analysis

1. Type and estimated numbers of rural areas:

It is anticipated that the expansion of the restricted zones will have minimal impact on nursery dealers, nursery growers and those handling ash wood in rural areas. The EAB infestation and current federal and state quarantines have significantly reduced or eliminated the market for ash nursery stock as ornamental, street, park plantings and ash wood.

Arborists and tree care companies would have the option of leaving regulated articles within the new restricted zones, chipping the material or transporting the articles outside the restricted zones to a federal/state disposal site for processing under a limited permit.

The greatest economic impact of EAB regulation would continue to be on municipalities within the new restricted zones located within rural areas, as they deal with the costs to manage the effect of this pest through tree removals, treatments and assessments of existing ash inventories. However, the modifications of the EAB regulations would not alter that impact.

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

All parties in the new restricted zones within rural areas would be required to obtain certificates and limited permits (or enter into compliance agreements) to ship regulated articles (e.g. firewood and forest products) outside those areas.

As there is no approved protocol to diagnose or treat nursery stock (since approved methods of eliminating EAB would kill the plants), movement of ash nursery stock outside the new restricted zones (as is the case for the existing ones) is prohibited.

3. Costs:

The regulation will not result in any initial or ongoing costs to regulated parties.

Tree removal services would have the option to leave ash materials within the new restricted zones or transport them outside of the zones under a limited permit to a federal/state disposal site for processing.

4. Minimizing adverse impact:

In conformance with State Administrative Procedure Act section 202-bb(2), the Department has designed the rule to minimize adverse economic impact on regulated parties in rural areas. By limiting the EAB quarantine to areas where infestations exist, the rule minimizes economic impacts while maintaining, without compromising, efforts to slow the spread of EAB.

Approaches for minimizing adverse economic impact were considered. The Department has sought to minimize adverse impact of the EAB quarantine by continuing the use of compliance agreements between the Department and regulated parties in rural areas --- agreements which permit the shipment of regulated articles without state or federal inspection and for which there is no charge. Given all of the facts and circumstances, the regulations minimize adverse economic impact as much as is currently possible.

5. Rural area participation:

On April 22, 2016, Department officials met with the Empire State Forest Products Association Board of Directors (Association) to discuss the expansion of the restricted zones. The Association outlined the impacts that the expanded quarantine would have on the forest products industry, including disruption of timber sales in the expanded quarantine area. The Association also outlined other issues which could make non-flight season harvests challenging, such as hunting restrictions, road weight restrictions and terrain that makes winter harvesting more dangerous to workers.

In response to these concerns, the Department and the DEC have established a limited permit system which will allow flight season harvest of material which is not infested and falls within restricted zones. This permit will only allow for the harvest and transport of high value ash logs that are not infested. The permit also requires processing of these logs within 72 hours of reaching their destination. This approach will limit lower value and infested materials from moving during flight season and will give the industry an opportunity to harvest and process high quality material which is not infested while it retains the highest value.

Movement of firewood continues to present a serious threat to spread EAB. State and federal entities are continuing aggressive outreach efforts in promoting the message “don’t move firewood.”

Job Impact Statement

The forest-based economy generates payrolls of more than $2 billion. Forest related activities in New York State provide employment for approximately 70,000 people. Of that number, 55,000 jobs are associated with the wood-based forest economy, including manufacturing.

There are an estimated 750-million ash trees in New York State (excluding the Adirondack and Catskill Forest Preserves), with ash species making up approximately seven percent of all trees in the State’s forests. The unchecked spread of the EAB infestation would have substantial adverse economic consequences to the nursery, forestry and wood-working (e.g. lumber yard, flooring and furniture and cabinet making) industries of the State, due to the destruction of the regulated articles upon which these industries depend.

The modifications of the Department’s EAB regulations will target areas of infestation with greater precision and more effectively slow the spread of the infestation. Accordingly, the new regulations will not have a substantial adverse impact on jobs or employment opportunities and will better protect jobs and employment opportunities in the wood-based forest economy.

NOTICE OF ADOPTION

Petroleum Products and Delivery Devices, Maple Syrup and Honey

I.D. No. AAM-32-15-00001-A
Filing No. 529
Filing Date: 2016-06-07
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 sections 162.20 and 276.4(a)(1)(vi); repeal of Part 176, sections 220.8 and 220.9, and Chapter VI, Subchapter E; and addition of existing Part 270 to Chapter VI, Subchapter D of Title 1 NYCRR.

Statutory authority: Agriculture and Markets Law, sections 16, 18, 179, 197-b(3)(a), 214-b, 251-z-4 and 251-z-5

Subject: Petroleum products and delivery devices, maple syrup and honey.

Purpose: To repeal requirements relating to petroleum devices and products, to harmonize maple syrup requirements.

Text of final rule: Paragraph (1) of subdivision (b) of section 162.20 of 1 NYCRR is amended to read as follows:

(b) [Definitions.] *Definition of Maple Syrup.* [(1)] Maple syrup means [syrup] *the liquid* made [exclusively] by the evaporation of pure [maple] sap *or sweet water obtained* [from the] *tapping a* [sugar] maple tree. [This pure maple] *Maple syrup* shall be produced and packed in New York State. [The solid content of the finished maple syrup shall be not less than 66.5 percent or more than 67.5 percent by weight (brix) at 68 degrees Fahrenheit.] *Maple syrup contains minimum soluble solids of 66.0 percent and maximum soluble solids of 68.9 percent.*

Paragraphs (2), (3), (4), (5), (6), and (7) of subdivision (b) of section 162.20 of 1 NYCRR are repealed.

Subdivision (c) of section 162.20 of 1 NYCRR is amended to read as follows:

(c) Grades. The only grades of maple syrup upon which the Seal of Quality may be used are [Grade A light amber, medium amber, or dark amber] *the grades of maple syrup set forth in subparagraphs (i), (ii), (iii), and (iv) of paragraph (2) of subdivision (b) of section 270.1 of this Title*. This syrup shall [have a good maple flavor characteristic of the color; shall be clean; practically free from damage; and shall be free from serious damage] *not be fermented or turbid and have no objectionable odors, off-colors, or sediment*.

Subdivision (d) of section 162.20 of 1 NYCRR is repealed.

Subdivision (e) of section 162.20 of 1 NYCRR is amended to read as follows:

(e) Packing. (1) All maple syrup upon which [theSeal] *the Seal* of Quality may be used shall be filtered at the time of packing and packed at a temperature of at least 180 degrees Fahrenheit.

(2) The packer shall accept for replacement any containers of maple products which have been opened for inspection by Department of Agriculture *and Markets'* inspectors at shipping point (producer sugar house). Such products are to be replaced with unopened containers of equal quality, ensuring hot-pack conditions. At the retail level the [department] *Department of Agriculture and Markets* will pay for the maple syrup before the inspection process takes place.

Part 176 of 1 NYCRR is repealed.

Part 220 of 1 NYCRR is amended by repealing sections 220.8 and 220.9 thereof.

Subparagraph (vi) of paragraph (1) of subdivision (a) of section 276.4 of 1 NYCRR is amended to read as follows:

(vi) All finished product containers must be clean, sanitary and properly labeled in compliance with the requirements of [Parts 175, 176 and] *Part* 259 of this Title.

Subchapter D of Chapter VI of 1 NYCRR is amended by adding existing Part 270 of 1 NYCRR.

Subchapter E of Chapter VI of 1 NYCRR is repealed.

Final rule as compared with last published rule: Nonsubstantive changes were made in section 162.20(b), (c), (d), (e) and Part 176.

Text of rule and any required statements and analyses may be obtained from: Mr. Mike Sikula, Director, Bureau of Weights and Measures, Department of Agriculture and Markets, 10B Airline Drive, Albany, New York 12235, (518) 457-3146, email: Mike.Sikula@agriculture.ny.gov

Revised Job Impact Statement

Changes were made to the last published rule to conform regulations dealing with maple syrup to the "new" maple syrup regulations, set forth in 1 NYCRR Part 270, so that all such regulations are consistent; these changes are not substantial and do not necessitate revision of the previously published impact statements and analyses.

Assessment of Public Comment

The agency received no public comment.

Division of Criminal Justice Services

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Handling of Ignition Interlock Cases Involving Certain Criminal Offenders

I.D. No. CJS-25-16-00004-P

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

Proposed Action: Amendment of sections 358.1-358.3, 358.4(a), (c), (d) and 358.5-358.8 of Title 9 NYCRR.

Statutory authority: Vehicle and Traffic Law, sections 1193(1)(g) and 1198(5)(a); L. 2009, ch. 496

Subject: Handling of Ignition Interlock Cases Involving Certain Criminal Offenders.

Purpose: To promote public/traffic safety, offender accountability and quality assurance through the establishment of minimum standards.

Substance of proposed rule (Full text is posted at the following State website:www.dcjs.ny.gov): These proposed amendments make substantive and technical changes to the Division of Criminal Justice Services rule, entitled "Handling of Ignition Interlock Cases Involving Certain Criminal Offenders". Overall, it updates, clarifies, and strengthens regulatory provisions to better enhance public/traffic safety, achieve greater offender accountability, and guarantee quality assurance with respect to Ignition Interlock Device (IID) program service delivery.

Rule Sections 358.1 and 358.2 are amended to update the objectives and applicability regulatory language to reflect recent statutory changes.

Rule Section 358.3 governing definitions, is amended to refine and/or reinforce certain definitional terms. Two new definitions of "Emergency Notification Program" and "real time reporting" are also added to reflect new programmatic features which are now operational.

Several proposed amendments are made to Rule Section 358.4 governing Ignition Interlock Program Plans. Plan content is updated to incorporate recent statutory changes as to imposition of IIDs in advance of sentencing and to better ensure that plans reflect handling of interim probation supervision cases. Additional proposed language will facilitate timely notification procedures to monitors where a court approves reduction in a breath sample in accordance with new regulatory provisions.

Rule Section 358.5, governing the Approval Process and Responsibilities of Qualified Manufacturers, is amended with respect to application procedures, including but not limited to, updating outdated language, and establishing parameters surrounding open application process and contractual term to promote consistency. Other proposed changes are sought to achieve greater offender and service delivery accountability. For example, new reporting language is proposed with respect to test results to better guarantee serious failed tests by operators are timely reported. Other changes strengthen provisions to establish timely DCJS notification of significant operational service delivery problems. Significantly, a new regulatory provision establishes a mechanism consistent with National Highway Traffic Safety Administration standards which will permit court authorization of a reduced breath sample for certain operators with certain health issues which prevent them from regular operational usage of the IID.

Rule Section 358.6 governing cancellation, suspension, and revocation of qualified manufacturers, installation and service providers and IIDs, is modified to clarify that verbal and/or written notification or communication of disapproval, suspension in whole or in part, of revocation or cancellation of a manufacturer's device, services, and/or operations by another state or jurisdiction, may result in revocation of a certified IID or suspension or removal of a qualified manufacturer or installation/service provider in New York State.

Proposed changes to Rule Section 358.7 governing monitoring and Rule Section 358.9 governing installation and costs, would update these regula-

tory provisions to reflect recent statutory changes and reference interim probation supervision. Additionally, Rule Section 358.7 sets forth revised intrastate and interstate monitoring procedures to establish that for intrastate conditional discharge cases, the sentencing county monitor shall contact the monitor in the county of residence to determine the class of IID available and the sentencing county monitor shall perform monitor services. Further where there is an Emergency Notification Program, the monitor shall notify the IID Manufacturer so that the designated law enforcement agency within the county of residence shall receive all applicable communications/notifications. Further, where an IID is to be imposed in advance of sentencing, the monitor in the county of residence is to be similarly contacted by the monitor in the county where the court orders installation to determine the specific class and features of the IID available and an identical procedure will be required for Emergency Notification Programming in the county of residence. With respect to interstate transfer, regulatory language is streamlined.

Among proposed regulatory changes are the following:

- Reflects the imposition and monitoring of IIDs installed in conjunction with interim probation supervision and in cases prior to sentencing pursuant to a court order.
- Clarifies that the period of IID restriction will commence from the earlier of the date of sentencing, or the date of installation in advance of sentencing and that a court may not authorize the operation of a motor vehicle by any individual whose license or privilege to operate a motor vehicle has been revoked.
- Establishes that monitors select the class and features of IIDs available from an available manufacturer in the region where an operator resides.
- Requires that the applicable monitor coordinate monitoring with the NYS Department of Corrections and Community Supervision (DOCCS) where the operator is under DOCCS supervision and promptly provide such agency with reports of any failed tasks or failed reports.
- Requires a court authorization for a reduction in breath sample to be consistent with NHTSA requirements and that every county plan establishes a procedure whereby the probation department and any other monitor be notified no later than five (5) business days from any such court approval.
- Requires all jurisdictions to submit an IID plan reflective of all operators who may be subject to IID installation and maintenance with monitoring ordered by a court in advance of sentencing or at sentencing, and to make modifications or updates, as required by DCJS. DCJS has required since 2014 that plans have procedures in this area and to amend plans to be consistent with law and regulatory provisions.
- Clarifies recent statutory changes to better ensure that youth adjudicated as Youthful Offenders of DWI and/or other alcohol related offenses are subject to IID installation and related compliance provisions.
- Clarifies recent statutory change that affected operators provide proof of installation compliance with the IID requirement to the court and the applicable monitor where such person is under probation or conditional discharge supervision.
- Requires that manufacturers:

o Provide documentation and verification of their respective Standby Letter of Credit (SLOC) as specified in the manufacturer's contract with New York State;

o The SLOC was previously incorporated in DCJS 2013 contracts with manufacturers;

o Adhere to any county plan real time reporting and emergency notification program requirements;

o Report a failed test or re-test where the BAC is .05 percent or higher; and provide immediate written notice to DCJS and the DOH whenever their IID devices, services, and/or operations has been compromised or does not function as or any other state or jurisdiction or disapproved or suspended in whole or in part, revoked or otherwise cancelled by another state or jurisdiction or has received notice or communication from another state or jurisdiction that any such actions are imminent.

Additionally, as existing DOH regulations require prior approval with respect to any operational modification of IIDs, new regulatory language reiterates this requirement and for any manufacturer to provide necessary documentation to DOH and that any such manufacturer notify DCJS of any intent to do so and provide a written summary of any requested or approved modification.

Text of proposed rule and any required statements and analyses may be obtained from: Linda J. Valenti, Assistant Counsel, New York State Division of Criminal Justice Services, Alfred E. Smith Office Building, Room 832, 80 South Swan Street, Albany, NY 12210, (518) 457-8413, email: linda.valenti@dcjs.ny.gov

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

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

Regulatory Impact Statement

1. Statutory authority:

Chapter 496 of the Laws of 2009, commonly referred to as Leandra's Law was a groundbreaking measure which strengthened various laws specifically relative to driving while intoxicated (DWI) or while impaired by drugs. The purpose of the law was to achieve greater offender accountability, promote public safety, combat and deter drunk driving, and better safeguard the welfare of child passengers. Among its provisions were requirements of rulemaking to the former Division of Probation and Correctional Alternatives, which was merged in 2010 with the Division of Criminal Justice Services (DCJS). Specifically, pursuant to Vehicle and Traffic Law (VTL) § 1193(1)(g) DCJS is responsible for promulgating regulations governing the monitoring of compliance by persons ordered to install and maintain ignition interlock devices to provide standards for monitoring by probation departments, and options for monitoring of compliance by such persons, that counties may adopt as an alternative to monitoring by a probation department. Further, VTL § 1198(5)(a) establishes that in the event of a court waiving the cost of any operator subject to the Leandra's Law requirement of installation and maintenance of an ignition interlock device (IID), "the cost of the device shall be borne in accordance with regulations issued [by DCJS] …or pursuant to such other agreement as may be entered into for provision of the device."

2. Legislative objectives:

The proposed rule amendments serves both the Governor's and the Legislature's underlying objective of "Leandra's Law" and its subsequent amendment, Chapter 169 of the Laws of 2013, to further strengthen DWI laws and penalties through statewide implementation of IID conditions so as to better enhance public/traffic safety, achieve greater offender accountability, and guarantee quality assurance through the establishment of minimum standards for the usage and monitoring of IIDs following a conviction of or adjudication as a Youthful Offender arising from a violation of VTL § 1192(2), (2-a), (3) or any crime defined by the VTL or Penal Law of which an alcohol-related violation of any provision of § 1192 is an essential element, or where ordered by a court in advance of sentence following an individual's arrest for one of the specified offenses.

3. Needs and benefits:

Rule amendments are necessary to reflect Chapter 169 of the Laws of 2013, as well as to incorporate particular changes of the revised National Highway Traffic Safety Administration (NHTSA) specifications for IIDs, and achieve certain operational refinements deemed appropriate following programmatic experience.

The proposed regulatory changes are beneficial to better safeguard the public, optimize traffic safety, and to promote greater offender and service delivery accountability.

4. Costs:

a. DCJS does not anticipate that proposed rule revisions will result in any additional costs to local government. The proposed regulatory changes continue to allow each jurisdiction with the flexibility to choose one or more persons or entities responsible for monitoring conditional discharge cases where a defendant has been required to install and maintain a functioning IID in any vehicle which they own or operate and affords the same flexibility as to cases involving individuals who agree or are ordered to install and maintain an IID in advance of sentencing. Notably, DCJS has annually applied for and received grant funding from 2010-- 2015 from the NYS Governor's Traffic Safety Committee (GTSC) totaling three (3) million dollars annually in NHTSA monies to offset local government costs in performing monitoring services. DCJS currently distributes monies to the localities pursuant to a formula based on statistics of 2013 DWI conviction rates and is unaware of any local government concerns with this formula. While DCJS has recently received approval of 2.8 million dollars for Federal fiscal year 2016, this reduced amount should not result in cuts as there have been unexpended monies in prior years.

The revised regulation is not expected to result in any additional costs to three of the four qualified manufacturers, nor to their installation/service providers. One manufacturer, CST/Intoxalock, may have additional expenses as well as additional income as a result of operators having to visit their installation/service providers rather than the past practice of mailing in the handsets without service visits. This practice prevented monthly inspection of the IID installation and the opportunity for technicians to detect any attempted tampering or circumvention by the operator, allowing for a potential public safety risk.

In accordance with existing regulations, all manufacturers applied for undertaking IID service delivery in conformity with NYS statutory and regulatory provisions. DCJS has contracts with all manufacturers as to operational performance and approve their maximum fee/charge schedule which takes into account a 10% fee waiver cost.

Existing statutory and regulatory provisions govern IID costs. Amendments do not change provisions in this area. Statutorily, where a court, determines financial "unaffordability", it may impose a payment plan or waive the fee. Where waived, jurisdictions have established a procedure

whereby costs are proportionately borne among manufacturers utilized at the local level.

b. Through grant funding received from GTSC, DCJS employs a full-time Community Correction Representative 2 assigned to the IID program. DCJS as noted earlier has received a GTSC award of NHTSA monies to offset any monitor costs of local government incurred. DCJS does not anticipate additional state and/or local costs from proposed revisions.

5. Local government mandates:

The existing rule established that every jurisdiction must submit for DCJS approval an ignition interlock plan for monitoring the use of IIDs. This revised rule states that a county may submit an amended plan on its own initiative; and that DCJS may require modifications or updates as it deems necessary to be consistent with law or regulatory provisions. In 2014, DCJS requested that localities submit amended IID Plans to reflect any changes which may have occurred since the filing of the original plans, including those resulting from aforementioned Chapter 169. The County Plan content is straightforward, simple, and largely prescriptive to ease any burden on localities. Monitoring functions associated with IID operators are statutorily required. DCJS' rule and proposed amendments have been carefully streamlined to afford considerable flexibility, yet require swift and certain court and district attorney notification as to certain failed tasks and failed tests. Additionally, it places specific responsibilities upon qualified manufacturers, installation/service providers, as well as operators to provide timely information and/or reports to monitors so as to assist them in managing their caseload.

6. Paperwork:

As noted above, this revised rule clarifies that jurisdictions may submit an amended County IID Plan on its own initiative; and that DCJS may require modifications or updates as it deems necessary to be consistent with law or regulatory provisions. As part of receiving Federal award monies, DCJS requires and jurisdictions agree to have their monitors provide quarterly statistical information regarding IID program operations to DCJS. These statistical reports can be automatically generated by probation departments which use the Caseload Explorer system; 55 are using the Caseload Explorer System at this time and template reporting forms are available for the remaining monitors.

IID Manufacturers wishing to conduct business in NYS are required to apply to DCJS through a standardized application format. Currently four manufacturers have contracts with DCJS. DCJS will consider the applications of any additional interested manufacturers. Statutorily, such manufacturers must have their IIDs certified by the Department of Health (DOH). Other data reporting requirements imposed upon qualified manufacturers and installation/service providers are routine business activities and essential to offender accountability and community safety. DCJS, in conjunction with the Department of Motor Vehicles and Office of Court Administration, and other partners, has developed approximately fifteen (15) reporting forms to facilitate exchange of information and promote consistency, which greatly benefit all jurisdictions in program implementation and compliance. The Financial Disclosure Report is available in both English and Spanish.

7. Duplication:

While DOH certifies IIDs, this revision does not duplicate any other existing State or Federal requirements.

8. Alternatives:

This proposal takes into account changes in law, and NHTSA standards, and certain other refinements which can only be accomplished through revising the existing regulation. In developing the proposal, DCJS considered feedback provided by the localities, qualified manufacturers, and other state and local entities. Additionally DCJS distributed an earlier rule proposal and made additional revisions based on feedback received from stakeholders to address certain operational issues raised. This proposal was reviewed and discussed by the Probation Commission at its meeting in May 2015. Overall, DCJS received positive support as to proposed regulatory changes.

9. Federal standards:

There are no federal standards governing the monitoring of offenders ordered to use an IID Notably, NHTSA published final updated Model Specifications for Breath Alcohol IIDs and this rule requires that any IID used meets these revised Specifications. As NYS law requires monitoring and DOH regulations require manufacturers with DOH approved certified IIDs satisfy DCJS regulations, it is necessary that DCJS' rule and proposed amendments be more comprehensive than Federal specifications, which are guidelines for the performance and uniform testing of IIDs.

10. Compliance schedule:

In light of DCJS previously disseminating proposed regulatory changes to all affected parties, positive feedback received, and that revisions are not substantial in nature, DCJS anticipates a 90 day maximum time from adoption to rule amendments becoming effective.

Regulatory Flexibility Analysis

1. Effect of rule:

These proposed regulatory amendments affect every county and the city of New York, qualified ignition interlock manufacturers doing business in New York State (NYS), their approved installation/service providers. There are four (4) approved Ignition Interlock Device (IID) manufacturers which also have contracts with the Division of Criminal Justice Services (DCJS) to provide services throughout NYS. Under existing DCJS rule, specifically 9 NYCRR Part 358, additional manufacturers could enter into agreements through an open and continuous application, receiving certification of their IIDs by the Department of Health (DOH), and adherence to applicable regulatory requirements. As of October 2015, there are approximately 200 approved installation/service providers in NYS.

2. Compliance requirements:

The existing rule implemented Chapter 469 of the Laws of 2009, commonly referred to as "Leandra's Law", provides for the monitoring of the use of court-ordered IIDs ordered upon defendants sentenced for a DWI misdemeanor or felony. It also established various reporting, recordkeeping, and other compliance requirements. The proposed regulatory amendments, (i) make minor modifications to incorporate certain statutory changes resulting from enactment of Chapter 169 of the Laws of 2013, (ii) establishes parameters with respect to reduced breath samples for certain operators and testing requirements consistent with revised National Highway Traffic Safety Administration (NHTSA) Breath Alcohol IID Model Specifications, (iii) makes limited revisions to improve program integrity and operational acceptability based on the experience of the field since implementation of the original rule, and (iv) addresses service delivery and individual accountability issues which have arisen. Among proposed regulatory changes are the following:

- Reflects the imposition and monitoring of IIDs installed in conjunction with interim probation supervision and in cases prior to sentencing pursuant to a court order.
- Clarifies that the period of IID restriction will commence from the earlier of the date of sentencing, or the date of installation in advance of sentencing and that a court may not authorize the operation of a motor vehicle by any individual whose license or privilege to operate a motor vehicle has been revoked.
- Establishes that monitors select the class and features of IIDs available from an available manufacturer in the region where an operator resides.
- Requires that the applicable monitor coordinate monitoring with the NYS Department of Corrections and Community Supervision (DOCCS) where the operator is under DOCCS supervision and promptly provide such agency with reports of any failed tasks or failed reports.
- Requires a court authorization for a reduction in breath sample to be consistent with NHTSA requirements and that every county plan establishes a procedure whereby the probation department and any other monitor be notified no later than five (5) business days from any such court approval.
- Requires all jurisdictions to submit an IID plan reflective of all operators who may be subject to IID installation and maintenance with monitoring ordered by a court in advance of sentencing or at sentencing, and to make modifications or updates, as required by DCJS. DCJS has required since 2014 that plans have procedures in this area and to amend plans to be consistent with law and regulatory provisions.
- Clarifies recent statutory changes to better ensure that youth adjudicated as Youthful Offenders of DWI and/or other alcohol related offenses are subject to IID installation and related compliance provisions.
- Clarifies recent statutory change that affected operators provide proof of installation compliance with the IID requirement to the court and the applicable monitor where such person is under probation or conditional discharge supervision.
- Requires manufacturers:

o Provide documentation and verification of their respective Standby Letter of Credit (SLOC) as specified in the manufacturer's contract with New York State;

o The SLOC was previously incorporated in DCJS 2013 contracts with manufacturers;

o Adhere to any county plan real time reporting and emergency notification program requirements;

o Report a failed test or re-test where the BAC is .05 percent or higher; and provide immediate written notice to DCJS and the DOH whenever their IID devices, services, or any other state or jurisdiction or disapproved or suspended in whole or in part, revoked or otherwise cancelled by another state or jurisdiction or has received notice or communication from another state or jurisdiction that any such actions are imminent.

Additionally, as existing DOH regulations require prior approval with respect to any operational modification of IIDs, new regulatory language reiterates this requirement and for any manufacturer to provide necessary documentation to DOH and that any such manufacturer notify DCJS of any intent to do so and provide a written summary of any requested or approved modification.

3. Professional services:

It is not anticipated that any professional services will be required to comply with the proposed regulatory changes.

4. Compliance costs:

DCJS does not anticipate that the proposed rule revisions will result in any additional costs to local governments or small businesses. The proposed regulatory changes continue to allow each jurisdiction with the flexibility to choose one or more persons or entities responsible for monitoring conditional discharge cases where a defendant has been required to install and maintain a functioning IID in any vehicle which they own or operate. It also affords the same flexibility to cases involving individuals who agree, or are ordered, to install and maintain an IID in advance of sentencing. DCJS has annually applied for and received grant funding from 2010- 2015 from the NYS Governor's Traffic Safety Committee (GTSC) totaling three (3) million dollars annually in NHTSA monies to offset local government costs in performing monitoring services. DCJS currently distributes monies to the localities pursuant to a formula based on statistics of 2013 DWI conviction rates and is unaware of any local government concerns with this formula. While DCJS has recently received approval of 2.8 million dollars for Federal fiscal year 2016, this reduced amount should not result in cuts as there have been unexpended monies in prior years that roll over.

Effective May, 8, 2014, NHTSA implemented revised Breath Alcohol IID Model Specifications refining performance criteria and test methods for IIDs. NHTSA encourages States to determine how best to implement these Model Specifications to strengthen the quality of IIDs used and therefore each qualified manufacturer has submitted updated certifications regarding devices in use in New York.

There may be limited additional costs to one of the four qualified manufacturers, in that it will now require all operators with any IIDS to undergo service visits on a monthly basis through an operator service visit. Under NYS law, unless a court waives the IID cost upon an operator who claims inability to pay, the cost is borne by the operator. Previously, such operators removed and mailed the IID "data-head" to the IID manufacturer monthly. This practice prevented monthly inspection of the IID installation and the opportunity for technicians to detect any attempted tampering or circumvention by the operator, allowing for a potential public safety risk.

5. Economic and technological feasibility:

Proposed amendments do not require any additional technological requirements beyond those currently being utilized in NYS.

As of November 1, 2013, DCJS revised IID classification system requires that all Class 1, 2, and 3 devices to include the integration of a camera. This change was made effective prospectively with the installation of new devices. Additionally, many monitoring entities require Class II devices with advanced features of Global Positioning System (GPS) location of a vehicle and Real Time Reporting (RTR). The Rule amendments propose a new RTR definition to mean the contemporaneous transmission of data of particular events, as defined in Rule Section 358.5(c)(6), to a specified monitoring entity as the event occurs or as soon as cellular reception permits. Lastly, four counties require Class III devices, which have all the minimum required features of Classes I (camera) and II (GPS and RTR), also contain an emergency notification feature. Accordingly, proposed amendments include a new definitional term "Emergency Notification Program".

6. Minimizing adverse impact:

DCJS does not anticipate that the proposed changes, which among its provisions revises or adds regulatory language to be consistent with Chapter 169 of the Laws of 2013, and current NHTSA specifications of IIDs, will have any adverse impact on local governments or small businesses. DCJS remains steadfast in its efforts to minimize adverse impact of the existing rule and any proposed changes upon local government, and has considered IID manufacturers input in crafting amendments to ensure any changes do not adversely impact service delivery or increase costs.

Since 2010 DCJS has annually submitted applications and been awarded grants from GTSC of NHTSA monies to offset local government costs in performing monitoring services. The existing and proposed revised rule language have both been crafted to offer guidance and structure in plan development and implementation. Other features with respect to monitoring continue to afford considerable flexibility as to particular actions where feasible, yet ensure swift and certain action where necessary to achieve uniformity in the handling of certain failed tasks and failed tests, safeguard the public, and better guarantee offender accountability. The proposed regulatory revisions retain several regulatory provisions as to operator responsibility to assist the judiciary's consideration of financial "unaffordability" and minimize unnecessary waivers, and to ensure operators convey timely information to monitors, the courts, and installation/service providers. Further, the proposed regulatory amendments contains language that in the event of judicial waiver of an operator's IID cost, a manufacturer designated by the monitor bears the costs associated with installation and maintenance of the IID.

While DCJS regulatory language establishes that IID qualified manufacturers may elect to do business in one, two, three, or all four regions of NYS, all of the IID manufacturers have elected to do business throughout NYS. Rural and non-rural counties exist in three regions and proposed regulatory revisions do not alter the requirement that a manufacturer must be able to do business with all other counties within the region upon the same favorable terms which guarantee service availability of installation/service providers within 50 miles of any operators' residence statewide. Notably, operator IID costs do not vary from region to region.

DCJS continues to make model forms available which assist jurisdictions in application of Leandra's Law and its amendments. These forms are of particular assistance to those rural counties with limited staff resources to undertake form development independently. These forms also have been disseminated to all courts by the Office of Court Administration.

7. Small business and local government participation:

The existing rule was developed with the input of a workgroup which included local government representation. DCJS has considered feedback on the existing rule since its implementation provided by qualified manufacturers, and local jurisdictions, including county IID monitors. Opportunities for feedback included regular communications with qualified manufacturers, involving quarterly conference calls with the manufacturers and an annual manufacturers' conference hosted by DCJS. The annual conference has been attended by both manufacturers and probation/CD monitoring agencies. Additionally, DCJS has communicated on the existing rule and proposed changes with local probation departments during probation professional association meetings and conferences. DCJS (i) discussed the proposed revisions with the NYS Probation Commission on May 19, 2015, (ii) distributed a draft copy of the proposed revision to all Probation Directors and CD Monitors and all qualified manufacturers, (iii) discussed the proposed revisions with qualified manufacturers, probation and CD monitors, and other interested State and local entities at the Annual IID Manufacturers Conference held on July 9-10, 2015, and (iv) made additional revisions based on feedback received from these stakeholders to address certain service delivery issues raised. Overall, feedback was positive as to proposed regulatory changes.

Rural Area Flexibility Analysis

1. Types and estimated number of rural areas:

Forty-three (43) of the 57 local probation departments outside of New York City are located in rural areas and will be affected by the proposed revised rule.

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

The existing rule implemented Chapter 469 of the Laws of 2009, commonly referred to as "Leandra's Law", in relation to the monitoring of the use of court-ordered ignition interlock devices (IIDs) ordered upon defendants sentenced for a DWI misdemeanor or felony. It established various reporting, recordkeeping, and other compliance requirements. The proposed regulatory amendments make minor modifications to incorporate certain statutory changes resulting from enactment of Chapter 169 of the Laws of 2013, establishes parameters with respect to reduced breath samples for certain operators consistent with revised National Highway Traffic Safety Administration (NHTSA) Breath Alcohol Ignition Interlock Device Model Specifications, as well as limited revisions to improve practice based on the experience of the field since implementation of the original rule as well as address program and individual accountability issues which have arisen. Among proposed regulatory changes are the following:

- Reflects the imposition and monitoring of IIDs installed in conjunction with interim probation supervision and in cases prior to sentencing pursuant to a court order.
- Clarifies that the period of IID restriction will commence from the earlier of the date of sentencing, or the date of installation in advance of sentencing and that a court may not authorize the operation of a motor vehicle by any individual whose license or privilege to operate a motor vehicle has been revoked.
- Establishes that monitors select the class and features of IIDs available from an available manufacturer in the region where an operator resides.
- Requires that the applicable monitor coordinate monitoring with the NYS Department of Corrections and Community Supervision (DOCCS) where the operator is under DOCCS supervision and promptly provide such agency with reports of any failed tasks or failed reports.
- Requires a court authorization for a reduction in breath sample to be consistent with NHTSA requirements and that every county plan establish a procedure whereby the probation department and any other monitor be notified no later than five (5) business days from any such court approval.
- Requires all jurisdictions to submit an IID plan reflective of all operators who may be subject to IID installation and maintenance with monitor-

ing ordered by a court in advance of sentencing or at sentencing, and to make modifications or updates, as required by DCJS. Since 2014 DCJS has required that plans have procedures in this area and to amend plans to be consistent with law and regulatory provisions.

• Clarifies recent statutory changes to better ensure that youth adjudicated as Youthful Offenders of DWI and/or other alcohol related offenses are subject to IID installation and related compliance provisions.

• Clarifies recent statutory change that affected operators provide proof of installation compliance with the IID requirement to the court and the applicable monitor where such person is under probation or conditional discharge supervision.

• Requires that manufacturers:

o Provide documentation and verification of and maintain a Standby Letter of Credit (SLOC) as specified in the manufacturer's contract with New York State;

o The SLOC was previously incorporated in DCJS 2013 contracts with manufacturers;

o Adhere to real time reporting and emergency notification program requirements where such is required in any county plan;

o Report a failed test or re-test where the BAC is .05 percent or higher and provide immediate written notice to DCJS and the Department of Health (DOH) whenever their IID device, services, and/or operations has been compromised or does not function as intended in New York State or any other state or jurisdiction or disapproved or suspended in whole or in part, revoked or otherwise cancelled by another state or jurisdiction or has received notice or communication from another state or jurisdiction that any such actions are imminent.

Additionally, as existing DOH regulations require prior approval with respect to any operational modification of IIDs, new regulatory language reiterates this requirement and for any manufacturer to provide necessary documentation to DOH and that any such manufacturer notify DCJS of any intent to do so and to provide a written summary of any requested or approved DOH modification.

3. Costs:

DCJS does not anticipate any additional costs experienced by rural areas resulting from proposed regulatory changes. The proposed regulatory changes continue to allow each county and the city of New York as a whole, with the flexibility to choose one or more persons or entities responsible for monitoring conditional discharge cases where a defendant has been required to install and maintain a functioning IID in any vehicle which they own or operate and affords the same flexibility as to cases involving individuals who agree and are ordered to install and maintain an IID in advance of sentencing. Noteworthy, DCJS has applied for and received grant funding each of the last five years from the New York State Governor's Traffic Safety Committee (GTSC) amounting to three (3) million dollars annually in NHTSA monies to offset local government costs in performing monitoring services. DCJS currently distributes monies to the localities pursuant to a formula based on statistics of 2013 DWI conviction rates and is unaware of any rural area concerns with this formula. While DCJS has recently received approval of 2.8 million dollars for Federal fiscal year 2016, this reduced amount should not result in cuts as there have been unexpended monies in prior years.

As to operator costs associated with IID devices Vehicle and Traffic Law (VTL) § 1198(5) establishes that the court, upon determining financial "unaffordability" to pay the cost of the device, may impose a payment plan with respect to the device or waive the fee. Additionally, this VTL provision requires that where the cost is waived, DCJS through regulation shall determine who bears the costs of the device or through such other agreement which may be entered into. The proposed rule revision retains existing language which states manufacturers and not local governments bear such costs. Statistics from August 15, 2010 through June 30, 2015, indicate that 21,188 operators (90.2%) were ordered to pay all IID costs associated with the installation and monthly charges; 904 operators (3.8%) paid the IID costs through payments plans; and 1,397 or 5.9% of operators had costs waived. Overall, the total percentage of waived payments has decreased statewide each year from 2011 (7.2%) to 2014 (4.8 %).

4. Minimizing adverse impact:

DCJS does not anticipate that the proposed changes, which among its provisions revises or adds regulatory language to be consistent with Chapter 169 of the Laws of 2013, and current NHTSA specifications of IIDs, will have any adverse impact on rural areas. DCJS remains steadfast in its efforts to minimize adverse impact of the existing rule and any proposed changes upon local government, especially rural counties. As noted earlier, since 2010 DCJS has annually submitted applications and been awarded grants from GTSC of NHTSA monies to offset local government costs in performing monitoring services. The existing and proposed revised rule language have both been crafted to offer guidance and structure in plan development and implementation. Other features with respect to monitoring continue to afford considerable flexibility as to particular actions where feasible, yet ensure swift and certain action where necessary to achieve uniformity in handling of certain failed tasks and failed tests, safeguard the public and better guarantee offender accountability. The proposed regulatory revisions retain several regulatory provisions as to operator responsibility to assist the judiciary's consideration of financial "unaffordability" and minimize unnecessary waivers, and to ensure operators convey timely information to monitors, the courts, and installation/service providers. Further, proposed regulatory amendments retain language that in the event of judicial waiver of an operator's IID cost, monitors will use the established procedures to ensure costs are proportionately borne among manufacturers.

While DCJS regulatory language establishes that IID manufacturers may elect to do business in one, two, three or all four regions of NYS, all four IID manufacturers with DOH certified IIDs have elected to do business throughout NYS. Through the prior establishment of regions, which include both rural and non-rural counties in three regions, proposed regulatory revisions continue to establish that a manufacturer doing business with a non-rural county must do business with rural counties within the region upon the same favorable terms which guarantee service availability of installation/service providers within 50 miles of any operators residence statewide.

DCJS continues to make model forms available which assist jurisdictions in application of Leandra's Law and its amendments. These forms are of particular assistance to those rural counties with limited staff resources to undertake form development independently. These forms also have been disseminated to all courts by the Office of Court Administration.

5. Rural area participation:

The existing rule was developed with the input from a workgroup which included rural probation representatives. DCJS has considered feedback on the existing rule since its implementation provided by qualified manufacturers, and local jurisdictions, including county IID monitors. Opportunities for feedback included regular communications with qualified manufacturers, involving quarterly conference calls with the manufacturers, and an annual manufacturers' conference hosted by DCJS. The annual conference has been attended by both manufacturers and probation/CD monitoring agencies. Additionally, DCJS has communicated on the existing rule and proposed changes with local probation departments during probation professional association meetings and conferences. DCJS discussed the proposed revisions with the NYS Probation Commission on May 19, 2015, distributed a draft copy of the proposed revision to all Probation Directors and CD Monitors and all qualified manufacturers, further discussed the proposed revisions with qualified manufacturers, probation and CD monitors, and other interested State and local entities at the Annual IID Manufacturers Conference held on July 9-10, 2015, and made additional revisions based on feedback received from these stakeholders to address certain service delivery issues raised. Overall, feedback was positive as to proposed regulatory changes.

Job Impact Statement

1. Nature of impact:

The revised rule will continue employment opportunities for those manufacturers of ignition interlock devices (IIDs) certified by the New York State (NYS) Department of Health (DOH), and approved as qualified manufacturers by the Division of Criminal Justice Services (DCJS) and for the more than 200 businesses in NYS which are designated installation/service providers of these devices. Between August 15, 2010 and June 30, 2015, over 86,000 IID orders were received by monitoring entities from courts statewide and approximately 23,500 (27.3%) IIDs were installed within 10 days of the time of sentencing, release from incarceration, or in advance of sentencing. In total, there have been 36,220 IIDs installed since "Leandra's Law" IID requirements took effect. As of October 2, 2015 there were 208 approved installation/service providers, mainly small automotive or electronic shops specializing in the installation of automobile stereo systems, remote starters, mufflers, automobile repair, as well as some automobile dealers. Four (4) manufacturers are currently approved as qualified manufacturers in NYS. It is anticipated that the demand for devices, installation, and maintenance-related services will continue, leading to increased employment opportunities in our state.

2. Categories and numbers affected:

This regulatory rule affects manufacturers of certified IID's and their respective installation/service providers in NYS and monitors of IID cases. During 2014, there were 46,526 defendants arrested for Vehicle and Traffic Law (VTL) § 1192 Felony and Misdemeanor Driving While Intoxicated (DWI) crimes. That same year there were 19,954 convictions for VTL § 1192 Felony and Misdemeanor DWIs. Statutory provisions require defendants convicted of or adjudicated a youthful offender involving certain DWI-related crimes in NYS to install IIDs in any vehicle which they own or operate as a condition of probation or conditional discharge (CD). Additionally, there are an increasing number of defendants who are willing to be subject to IID's and court ordered to do so in advance of sentencing. As a result, it is anticipated that there will be continued and

expanded employment opportunities for manufacturers and installation/service providers. DCJS' regulations in this area further enable any other ignition interlock manufacturers doing business outside of NYS whose IIDs have been certified by DOH to apply through an Open and Continuous Application to conduct business in NYS. This creates the potential to increase the number of qualified manufacturers and installation/service providers in the future.

DCJS does not foresee that counties, including New York City, or probation departments who monitor probation cases, and any probation departments and other alternative monitors who are designated to handle CD cases, will be adversely affected by the proposed revised rule. The existing rule and proposed amendments are designed to ensure consistency with state law and recommended federal National Highway Traffic Safety Administration (NHTSA) Specifications and provide flexibility, wherever feasible and/or appropriate, consistent with public safety and accountability in order to minimize any effects upon local government. DCJS has applied for and received grant funding each of the last five years from the NYS Governor's Traffic Safety Committee (GTSC) amounting to three (3) million dollars annually in NHTSA monies to offset local government costs in performing monitoring services. DCJS currently distributes monies to the localities pursuant to a formula based on statistics of 2013 DWI conviction rates. These grant funds are intended to support the IID monitoring of this offender population by the localities. While DCJS has recently received approximately 2.8 million dollars for Federal fiscal year 2016, this reduced amount should not result in cuts as there have been unexpended monies in prior years.

3. Regions of adverse impact:

The revised rule will have no adverse or disproportionate impact on jobs or employment opportunities in any region of NYS. At the present time, all four manufacturers have been approved by DCJS to operate throughout NYS.

4. Minimizing adverse impact:

DCJS does not anticipate that these regulatory amendments will have an adverse impact on jobs or employment opportunities.

DCJS' Office of Probation and Correctional Alternatives (OPCA): (i) discussed the proposed revisions with the NYS Probation Commission on May 19, 2015; (ii) distributed a draft copy of the proposed regulatory rule revision to all Probation Directors and CD Monitors and all qualified manufacturers; further discussed the proposed regulatory revisions with qualified manufacturers, probation and CD monitors, and other state and local entities at the Annual IID Manufacturers Conference held on July 9-10, 2015; (iv) and made additional revisions based on feedback received from these stakeholders to address certain issues raised. Overall, feedback was positive as to these proposed regulatory changes.

5. Self-employment opportunities:

Although manufacturers of IIDs are generally large national and/or international businesses, their respective installation/service providers are typically small, owner-operated businesses doing business in NYS. There continues to be a potential for self-employment opportunities where such businesses can meet manufacturer agreements and NYS regulatory requirements governing training, installation, maintenance of services, and other operational provisions.

The proposed revision may create additional job opportunities for installation/service providers, as additional manufacturers apply to DCJS and receive certification of their devices from DOH. Further, expanded employment opportunities exist for installation/service providers as our proposed amendments will require all operators with IID(s) to undergo service visits. Under the current regulation, service visit requirements can be accomplished by operators, with a removable IID head, mailing the IID component back to the manufacturer -a practice applicable and utilized by only one manufacturer. Actual service visits to an installation/service provider are critical in detecting attempted/actual tampering and therefore a beneficial change.

State Board of Elections

NOTICE OF ADOPTION

Disclosure of Independent Expenditures

I.D. No. SBE-10-16-00003-A
Filing No. 531
Filing Date: 2016-06-07
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 section 6200.10 of Title 9 NYCRR.

Statutory authority: Election Law, section 14-107(7)

Subject: Disclosure of Independent Expenditures.

Purpose: To conform 9 NYCRR 6200.10 to reflect amendments to Election Law 14-107 made by chapter 56 of the Laws of 2015.

Text or summary was published in the March 9, 2016 issue of the Register, I.D. No. SBE-10-16-00003-P.

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

Text of rule and any required statements and analyses may be obtained from: Brian L. Quail, Esq., State Board of Elections, 40 North Pearl Street Suite 5, Albany, New York 12207, (518) 474-2063, email: brian.quail@elections.ny.gov

Assessment of Public Comment

The State Board of Elections received only one public comment on its proposed amendment to 9 NYCRR 6200.10. It was received on or about April 25, 2016, from Common Cause, New York.

The comments were generally favorable in nature relative to the amendments, and, in particular, the language clarifying expenditures as including those made by a Person and conveyed to five hundred or more members of a general public audience. The comments also supported, the addition, in the definition of independent expenditures, of a third category and time frame of covered communications with the language "within sixty days before a general or special election for the office sought by the candidate or thirty days before a primary election, includes or references a clearly identified candidate".

The comments, however, expressed disappointment "on the missed opportunity of creating the requirement of reporting whether or not an IE was made in support of or against a candidate." In assessing this comment, the Board analyzed the reporting information captured in the current Independent Expenditure reporting regimen and determined that it does presently capture the disclosure of "the election to which the independent expenditure pertains and the name of the clearly identified candidate … referenced" and that such information is publicly disclosed. Additionally, the candidates supported or opposed by the Independent Expenditure committee are stated on the committee's registration forms, which are available to the public as well. Accordingly, an amendment to the proposed rule to capture this information is not necessary.

Department of Environmental Conservation

NOTICE OF ADOPTION

Management of Black Sea Bass

I.D. No. ENV-50-15-00002-A
Filing No. 525
Filing Date: 2016-06-03
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 40 of Title 6 NYCRR.

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

Subject: Management of black sea bass.

Purpose: Redefine the term trip limit to allow two fishers aboard a single vessel to possess and land the trip limit for black sea bass.

Text or summary was published in the December 16, 2015 issue of the Register, I.D. No. ENV-50-15-00002-P.

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

Text of rule and any required statements and analyses may be obtained from: Karen Graulich, DEC Marine Resources, 205 N. Belle Mead Rd. - Suite 1, East Setauket, NY 11733, (631) 444-5636, email: karen.graulich@dec.ny.gov

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.

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

We received five comments through email. Two comments were in support of the proposed changes to the regulations, citing safety as well as the economic and environmental benefits that would result from the change.

Two other commenters misunderstood the proposed changes. One expressed concern about changes to the black sea bass size limit and a year-round commercial season, neither of which are part of the proposed regulatory changes. This commenter also submitted a second email requesting information comparing recreational and commercial black sea bass management. The other commenter suggested a reduction in the recreational black sea bass size limit from 14 to 12 inches. Again, the proposed changes have nothing to do with changing the size limit or the recreational black sea bass fishery.

The fifth commenter did not include any comments or text in the email other than the subject line "Comments for Part 40, Section 13-0303 and 13-0340-f - Management of Black Sea Bass".

PROPOSED RULE MAKING HEARING(S) SCHEDULED

Low Emission Vehicle (LEV) III and Zero Emission Vehicle (ZEV) Emission Standards

I.D. No. ENV-25-16-00007-P

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

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

Statutory authority: Environmental Conservation Law, sections 1-0101, 1-0303, 3-0301, 19-0103, 19-0105, 19-0107, 19-0301, 19-0303, 19-0305, 19-1101, 19-1103, 19-1105, 71-2103 and 71-2105; Federal Clean Air Act, section 177

Subject: Low emission vehicle (LEV) III and zero emission vehicle (ZEV) emission standards.

Purpose: To incorporate revisions to California's LEV III and ZEV standards.

Public hearing(s) will be held at: 1:00 p.m., Aug. 8, 2016 at Department of Environmental Conservation, 625 Broadway, Public Assembly Rm. 129A/B, Albany, NY.

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

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

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

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

218-1.2(d)	California Code of Regulations, Title 13, Section 1962 (2-13-10)	** ***
218-1.2(e)	California Code of Regulations, Title 13, Section 1962 (2-13-10)	** ***
218-1.2(f)	Clean Air Act 42 U.S.C. Section 7543 (1988) as amended by Pub. L. 101-549 (1990)	**
	Clean Air Act 42 U.S.C. Section 7507 (1988) as amended by Pub. L. 101-549 (1990)	**
218-1.2(g)	California Health and Safety Code, Section 39003 (1975)	** †
218-1.2(j)	California Code of Regulations, Title 13, Section 1900 [(12-31-12)] *(10-8-15)*	** ***
218-1.2(l)	California Code of Regulations, Title 13, Section 1962 (2-13-10)	** ***
218-1.2(m)	California Vehicle Code, Section 165 (2013)	** †
218-1.2(n)	California Code of Regulations, Title 13, Section 1900 [(12-31-12)] *(10-8-15)*	** ***
218-1.2(q)	California Code of Regulations, Title 13, Section 1962.1 [(7-10-14)] *(1-1-16)*	** ***
218-1.2(w)	California Code of Regulations, Title 13, Section 1900 [(12-31-12)] *(10-8-15)*	** ***
218-1.2(y)	California Code of Regulations, Title 13, Section 1900 [(12-31-12)] *(10-8-15)*	** ***
218-1.2(z)	California Code of Regulations, Title 13, Section 1900 [(12-31-12)] *(10-8-15)*	** ***
218-1.2(ab)	California Code of Regulations, Title 13, Section 1900 [(12-31-12)] *(10-8-15)*	** ***
218-1.2(ac)	California Code of Regulations, Title 13, Section 1900 [(12-31-12)] *(10-8-15)*	** ***
218-1.2(ad)	California Code of Regulations, Title 13, Section 1905 (7-3-96)	** ***
218-1.2(af)	California Code of Regulations, Title 13, Section 1900 [(12-31-12)] *(10-8-15)*	** ***
218-1.2(aj)	California Code of Regulations, Title 13, Section 1962 (2-13-10)	** ***
218-1.2(ak)	California Code of Regulations, Title 13, Section 1960.5 (10-16-02)	** ***
218-1.2(ap)	California Code of Regulations, Title 13, Section 1900 [(12-31-12)] *(10-8-15)*	** ***
218-1.2(aq)	California Code of Regulations, Title 13, Section 1900 [(12-31-12)] *(10-8-15)*	** ***
218-1.2(at)	40 CFR Section 86.1827-01 (2-26-07)	*
218-1.2(az)	California Code of Regulations, Title 13, Section 2112 [(8-7-12)] *(12-5-14)*	** ***
218-1.2(bc)	California Code of Regulations, Title 13, Section 1962 (2-13-10)	** ***
218-1.2(bd)	California Code of Regulations, Title 13, Section 1900 [(12-31-12)] *(10-8-15)*	** ***
218-1.2(be)	California Code of Regulations, Title 13, Section 2035 (11-9-07)	** ***
218-1.2(bf)	California Code of Regulations, Title 13, Section 2035 (11-9-07)	** ***
218-1.2(bg)	California Code of Regulations, Title 13, Section 2035 (11-9-07)	** ***
218-1.2(bh)	California Code of Regulations, Title 13, Section 2035 (11-9-07)	** ***
218-1.2(bi)	California Code of Regulations, Title 13, Section 1900 [(12-31-12)] *(10-8-15)*	** ***
	California Code of Regulations, Title 13, Section 1956.8 (10-7-06)	** ***
	California Code of Regulations, Title 13, Section 1956.9 (3-6-96)	** ***
	California Code of Regulations, Title 13, Section 1960.1 (12-31-12)	** ***
	California Code of Regulations, Title 13, Section 1960.1.5 (9-30-91)	** ***
	California Code of Regulations, Title 13, Section 1960.5 (10-16-02)	** ***
	California Code of Regulations, Title 13, Section 1961 (12-31-12)	** ***
	California Code of Regulations, Title 13, Section 1961.2 [(12-31-12)] *(10-8-15)*	** ***
	California Code of Regulations, Title 13, Section 1962 (2-13-10)	** ***
218-2.1(a)	California Code of Regulations, Title 13, Section 1962.1 [(7-10-14)] *(1-1-16)*	** ***
	California Code of Regulations, Title 13, Section 1964 (2-23-90)	** ***
	California Code of Regulations, Title 13, Section 1965 [(8-7-12)] *(10-8-15)*	** ***
	California Code of Regulations, Title 13, Section 1968.1 (11-27-99)	** ***
	California Code of Regulations, Title 13, Section 1968.2 [(8-7-12)] *(7-31-13)*	** ***

	California Code of Regulations, Title 13, Section 1976 [(12-31-12)] *(10-8-15)*	** ***
	California Code of Regulations, Title 13, Section 1978 [(8-7-12)] *(10-8-15)*	** ***
	California Code of Regulations, Title 13, Section 2047 (5-31-88)	** ***
	California Code of Regulations, Title 13, Section 2065 (12-4-03)	** ***
	California Code of Regulations, Title 13, Section 2235 (8-8-12)	** ***
	Clean Air Act 42 U.S.C. Section 7521 (1988) as amended by Pub. L. 101-549 (1990)	**
218-2.1(b)(5)	Clean Air Act 42 U.S.C. Section 7401 'et seq'. (1988) as amended by Pub. L. 101-549 (1990)	**
218-2.1(b)(8)	California Health and Safety Code, Section 43656 (1975)	***
218-2.1(d)	Clean Air Act 42 U.S.C. Section 7507 (1988) as amended by Pub. L. 101-549 (1990)	**
218-2.4	California Health and Safety Code, Section 43014 (1976)	** †
	California Code of Regulations, Title 13, Section 1960.1(g)(2) (12-31-12)	** ***
218-3.1	California Code of Regulations, Title 13, Section 1961(b)(1) (12-31-12)	** ***
	California Code of Regulations, Title 13, Section 1961.2 [(12-31-12)] *(10-8-15)*	** ***
218-3.1(a)	California Code of Regulations, Title 13, Section 1960.1(g)(1) (12-31-12)	** ***
	California Code of Regulations, Title 13, Section 1961.2 [(12-31-12)] *(10-8-15)*	** ***
	California Code of Regulations, Title 13, Section 1960.1(g)(2) (12-31-12)	** ***
218-3.1(b)	California Code of Regulations, Title 13, Section 1961(b) (12-31-12)	** ***
	California Code of Regulations, Title 13, Section 1961.2 [(12-31-12)] (10-8-15)	** ***
	California Code of Regulations, Title 13, Section 1962 (2-13-10)	** ***
218-4.1	California Code of Regulations, Title 13, Section 1962.1 [(7-10-14)] *(1-1-16)*	** ***
	California Code of Regulations, Title 13, Section 1962.2 [(7-10-14)] *(1-1-16)*	** ***
	California Code of Regulations, Title 13, Section 2061 (10-23-96)	** ***
218-5.1(a)	California Code of Regulations, Title 13, Section 2062 (8-7-12)	** ***
	California Code of Regulations, Title 13, Section 2065 (12-4-03)	** ***
	California Code of Regulations, Title 13, Section 2065 (12-4-03)	** ***
218-5.2(a)	California Code of Regulations, Title 13, Section 2109 (12-30-83)	** ***
	California Code of Regulations, Title 13, Section 2110 (11-27-99)	** ***
218-5.2(b)(1)	California Code of Regulations, Title 13, Section 2106 (11-27-99)	** ***
218-5.3(b)	California Code of Regulations, Title 13, Section 2101 (11-27-99)	** ***
218-6.2	Clean Air Act 42 U.S.C. Section 7401 et seq. (1988) as amended by Pub. L. 101-549 (1990)	**
218-7.2(c)(1)	California Code of Regulations, Title 13, Section 2222 (10-1-09)	** ***
218-7.2(c)(2)	California Code of Regulations, Title 13, Section 2222 (10-1-09)	** ***
218-7.3(a)(1)	California Code of Regulations, Title 13, Section 2221 [(11-30-83)] *(12-30-83)*	** ***
	California Code of Regulations, Title 13, Section 2224 (8-16-90)	** ***
218-7.3(a)(2)	California Code of Regulations, Title 13, Section 2224(a) (8-16-90)	** ***
218-7.4(b)(3)(i)	California Code of Regulations, Title 13, Section 2222 (10-1-09)	** ***
218-7.4(b)(3)(ii)	California Code of Regulations, Title 13, Section 2222 (10-1-09)	** ***
218-7.5(b)	California Code of Regulations, Title 13, Section 2222 (10-1-09)	** ***
218-8.1(a)	California Code of Regulations, Title 13, Section 1961.1 (8-7-12)	** ***
218-8.1(b)	California Code of Regulations, Title 13, Section 1961.1 (8-7-12)	** ***
218-8.2	California Code of Regulations, Title 13, Section 1961.1 (8-7-12)	** ***
	California Code of Regulations, Title 13, Section 1961.3 (12-31-12)	** ***
218-8.3(a)	California Code of Regulations, Title 13, Section 1961.1 (8-7-12)	** ***
	California Code of Regulations, Title 13, Section 1961.3 (12-31-12)	** ***
218-8.3(b)	California Code of Regulations, Title 13, Section 1961.1 (8-7-12)	** ***
	California Code of Regulations, Title 13, Section 1961.3 (12-31-12)	** ***
218-8.3(c)	California Code of Regulations, Title 13, Section 1961.1 (8-7-12)	** ***
	California Code of Regulations, Title 13, Section 1961.3 (12-31-12)	** ***
218-8.3(d)	California Code of Regulations, Title 13, Section 1961.1 (8-7-12)	** ***
	California Code of Regulations, Title 13, Section 1961.3 (12-31-12)	** ***
218-8.4(a)	California Code of Regulations, Title 13, Section 1961.1 (8-7-12)	** ***
218-8.4(b)	California Code of Regulations, Title 13, Section 1961.1 (8-7-12)	** ***
218-8.5(c)	California Code of Regulations, Title 13, Section 1961.1 (8-7-12)	** ***
	California Code of Regulations, Title 13, Section 1961.3 (12-31-12)	** ***
	California Code of Regulations, Title 13, Section 2035 (11-9-07)	** ***
	California Code of Regulations, Title 13, Section 2037 [(8-7-12)] *(12-5-14)*	** ***
218-9.1	California Code of Regulations, Title 13, Section 2038 (8-7-12)	** ***
	California Code of Regulations, Title 13, Section 2039 (12-26-90)	** ***
	California Code of Regulations, Title 13, Section 2040 (12-26-90)	** ***
	California Code of Regulations, Title 13, Section 2041 (12-26-90)	** ***
	California Code of Regulations, Title 13, Section 2046 (2-16-79)	** ***
	California Code of Regulations, Title 13, Section 2141 (12-8-10)	** ***
	California Code of Regulations, Title 13, Section 2142 (2-23-90)	** ***

	California Code of Regulations, Title 13, Section 2143 (11-27-99)	** ***
218-9.2	California Code of Regulations, Title 13, Section 2144 (11-27-99)	** ***
	California Code of Regulations, Title 13, Section 2145 (8-7-12)	** ***
	California Code of Regulations, Title 13, Section 2146 (11-27-99)	** ***
	California Code of Regulations, Title 13, Section 2147 [(8-7-12)] *(12-5-14)*	** ***
	California Code of Regulations, Title 13, Section 2148 (11-27-99)	** ***
	California Code of Regulations, Title 13, Section 2149 (2-23-90)	** ***
	California Code of Regulations, Title 13, Section 2109 (12-30-83)	** ***
	California Code of Regulations, Title 13, Section 2110 (11-27-99)	** ***
	California Code of Regulations, Title 13, Section 2111 (12-8-10)	** ***
	California Code of Regulations, Title 13, Section 2112 [(8-7-12)] *(12-5-14)*	** ***
	California Code of Regulations, Title 13, Section 2113 (1-26-95)	** ***
	California Code of Regulations, Title 13, Section 2114 (11-27-99)	** ***
	California Code of Regulations, Title 13, Section 2115 (1-26-95)	** ***
	California Code of Regulations, Title 13, Section 2116 (1-26-95)	** ***
	California Code of Regulations, Title 13, Section 2117 (1-26-95)	** ***
	California Code of Regulations, Title 13, Section 2118 (1-26-95)	** ***
	California Code of Regulations, Title 13, Section 2119 (11-27-99)	** ***
	California Code of Regulations, Title 13, Section 2120 (1-26-95)	** ***
	California Code of Regulations, Title 13, Section 2121 (1-26-95)	** ***
	California Code of Regulations, Title 13, Section 2122 (12-8-10)	** ***
	California Code of Regulations, Title 13, Section 2123 (1-26-95)	** ***
218-10.1	California Code of Regulations, Title 13, Section 2124 (1-26-95)	** ***
	California Code of Regulations, Title 13, Section 2125 (1-26-95)	** ***
	California Code of Regulations, Title 13, Section 2126 (1-26-95)	** ***
	California Code of Regulations, Title 13, Section 2127 (1-26-95)	** ***
	California Code of Regulations, Title 13, Section 2128 (1-26-95)	** ***
	California Code of Regulations, Title 13, Section 2129 (1-26-95)	** ***
	California Code of Regulations, Title 13, Section 2130 (11-27-99)	** ***
	California Code of Regulations, Title 13, Section 2131 (1-26-95)	** ***
	California Code of Regulations, Title 13, Section 2132 (1-26-95)	** ***
	California Code of Regulations, Title 13, Section 2133 (1-26-95)	** ***
	California Code of Regulations, Title 13, Section 2134 (1-26-95)	** ***
	California Code of Regulations, Title 13, Section 2135 (1-26-95)	** ***
	California Code of Regulations, Title 13, Section 2136 (12-8-10)	** ***
	California Code of Regulations, Title 13, Section 2137 (12-28-00)	** ***
	California Code of Regulations, Title 13, Section 2138 (11-27-99)	** ***
	California Code of Regulations, Title 13, Section 2139 [(8-7-12)] *(12-5-14)*	** ***
	California Code of Regulations, Title 13, Section 2140 [(8-7-12)] *(12-5-14)*	** ***
	California Code of Regulations, Title 13, Section 2141 (12-8-10)	** ***
	California Code of Regulations, Title 13, Section 2142 (2-23-90)	** ***
	California Code of Regulations, Title 13, Section 2143 (11-27-99)	** ***
218-10.2	California Code of Regulations, Title 13, Section 2144 (11-27-99)	** ***
	California Code of Regulations, Title 13, Section 2145 (8-7-12)	** ***
	California Code of Regulations, Title 13, Section 2146 (11-27-99)	** ***
	California Code of Regulations, Title 13, Section 2147 [(8-7-12)] *(12-5-14)*	** ***
	California Code of Regulations, Title 13, Section 2148 (11-27-99)	** ***
	California Code of Regulations, Title 13, Section 2149 (2-23-90)	** ***
218-11.1	California Code of Regulations, Title 13, Section 1965 [(8-7-12)] *(10-8-15)*	** ***
218-11.2	California Code of Regulations, Title 13, Section 1965 [(8-7-12)] *(10-8-15)*	** ***

Subpart 218-1 remains the same.

Section 218-2.1(a) is revised to read:

(a) It is unlawful for any person to sell or register, offer for sale or lease, import, deliver, purchase, rent, lease, acquire or receive a 1993, 1994, 1996 or subsequent model-year, new or used motor vehicle, new motor vehicle engine or motor vehicle with a new motor vehicle engine in the State of New York which is not certified to California emission standards and meets all other applicable requirements of California Code of Regulations, title 13, sections 1956.8, 1956.9, 1960.1, 1960.1.5, 1960.5, 1961, *1961.2,* 1962, 1962.1, 1964, 1965, 1968.1, 1968.2, 1976, 1978, 2030, 2031, 2047, 2065, 2235, and article 1.5 (see Table 1, section 200.9 of this Title) and is otherwise not in compliance with the Environmental Conservation Law and these departmental regulations, unless the vehicle is sold to another dealer, sold for the purpose of being wrecked or dismantled, sold exclusively for off-highway use or sold for registration out of state. Vehicles that have been certified to standards promulgated pursuant to the authority contained in 42 USC 7521 (see Table 1, section 200.9 of this Title) and that are in the possession of a rental agency in New York that are next rented with a final destination outside of New York will not be deemed as being in violation of this prohibition.

Sections 218-2.1(b) through 218-12.1 remain the same.

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

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

Public comment will be received until: August 15, 2016.

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

Summary of Regulatory Impact Statement

The Department is proposing to amend Part 218 and the associated provisions in Section 200.9 to incorporate California's latest low emission

vehicle (LEV) III and zero emission vehicle (ZEV) standards into New York's existing LEV program.

Part 218 is being revised to update New York's incorporation of California's amendments to the LEV III program initially adopted by New York in 2012. The proposed LEV III revisions to Part 218 apply to all 2017 through 2025 model year vehicles up to 14,000 pounds GVWR and attempt to align LEV III with Tier 3 criteria pollutant standards adopted by the United States Environmental Protection Agency (EPA). EPA's Tier 3 standards generally mirror the structure and requirements of LEV III and were developed in collaboration with the California Air Resources Board (CARB). The proposed LEV III amendments include revisions that provide vehicle manufacturers with additional compliance flexibility while maintaining the stringency of LEV III and modify the California environmental performance label scores to include LEV III emission standards.

CARB initially adopted LEV III standards in 2012, but they were not incorporated in the environmental performance label smog scores. CARB's adopted revisions incorporate LEV III emission standards into the scores and revise the scores annually. Greenhouse gas (GHG) scores will be updated to reflect the current vehicle fleet. Federal labels will continue to be available as a compliance option.

Part 218 is also being revised to incorporate California's amendments to the ZEV program. New York last updated its ZEV requirements in 2015. The proposed ZEV revisions to Part 218 apply to 2018 through 2025 model year passenger cars, light-duty trucks, and medium-duty vehicles. The proposed ZEV amendments include, as explained below, a revised intermediate volume manufacturer (IVM) definition, IVM transition lead time, ZEV percentage requirements, IVM pooling provision, IVM credit deficit provision, and a revision to the fast refueling definition.

Revised IVM definition: As part of the 2012 ACC rulemaking, CARB redefined an IVM as any manufacturer with California sales between 4,501 and 20,000 new light and medium-duty vehicles. Sales are based on the average number of vehicles sold over the previous consecutive 3 year period. CARB determined that the vehicle sales requirement is insufficient to accurately assess a manufacturer's ability to produce advanced technology vehicles such as ZEV and transitional zero emission vehicles (TZEV). TZEVs are advanced technology vehicles such as plug-in hybrid electric vehicles (e.g., Chevrolet Volt), electric vehicles with internal combustion range extenders (e.g., BMW i3 REX), or hydrogen fueled internal combustion engine vehicles which advance the introduction of pure ZEVs. In addition to the sales requirement, therefore, CARB adopted an automotive related global revenue threshold requirement. The automotive related global revenue threshold will only be available to IVMs for the 2018 through 2020 model years. This revenue threshold will be $40 billion based on the average for the previous 3 consecutive fiscal years. If an IVM's 3 year average global automotive revenue is no greater than $40 billion, then the 3 model year production average corresponding to that fiscal year will not apply to the 5 consecutive 3 year averages discussed below. Starting with model year 2021, any manufacturer that exceeds the 20,000 vehicle threshold will be required to meet large volume manufacturer (LVM) ZEV requirements regardless of automotive related global revenue.

IVM to LVM transition lead time: The current ZEV regulation provides IVMs as little as 3 years lead time before they are required to meet LVM requirements. CARB extended the lead time provision for IVMs to 5 consecutive 3 year averages beginning when an IVM exceeds the 20,000 vehicle average. This provision will provide IVMs with 5 to 7 years lead time to produce ZEV and TZEV. The first 3 year period covers the 2015 to 2017 model years reported in 2018. For example, if an IVM averages greater than 20,000 vehicles per year for 5 consecutive 3 years averages starting in 2015-2017 it will transition to LVM ZEV requirements starting with model year 2022. The lead time clock will not run when automotive related global revenue is less than, or equal to, $40 billion.

ZEV percentage requirements: The current ZEV percentage requirements were established in the 2012 ACC rulemaking. CARB determined the ZEV percentage requirements will remain unchanged and will be reexamined as part of the mid-term review in 2016. IVM will be allowed to meet their full ZEV requirement with TZEV.

IVM pooling provision: CARB, with input from Section 177 states, revised the optional Section 177 state compliance path pooling provisions. The optional Section 177 state compliance path is a voluntary compliance mechanism intended to alleviate the compliance burden for manufacturers while ensuring that ZEVs are actually placed in service in Section 177 states prior to model year 2018. Currently, to be eligible for pooling, a manufacturer must voluntarily place a certain percentage of advanced technology vehicles in Section 177 states in model years 2016 and 2017 beyond the base path percentages for those model years. In return, the manufacturer will be granted the ability to pool vehicle sales among states and between regions, and be subject to decreased ZEV and TZEV percentages in later years. Generally, LVMs were the only manufacturers in a position to avail themselves of the optional compliance path. Most IVMs currently do not have ZEV or TZEV models and cannot meet the early placement requirement which enables pooling. Therefore, IVMs will be permitted to place additional advanced technology vehicles 2 years prior to commencing LVM status in order to be eligible for pooling. IVMs will also be allowed to pool TZEV credits, but their overall TZEV obligation will not be reduced by pooling.

IVM ZEV credit deficit: The current ZEV regulation allows manufacturers 1 year to offset a ZEV credit deficit. CARB extended the credit recovery period up to 3 years, consistent with other mobile source programs, but restricted to IVMs only. IVMs with a credit deficit will be required to present a plan to CARB detailing how they intend to achieve compliance. IVMs will be allowed to offset a ZEV deficit with TZEV credits consistent with existing regulations.

Fast refueling: Lastly, CARB revised the fast refueling definition for battery electric vehicles (BEV), also known as battery swapping. Battery swapping for a BEV removes the depleted battery pack with a fully charged replacement battery pack to meet the refueling time and driving range requirements for each ZEV Type. CARB previously revised the fast refueling definition to require a demonstration of battery swapping for in use vehicles within a calendar year. Manufacturers contend this is problematic for vehicles placed in the latter part of a model year. CARB adopted clarifying language that requires the demonstration to occur within 12 months of the vehicle being placed in service.

The Department is proposing to adopt LEV III and ZEV standards and credit mechanisms that are identical to those adopted by CARB as required by Section 177 of the Clean Air Act.

The proposed LEV III amendments are expected to have minimal, if any, economic impact on manufacturers. The proposed amendments are intended to minimize manufacturers' compliance costs by aligning the LEV III standards with EPA's Tier 3 standards to the greatest extent possible. Any potential savings are related to certification test procedures. CARB estimated that 2 of 30 manufacturers would save an average of $76,000 in hybrid electric vehicle certification testing costs over the life of the regulation. New York is preempted from certifying vehicles, so these costs and savings do not apply. CARB also estimated average annual BEV and plug-in hybrid electric vehicle (PHEV) 3 year projection reporting would be $1,500. New York currently does not require manufacturers to submit a similar report.

The proposed ZEV amendment's economic impact on IVMs is dependent upon their compliance strategy. Compliance scenarios range from, but are not limited to, compliance with only ZEVs to only TZEVs. Compliance with fuel cell vehicles (FCVs), or BEVs earning maximum credit will require fewer vehicles to be delivered to demonstrate compliance. FCVs cost more per vehicle than TZEVs, but the overall number of vehicles required to demonstrate compliance would be less. An IVM demonstrating compliance using solely TZEVs would be required to deliver more vehicles due to the lower ZEV credit per vehicle. The most likely compliance scenario will include a mix of ZEVs and TZEVs to increase compliance flexibility and reduce costs.

The proposed LEV III and ZEV amendments are not expected to have any impact on consumers. There should be no costs associated with the proposed LEV III and ZEV amendments that will be passed along to consumers in the form of higher prices.

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

There are no costs associated with the proposed amendments that will be passed along to dealerships. The proposed amendments are not expected to cause a noticeable change in New York employment, business creation, elimination, or expansion. The proposed amendments are not expected to result in any additional costs for local and state agencies. No additional paperwork or staffing requirements are expected.

The proposed amendments do not impose a local government mandate. No additional paperwork or staffing requirements are expected. This is not a mandate on local governments pursuant to Executive Order 17. Local governments have no additional compliance obligations as compared to other subject entities.

The proposed amendments should not result in any new significant paperwork requirements for New York vehicle suppliers, dealers or

government. New York relies on materials submitted to California for certification, while manufacturers must submit to New York annual sales and corporate fleet average reports to show compliance with the fleet average requirements. The Department believes that most manufacturers currently include provisions in their ordering mechanisms to ensure that only California certified vehicles are shipped to New York dealers. This has been the case since New York first adopted the California LEV program in 1992. Implementation of the proposed LEV III and ZEV regulations is not expected to be burdensome in terms of paperwork to owners/operators of vehicles.

There are no relevant state or federal rules or other legal requirements that would duplicate, overlap or conflict with this proposed regulation. The option of maintaining the current LEV program without adopting CARB's LEV III and ZEV amendments was reviewed and rejected due to the Section 177 identicality requirement. New York State must maintain compliance with recent improvements in the California standards in order to achieve the emission reductions necessary for the attainment and maintenance of the ozone and carbon monoxide standards, as well as reductions of GHG emissions.

Federal Tier 3 standards will be available as an alternative for the 2017 through 2025 model years and the proposed LEV III standards attempt to align with them where possible. There are no equivalent federal ZEV standards available as an alternative.

The proposed LEV III regulatory amendment will take effect for 2017 through 2025 model year vehicles up to 14,000 pounds GVWR. The proposed ZEV regulatory amendment will take effect for 2018 through 2025 model year passenger cars, light-duty trucks, and medium-duty vehicles.

Regulatory Flexibility Analysis

1. Effect of rule:

The New York State Department of Environmental Conservation (Department) is proposing to amend 6 NYCRR Section 200.9 and 6 NYCRR Part 218 to incorporate California's latest greenhouse gas low emission vehicle (LEV) III and zero emission vehicle (ZEV) standards, which were adopted by California in October 2015, into New York's existing LEV program. These changes apply to vehicles purchased by consumers, businesses, and government agencies in New York and may impact businesses involved in manufacturing, selling, leasing, or purchasing passenger cars or trucks.

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

The proposed changes are an addition to the current LEV standards. The new motor vehicle emissions program has been in effect in New York State since model year 1993 for passenger cars and light-duty trucks, with the exception of the 1995 model year, and the Department is unaware of any significant adverse impact to small businesses or local governments as a result of previous revisions. Section 177 of the federal Clean Air Act requires New York to maintain standards identical to California's in order to maintain the LEV program.

2. Compliance requirements:

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

3. Professional services:

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

4. Compliance costs:

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

5. Minimizing adverse impact:

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

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

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

6. Small business and local government participation:

The Department plans on holding public hearings at various locations throughout New York State after the amendments are proposed. Small businesses and local governments will have the opportunity to attend these public hearings. Additionally, there will be a public comment period in which interested parties can submit written comments.

7. Economic and technological feasibility:

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

The proposed LEV III amendments attempt to minimize adverse impacts on automobile manufacturers by harmonizing standards with Tier 3 standards for the 2017 through 2025 model years which were recently adopted by the United States Environmental Protection Agency. The proposed LEV III revisions to Part 218 will apply to all 2017 through 2025 model year passenger cars, light-duty trucks, and medium-duty vehicles up to 14,000 pounds gross vehicle weight rating (GVWR).

The proposed ZEV amendments include a revised intermediate volume manufacturer (IVM) definition, transition lead time, ZEV percentage requirements, Section 177 State optional pooling provision, credit deficit provision, and a revision to the fast refueling definition. The proposed ZEV revisions to Part 218 will apply to all 2018 through 2025 model year passenger cars, light-duty trucks, and medium-duty vehicles.

8. Cure period:

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

Rural Area Flexibility Analysis

1. Types and estimated numbers of rural areas:

The New York State Department of Environmental Conservation (Department) is proposing to amend 6 NYCRR Section 200.9 and 6 NYCRR Part 218 to incorporate California's latest greenhouse gas low emission vehicle (LEV) III and zero emission vehicle (ZEV) standards, which were adopted by California in October 2015, into New York's existing LEV program.

There are no requirements in the proposed regulation which apply only to rural areas. These changes apply to manufacturers' requirements for the manufacture and sale of vehicles sold in New York. The changes to these regulations may impact businesses involved in manufacturing, selling, purchasing, or repairing passenger cars or trucks.

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

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

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

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

3. Costs:

The proposed amendments to the LEV III and ZEV standards are not expected to have any impact on consumers. The proposed LEV III amendments are intended to provide manufacturers with compliance flexibility by harmonizing the LEV III standards with recently adopted federal Tier 3 emission standards for the 2017 through 2025 model years. The standards will apply to passenger cars, light-duty trucks, and medium-duty vehicles up to 14,000 pounds gross vehicle weight rating (GVWR).

The proposed ZEV amendments include a revised intermediate volume manufacturer (IVM) definition, transition lead time, ZEV percentage requirements, Section 177 State optional pooling provision, credit deficit provision, and a revision to the fast refueling definition. The proposed ZEV revisions to Part 218 will apply to all 2018 through 2025 model year passenger cars, light-duty trucks, and medium-duty vehicles.

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

4. Minimizing adverse impact:

The proposed changes will not adversely impact rural areas.

5. Rural area participation:

The Department plans on holding public hearings at various locations throughout New York State once the regulation is proposed. Some of these locations will be convenient for persons from rural areas to participate. Additionally, there will be a public comment period in which interested parties can submit written comments.

Job Impact Statement

1. Nature of impact:

The New York State Department of Environmental Conservation (Department) is proposing to amend 6 NYCRR Section 200.9 and 6 NYCRR Part 218 to incorporate California's latest low emission vehicle (LEV) III and zero emission vehicle (ZEV) standards, which were adopted by California in October 2015, into New York's existing LEV program.

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

2. Categories and numbers affected:

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

3. Regions of adverse impact:

None.

4. Minimizing adverse impact:

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

The proposed LEV III amendments attempt to minimize adverse impacts on automobile manufacturers by harmonizing standards with Tier 3 standards for the 2017 through 2025 model years which were recently adopted by the United States Environmental Protection Agency. The proposed LEV III revisions to Part 218 will apply to all 2017 through 2025 model year passenger cars, light-duty trucks, and medium-duty vehicles up to 14,000 pounds gross vehicle weight rating (GVWR).

The proposed ZEV amendments include a revised intermediate volume manufacturer (IVM) definition, transition lead time, ZEV percentage requirements, Section 177 State optional pooling provision, credit deficit provision, and a revision to the fast refueling definition. The proposed ZEV revisions to Part 218 will apply to all 2018 through 2025 model year passenger cars, light-duty trucks, and medium-duty vehicles.

5. Self-employment opportunities:

None that the Department is aware of at this time.

Department of Financial Services

EMERGENCY RULE MAKING

Assessment of Entities Regulated by the Banking Division of the Department of Financial Services

I.D. No. DFS-25-16-00030-E
Filing No. 533
Filing Date: 2016-06-07
Effective Date: 2016-06-09

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

Action taken: Addition of Part 501 to Title 3 NYCRR.

Statutory authority: Banking Law, section 17; Financial Services Law, section 206

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

Specific reasons underlying the finding of necessity: Pursuant to the Financial Services Law ("FSL"), the New York State Banking Department ("Banking Department") and the New York State Insurance Department were consolidated, effective October 3, 2011, into the Department of Financial Services ("Department").

Prior to the consolidation, assessments of institutions subject to the Banking Law ("BL") were governed by Section 17 of the BL; effective on October 3, 2011, assessments are governed by Section 206 of the Financial Services Law, provided that Section 17 continues to apply to assessments for the fiscal year which commenced April 1, 2011.

Both Section 17 of the Banking Law and Section 206 of the Financial Services Law provide that all expenses (compensation, lease costs and other overhead) of the Department in connection with the regulation and supervision (including examination) of any person or entity licensed, registered, incorporated or otherwise formed pursuant to the BL are to be charged to, and paid by, the regulated institutions subject to the supervision of in the Banking Division of the Department (the "Banking Division"). Under both statutes, the Superintendent is authorized to assess regulated institutions in the Banking Division in such proportions as the Superintendent shall deem just and reasonable.

Litigation commenced in June, 2011 challenged the methodology used by the Banking Department to assess mortgage bankers. On May 3, 2012, the Appellate Division invalidated this methodology for the 2010 State Fiscal Year, finding that the former Banking Department had not followed the requirements of the State Administrative Procedures Act.

In response to this ruling, the Department has determined to adopt this new rule setting forth the assessment methodology applicable to all entities regulated by the Banking Division for fiscal years beginning with fiscal year 2011.

The emergency adoption of this regulation is necessary to implement the requirements of Section 17 of the Banking Law and Section 206 of the Financial Services Law in light of the determination of the Court and the ongoing need to fund the operations of the Department without interruption.

Subject: Assessment of entities regulated by the Banking Division of the Department of Financial Services.

Purpose: New Part 501 implements Section 17 of the Banking Law and Section 206 of the Financial Services Law and sets forth the basis for allocating all costs and expenses attributable to the operation of the Banking Division of the Department of Financial Services among and between any person or entity licensed, registered, incorporated or otherwise formed pursuant the Banking Law.

Text of emergency rule: *Part 501*

BANKING DIVISION ASSESSMENTS

§ 501.1 Background.

Pursuant to the Financial Services Law ("FSL"), the New York State Banking Department ("Banking Department") and the New York State Insurance Department were consolidated on October 3, 2011 into the Department of Financial Services ("Department").

Prior to the consolidation, assessments of institutions subject to the Banking Law ("BL") were governed by Section 17 of the BL. Effective October 3, 2011, assessments are governed by Section 206 of the FSL, provided that Section 17 of the BL continues to apply to assessments for the fiscal year commencing on April 1, 2011.

Both Section 17 of the BL and Section 206 of the FSL provide that all expenses (including, but not limited to, compensation, lease costs and other overhead costs) of the Department attributable to institutions subject to the BL are to be charged to, and paid by, such regulated institutions. These institutions ("Regulated Entities") are now regulated by the Banking Division of the Department. Under both Section 17 of the BL and Section 206 of the FSL, the Superintendent is authorized to assess Regulated Entities for its total costs in such proportions as the Superintendent shall deem just and reasonable.

The Banking Department has historically funded itself entirely from industry assessments of Regulated Entities. These assessments have covered all direct and indirect expenses of the Banking Department, which are activities that relate to the conduct of banking business and the regulatory concerns of the Department, including all salary expenses, fringe benefits, rental and other office expenses and all miscellaneous and overhead costs such as human resource operations, legal and technology costs.

This regulation sets forth the basis for allocating such expenses among Regulated Entities and the process for making such assessments.

§ 501.2 Definitions.

The following definitions apply in this Part:

(a) "Total Operating Cost" means for the fiscal year beginning on April 1, 2011, the total direct and indirect costs of operating the Banking Division. For fiscal years beginning on April 1, 2012, "Total Operating Cost" means (1) the sum of the total operating expenses of the Department that are solely attributable to regulated persons under the Banking Law and (2) the proportion deemed just and reasonable by the Superintendent of the other operating expenses of the Department which under Section 206(a) of the Financial Services Law may be assessed against persons regulated under the Banking Law and other persons regulated by the Department.

(b) "Industry Group" means the grouping to which a business entity regulated by the Banking Division is assigned. There are three Industry Groups in the Banking Division:

(1) The Depository Institutions Group, which consists of all banking organizations and foreign banking corporations licensed by the Department to maintain a branch, agency or representative office in this state;

(2) The Mortgage-Related Entities Group, which consists of all mortgage brokers, mortgage bankers and mortgage loan servicers; and

(3) The Licensed Financial Services Providers Group, which consists of all check cashers, budget planners, licensed lenders, sales finance companies, premium finance companies and money transmitters.

(c) "Industry Group Operating Cost" means the amount of the Total Operating Cost to be assessed to a particular Industry Group. The amount is derived from the percentage of the total expenses for salaries and fringe benefits for the examining, specialist and related personnel represented by such costs for the particular Industry Group.

(d) "Industry Group Supervisory Component" means the total of the Supervisory Components for all institutions in that Industry Group.

(e) "Supervisory Component" for an individual institution means the product of the average number of hours attributed to supervisory oversight by examiners and specialists of all institutions of a similar size and type, as determined by the Superintendent, in the applicable Industry Group, or the applicable sub-group, and the average hourly cost of the examiners and specialists assigned to the applicable Industry Group or sub-group.

(f) "Industry Group Regulatory Component" means the Industry Group Operating Cost for that group minus the Industry Group Supervisory Component and certain miscellaneous fees such as application fees.

(g) "Industry Financial Basis" means the measurement tool used to distribute the Industry Group Regulatory Component among individual institutions in an Industry Group.

The Industry Financial Basis used for each Industry Group is as follows:

(1) For the Depository Institutions Group: total assets of all institutions in the group;

(2) For the Mortgage-Related Entities Group: total gross revenues from New York State operations, including servicing and secondary market revenues, for all institutions in the group; and

(3) For the Licensed Financial Services Providers Group: (i.) for budget planners, the number of New York customers; (ii.) for licensed lenders, the dollar amount of New York assets; (iii.) for check cashers, the dollar amount of checks cashed in New York; (iv.) for money transmitters, the dollar value of all New York transactions; (v.) for premium finance companies, the dollar value of loans originated in New York; and (vi.) for sales finance companies, the dollar value of credit extensions in New York.

(h) "Financial Basis" for an individual institution is that institution's portion of the measurement tool used in Section 501.2(g) to develop the Industry Financial Basis. (For example, in the case of the Depository Institutions Group, an entity's Financial Basis would be its total assets.)

(i) "Industry Group Regulatory Rate" means the result of dividing the Industry Group Regulatory Component by the Industry Financial Basis.

(j) "Regulatory Component" for an individual institution is the product of the Financial Basis for the individual institution multiplied by the Industry Group Regulatory Rate for that institution.

§ 501.3 Billing and Assessment Process.

The New York State fiscal year begins April 1 and ends March 31 of the following calendar year. Each institution subject to assessment pursuant to this Part is billed five times for a fiscal year: four quarterly assessments (each approximately 25% of the anticipated annual amount) based on the Banking Division's estimated annual budget at the time of the billing, and a final assessment (or "true-up"), based on the Banking Division's actual expenses for the fiscal year. Any institution that is a Regulated Entity for any part of a quarter shall be assessed for the full quarter.

§ 501.4 Computation of Assessment.

The total annual assessment for an institution shall be the sum of its Supervisory Component and its Regulatory Component.

§ 501.5 Penalties/Enforcement Actions.

All Regulated Entities shall be subject to all applicable penalties, including late fees and interest, provided for by the BL, the FSL, the State Finance law or other applicable laws. Enforcement actions for nonpayment could include suspension, revocation, termination or other actions.

§ 501.6 Effective Date.

This Part shall be effective immediately. It shall apply to all State Fiscal Years beginning with the Fiscal Year starting on April 1, 2011.

This notice is intended to serve only as a notice of emergency adoption. This agency intends to adopt this emergency rule as a permanent rule and will publish a notice of proposed rule making in the *State Register* at some future date. The emergency rule will expire September 4, 2016.

Text of rule and any required statements and analyses may be obtained from: Hadas A. Jacobi, Esq., Department of Financial Services, One State Street, New York, NY 10004, (212) 480-5890, email: adas.jacobi@dfs.ny.gov

Regulatory Impact Statement

1. Statutory Authority

Pursuant to the Financial Services Law ("FSL"), the New York State Banking Department (the "Banking Department") and the New York State Insurance Department were consolidated, effective October 3, 2011, into the Department of Financial Services (the "Department").

Prior to the consolidation, assessments of institutions subject to the Banking Law ("BL") were governed by Section 17 of the BL; effective on October 3, 2011, assessments are governed by Section 206 of the Financial Services Law, provided that Section 17 continues to apply to assessments for the fiscal year which commenced April 1, 2011.

Both Section 17 of the BL and Section 206 of the FSL provide that all expenses (compensation, lease costs and other overhead) of the Department in connection with the regulation and supervision of any person or entity licensed, registered, incorporated or otherwise formed pursuant to the BL are to be charged to, and paid by, the regulated institutions subject to the supervision of the Banking Division of the Department (the "Banking Division"). Under both statutes, the Superintendent is authorized to assess regulated institutions in the Banking Division in such proportions as the Superintendent shall deem just and reasonable.

In response to a court ruling, In the Matter of Homestead Funding Corporation v. State of New York Banking Department et al., 944 N.Y.S. 2d 649 (2012) ("Homestead"), that held that the Department should adopt changes to its assessment methodology for mortgage bankers through a formal assessment rule pursuant to the requirements of the State Administrative Procedures Act ("SAPA"), the Department has determined to adopt this new regulation setting forth the assessment methodology applicable to all entities regulated by the Banking Division for fiscal years beginning with fiscal year 2011.

2. Legislative Objectives

The BL and the FSL make the industries regulated by the former Banking Department (and now by the Banking Division of the new Department) responsible for all the costs and expenses of their regulation by the State. The assessments have covered all direct and indirect expenses of the Banking Department, which are activities that relate to the conduct of banking business and the regulatory concerns of the Department, including all salary expenses, fringe benefits, rental and other office expenses and all miscellaneous and overhead costs such as human resource operations, legal and technology costs.

This reflects a long-standing State policy that the regulated industries are the appropriate parties to pay for their supervision in light of the financial benefits it provides to them to engage in banking and other regulated businesses in New York. The statute specifically provides that

these costs are to be allocated among such institutions in the proportions deemed just and reasonable by the Superintendent.

While this type of allocation had been the practice of the former Banking Department for many decades, Homestead found that a change to the methodology for mortgage bankers to include secondary market and servicing income should be accomplished through formal regulations subject to the SAPA process. Given the nature of the Banking Division's assessment methodology - - the calculation and payment of the assessment is ongoing throughout the year and any period of uncertainty as to the applicable rule would be extremely disruptive - - the Department has determined that it is necessary to adopt the rule on an emergency basis so as to avoid any possibility of disrupting the funding of its operations.

3. Needs and Benefits

The Banking Division regulates more than 250 state chartered banks and licensed foreign bank branches and agencies in New York with total assets of over $2 trillion. In addition, it regulates a variety of other entities engaged in delivering financial services to the residents of New York State. These entities include: licensed check cashers; licensed money transmitters; sales finance companies; licensed lenders; premium finance companies; budget planners; mortgage bankers and brokers; mortgage loan servicers; and mortgage loan originators.

Collectively, the regulated entities represent a spectrum, from some of the largest financial institutions in the country to the smallest, neighborhood-based financial services providers. Their services are vital to the economic health of New York, and their supervision is critical to ensuring that these services are provided in a fair, economical and safe manner.

This supervision requires that the Banking Division maintain a core of trained examiners, plus facilities and systems. As noted above, these costs are by statute to be paid by all regulated entities in the proportions deemed just and reasonable by the Superintendent. The new regulation is intended to formally set forth the methodology utilized by the Banking Division for allocating these costs.

4. Costs

The new regulation does not increase the total costs assessed to the regulated industries or alter the allocation of regulatory costs between the various industries regulated by the Banking Division. Indeed, the only change from the allocation methodology used by the Banking Department in the previous state fiscal years is that the regulatory costs assessed to the mortgage banking industry will be divided among the entities in that group on a basis which includes income derived from secondary market and servicing activities. The Department believes that this is a more appropriate basis for allocating the costs associated with supervising mortgage banking entities.

5. Local Government Mandates

None.

6. Paperwork

The regulation does not change the process utilized by the Banking Division to determine and collect assessments.

7. Duplication

The regulation does not duplicate, overlap or conflict with any other regulations.

8. Alternatives

The purpose of the regulation is to formally set forth the process employed by the Department to carry out the statutory mandate to assess and collect the operating costs of the Banking Division from regulated entities. In light of Homestead, the Department believes that promulgating this formal regulation is necessary in order to allow it to continue to assess all of its regulated institutions in the manner deemed most appropriate by the Superintendent. Failing to formalize the Banking Division's allocation methodology would potentially leave the assessment process open to further judicial challenges.

9. Federal Standards

Not applicable.

10. Compliance Schedule

The emergency regulations are effective immediately. Regulated institutions will be expected to comply with the regulation for the fiscal year beginning on April 1, 2011 and thereafter.

Regulatory Flexibility Analysis

1. Effect of the Rule:

The regulation does not have any impact on local governments.

The regulation simply codifies the methodology used by the Banking Division of the Department of Financial Services (the "Department") to assess all entities regulated by it, including those which are small businesses. The regulation does not increase the total costs assessed to the regulated industries or alter the allocation of regulatory costs between the various industries regulated by the Banking Division.

Indeed, the only change from the allocation methodology used by the Banking Department in the previous state fiscal years is that the regulatory costs assessed to the mortgage banking industry will be divided among the entities in that group on a basis which includes income derived from secondary market and servicing activities. The Department believes that this is a more appropriate basis for allocating the costs associated with supervising mortgage banking entities. It is expected that the effect of this change will be that larger members of the mortgage banking industry will pay an increased proportion of the total cost of regulating that industry, while the relative assessments paid by smaller industry members will be reduced.

2. Compliance Requirements:

The regulation does not change existing compliance requirements. Both Section 17 of the Banking Law and Section 206 of the Financial Services Law provide that all expenses (compensation, lease costs and other overhead) of the Department in connection with the regulation and supervision of any person or entity licensed, registered, incorporated or otherwise formed pursuant to the Banking Law are to be charged to, and paid by, the regulated institutions subject to the supervision of the Banking Division. Under both statutes, the Superintendent is authorized to assess regulated institutions in the Banking Division in such proportions as the Superintendent shall deem just and reasonable.

3. Professional Services:

None.

4. Compliance Costs:

All regulated institutions are currently subject to assessment by the Banking Division. The regulation simply formalizes the Banking Division's assessment methodology. It makes only one change from the allocation methodology used by the Banking Department in the previous state fiscal years. That change affects only one of the industry groups regulated by the Banking Division. Regulatory costs assessed to the mortgage banking industry are now divided among the entities in that group on a basis which includes income derived from secondary market and servicing activities. Even within the one industry group affected by the change, additional compliance costs, if any, are expected to be minimal.

5. Economic and Technological Feasibility:

All regulated institutions are currently subject to the Banking Division's assessment requirements. The formalization of the Banking Division's assessment methodology in a regulation will not impose any additional economic or technological burden on regulated entities which are small businesses.

6. Minimizing Adverse Impacts:

Even within the mortgage banking industry, which is the one industry group affected by the change in assessment methodology, the change will not affect the total amount of the assessment. Indeed, it is anticipated that this change may slightly reduce the proportion of mortgage banking industry assessments that is paid by entities that are small businesses.

7. Small Business and Local Government Participation:

This regulation does not impact local governments.

This regulation simply codifies the methodology which the Banking Division uses for determining the just and reasonable proportion of the Banking Division's costs to be charged to and paid by each regulated institution, including regulated institutions which are small businesses. The overall methodology was adopted in 2005 after extensive discussion with regulated entities and industry associations representing groups of regulated institutions, including those that are small businesses.

Thereafter, the Banking Department applied assessments against all entities subject to its regulation. In addition, for fiscal 2010, the Banking Department changed its overall methodology slightly with respect to assessments against the mortgage banking industry to include income derived from secondary market and servicing activities. Litigation was commenced challenging this latter change, and in a recent decision, In the Matter of Homestead Funding Corporation v. State of New York Banking Department et al., 944 N.Y.S. 2d 649 (2012), the court determined that the Department should adopt a change to its assessment methodology for mortgage bankers through a formal assessment rule promulgated pursuant to the requirements of the State Administrative Procedures Act. The challenged change in methodology had the effect of increasing the proportion of assessments against the mortgage banking industry paid by its larger members, while reducing the assessments paid by smaller participants, including those which are small businesses.

Rural Area Flexibility Analysis

Types and Estimated Numbers: There are entities regulated by the New York State Department of Financial Services (formerly the Banking Department) located in all areas of the State, including rural areas. However, this rule simply codifies the methodology currently used by the Department to assess all entities regulated by it. The regulation does not alter that methodology, and thus it does not change the cost of assessments on regulated entities, including regulated entities located in rural areas.

Compliance Requirements: The regulation would not change the current compliance requirements associated with the assessment process.

Costs: While the regulation formalizes the assessment process, it does

not change the amounts assessed to regulated entities, including those located in rural areas.

Minimizing Adverse Impacts: The regulation does not increase the total amount assessed to regulated entities by the Department. It simply codifies the methodology which the Superintendent has chosen for determining the just and reasonable proportion of the Department's costs to be charged to and paid by each regulated institution.

Rural Area Participation: This rule simply codifies the methodology which the Department currently uses for determining the just and reasonable proportion of the Department's costs to be charged to and paid by each regulated institution, including regulated institutions located in rural areas. The overall methodology was adopted in 2005 after extensive discussion with regulated entities and industry associations representing groups of regulated institutions, including those located in rural areas. It followed the loss of several major banking institutions that had paid significant portions of the former Banking Department's assessments.

Thereafter, the Department applied assessments against all entities subject to its regulation. In addition, for fiscal 2010, the Department changed this overall methodology slightly with respect to assessments against the mortgage banking industry to include income derived from secondary market income and servicing income. This latter change was challenged by a mortgage banker, and in early May, the Appellate Division determined that the latter change should have been made in conformity with the State Administrative Procedures Act. The challenged part of the methodology had the effect of increasing the proportion of assessments against the mortgage banking industry paid by its larger members, while reducing the assessments paid by smaller participants.

Job Impact Statement

The regulation is not expected to have an adverse effect on employment.

All institutions regulated by the Banking Division (the "Banking Division") of the Department of Financial Services are currently subject to assessment by the Department. The regulation simply formalizes the assessment methodology used by the Banking Division. It makes only one change from the allocation methodology used by the former Banking Department in the previous state fiscal years.

That change affects only one of the industry groups regulated by the Banking Division. It somewhat alters the way in which the Banking Division's costs of regulating mortgage banking industry are allocated among entities within that industry. In any case, the total amount assessed against regulated entities within that industry will remain the same.

Department of Health

NOTICE OF ADOPTION

Children's Camps

I.D. No. HLT-51-15-00008-A
Filing No. 519
Filing Date: 2016-06-01
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 Subpart 7-2 of Title 10 NYCRR.

Statutory authority: Public Health Law, section 225

Subject: Children's Camps.

Purpose: To include camps for children w/developmental disabilities as a type of facility with in the oversight of the Justice Center.

Substance of final rule:

The following summarizes the proposed regulations pertaining to children with disabilities attending a children's camp.

Pursuant to the proposed amendments, the following requirements, which previously pertained only to camps with 20 percent or more campers with a developmental disability, will now apply to any camp enrolling campers with a disability, beginning October 1, 2016:

- For campers who cannot independently manipulate a wheelchair or adaptive equipment, camps must provide at least 1:2 supervision;
- Staff that have direct care responsibilities of campers with disabilities must receive training relevant to the specific needs of the campers in their charge;
- Camps must obtain and implement, as appropriate, care and treatment plans for campers with disabilities that have such plans as well as obtain other available information relevant to the care and specific needs of a camper with disabilities including pre-existing medical conditions, allergies, modified diets, and activity restrictions;
- During swimming activities, camps must provide one counselor for each camper who is non-ambulatory or has a disability that may result in an increased risk for an emergency in the water;
- For campers with developmental disabilities, camps must provide one counselor for every five campers during swimming activities;
- Camps must obtain parent/guardian's written permission to allow campers with developmentally disabilities to participate in swimming activities;
- Camps must develop procedures and training for handling seizures or aspiration of water by campers with developmental disabilities that may occur during swimming activities;
- All lavatories and showers used by campers with physical disabilities must be equipped with specialized features and grab bars;
- Lavatories and showers used by campers with a disability, who are unable to moderate water temperature safely, shall have a water temperature not greater than 110 degrees Fahrenheit;
- Buildings housing non-ambulatory campers shall have ramps to facilitate access.
- Non-ambulatory campers may not have housing above ground level; and
- Exterior paths must be constructed and maintained, as appropriate for the camp population served, to provide for safe travel during inclement weather.

The amendments also define a "Camp for Children with Developmental Disabilities." Such camps would be immediately required to adhere to the following additional requirements, pursuant to the legislation that established the Justice Center, in addition to immediately complying with the provisions above:

- Reportable incident is defined to include abuse, neglect and other significant incidents specified in section 488 of Social Services Law. Camp staff must report all reportable incidents to the Justice Center Vulnerable Persons' Central Registry and the permit-issuing official;
- A definition of a personal representative was added to be consistent with section 488 of Social Services Law;
- Prior to hiring camp staff, camps must verify that candidates are not on the Justice Center's staff exclusion list or on the Office of Children and Family Services State Central Registry of Child Abuse and Maltreatment;
- All camp staff must obtain mandated reporter training and review and acknowledge an understanding of the Justice Center's code of conduct;
- Camps must ensure that immediate protections are in place following an incident to prevent further risk or harm to campers;
- Camps must notify the victim, any potential witnesses, and each camper's personnel representative (as appropriate) that the camper may be interviewed as part an abuse or neglect investigation;
- Camps must cooperate fully with reportable incident investigations and provide/disclose all necessary information and access to conduct investigations;
- Reportable incident investigations procedures are established;
- Camps must promptly obtain an appropriate medical examination of a physically injured camper with a developmental disability;
- Unless a waiver is granted, camps must convene a Facility Incident Review Committee to review the camp's responses to a reportable incident including making recommendations for improvement, reviewing incident trends, and making recommendations to reduce reportable incidents;
- Camps must implement any corrective actions identified as the result of a reportable incident investigation.

Note that, for organizational reasons, these amendments repeal section 7-2.25 in its entirety, and replace it with a new section 7-2.25. Although reorganized, some provisions have been left substantially unchanged, including certain provisions relating to camp directors and health directors.

Final rule as compared with last published rule: Nonsubstantive changes were made in section 7-2.24(b).

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

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

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

Assessment of Public Comment

A total of six written comments were received during the comment period. Written comments were received from: three local health departments (Chemung County, Livingston County, and Niagara County), the Conference of Environmental Health Directors, New York State Association of County Health Officials, and Town of Hyde Park.

The following summarizes the concerns expressed by those who commented and the Department of Health's (DOH) response to the comments:

Increased Cost for Camps:

Comments:

All six commenters included concerns that the proposed amendments would place financial hardships on camps that are not designated as a Camp for Children with Developmental Disabilities and that the hardships may result in camps closing.

DOH Response:

The amendments are necessary to protect children with disabilities attending any camp. The amendments impose additional requirements on camps enrolling campers with physical or developmental disabilities, to further protect this vulnerable population.

Comments:

Comments received expressed concern that higher staff supervision ratios for children with disabilities will result in the hiring of additional staff.

DOH Response:

The supervision and staffing requirements in these amendments apply to campers with severe disabilities and who are unable to care for themselves. In most cases, the new staffing requirements are anticipated to be implemented through existing staffing levels with minor changes to current camp policies and procedures.

Comments:

Comments were received that expressed concern that the new staff training and qualifications were unspecified and there were no guidelines for adequate training.

DOH Response:

The cost for additional staff training on the needs of campers with disabilities is expected to be minimal, as camps are currently required to provide staff training in other areas. Therefore, only staff with direct care responsibilities are required to be trained on the needs of the campers with disabilities in their charge. The amendments do not mandate hiring specially trained or certified staff or provide training guidelines because each training will be camp specific depending on the disabilities of the children who are enrolled.

Comments:

Comments were received that expressed concern about the costs associated with new structural accessibility requirements for campers with physical disabilities.

DOH Response:

Accessibility standards have been mandated by NYS Uniform Building and Construction Code since 1984 and by American's with Disabilities Act since 1986. Prior to the amendment, accessibility requirements only pertained to camps with 20 percent or more campers with a developmental disability. The regulation is amended to correctly apply accessibility requirements to all children's camps.

Comments:

Comments received expressed concerns about additional unspecified procedural requirements.

DOH Response:

Commenters stated that procedural requirements of the amendments would increase expenses for camps, but did not explain what requirements were of concern. Therefore, the Department believes no change is necessary.

Comments:

Comments received expressed concern about the cost associated with the establishment of Facility Incident Review Committees.

DOH Response:

Chapter 501 of the Laws of 2012 which established the NYS Justice Center for the Protection of People with Special Needs, requires each facility within the oversight of the Justice Center to have a Facility Incident Review Committee. Accordingly, this requirement applies to Camps for Children with Developmental Disabilities. In certain circumstances, however, a camp operator may seek an exemption from the requirement pursuant to 10 NYCRR Section 7-2.25(b)(8)(iv)(b).

Comment:

One commenter suggested that if a camper requires 1 to 1 supervision that the child's parents should provide the caregiver.

DOH Response:

The amendments do not prohibit camps from making individual arrangements with parents for a caregiver. However, the Department declines to make this a requirement.

Comment:

Another commenter included a suggestion that a provision should be included for low cost or no interest loan to camp operators to assist with compliance.

DOH Response:

Low interest loans to camp operators is outside of the scope of these regulations.

Comment:

One commenter suggested that a provision should be included that gives camps advanced notice to allow for adequate training preparation.

DOH Response:

The requirements for Children's Camps for Children with Developmental Disabilities are consistent with past emergency regulations and guidance that have been implemented since June of 2013. Requirements for other camps are not effective until October 1, 2016, which gives camps time to prepare.

Increased Costs for Local Health Departments:

Comments:

Comments received expressed concern that the amendments would result in additional expenses and place a burden on local health departments (LHDs). One commenter specifically listed the costs associated with incident investigation and other training required in the Justice Center regulations for Camps for Children with Developmental Disabilities. There were also comments which mentioned the inability for LHDs to increase children's camp permit fee to cover costs associated with the amendments.

DOH Response:

Additional expenses associated with LHDs complying with these amendments is expected to be minimal. LHDs will assess camps for compliance with the amendments during currently required routine on-site inspections of a camp. The additional requirements are not expected to add a significant amount of time to an inspection. Furthermore, amendments for incident investigation and additional staff training at Camps for Children with Developmental Disabilities are required by the Justice Center legislation and cannot be amended by the Department of Health. The Department of Health will be providing training to LHDs about the amendments at no charge. Children's camp permit fees are set in Public Health Law § 1406 and therefore cannot be increased through regulation.

Expanding the applicability of the regulations:

Comments:

Commenters questioned the need for amendments that go beyond the Justice Center regulations.

DOH Response:

The Department evaluated the regulations and determined the amendments are necessary to protect children with disabilities attending all camps, not just camps designated as a Camp for Children with Developmental Disabilities.

Higher Education Services Corporation

EMERGENCY RULE MAKING

New York State Science, Technology, Engineering and Mathematics Incentive Program

I.D. No. ESC-25-16-00005-E

Filing No. 527

Filing Date: 2016-06-06

Effective Date: 2016-06-06

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

Action taken: Addition of section 2201.13 to Title 8 NYCRR.

Statutory authority: Education Law, sections 653, 655 and 669-e

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

Specific reasons underlying the finding of necessity: This statement is being submitted pursuant to subdivision (6) of section 202 of the State Administrative Procedure Act and in support of the New York State Higher Education Services Corporation's ("HESC") Emergency Rule Making seeking to add a new section 2201.13 to Title 8 of the Official Compilation of Codes, Rules and Regulations of the State of New York.

This regulation implements a statutory student financial aid program providing for awards to be made to students beginning with the fall 2014 term. Emergency adoption is necessary to avoid an adverse impact on the processing of awards to eligible scholarship applicants. The statute provides for tuition benefits to college-going students who, beginning August 2014, pursue an undergraduate program of study in science, technology, engineering, or mathematics at a New York State public

institution of higher education. High school students entering college in August must inform the institution of their intent to enroll no later than May 1. Therefore, it is critical that the terms of the program as provided in the regulation be available immediately in order for HESC to process scholarship applications so that students can make informed choices. To accomplish this mandate, the statute further provides for HESC to promulgate emergency regulations to implement the program. For these reasons, compliance with section 202(1) of the State Administrative Procedure Act would be contrary to the public interest.

Subject: New York State Science, Technology, Engineering and Mathematics Incentive Program.

Purpose: To implement the New York State Science, Technology, Engineering and Mathematics Incentive Program.

Text of emergency rule: New section 2201.13 is added to Title 8 of the New York Code, Rules and Regulations to read as follows:

Section 2201.13 New York State Science, Technology, Engineering and Mathematics Incentive Program.

(a) Definitions. The following definitions apply to this section:

(1) "Award" shall mean a New York State Science, Technology, Engineering and Mathematics Incentive Program award pursuant to section 669-e of the New York State education law.

(2) "Employment" shall mean continuous employment for at least thirty-five hours per week in the science, technology, engineering or mathematics field, as published on the corporation's web site, for a public or private entity located in New York State for five years after the completion of the undergraduate degree program and, if applicable, a higher degree program or professional licensure degree program and a grace period as authorized by section 669-e(4) of the education law.

(3) "Grace period" shall mean a six month period following a recipient's date of graduation from a public institution of higher education and, if applicable, a higher degree program or professional licensure degree program as authorized by section 669-e(4) of the education law.

(4) "High school class" shall mean the total number of students eligible to graduate from a high school in the applicable school year.

(5) "Interruption in undergraduate study or employment" shall mean a temporary period of leave for a definitive length of time due to circumstances as determined by the corporation, including, but not limited to, maternity/paternity leave, death of a family member, or military duty.

(6) "Program" shall mean the New York State Science, Technology, Engineering and Mathematics Incentive Program codified in section 669-e of the education law.

(7) "Public institution of higher education" shall mean the state university of New York, as defined in subdivision 3 of section 352 of the education law, a community college as defined in subdivision 2 of section 6301 of the education law, or the city university of New York as defined in subdivision 2 of section 6202 of the education law.

(8) "School year" shall mean the period commencing on the first day of July in each year and ending on the thirtieth day of June next following.

(9) "Science, technology, engineering and mathematics" programs shall mean those undergraduate degree programs designated by the corporation on an annual basis and published on the corporation's web site.

(10) "Successful completion of a term" shall mean that at the end of any academic term, the recipient: (i) met the eligibility requirements for the award pursuant to sections 661 and 669-e of the education law; (ii) completed at least 12 credit hours or its equivalent in a course of study leading to an approved undergraduate degree in the field of science, technology, engineering, or mathematics; and (iii) possessed a cumulative grade point average (GPA) of 2.5 as of the date of the certification by the institution. Notwithstanding, the GPA requirement is preliminarily waived for the first academic term for programs whose terms are organized in semesters, and for the first two academic terms for programs whose terms are organized on a trimester basis. In the event the recipient's cumulative GPA is less than a 2.5 at the end of his or her first academic year, the recipient will not be eligible for an award for the second academic term for programs whose terms are organized in semesters or for the third academic term for programs whose terms are organized on a trimester basis. In such case, the award received for the first academic term for programs whose terms are organized in semesters and for the first two academic terms for programs whose terms are organized on a trimester basis must be returned to the corporation and the institution may reconcile the student's account, making allowances for any other federal, state, or institutional aid the student is eligible to receive for such terms unless: (A) the recipient's GPA in his or her first academic term for programs whose terms are organized in semesters was a 2.5 or above, or (B) the recipient's GPA in his or her first two academic terms for programs whose terms are organized on a trimester basis was a 2.5 or above, in which case the institution may retain the award received and only reconcile the student's account for the second academic term for programs whose terms are organized in semesters or for the third academic term for programs whose terms are organized on a trimester basis. The corporation shall issue a guidance document, which will be published on its web site.

(b) Eligibility. An applicant for an award under this program pursuant to section 669-e of the education law must also satisfy the general eligibility requirements provided in section 661 of the education law.

(c) Class rank or placement. As a condition of an applicant's eligibility, the applicant's high school shall provide the corporation:

(1) official documentation from the high school either (i) showing the applicant's class rank together with the total number of students in such applicant's high school class or (ii) certifying that the applicant is in the top 10 percent of such applicant's high school class; and

(2) the applicant's most current high school transcript; and

(3) an explanation of how the size of the high school class, as defined in subdivision (a), was determined and the total number of students in such class using such methodology. If the high school does not rank the students in such high school class, the high school shall also provide the corporation with an explanation of the method used to calculate the top 10 percent of students in the high school class, and the number of students in the top 10 percent, as calculated. Each methodology must comply with the terms of this program as well as be rational and reasonable. In the event the corporation determines that the methodology used by the high school fails to comply with the term of the program, or is irrational or unreasonable, the applicant will be denied the award for failure to satisfy the eligibility requirements; and

(4) any additional information the corporation deems necessary to determine that the applicant has graduated within the top 10 percent of his or her high school class.

(d) Administration.

(1) Applicants for an award shall:

(i) apply for program eligibility on forms and in a manner prescribed by the corporation. The corporation may require applicants to provide additional documentation evidencing eligibility; and

(ii) postmark or electronically transmit applications for program eligibility to the corporation on or before the date prescribed by the corporation for the applicable academic year. Notwithstanding any other rule or regulation to the contrary, such applications shall be received by the corporation no later than August 15th of the applicant's year of graduation from high school.

(2) Recipients of an award shall:

(i) execute a service contract prescribed by the corporation;

(ii) apply for payment annually on forms specified by the corporation;

(iii) confirm annually their enrollment in an approved undergraduate program in science, technology, engineering, or mathematics;

(iv) receive such awards for not more than four academic years of full-time undergraduate study or five academic years if the program of study normally requires five years, as defined by the commissioner pursuant to article thirteen of the education law, excluding any allowable interruption of study; and

(v) respond to the corporation's requests for a letter from their employer attesting to the employee's job title, the employee's number of hours per work week, and any other information necessary for the corporation to determine compliance with the program's employment requirements.

(e) Amounts.

(1) The amount of the award shall be determined in accordance with section 669-e of the education law.

(2) Disbursements shall be made each term to institutions, on behalf of recipients, within a reasonable time upon successful completion of the term subject to the verification and certification by the institution of the recipient's GPA and other eligibility requirements.

(3) Awards shall be reduced by the value of other educational grants and scholarships limited to tuition, as authorized by section 669-e of the education law.

(f) Failure to comply.

(1) All award monies received shall be converted to a 10-year student loan plus interest for recipients who fail to meet the statutory, regulatory, contractual, administrative or other requirement of this program.

(2) The interest rate for the life of the loan shall be fixed and equal to that published annually by the U.S. Department of Education for undergraduate unsubsidized Stafford loans at the time the recipient signed the service contract with the corporation.

(3) Interest shall begin to accrue on the day each award payment is disbursed to the institution.

(4) Interest shall be capitalized on the day the award recipient violates any term of the service contract or the date the corporation deems the recipient was no longer able or willing to perform the terms of the service contract. Interest on this amount shall be calculated using simple interest.

(5) Where a recipient has demonstrated extreme hardship as a result of a total and permanent disability, labor market conditions, or other such circumstances, the corporation may, in its discretion, postpone converting the award to a student loan, temporarily suspend repayment of the amount owed, prorate the amount owed commensurate with service completed, discharge the amount owed, or such other appropriate action. Where a recipient has demonstrated in-school status, the corporation shall temporarily suspend repayment of the amount owed for the period of in-school status.

This notice is intended to serve only as a notice of emergency adoption. This agency intends to adopt this emergency rule as a permanent rule and will publish a notice of proposed rule making in the *State Register* at some future date. The emergency rule will expire September 3, 2016.

Text of rule and any required statements and analyses may be obtained from: Cheryl B. Fisher, NYS Higher Education Services Corporation, 99 Washington Avenue, Room 1325, Albany, New York 12255, (518) 474-5592, email: regcomments@hesc.ny.gov

Regulatory Impact Statement

Statutory authority:

The New York State Higher Education Services Corporation's ("HESC") statutory authority to promulgate regulations and administer the New York State Science, Technology, Engineering and Mathematics Incentive Program ("Program") is codified within Article 14 of the Education Law. In particular, Part G of Chapter 56 of the Laws of 2014 created the Program by adding a new section 669-e to the Education Law. Subdivision 5 of section 669-e of the Education Law authorizes HESC to promulgate emergency regulations for the purpose of administering this Program.

Pursuant to Education Law § 652(2), HESC was established for the purpose of improving the post-secondary educational opportunities of eligible students through the centralized administration of New York State financial aid programs and coordinating the State's administrative effort in student financial aid programs with those of other levels of government.

In addition, Education Law § 653(9) empowers HESC's Board of Trustees to perform such other acts as may be necessary or appropriate to carry out the objects and purposes of the corporation including the promulgation of rules and regulations.

HESC's President is authorized, under Education Law § 655(4), to propose rules and regulations, subject to approval by the Board of Trustees, governing, among other things, the application for and the granting and administration of student aid and loan programs, the repayment of loans or the guarantee of loans made by HESC; and administrative functions in support of state student aid programs. Also, consistent with Education Law § 655(9), HESC's President is authorized to receive assistance from any Division, Department or Agency of the State in order to properly carry out his or her powers, duties and functions. Finally, Education Law § 655(12) provides HESC's President with the authority to perform such other acts as may be necessary or appropriate to carry out effectively the general objects and purposes of HESC.

Legislative objectives:

The Education Law was amended to add a new section 669-e to create the "New York State Science, Technology, Engineering and Mathematics Incentive Program" (Program). This Program is aimed at increasing the number of individuals working in the fields of science, technology, engineering and mathematics (STEM) in New York State to meet the increasingly critical need for those skills in the State's economy.

Needs and benefits:

According to a February 2012 report by President Obama's Council of Advisors on Science and Technology, there is a need to add to the American workforce over the next decade approximately one million more science, technology, engineering and mathematics (STEM) professionals than the United States will produce at current rates in order for the country to stay competitive. To meet this goal, the United States will need to increase the number of students who receive undergraduate STEM degrees by about 34% annually over current rates. The report also stated that fewer than 40% of students who enter college intending to major in a STEM field complete a STEM degree. Further, a recent Wall Street Journal article reported that New York state suffers from a shortage of graduates in STEM fields to fill the influx of high-tech jobs that occurred five years ago. At a plant in Malta, about half the jobs were filled by people brought in from outside New York and 11 percent were foreigners. According to the article, Bayer Corp. is due to release a report showing that half of the recruiters from large U.S. companies surveyed couldn't find enough job candidates with four-year STEM degrees in a timely manner; some said that had led to more recruitment of foreigners. About two-thirds of the recruiters surveyed said that their companies were creating more STEM positions than other types of jobs. There are also many jobs requiring a two-year degree. In an effort to deal with this shortage, companies are using more internships, grants and scholarships.

The Program is aimed at increasing the number New York graduates with two and four year degrees in STEM who will be working in STEM fields across New York state. Eligible recipients may receive annual awards for not more than four academic years of undergraduate full-time study (or five years if enrolled in a five-year program) while matriculated in an approved program leading to a career in STEM.

The maximum amount of the award is equal to the annual tuition charged to New York State resident students attending an undergraduate program at the State University of New York (SUNY), including state operated institutions, or City University of New York (CUNY). The current maximum annual award for the 2014-15 academic year is $6,170. Payments will be made directly to schools on behalf of students upon certification of their successful completion of the academic term.

Students receiving a New York State Science, Technology, Engineering and Mathematics Incentive Program award must sign a service agreement and agree to work in New York state for five years in a STEM field and reside in the State during those five years. Recipients who do not fulfill their service obligation will have the value of their awards converted to a student loan and be responsible for interest.

Costs:

a. It is anticipated that there will be no costs to the agency for the implementation of, or continuing compliance with this rule.

b. The maximum cost of the program to the State is $8 million in the first year based upon budget estimates.

c. It is anticipated that there will be no costs to Local Governments for the implementation of, or continuing compliance with, this rule.

d. The source of the cost data in (b) above is derived from the New York State Division of the Budget.

Local government mandates:

No program, service, duty or responsibility will be imposed by this rule upon any county, city, town, village, school district, fire district or other special district.

Paperwork:

This proposal will require applicants to file an electronic application for each year they wish to receive an award up to and including five years of eligibility. Recipients are required to sign a contract for services in exchange for an award. Recipients must submit annual status reports until a final disposition is reached in accordance with the written contract.

Duplication:

No relevant rules or other relevant requirements duplicating, overlapping, or conflicting with this rule were identified.

Alternatives:

The proposed regulation is the result of HESC's outreach efforts to financial aid professionals with regard to this Program. Several alternatives were considered in the drafting of this regulation. For example, several alternatives were considered in defining terms/phrases used in the regulation as well as the academic progress requirement. Given the statutory language as set forth in section 669-e of the Education Law, a "no action" alternative was not an option.

Federal standards:

This proposal does not exceed any minimum standards of the Federal Government, and efforts were made to align it with similar federal subject areas as evidenced by the adoption of the federal unsubsidized Stafford loan rate in the event that the award is converted into a student loan.

Compliance schedule:

The agency will be able to comply with the regulation immediately upon its adoption.

Regulatory Flexibility Analysis

This statement is being submitted pursuant to subdivision (3) of section 202-b of the State Administrative Procedure Act and in support of the New York State Higher Education Services Corporation's ("HESC") Emergency Rule Making, seeking to add a new section 2201.13 to Title 8 of the Official Compilation of Codes, Rules and Regulations of the State of New York.

It is apparent from the nature and purpose of this rule that it will not impose an adverse economic impact on small businesses or local governments. HESC finds that this rule will not impose any compliance requirement or adverse economic impact on small businesses or local governments. Rather, it has potential positive impacts inasmuch as it implements a statutory student financial aid program that provides tuition benefits to college students who pursue their undergraduate studies in the fields of science, technology, engineering, or mathematics at a New York State public institution of higher education. Students will be rewarded for remaining and working in New York, which will provide an economic benefit to the State's small businesses and local governments as well.

Rural Area Flexibility Analysis

This statement is being submitted pursuant to subdivision (4) of section 202-bb of the State Administrative Procedure Act and in support of the New York State Higher Education Services Corporation's Emergency

Rule Making, seeking to add a new section 2201.13 to Title 8 of the Official Compilation of Codes, Rules and Regulations of the State of New York.

It is apparent from the nature and purpose of this rule that it will not impose an adverse impact on rural areas. Rather, it has potential positive impacts inasmuch as it implements a statutory student financial aid program that provides tuition benefits to college students who pursue their undergraduate studies in the fields of science, technology, engineering, or mathematics at a New York State public institution of higher education. Students will be rewarded for remaining and working in New York, which will benefit rural areas around the State as well.

This agency finds that this rule will not impose any reporting, record keeping or other compliance requirements on public or private entities in rural areas.

Job Impact Statement

This statement is being submitted pursuant to subdivision (2) of section 201-a of the State Administrative Procedure Act and in support of the New York State Higher Education Services Corporation's Emergency Rule Making seeking to add a new section 2201.13 to Title 8 of the Official Compilation of Codes, Rules and Regulations of the State of New York.

It is apparent from the nature and purpose of this rule that it will not have any negative impact on jobs or employment opportunities. Rather, it has potential positive impacts inasmuch as it implements a statutory student financial aid program that provides tuition benefits to college students who pursue their undergraduate studies in the fields of science, technology, engineering, or mathematics at New York State public institution of higher education. Students will be rewarded for remaining and working in New York, which will benefit the State as well.

Department of Motor Vehicles

NOTICE OF ADOPTION

Enforcement of Off Premise Sales Regulation

I.D. No. MTV-15-16-00009-A
Filing No. 517
Filing Date: 2016-06-01
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 section 78.3 of Title 15 NYCRR.

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

Subject: Enforcement of off premise sales regulation.

Purpose: To provide for enforcement of off premise sales regulation.

Text of final rule: Subdivision (d) of section 78.3 is amended to read as follows:

(d) Place of business in New York. An applicant for a dealer registration must have and continuously maintain a place of business in this state. Only a New York registered retail dealer may engage in the buying and selling of vehicles at retail as a business in New York. *An application for registration shall be denied, or, if one has been approved, such registration shall be subject to suspension, revocation and/or a civil penalty as provided for in section 78.32 of this Part, where the Commissioner has reasonable grounds to believe that such application has been or will be used for the purpose of circumventing the restrictions set forth in section 78.8 of this Part regarding sales away from premises.*

Final rule as compared with last published rule: Nonsubstantive changes were made in section 78.3(d).

Text of 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

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

Revised statements regarding the Regulatory Impact Statement, Rural Area Flexibility Analysis, Job Impact Statement and Regulatory Flexibility Analysis for Small Businesses and Local Governments are not submitted with this proposed rule because no substantial changes were made to the proposed regulation that affect such statements.

Initial Review of Rule

As a rule that requires a RFA, RAFA or JIS, this rule will be initially reviewed in the calendar year 2021, which is the 4th or 5th year after the year in which this rule is being adopted. This review period, justification for proposing same, and invitation for public comment thereon, were contained in a RFA, RAFA or JIS:

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

Assessment of Public Comment

The agency received no public comment.

PROPOSED RULE MAKING
NO HEARING(S) SCHEDULED

Points for Railroad Crossing Violations

I.D. No. MTV-25-16-00003-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 131.3 of Title 15 NYCRR.

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

Subject: Points for railroad crossing violations.

Purpose: Increases the points for railroad crossing violations from 3 to 5 points.

Text of proposed rule: Paragraphs (4) and (6) of subdivision (b) of section 131.3 are amended to read as follows:

(4) The following violations shall be assigned a point value of five points:

(i) reckless driving;

(ii) any violation involving overtaking or passing a stopped school bus; [and]

(iii) any violation involving the use of a mobile telephone or portable electronic device[.] *; and*

(iv) any violation involving a railroad crossing.

(6) The following violations shall be assigned a point value of three points:

(i) any violation involving speed except where a different point value has been assigned;

(ii) any violation constituting a failure to yield the right-of-way;

(iii) any violation involving [a railroad crossing,] disobeying a traffic control signal or a stop or yield sign;

(iv) any violation involving improper passing, changing lanes unsafely, driving to left of center of roadway, or driving in the wrong direction;

(v) leaving the scene of a property damage incident or injury to an animal without reporting; *and*

(vi) any violation involving use of safety belts or seats by a child under the age of 16.

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

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

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

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

Regulatory Impact Statement

1. Statutory authority: 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 of Motor Vehicles (DMV). Section 510(3)(i) of the VTL provides that the Commissioner may suspend or revoke a driver's license for habitual or persistent violation of any provisions of such law and/or violations of any local rule or regulation in relation to traffic. Pursuant to this section of law, Part 131 establishes a point system that serves as the basis for the assessment of persistent violator status. The Department determines which violations are assigned points and how many such points are assigned.

2. Legislative objectives: Section 510(3)(i) of the Vehicle and Traffic Law provides that the Department of Motor Vehicles may take license action against a motorist who persistently violates laws related to traffic. Part 131 establishes the point system, whereby specific point values are assigned for most traffic offenses. A person who accumulates 11 or more points within an 18 month period is deemed a persistent violator and is subject to a license suspension or revocation.

Part 131.3(a) provides that "all traffic violations shall be assigned a value of two points, except as otherwise prescribed in subdivision (b) of this section." Determining and setting appropriate point values for different types of violations, relative to their severity and the risk they pose, aligns with the legislative objective of sanctioning drivers who commit persistent violations of the law. Since railroad-crossing violations have serious public safety consequences, it is appropriate that such violations carry a point value commensurate with those potential consequences. Therefore, it is appropriate to raise the points for railroad-crossing violations from three to five points.

3. Needs and benefits: This proposed rule is both necessary and beneficial for the enhancement of highway safety in New York State. In 2015, 636 tickets were issue for railroad-crossing related violations. In addition, in 2015, eight people died in New York State as the result of such violations. About every 90 minutes a vehicle and train collide in the U.S. One is 30 times more likely to die in a crash with a train than with another motor vehicle. A derailment can result and if a freight train is involved, there is a possibility that hazardous material being transported by the train could become involved and endanger an entire community.

Increasing points for railroad-crossing related violation reinforces the message that DMV considers this a serious offense. Moreover, the increased points become part of the persistent violator equation. A person who accumulates 11 points within an 18 month period is deemed a persistent violator and is subject to the suspension or revocation of his or her license. This tool enables DMV to take appropriate license sanctions against a driver who may pose a highway safety risk to others.

Assigning appropriate point values for railroad-crossing violations is an essential component of DMV's commitment to highway safety and its effort to deter such violations on our highways.

4. Costs:

a. Cost to regulated parties and customers: There is no cost to the citizens of the State.

b: Costs to the agency and local governments: There is no cost to local governments or to DMV.

5. Local government mandates: There are no local government mandates.

6. Paperwork: There are no new paperwork requirements associated with this proposed rule.

7. Duplication: This proposal does not duplicate, overlap or conflict with any relevant rule or legal requirement of the State and federal governments.

8. Alternatives: After reviewing the continuing and serious highway safety risks associated with railroad-crossing violations, DMV determined that it was prudent to increase points for such violation.

9. Federal standards: The proposal does not exceed any minimum standards of the federal government for the same or similar subject areas.

10. Compliance schedule: The proposed rule would apply to railroad crossing violations committed on or after the day the rule is adopted.

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

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

This proposal increases the points assigned to railroad crossing violations from three to five. Due to its narrow focus, this rule will not impose an adverse economic impact or reporting, record keeping, or other compliance requirements on small businesses in rural or urban areas or on employment opportunities. No local government activities are involved.

Office for People with Developmental Disabilities

NOTICE OF ADOPTION

Site Based Prevocational Services Certification and Physical Plant Requirements

I.D. No. PDD-15-16-00002-A

Filing No. 532

Filing Date: 2016-06-07

Effective Date: 2016-09-01

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

Action taken: Amendment of section 635-7.5 of Title 14 NYCRR.

Statutory authority: Mental Hygiene Law, sections 13.07, 13.09(b), 16.00 and 16.05

Subject: Site Based Prevocational Services Certification and Physical Plant Requirements.

Purpose: To apply existing physical plant and certification requirements in OPWDD regulations to site based prevocational services.

Text or summary was published in the April 13, 2016 issue of the Register, I.D. No. PDD-15-16-00002-P.

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

Text of rule and any required statements and analyses may be obtained from: OPWDD Counsel's Office, Office for People With Developmental Disabilities (OPWDD), 44 Holland Avenue, 3rd floor, Albany, NY 12229, (518) 474-7700, email: RAU.Unit@opwdd.ny.gov

Additional matter required by statute: Pursuant to the requirements of the State Environmental Quality Review Act, OPWDD, as lead agency, has determined that the action described herein will have no effect on the environment, and an E.I.S. is not needed.

Assessment of Public Comment

The agency received no public comment.

Public Service Commission

PROPOSED RULE MAKING
NO HEARING(S) SCHEDULED

Consideration of the Avangrid Implementation Plan and Audit Recommendations

I.D. No. PSC-25-16-00008-P

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

Proposed Action: The Commission is considering the Audit Implementation Plan submitted by the Avangrid companies (NYSEG and RG&E) and whether to order the implementation of audit recommendations.

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

Subject: Consideration of the Avangrid Implementation Plan and audit recommendations.

Purpose: To consider Avangrid's Implementation Plan.

Substance of proposed rule: The Public Service Commission is considering an Operations Audit Implementation Plan filed by the Avangrid companies (New York State Electric & Gas Corporation and Rochester Gas and Electric Corporation) on May 20, 2016 in Case 13-M-0314. New York State Electric & Gas Corporation and Rochester Gas and Electric Corporation's Implementation Plan addresses the 42 actionable recommendations contained in the Final Audit Report prepared by Overland Consulting Group as a result of its operations audit to review the accuracy and effectiveness of certain reliability and customer service systems at all gas and combination gas and electric utilities in New York State. The Commission is considering whether to adopt, reject or modify, in whole or in part, the relief proposed and may resolve related matters.

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

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

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

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

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

(13-M-0314SP4)

PROPOSED RULE MAKING
NO HEARING(S) SCHEDULED

To Delay Companies' Third-party Assessments of Customer Personally Identifiable Information Until 2018

I.D. No. PSC-25-16-00009-P

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

Proposed Action: The Commission is considering a petition filed on April 15, 2016 by Con Edison and O&R to extend the deadline under which the Companies are required to perform third-party assessments of their protection of Customer Personally Identifiable Information.

Statutory authority: Public Service Law, sections 65 and 66

Subject: To delay Companies' third-party assessments of customer personally identifiable information until 2018.

Purpose: To extend the time period between the Companies' third-party assessments of customer personally identifiable information.

Substance of proposed rule: The Public Service Commission is considering an April 15, 2016 petition by Consolidated Edison Company of New York, Inc. ("Con Edison") and Orange and Rockland Utilities, Inc. ("O&R") to change the timeframe under which the Commission requires Con Edison and O&R to perform third-party assessments of their handling and protection of Customer Personally Identifiable Information (PII). Each utility is required to have a third-party assess the utility's protection and handling of Customer PII annually. The Companies are requesting that the Commission allow them to submit the next assessment in 2018, instead of 2017, and to evaluate in 2018 if a longer timeframe between assessments is appropriate. The Commission is considering whether to adopt, reject or modify, in whole or in part, the relief proposed and may resolve related matters.

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

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

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

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

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

(13-M-0178SP1)

PROPOSED RULE MAKING
NO HEARING(S) SCHEDULED

Consideration of Consolidated Edison Company of New York, Inc.'s Implementation Plan and Audit Recommendations

I.D. No. PSC-25-16-00010-P

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

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

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

Subject: Consideration of Consolidated Edison Company of New York, Inc.'s Implementation Plan and audit recommendations.

Purpose: To consider Consolidated Edison Company of New York, Inc.'s Implementation Plan.

Substance of proposed rule: The Public Service Commission is considering an Operations Audit Implementation Plan filed by Consolidated Edison Company of New York, Inc. on May 20, 2016 in Case 13-M-0314. Consolidated Edison Company of New York, Inc.'s Implementation Plan addresses the 69 actionable recommendations contained in the Final Audit Report prepared by Overland Consulting Group as a result of its operations audit to review the accuracy and effectiveness of certain reliability and customer service systems at all gas and combination gas and electric utilities in New York State. The Commission is considering whether to adopt, reject or modify, in whole or in part, the relief proposed and may resolve related matters.

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

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

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

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

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

(13-M-0314SP3)

PROPOSED RULE MAKING
NO HEARING(S) SCHEDULED

Petition for Rehearing of the Order Authorizing Framework for Community Choice Aggregation Opt-Out Program

I.D. No. PSC-25-16-00011-P

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

Proposed Action: The Commission is considering a petition requesting rehearing of the April 21, 2016 Order Authorizing Framework for Community Choice Aggregation Opt-out Program in Case 14-M-0224 filed by National Fuel Gas Distribution Corporation (NFG) on May 23, 2016.

Statutory authority: Public Service Law, sections 5(1)(b), (2), 22, 53, 65(1), (2), (3), 66(2) and (5)

Subject: Petition for rehearing of the Order Authorizing Framework for Community Choice Aggregation Opt-out Program.

Purpose: To determine appropriate rules for Community Choice Aggregation Programs.

Substance of proposed rule: The Public Service Commission is considering a petition requesting rehearing, reconsideration, and/or clarification of the April 21, 2016 Order Authorizing Framework for Community Choice Aggregation Opt-out Program in Case 14-M-0224 filed by National Fuel Gas Distribution Corporation (NFG) on May 23, 2016. NFG requests rehearing or reconsideration of the Order's decision that Community Choice Aggregation (CCA) programs throughout the state may, once approved by the Commission, enroll customers on an opt-out basis. NFG also requests clarification regarding the authority of municipalities to undertake actions contemplated by the Order. Upon conducting its evaluation of the rehearing 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-0224SP3)

PROPOSED RULE MAKING
NO HEARING(S) SCHEDULED

Consideration of NYISO's Western New York PPTN Viability and Sufficiency Assessment

I.D. No. PSC-25-16-00012-P

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

Proposed Action: The Commission is considering whether the New York Independent System Operator, Inc. (NYISO) should proceed to evaluate the proposed solutions it submitted on June 1, 2016 to the identified Public Policy Transmission Need (PPTN)/Public Policy Requirements.

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

Subject: Consideration of NYISO's Western New York PPTN Viability and Sufficiency Assessment.

Purpose: To identify whether NYISO should proceed to further evaluate solutions to a Western New York PPTN.

Substance of proposed rule: The Public Service Commission (Commission) is considering whether the New York Independent System Operator, Inc. (NYISO) should proceed to evaluate the proposed solutions the NYISO submitted on June 1, 2016, as part of a Western New York Public Policy Transmission Need (PPTN) Viability and Sufficiency Assessment (Assessment). The PPTN Assessment addresses the proposed solutions the NYISO received upon soliciting responses to the PPTN for Western New York that was initially identified by the Commission in an order issued in this proceeding on July 20, 2015. In accordance with its Policy Statement issued in Case 14-E-0068 on August 15, 2014, the Commission seeks comments on whether the proposed solutions identified in the PPTN Assessment should continue to be analyzed by the NYISO, or whether there is no longer a Public Policy Requirement/PPTN driving the need for a potential transmission solution that warrants further evaluation by the NYISO. The Commission may determine that the PPTN continues to exist for Western New York, or that such a PPTN no longer exists, or that a modified PPTN exists, including, but not limited to, whether a non-transmission solution should be pursued, and may address other related matters.

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

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

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

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

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

(14-E-0454SP2)

PROPOSED RULE MAKING
NO HEARING(S) SCHEDULED

Petition for Reconsideration of the Order Authorizing Framework for Community Choice Aggregation Opt-Out Program

I.D. No. PSC-25-16-00013-P

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

Proposed Action: The Commission is considering petitions requesting reconsideration of the April 21, 2016 Order Authorizing Framework for Community Choice Aggregation Opt—out Program in Case 14-M-0224 filed by the Joint Utilities on May 23, 2016.

Statutory authority: Public Service Law, sections 5(1)(b), (2), 22, 53, 65(1), (2), (3), 66(2) and (5)

Subject: Petition for reconsideration of the Order Authorizing Framework for Community Choice Aggregation Opt-out Program.

Purpose: To determine appropriate rules for Community Choice Aggregation Programs.

Substance of proposed rule: The Public Service Commission is considering a petition requesting rehearing or reconsideration of the April 21, 2016 Order Authorizing Framework for Community Choice Aggregation Opt-out Program in Case 14-M-0224 filed by Consolidated Edison Company of New York, Inc., Orange and Rockland Utilities, Inc., Central Hudson Gas & Electric Corporation, National Fuel Gas Distribution Corporation, The Brooklyn Union Gas Company d/b/a National Grid NY, KeySpan Gas East Corporation d/b/a National Grid, Niagara Mohawk Power Corporation d/b/a National Grid, New York State Electric & Gas Corporation and Rochester Gas and Electric Corporation (collectively, the Joint Utilities) on May 23, 2016. The petition seeks reconsideration/clarification regarding the Joint Utilities' opportunity to comment on implementation plans, the provision of customer telephone numbers and customer participation in low-income programs. 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-0224SP2)

PROPOSED RULE MAKING
NO HEARING(S) SCHEDULED

Consideration of the National Grid Companies' Implementation Plan and Audit Recommendations

I.D. No. PSC-25-16-00014-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 Audit Implementation Plan submitted by the National Grid companies and whether to order the implementation of audit recommendations.

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

Subject: Consideration of the National Grid companies' Implementation Plan and audit recommendations.

Purpose: To consider the National Grid companies' Implementation Plan.

Substance of proposed rule: The Public Service Commission is considering an Operations Audit Implementation Plan filed by the National Grid companies (KeySpan Gas East Corp., Brooklyn Union Gas and Niagara Mohawk Power Company) on May 20, 2016 in Case 13-M-0314. National Grid's Implementation Plan addresses the 69 actionable recommendations contained in the Final Audit Report prepared by Overland Consulting Group as a result of its operations audit to review the accuracy and effectiveness of certain reliability and customer service systems at all gas and combination gas and electric utilities in New York State. The Commission is considering whether to adopt, reject or modify, in whole or in part, the relief proposed and may resolve related matters.

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

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

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

Regulatory Impact Statement, Regulatory Flexibility Analysis, Rural Area Flexibility Analysis and Job Impact Statement
Statements and analyses are not submitted with this notice because the proposed rule is within the definition contained in section 102(2)(a)(ii) of the State Administrative Procedure Act.
(13-M-0314SP1)

PROPOSED RULE MAKING
NO HEARING(S) SCHEDULED

Consideration of the National Fuel Gas Distribution Corporation Implementation Plan and Audit Recommendations

I.D. No. PSC-25-16-00015-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 the Audit Implementation Plan submitted by the National Fuel Gas Distribution Corporation and whether to order the implementation of audit recommendations.

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

Subject: Consideration of the National Fuel Gas Distribution Corporation Implementation Plan and audit recommendations.

Purpose: To consider National Fuel Gas Distribution Corporation's Implementation Plan.

Substance of proposed rule: The Public Service Commission is considering an Operations Audit Implementation Plan filed by National Fuel Gas Distribution Corporation on May 20, 2016 in Case 13-M-0314. National Fuel Gas Distribution Corporation's Implementation Plan addresses the 49 actionable recommendations contained in the Final Audit Report prepared by Overland Consulting Group as a result of its operations audit to review the accuracy and effectiveness of certain reliability and customer service systems at all gas and combination gas and electric utilities in New York State. The Commission is considering whether to adopt, reject or modify, in whole or in part, the relief proposed and may resolve related matters.

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

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

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

Regulatory Impact Statement, Regulatory Flexibility Analysis, Rural Area Flexibility Analysis and Job Impact Statement
Statements and analyses are not submitted with this notice because the proposed rule is within the definition contained in section 102(2)(a)(ii) of the State Administrative Procedure Act.
(13-M-0314SP5)

PROPOSED RULE MAKING
NO HEARING(S) SCHEDULED

Consideration of the Orange and Rockland Utilities, Inc. Implementation Plan and Audit Recommendations

I.D. No. PSC-25-16-00016-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 the Audit Implementation Plan submitted by Orange and Rockland Utilities, Inc. and whether to order the implementation of audit recommendations.

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

Subject: Consideration of the Orange and Rockland Utilities, Inc. Implementation Plan and audit recommendations.

Purpose: To consider Orange and Rockland Utilities, Inc.'s Implementation Plan.

Substance of proposed rule: The Public Service Commission is considering an Operations Audit Implementation Plan filed by Orange and Rockland Utilities, Inc. on May 20, 2016 in Case 13-M-0314. Orange and Rockland Utilities, Inc.'s Implementation Plan addresses the 73 actionable recommendations contained in the Final Audit Report prepared by Overland Consulting Group as a result of its operations audit to review the accuracy and effectiveness of certain reliability and customer service systems at all gas and combination gas and electric utilities in New York State. The Commission is considering whether to adopt, reject or modify, in whole or in part, the relief proposed and may resolve related matters.

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

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

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

Regulatory Impact Statement, Regulatory Flexibility Analysis, Rural Area Flexibility Analysis and Job Impact Statement
Statements and analyses are not submitted with this notice because the proposed rule is within the definition contained in section 102(2)(a)(ii) of the State Administrative Procedure Act.
(13-M-0314SP6)

PROPOSED RULE MAKING
NO HEARING(S) SCHEDULED

Consideration of the Central Hudson Gas & Electric Corporation Implementation Plan and Audit Recommendations

I.D. No. PSC-25-16-00017-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 the Audit Implementation Plan submitted by Central Hudson Gas & Electric Corporation and whether to order the implementation of audit recommendations.

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

Subject: Consideration of the Central Hudson Gas & Electric Corporation Implementation Plan and audit recommendations.

Purpose: To consider Central Hudson Gas & Electric Corporation 's Implementation Plan.

Substance of proposed rule: The Public Service Commission is considering an Operations Audit Implementation Plan filed by Central Hudson Gas & Electric Corporation on May 20, 2016 in Case 13-M-0314. Central Hudson Gas & Electric Corporation's Implementation Plan addresses the 63 actionable recommendations contained in the Final Audit Report prepared by Overland Consulting Group as a result of its operations audit to review the accuracy and effectiveness of certain reliability and customer service systems at all gas and combination gas and electric utilities in New York State. The Commission is considering whether to adopt, reject or modify, in whole or in part, the relief proposed and may resolve related matters.

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

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

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

Regulatory Impact Statement, Regulatory Flexibility Analysis, Rural Area Flexibility Analysis and Job Impact Statement
Statements and analyses are not submitted with this notice because the proposed rule is within the definition contained in section 102(2)(a)(ii) of the State Administrative Procedure Act.
(13-M-0314SP2)

PROPOSED RULE MAKING
NO HEARING(S) SCHEDULED

Proposed Community Choice Aggregation Data Security Agreement

I.D. No. PSC-25-16-00018-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 proposed Data Security Agreement filed by the Joint Utilities on June 6, 2016 for use in Community Choice Aggregation programs.

Statutory authority: Public Service Law, sections 5(1)-(2), 53, 65 and 66

Subject: Proposed Community Choice Aggregation Data Security Agreement.

Purpose: To ensure appropriate consumer protections in Community Choice Aggregation programs.

Substance of proposed rule: The Public Service Commission (Commission) is considering a proposed Data Security Agreement (Agreement) for Community Choice Aggregation (CCA) programs filed by Consolidated Edison Company of New York, Inc., Orange and Rockland Utilities, Inc., Central Hudson Gas & Electric Corporation, National Fuel Gas Distribution Corporation, The Brooklyn Union Gas Company d/b/a National Grid NY, KeySpan Gas East Corporation d/b/a National Grid, Niagara Mohawk Power Corporation d/b/a National Grid, New York State Electric & Gas Corporation, and Rochester Gas and Electric Corporation (collectively, the Joint Utilities) on June 6, 2016. The Joint Utilities filed the Agreement in compliance with the Commission's April 21, 2016 Order Authorizing Framework for Community Choice Aggregation Opt-out Program in Case 14-M-0224. The Commission may adopt, reject, or modify, in whole or in part, the proposed Agreement 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-0224SP4)

PROPOSED RULE MAKING
NO HEARING(S) SCHEDULED

Revision of Customer Service Metrics

I.D. No. PSC-25-16-00019-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 draft set of revised customer service metrics issued for comment by the Staff of the Department of Public Service. The proposed metrics would revise certain existing standards.

Statutory authority: Public Service Law, sections 37, 66, 80, 89-c and 111

Subject: Revision of customer service metrics.

Purpose: To consider revisions to customer service metrics previously approved by the Commission.

Substance of proposed rule: On August 15, 2013, the Public Service Commission authorized an audit of the State's electric and gas utilities' self-reported data concerning electric reliability, gas safety and customer service. On April 20, 2016, the Commission released the auditor's report, which included a number of recommendations to improve utility performance in each of the three categories. As required by Public Service Law § 69(19), the subject utilities are required to file compliance plans for the report's recommendations. The Commission, however, has commenced Case 15-M-0566 to address 288 customer service recommendations separately, because of the potential conflict between the recommendations and existing Commission Orders. On May 26, 2016, a notice was issued seeking comment on the customer service recommendations. The Commission may adopt, reject or modify, in whole or in part, the relief proposed and may resolve related matters.

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

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

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

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

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

(15-M-0566SP1)

PROPOSED RULE MAKING
NO HEARING(S) SCHEDULED

Notice of Intent to Submeter Electricity

I.D. No. PSC-25-16-00020-P

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

Proposed Action: The Public Service Commission is considering the Notice of Intent, filed by Gemini Residential, LLC, to submeter electricity at 225 East 39th Street, New York, New York, and the request for a waiver of 16 NYCRR § 96.5(k)(3), requiring an energy audit.

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

Subject: Notice of Intent to submeter electricity.

Purpose: To consider the Notice of Intent of Gemini Residential, LLC to submeter electricity at 225 East 39th Street, New York, New York.

Substance of proposed rule: The Commission is considering the Notice of Intent, filed by Gemini Residential, LLC on May 25, 2016, to submeter electricity at 225 East 39th Street, New York, New York, located in the service territory of Consolidated Edison Company of New York, Inc. The Commission is also considering Petitioner's request for a waiver of 16 NYCRR § 96.5(k)(3), which requires proof that an energy audit has been conducted when 20 percent or more of the residents receive income-based housing assistance. The Commission may adopt, reject or modify, in whole or in part, the relief proposed and may resolve related matters.

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

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

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

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

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

(16-E-0324SP1)

PROPOSED RULE MAKING
NO HEARING(S) SCHEDULED

Notice of Intent to Submeter Electricity

I.D. No. PSC-25-16-00021-P

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

Proposed Action: The Public Service Commission is considering the Notice of Intent, filed by 28th Highline Associates, LLC, to submeter electricity at 520 West 28th Street, New York, New York.

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

Subject: Notice of Intent to submeter electricity.

Purpose: To consider the Notice of Intent of 28th Highline Associates, LLC to submeter electricity at 520 West 28th Street, New York, NY.

Substance of proposed rule: The Commission is considering the Notice of Intent, filed by 28th Highline Associates, LLC on June 3, 2016, to submeter electricity at 520 West 28th Street, New York, New York, located in the service territory of Consolidated Edison Company of New York, Inc. The Commission may adopt, reject or modify, in whole or in part, the relief proposed and may resolve related matters.

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

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

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

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

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

(16-E-0332SP1)

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Transfer of Ownership Interests in Crestwood Pipeline East LLC

I.D. No. PSC-25-16-00022-P

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

Proposed Action: The Commission is considering a petition filed by Crestwood Pipeline East LLC (CPE), et al., regarding a transfer of ownership interests in CPE, which owns a 37.5 mile natural gas pipeline in New York.

Statutory authority: Public Service Law, sections 5(1)(b) and 70

Subject: Transfer of ownership interests in Crestwood Pipeline East LLC.

Purpose: Consideration of transfer of ownership interests in Crestwood Pipeline East LLC.

Substance of proposed rule: The Public Service Commission is considering a petition filed on May 4, 2016, by Crestwood Pipeline East LLC (CPE), Crestwood Pipeline and Storage Northeast LLC (Crestwood), Stagecoach Gas Services LLC (Stagecoach), and Con Edison Gas Pipeline and Storage Northeast, LLC (CEGPS) (collectively, the Petitioners) regarding the proposed transfer of 100% of the equity interests in CPE, which owns a 37.5 mile intrastate gas pipeline in New York, from Crestwood to Stagecoach (the Transfer). At the time of the Transfer, Crestwood and CEGPS will each own 50% of the equity interests in Stagecoach. The Petitioners request that the Commission either issue a declaratory ruling that it need not review the Transfer under Public Service Law (PSL) § 70, or review and approve the Transfer pursuant to PSL § 70 and any other relevant statutory or regulatory provisions. In addition, the Petitioners request that the lightened regulatory scheme approved for CPE continue unchanged. 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-G-0261SP1)

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Use of the Elster Solutions Energy Axis Transponder

I.D. No. PSC-25-16-00023-P

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

Proposed Action: The Public Service Commission is considering a petition filed by Valley Energy on May 5, 2016, to use the Elster Solutions Energy Axis gas transponder in gas meter applications.

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

Subject: Use of the Elster Solutions Energy Axis transponder.

Purpose: To consider the use of the Elster Solutions Energy Axis transponder.

Substance of proposed rule: The Public Service Commission is considering the petition filed by Valley Energy, Inc., to use the Energy Axis gas transponder, manufactured by Elster Solutions, a division of Honeywell, Inc., in commercial and residential gas metering applications. The Commission may approve, reject or modify the relief proposed, and may consider other 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-G-0269SP1)

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Pole Attachment Rules

I.D. No. PSC-25-16-00024-P

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

Proposed Action: The Commission is considering a petition filed by CTIA - The Wireless Association, requesting a determination that the Commission's existing pole attachment rules apply to wireless communications providers.

Statutory authority: Public Service Law, section 119-a

Subject: Pole Attachment Rules.

Purpose: To determine that the Commission's existing pole attachment rules apply to wireless providers.

Substance of proposed rule: The Commission is considering a petition filed by CTIA – The Wireless Association requesting a determination that the Commission's current pole attachment rules apply equally and consistently to wireless communications providers. CTIA specifically requests that the Commission determine that: 1. Its regulation of pole attachments applies with equal force, in a non-discriminatory manner, to wireless facilities attached to utility poles; 2. Detailed timelines, like the 148-day FCC mandated timeline, for entering into access agreements, completing the permitting and make-ready review processes, and granting final approval to attachers will be established and enforced; 3. Disputes regarding the rates, terms, and conditions of pole attachments will be resolved by the

Commission on an expedited, 45-day basis; and 4. Rate principles for wireless attachments track those in place at other regulatory agencies, including the FCC, and assume that wireless attachers will occupy one-foot of pole space. The full text of the petition may be reviewed online at the Department of Public Service web page: www.dps.ny.gov. The Commission may adopt, reject or modify, in whole or in part, the relief proposed and may resolve related matters.

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

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

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

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

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

(16-M-0330SP1)

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Acquisition of All Water Supply Assets of Woodbury Heights Estates Water Co., Inc. by the Village of Kiryas Joel

I.D. No. PSC-25-16-00025-P

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

Proposed Action: The Public Service Commission is considering a Joint Petition filed April 1, 2016 by Woodbury Heights Estates Water Co., Inc. and the Village of Kiryas Joel for the transfer of all water supply assets to the Village of Kiryas Joel.

Statutory authority: Public Service Law, sections 4(1), 5(1), 89-c(1), (10) and 89-h(1)

Subject: Acquisition of all water supply assets of Woodbury Heights Estates Water Co., Inc. by the Village of Kiryas Joel.

Purpose: To consider acquisition of all water supply assets of Woodbury Heights Estates Water Co., Inc. by the Village of Kiryas Joel.

Substance of proposed rule: The Public Service Commission is considering a Joint Petition filed April 1, 2016 by Woodbury Heights Estates Water Co., Inc., (the "Company") and the Village of Kiryas Joel (the "Village") for approval of an agreement under which the Company would sell and the Village would acquire 100% of all assets of the Company. The Company provides water service to 67 customers within the Woodbury Heights Estates Subdivision in the Town of Woodbury, Orange County. The Village of Kiryas Joel Water is a water supply system serving about 25,000 residents of the Village and nearby towns. The Village proposes development of additional water supplies and connection of the Woodbury Heights system to the Village. Acquisition by the Town would provide for more secure operation through greater resource availability. The expanded customer base of the Village also allows for greater revenues and thus potentially reduced rates to the customers of the Company. 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-0192SP1)

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Use of the Badger E Series Ultrasonic Cold Water Stainless Steel Meter, in Residential Fire Service Applications

I.D. No. PSC-25-16-00026-P

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

Proposed Action: The Public Service Commission is considering a petition filed by New York American Water Company on April 22, 2016, to use the Badger E-Series Ultrasonic Cold Water Stainless Steel Meter, in residential fire service applications.

Statutory authority: Public Service Law, section 89-d(1)

Subject: Use of the Badger E Series Ultrasonic Cold Water Stainless Steel Meter, in residential fire service applications.

Purpose: To consider the use of the Badger E Series Ultrasonic Cold Water Stainless Steel Meter in fire service applications.

Substance of proposed rule: The Public Service Commission is considering a petition filed by New York American Water Company to use the Badger E-Series Ultrasonic Cold Water Stainless Steel Meter, in commercial and residential closed looped fire service applications. The Commission may approve, modify, or reject the relief proposed, and may consider other 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-0243SP1)

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Use of the Badger Meter HR E LCD High Resolution E Series Encoder Register

I.D. No. PSC-25-16-00027-P

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

Proposed Action: The Public Service Commission is considering a petition filed by New York American Water Company on April 26, 2016, to use the Badger Meter HR E LCD High Resolution E Series Encoder Register.

Statutory authority: Public Service Law, section 89-d(1)

Subject: Use of the Badger Meter HR E LCD High Resolution E Series Encoder Register.

Purpose: To consider the use of the Badger Meter HR E LCD High Resolution E Series Encoder Register.

Substance of proposed rule: The Public Service Commission is considering a petition filed by New York American Water Company to use the Badger Meter HR E LCD High Resolution E Series Encoder Registers. The Commission may approve, modify, or reject the relief proposed, and may consider other 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-0245SP1)

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Notice of Intent to Submeter Electricity

I.D. No. PSC-25-16-00028-P

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

Proposed Action: The Public Service Commission is considering the Notice of Intent, filed by 421 Kent Development LLC, to submeter electricity at 60 South 8th Street, Brooklyn, New York.

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

Subject: Notice of Intent to submeter electricity.

Purpose: To consider the Notice of Intent of 421 Kent Development LLC to submeter electricity at 60 South 8th Street, Brooklyn, New York.

Substance of proposed rule: The Commission is considering the Notice of Intent, filed by 421 Kent Development LLC on June 1, 2016, to submeter electricity at 60 South 8th Street, Brooklyn, New York, located in the service territory of Consolidated Edison Company of New York, Inc. The Commission may adopt, reject or modify, in whole or in part, the relief proposed and may resolve related matters.

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

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

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

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

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

(16-E-0329SP1)

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Use of the Orion Water Endpoints Meter Reading System

I.D. No. PSC-25-16-00029-P

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

Proposed Action: The Public Service Commission is considering a petition filed by Corbin Hill Water Corporation on May 17, 2016, to use the Orion Water Endpoints to deliver meter readings through cellular networks.

Statutory authority: Public Service Law, section 89-d(1)

Subject: Use of the Orion Water Endpoints meter reading system.

Purpose: To consider the use of the Orion Water Endpoints.

Substance of proposed rule: The Public Service Commission is considering a petition filed by Corbin Hill Water Corporation to use the Orion Water Endpoint cellular meter reading system. The Commission may approve, modify, or reject the relief proposed, and may consider other 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-0301SP1)

Department of State

NOTICE OF ADOPTION

Educational Standards and Requirements for Nail Trainees

I.D. No. DOS-15-16-00017-A
Filing No. 530
Filing Date: 2016-06-07
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: Addition of section 162.6 and Part 163 to Title 19 NYCRR.

Statutory authority: General Business Law, sections 402(5) and 404; Executive Law, section 91

Subject: Educational standards and requirements for nail trainees.

Purpose: To make available a course of study for nail trainees.

Text or summary was published in the April 13, 2016 issue of the Register, I.D. No. DOS-15-16-00017-EP.

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

Text of rule and any required statements and analyses may be obtained from: David Mossberg, NYS Dept. of State, 123 William Street, 20th Fl., New York, NY 10038, (212) 417-2063, email: david.mossberg@dos.ny.gov

Initial Review of Rule

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

Assessment of Public Comment

The Department of State received one comment from the New York Committee for Occupational Safety and Health regarding this proposal; the comment was supportive of this rulemaking.

REVISED RULE MAKING NO HEARING(S) SCHEDULED

Facility Requirements for Businesses Which Offer Appearance Enhancement Services

I.D. No. DOS-22-15-00017-RP

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

Proposed Action: Amendment of section 160.16 of Title 19 NYCRR.

Statutory authority: Executive Law, section 91; General Business Law, sections 402(5) and 404

Subject: Facility requirements for businesses which offer appearance enhancement services.

Purpose: Increase ventilation standards for businesses which offer appearance enhancement services.

Text of revised rule: Section 160.16 of Part 160 of Title 19 of the New York Codes, Rules and Regulations is amended to read as follows:

Section 160.16. Facilities: ancillary provisions.

(a) *For the purposes of this section, the following terms shall have the following meanings:*

(1) "appearance enhancement business" means the business of providing any or all of the services licensed pursuant to Article 27 of the New York General Business law at a fixed location.

(2) "nail salon" means each building, or portion of a building, in which nail specialty services are offered or provided.

(3) "nail specialty service" means providing services for a fee or any consideration or exchange to cut, shape or to enhance the appearance of the nails of the hands or feet. Nail specialty shall include the application and removal of sculptured or artificial nails.

(4) "nail station" means a table or work area where any nail specialty service is performed. In the case of a table or work area where more than one nail specialty service can be performed at any one time, each portion of such table or work area where a nail specialty service can be performed shall be deemed to be a separate nail station.

(5) "owner" means a person who or which owns, controls or operates, whether as a partner shareholder, officer, independent contractor (including area renter) or proprietor an appearance enhancement business.

(6) "registered design professional" means an individual who is a registered architect (RA) in accordance with Article 147 of the New York State Education Law or a licensed professional engineer (PE) in accordance with Article 145 of the New York State Education Law.

(b) In addition to [any requirement] *complying with all applicable requirements* of the State Uniform *Fire Prevention and Building* Code, *New York City Construction Code or other building code applicable to the building in which appearance enhancement activities are performed, and with all applicable requirements of the* State Sanitary Code*,* State Industrial Code*,* [or similar law or regulation] *and other laws and regulations applicable to appearance enhancement activities and/or to buildings, including environmental standards, in which such activities are performed*, an owner shall provide*, in each appearance enhancement business each of the following*:

[(a)] *(1)* hot and cold running water;

[(b)] *(2)* toilet facilities and wash basins for use by clients and employees;

[(c)] *(3)* illumination for the safe provision of licensed services;

[(d)] *(4)* covered containers for hair, paper and other waste material; [and]

[(e)] *(5)* sufficient space or working area to ensure the safety and health for both the operator and client[.]*; and*

(6) in the case of a nail salon, a mechanical ventilation system which complies with the "2015 International Mechanical Code" (Publication Date: May 30, 2014, Third Printing), published by the International Code Council, Inc., and as amended by the NYS Building Standards and Codes 2016 Uniform Code Supplement (hereinafter referred to as the "2015 IMC") such that it:

(i) has the capacity to supply outdoor airflow at a rate of not less than the greater of (a) the ventilation standards for nail salons as set forth at Sections 401 and 403 of the 2015 IMC or (b) 50 cubic feet per minute for each nail station in the nail salon;

(ii) includes a mechanical exhaust system that:

(a) is designed and constructed to capture all chemical vapors, fumes, dust and other air contaminants at their source and to exhaust such contaminants to the outdoor atmosphere;

(b) has at least one exhaust inlet for each nail station (each such exhaust inlet to be factory-installed by the manufacturer of the nail station or field-installed at a location that is not more than 12 inches horizontally and not more than 12 inches vertically from the point of chemical application or where the customer's nails are placed when a nail specialty service is being performed);

(c) has the capacity to exhaust from the nail salon at a rate of not less than the greater of (1) the ventilation standards for nail salons as set forth at Sections 401 and 403 of the 2015 IMC or (2) 50 cubic feet per minute for each nail station in the nail salon;

(d) exhausts all exhaust air from the nail salon (including but not limited to all chemical vapors and fumes, dust, and other air contaminants and odors generated by or resulting from nail specialty services) to the outdoor atmosphere, with each exhaust discharge located at a point where it will not cause a nuisance to others and where the exhausted air (including but not limited to the exhausted chemical vapors and fumes, dust, and other air contaminants and odors) cannot be readily drawn in by the outdoor air intake components of the ventilation system; and

(e) exhausts all exhaust air from the nail salon (including but not limited to all chemical vapors and fumes, dust, and other air contaminants and odors generated by or resulting from nail specialty services) in a manner that assures that no part of such exhaust air shall be recirculated into the nail salon or into any other space in the building, or transferred to any other space in the building;

(iii) is balanced in a manner to supply outdoor air at a rate equal to the rate of the exhaust; and

(iv) operates at or above the minimum supply outdoor airflow rate specified in subparagraph (i) of this paragraph and at or above the minimum exhaust rate specified in clause (c) of subparagraph (ii) of this paragraph at all times when the nail salon is occupied by any person or persons.

(c) No standard or requirement set forth in paragraph (6) of subdivision (b) of this section shall be construed as superseding, amending or otherwise affecting any higher or more restrictive standard or requirement applicable to appearance enhancement activities and/or to buildings. Failure to comply with any such higher or more restrictive standard or requirement may be a violation of the other applicable law or regulation, including, as the case may be, the State Uniform Fire Prevention and Building Code, New York City Construction Code, other building code, State Sanitary Code, State Industrial Code or environmental standards.

(d) Beginning on October 3, 2016 any nail salon which obtains a new appearance enhancement business license shall attain compliance with the minimum ventilation rate specifications set forth paragraph (6) of subdivision (b) of this section. A signed certification by the ventilation system installer, manufacturer or a registered design professional that the ventilation system meets such ventilation rate specifications shall be maintained on the business premises and be available for inspection by the Department. A nail salon licensed before October 3, 2016 shall have until October 3, 2021 to comply with the requirements of this subdivision.

(e) For the purpose of compliance with this Part the 2015 IMC is incorporated herein by reference. Copies of the 2015 IMC may be obtained from the publisher at the following address:

International Code Council, Inc.
500 New Jersey Avenue, NW, 6th Floor
Washington, DC 20001
The 2015 IMC is also available for public inspection and copying at:
New York State Department of State
One Commerce Plaza, 99 Washington Avenue
Albany, NY 12231-0001

Revised rule compared with proposed rule: Substantial revisions were made in section 160.16.

Text of revised proposed rule and any required statements and analyses may be obtained from David A. Mossberg, Esq., NYS Dept. of State, 123 William Street, 20th FL., New York, NY 10038, (212) 417-2063, email: david.mossberg@dos.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

1. Statutory authority:

New York Executive Law § 91 and New York General Business Law ("GBL") §§ 402(5); 404. Section 91 of the Executive Law authorizes the Secretary of State to: "adopt and promulgate such rules which shall regulate and control the exercise of the powers of the department of state."

In addition, Sections 402(5) and 404 of the GBL authorize the Secretary of State to promulgate rules specifically relating to the appearance enhancement industry.

2. Legislative objectives:

Article 27 of the GBL was enacted, inter alia, to provide a system of licensure of appearance enhancement businesses and operators that would both allow for the greatest possible flexibility in the establishment of regulated services and implement measures to protect those inextricably entwined in the industry. Consistent with this legislative intent of Article 27, the Department is empowered to issue regulations which protect the general welfare of the public, including those who practice in the nail specialty field.

3. Needs and benefits:

The revised rulemaking is needed to improve working conditions and air quality standards in places of business which offer nail specialty services. To protect workers, patrons and the public at large, this revised rulemaking would amend current regulations to require that all appearance enhancement businesses which offer nail specialty services meet certain ventilation standards by no later than October 3, 2021. After the original rule was proposed in June 2015, the standards set forth in this rulemaking were incorporated into the New York State Mechanical Code, and were made effective October 3, 2016, such that all new businesses that open after October 3, 2016, will be required to satisfy the same requirements provided for in this rule. Accordingly, this rule would ensure that existing business established before October 3, 2016, will all, within the following five years, meet the same standards that new businesses will be required to meet. By requiring every licensed business to meet these specific ventilation standards, regardless of when such business started operation, workers and patrons would benefit significantly from a reduction in offensive chemical vapors, fumes, dust, and other air contaminants.

4. Costs:

a. Costs to regulated parties:

The revised rulemaking requires every licensed business which offers nail specialty services to meet new ventilation standards, regardless of

when such business first became licensed. The Department believes that a substantial number of appearance enhancement business owners will be required to come into compliance with the stricter ventilation requirements imposed by this regulation. Costs of compliance will differ significantly depending on many factors, including but not limited to: age of the business, geographic location, and type of structure (i.e., whether the business operates in a standalone building, strip mall, enclosed shopping mall etc…). The Department estimates as little as $500 for a 1,000 square foot strip mall location to many thousands of dollars for a business located in a large, outdated commercial building. Assuming a business is already in compliance with the airflow rates proposed by this revised rulemaking, the cost of a source capture system unit is estimated to range from $500 to $1500 per station. Additionally, businesses will have to retain ventilation system installers, manufacturers or registered design professionals to certify that the ventilation systems in place comply with the standards set forth in the rule. The Department also anticipates that businesses will have to expend costs, which will vary significantly, for necessary materials to meet these standards, which may include costs for: system designs, local hoods, ductwork, exhaust fans, electrical connections, testing.

b. Costs to the Department of State, the State, and Local Governments:

The Department does not anticipate any additional costs to implement the rule.

5. Local government mandates:

The rule does not impose any program, service, duty or responsibility upon any county, city, town, village, school district or other special district.

6. Paperwork:

Businesses subject to this rule must maintain a certification from a design professional confirming that the business complies with the ventilation standards set forth in this rulemaking.

7. Duplication:

This rule does not duplicate, overlap or conflict with any other state or federal requirement.

8. Alternatives:

The Department considered not proposing the instant rulemaking. It was determined, however, this rule is needed to protect the health and safety of a significant population of practitioners who are often subject to substandard workplace conditions. This rule will also benefit the thousands of customers who visit nail salons throughout the state. Additionally, the Department found that this rule was needed to ensure that all businesses adhere to the same health and safety standards as these standards are now required by reason of incorporation into the New York State Mechanical Code effective October 3, 2016.

9. Federal standards:

The proposed amendments do not exceed any minimum standards of the federal government for the same or similar subject areas.

10. Compliance schedule:

To ensure that current licensees have sufficient time to comply with these improved standards, if a business subject to this proposal is licensed before October 3, 2016 such business will have 5 years to make necessary updates. The Department has also considered that there may be newer businesses entering this industry, and so to provide sufficient time for those newer businesses to get into compliance, the Department is making this proposal effective October 3, 2016, the same date the New York State Mechanical Code will take effect.

Revised Regulatory Flexibility Analysis

1. Effect of rule:

The revised rulemaking requires all businesses that offer nail specialty services to meet the same ventilation standards by October 3, 2021. After the original rule was proposed in June 2015, the standards set forth in this rulemaking were incorporated into the New York State Mechanical Code, and were made effective October 3, 2016, such that all new businesses that open after October 3, 2016, will be required to satisfy the same requirements provided for in this rule. Accordingly, this rule would ensure that existing business established before October 3, 2016, will all, within the following five years, meet the same standards that new businesses will be required to meet. A requirement that every licensed business eventually meet these specific ventilation standards, regardless of when such businesses started operation, would allow all workers and patrons to benefit from the improved ventilation standards that will result in a reduction in offensive chemical vapors, fumes, dust, and other air contaminants.

The rule does not apply to local governments.

2. Compliance requirements:

Businesses which offer nail specialty services, regardless of when they started operation, will have to ensure air quality standards which comply with this rulemaking. To meet these new standards, many businesses will have to install new ventilation systems to ensure sufficient air flow rates as well as purchase and install mechanical source point capture systems. Existing business will have 5 years to comply with these requirements. New businesses established after October 3, 2016 will have to comply immediately.

3. Professional services:

The Department anticipates that businesses will have to retain design professionals which may include mechanical contractors, to ensure such business is compliant with ventilation standards imposed by this revised regulation. In addition, if in the event such businesses is not compliant, the Department anticipates that engineers or contractors may be required to bring the place of establishment into compliance. Further, to ensure compliance with these standards during inspections, businesses will be required to have a certification on the premises from a ventilation system installer, manufacturer or registered design professional confirming compliance.

4. Compliance costs:

The revised rulemaking requires every licensed business which offers nail specialty services to meet new ventilation standards, regardless of when such business first became licensed. The Department believes that a substantial number of appearance enhancement business owners will be required to come into compliance with the stricter ventilation requirements imposed by this regulation. Costs of compliance will differ significantly depending on many factors, including but not limited to: age of the business, geographic location, and type of structure (i.e., whether the business operates in a standalone building, strip mall, enclosed shopping mall etc…). The Department estimates as little as $500 for a 1,000 square foot strip mall location to thousands of dollars for a business located in a large, outdated commercial building. Assuming a business is already in compliance with the airflow rates proposed by this revised rulemaking, the cost of a source capture system unit is estimated to range from $500 to $1500 per station. Additionally, businesses will have to retain ventilation system installers, manufacturers or registered design professionals to certify that the ventilation systems in place comply with the standards set forth in the rule. The Department also anticipates that businesses will have to expend costs, which will vary significantly, for necessary materials to meet these standards, which may include costs for: system designs, local hoods, ductwork, exhaust fans, electrical connections, and testing.

5. Economic and technological feasibility:

The Department finds that it is both economically and technically feasible for those businesses which will be affected by this rule to comply. The Department notes, in part, that during the initial comment period under the original proposal there were no objections to this rule citing to an inability to comply. Further, other jurisdictions such as Washington, Oregon, and Massachusetts have similar ventilation standards already in effect. It must also be noted, that as a result of the recent adoption of the 2015 Mechanical Code, newer businesses will be expected to comply with the same standards notwithstanding this proposed rule. Accordingly, it is economically and technically feasible to comply with this rule.

6. Minimizing adverse impact:

The Department did not identify any alternatives which would achieve the results of the proposed rule and at the same time be less restrictive and less burdensome in terms of compliance. The Department has consulted with Department of Labor, Department of Health, as well as several advocacy groups and finds this rule is necessary for the wellbeing of those who engage in the practice of nail specialty. In addition, during the initial publication of this proposed rule, the Department received multiple comments which supported this rulemaking as a necessary measure to protect the wellbeing of those who work and patronize nail salons.

7. Small business and local government participation:

The Department, in conjunction with the Governor's Task Force to Stop Wage Theft, Unsafe Working Conditions and Unlicensed Businesses in the nail salon industry, has consulted with small business interests which may be affected by this rule. In addition, during the initial publication of this proposed rule, the Department received multiple comments which supported this rulemaking as a necessary measure to protect the wellbeing of those who work and patronize nail salons. Additional comments will be received and entertained during the public comment period associated with this Revised Notice of Proposed Rulemaking.

8. Compliance:

This rule will be effective October 3, 2016. Businesses which are licensed before October 3, 2016 will have 5 years to ensure that the ventilation requirements imposed by this rule are satisfied. Newer businesses which are licensed after October 3?, 2016 will have to ensure compliance immediately.

9. Cure period:

The Department is not providing for a cure period prior to enforcement of these regulations. The Department finds that a cure period is not necessary. It is anticipated that businesses which are established after October 3, 2016 will already be in compliance with the standards imposed by this rule. Further, businesses which are licensed before October 3, 2016 will have 5 years to come into compliance. Accordingly, the Department

finds that interested parties will have sufficient time to comply with this rule thereby eliminating the need for a cure period.

Revised Rural Area Flexibility Analysis

1. Types and estimated numbers of rural areas:

The revised rule will apply to appearance enhancement businesses that are licensed pursuant to Article 27 of the General Business Law. The Department of State (the "Department") currently licenses approximately 34,000 such businesses, many of which operate in rural areas. Licensed owners are responsible for complying with this rule. Businesses which do not currently meet the ventilation standards set forth by this revised rulemaking will be required to come into compliance. This rule applies the same standards to all businesses, including those operating in rural areas.

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

The Department does anticipate that businesses in rural areas will have to retain code compliance specialists or registered design professionals which may include mechanical contractors, to ensure such business meet the ventilation standards imposed by this revised rulemaking. If in the event such business is not compliant, the Department anticipates professional engineering services will be required to bring the place of establishment into code. In addition, businesses subject to this rule will be required to have available a certification signed by a ventilation system installer, manufacturer or registered design professional, that the ventilation system meets the specifications set forth by this rule; such certification is required to be maintained on the business premises and be available for inspection by the Department.

3. Costs:

The revised rulemaking requires every licensed business which offers nail specialty services to meet new ventilation standards, regardless of when such business first became licensed, by October 3, 2021. The Department believes that a substantial number of appearance enhancement business owners will be required to come into compliance with the updated ventilation requirements imposed by this regulation. Costs of compliance will differ significantly depending on many factors, including but not limited to: age of the business, geographic location, and type of structure (i.e., whether the business operates in a standalone building, strip mall, enclosed shopping mall etc…). The Department estimates as little as $500 for a 1,000 square foot strip mall location to many thousands of dollars for a business located in a large, outdated commercial building. Assuming a business is already in compliance with the airflow rates proposed by this revised rulemaking, the cost of a source capture system unit is estimated to range from $500 to $1500 per station. Additionally, businesses will have to retain ventilation system installers, manufacturers or registered design professionals to certify that the ventilation systems in place comply with the standards set forth in the rule. The Department also anticipates that businesses will have to expend costs, which will vary significantly, for necessary materials to meet these standards, which may include costs for: system designs, local hoods, ductwork, exhaust fans, electrical connections, testing.

4. Minimizing adverse impact:

The Department did not identify any alternatives which would achieve the results of the proposed rule and at the same time be less restrictive and less burdensome in terms of compliance. The Department has consulted with Department of Labor, Department of Health, as well as several advocacy groups and finds this rule is necessary for the wellbeing of those who engage in the practice of nail specialty. In addition, during the initial publication of this proposed rule, the Department received multiple comments which supported this rulemaking as a necessary measure to protect the wellbeing of those who work and patron nail salons.

5. Rural area participation:

The original text of the proposed rule was published both on the Department's website as well as in the June 3, 2015, register; however no significant comments from rural areas have been received. Additional comments will be received and entertained during the public comment period associated with this Revised Notice of Proposed Rulemaking.

Revised Job Impact Statement

1. Nature of impact:

The revised rulemaking requires all businesses that offer nail specialty services to meet the same ventilation standards by October 3, 2021. After the original rule was proposed in June 2015, the standards set forth in this rulemaking were incorporated into the New York State Mechanical Code, and were made effective October 3, 2016, such that all new businesses that open after October 3, 2016, will be required to satisfy the same requirements provided for in this rule. Accordingly, this rule would ensure that existing business established before October 3, 2016, will all, within the following five years, meet the same standards that new businesses will be required to meet. A requirement that every licensed business eventually meet these specific ventilation standards, regardless of when such businesses started operation, would allow all workers and patrons to benefit from the improved ventilation standards that will result in a reduction in offensive chemical vapors, fumes, dust, and other air contaminants.

2. Categories and numbers affected:

There are approximately 34,000 licensees which would potentially be subject to this rulemaking. That number should be reduced by the number of licensees who do not offer nail specialty services and by the number of businesses who have already upgraded their ventilation systems.

3. Regions of adverse impact:

The proposed rulemaking will not have any disproportionate regional adverse impact on jobs or employment opportunities.

4. Minimizing adverse impact:

The Department did not identify any alternatives which would achieve the results of the proposed rule and at the same time be less restrictive and less burdensome in terms of compliance. The Department has consulted with Department of Labor, Department of Health, as well as several advocacy groups and finds this rule is necessary for the wellbeing of those who engage in the practice of nail specialty. In addition, during the initial publication of this proposed rule, the Department received multiple comments which supported this rulemaking as a necessary measure to protect the wellbeing of those who work and patron nail salons.

Assessment of Public Comment

The Department of State (the "Department") received several comments following publication of the proposed rule which was published in the June 3, 2015 Register.

Summary and analysis of issues raised and significant alternatives suggested by comments, reasons why any significant alternatives were not incorporated into the rule, and description of changes made in the rule as a result of such comments are described below:

COMMENT 1:

Consideration should be given to requiring that certain chemicals be banned from use in salons.

RESPONSE 1:

The Department finds that additional studies are necessary before considering such a proposal. In addition, as noted by one of the commentators to the original rule, banning chemicals may only lead to replacement by other more dangerous chemicals and imposing stricter ventilation standards is believed to be an effective measure to reduce exposure to harmful/offensive chemicals. Accordingly, this suggestion has not been incorporated into the revised rulemaking.

COMMENT 2:

The rule should: "[i]mplement a training and education program where employers and workers receive information on the importance of choosing safer products, thereby reducing exposures through eliminating hazards at the source."

RESPONSE 2:

The Department supports increasing awareness among the regulated community, however as indicated in Response 1, attempting to reduce exposures by eliminating known hazards (through mandatory education or other means) may have unintended collateral consequences and may not be as effective in reducing harmful exposure as imposing stricter ventilation standards. In addition, mandating training through regulation may not allow enough flexibility for the Department to address future products and is therefore not advisable to incorporate into a specific rule.

COMMENT 3:

The rule should: "[r]equire a specific health and safety curriculum for licensed nail salon owners and technicians that includes a focus on the use of safer products and practices."

RESPONSE 3:

The Department, in conjunction with the State Appearance Enhancement Advisory Board and the New York State Education Department, already has regulations in place focusing on health and safety. Specifically, under current regulations those practicing nail specialty are required to take a total of 250 hours of training with at least 38 hours devoted to health and safety related subject matters. Cosmetologists who may also practice nail specialty are required to take a total of 1000 hours of training with at least 26 hours devoted to health and safety, and 40 hours on nail care procedures. The Department is also developing similar curriculum for the new created class of Nail Trainees. See also Response 2.

COMMENT 4:

The rule should: "[r]equire industry to formulate nail salon products that contain less toxic and volatile chemicals, particularly organic solvents, and include ingredients on professional product labels."

RESPONSE 4:

See Response 1.

COMMENT 5:

The rule should: "be clarified to ensure that dusts created when removing nails as well as chemical applications are targets for source capture systems."

RESPONSE 5:

The Department agrees and has amended the proposed rule to provide,

in part, that the ventilation standards shall be required to be in operation whenever the salon is in use and occupied by any person. In addition, the revised rule provides that the required system must capture: "all chemical vapors and fumes, dust, and other air contaminants and odors generated by or resulting from nail specialty services at their source."

COMMENT 6:

The Department should: "[c]onduct an in-depth study of ventilation needs and approaches for healthier nail salons" to ensure that the proposed regulation is effective in improving air quality in salons.

RESPONSE 6:

Prior to publication of the original rule and the current revised proposed rulemaking, the Division of Licensing Services consulted with the Division of Building Standards and Codes, the Department of Labor and the Department of Health and believes that this rule is effective and will improve the air quality of salons. Further, based on available information as well as practices in other jurisdictions, the Department finds that the revised proposed rulemaking will have a significant impact on improving air quality in salons. Finally, the Department notes that these standards have recently been incorporated into the New York State Mechanical Code and therefore finds these standards will be effective in improving air quality.

COMMENT 7:

The Department should: "[i]mplement programs to ensure proper installation and maintenance of ventilation equipment and systems."

RESPONSE 7:

The Department agrees that proper installation and maintenance is critical to improving air quality. To help ensure that the system requirements set forth by this rulemaking are satisfied, businesses subject to the rule will be required to maintain appropriate certifications indicating compliance.

COMMENT 8:

The Department should allow for: "a grace period of time for salon owners to obtain and install systems."

RESPONSE 8:

The Department agrees and has amended the proposed rule to provide a reasonable period of time for owners to comply.

COMMENT 9:

The Department should: "[c]reate a purchasing pool for equipment and systems for salon owners to access to reduce costs."

RESPONSE 9:

As part of the economic and feasibility analysis already conducted by the Department, the Department believes this is neither necessary nor appropriate to incorporate into a specific amendment to the rule text. The Department is however exploring funding options for small business owners, should that be necessary, with the Department of Labor.

COMMENT 10:

The Department should work with licensees and building owners to provide educational information regarding how to implement the new ventilation standards being imposed by this regulation.

RESPONSE 10:

The Department agrees and will continue to work with the Nail Salon Task force and other advocacy/interest groups in explaining how to comply with this regulation.

COMMENT 11:

The fume capture nozzle should be placed max. of 6'' above the work area, and at an angle of 45°.

RESPONSE 11:

In developing this rule, the Division of Licensing Services consulted with the Division of Building Standards and Codes, the Department of Labor and the Department of Health and believes that this rule is effective and will improve the air quality of salons. At the proposed distance, it is anticipated that the capture system will provide a sufficient exhaust rate to remove contaminants at the rate specified by the revised rule. It is noted that the current proposal is based, in part, on the 2015 International Mechanical Code, which has been incorporated into the New York Mechanical Code. These standards provide: "Manicure and pedicure stations shall be provided with an exhaust system in accordance with Table 403.3.1.1, Note h. Manicure tables and pedicure stations not provided with factory-installed exhaust inlets shall be provided with exhaust inlets located not more than 12 inches (305 mm) horizontally and vertically from the point of chemical application." 2015 ICC § 502.20. Absent a specific scientific or authoritative finding to the contrary that the current proposal is not sufficient, the Department finds that further changes to this rule are not warranted.

COMMENT 12:

The ventilation system should contain a filtration system with automatic alarm signal to alert the user to change filter.

RESPONSE 12:

The Department finds that this specific requirement is not necessary. It is expected that owners will maintain their equipment in good working order and that contaminates will be processed pursuant to the standards set forth in this rulemaking. Provided that the system produces sufficient airflow according to this rule, an alarm may not provide an additional benefit to persons within a salon.

COMMENT 13:

The ventilation system required by this proposal should: (a) be vented to the outside, if practical, provided it is first filtered by a high efficiency particle filter, such as a HEPA type filter to remove the nail dust and other particles, as well as an activated carbon filter to remove the gaseous fumes; or (b) recirculated into the salon, provided a filtration system to filter the dust and other particles followed by an activated carbon filter with a min of 0.1 sec treatment time or dwell time.

RESPONSE 13:

The revised proposal now includes that the exhaust system shall exhaust "from the nail salon … in a manner that assures that no part of such exhaust air shall be recirculated into the nail salon or into any other space in the building, or transferred to any other space in the building." The revised rule further provides that: "each exhaust discharge [be] located at a point where it will not cause a nuisance to others and where the exhausted air (including but not limited to the exhausted chemical vapors and fumes, dust, and other air contaminants and odors) cannot be readily drawn in by the outdoor air intake components of the ventilation system". Additionally, the revised rule requires that all exhaust adhere to applicable codes, including environmental. As such, to the extent any contaminants are being exhausted outdoors, such exhaust must be within established air quality standards. Accordingly, the concerns raised by this comment are adequately addressed by the revised rule.

COMMENT 14:

The original proposal could be interpreted as 50 cfm per system and not per work station. If this were total system ventilation rate, the ventilation system would be ineffective if there were 2 or more work stations. Therefore specific wording should clearly state the minimum flow rate as 50 cfm for each vent opening.

RESPONSE 14:

The revised proposal requires that the system: "has the capacity to exhaust from the nail salon at a rate of not less than the greater of (I) 0.625 cubic feet per minute for each square foot of floor space in the nail salon or (II) 50 cubic feet per minute for each nail station in the nail salon." The Department believes that this change clarifies the appropriate standards for both the salon as well as each nail station.

COMMENT 15:

To help avoid public controversy, venting to the outside would need to explicitly comply with federal, state and city environmental standards for industrial emissions. The exhaust would need to be filtered with both organic vapor filters and particulate filters to ensure compliance with environmental standards before being released outdoors. Since the filters become saturated and ineffective with weeks or months of use, some means of determining when the filter is saturated and enforcing the replacement of the filters would need to be put in the regulation.

RESPONSE 15:

The revised rule now provides, in part, that nothing in this rule shall affect any "standard or requirement that may be imposed by the State Uniform Fire Prevention and Building Code, New York City Construction Code or other building code applicable to the building in which appearance enhancement activities are performed, or by the State Sanitary Code, State Industrial Code, or any other law or regulation applicable to such activities or to the building in which activities are performed, or any applicable environmental protection law or regulation." Accordingly, any outside exhaust must comply with applicable air quality standards, which may require the use of appropriate filters.

COMMENT 16:

Since respirators are not an effective exposure control method for organic vapor toxicants in this type of work setting, we recommend that the following statement be added to ensure that respirators are not used as a substitute for exhaust ventilation, "The required exhaust ventilation shall be installed and used regardless of the use of respirators."

RESPONSE 16:

The Department believes that this is not necessary as the revised text provides that the system must be in operation whenever the salon is occupied by one or more persons.

COMMENT 17:

The rule should prohibit recirculation of exhaust air from nail salons back into the salon or into other spaces in the building.

RESPONSE 17:

See Response 13.

State University of New York

NOTICE OF ADOPTION

Amendments to Traffic and Parking Regulations at State University of New York University at Buffalo

I.D. No. SUN-38-15-00002-A
Filing No. 524
Filing Date: 2016-06-03
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 572 of Title 8 NYCRR.

Statutory authority: Education Law, section 360(1)

Subject: Amendments to Traffic and Parking Regulations at State University of New York University at Buffalo.

Purpose: To amend existing regulations to update traffic and parking regulations at State University of New York University at Buffalo.

Text or summary was published in the September 23, 2015 issue of the Register, I.D. No. SUN-38-15-00002-P.

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

Text of rule and any required statements and analyses may be obtained from: Angela Winn, State University of New York, Office of General Counsel, University Plaza, Albany, NY 12246, (518) 320-1403, email: Angela.Winn@suny.edu

Assessment of Public Comment
The agency received no public comment.

Office of Temporary and Disability Assistance

EMERGENCY/PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Emergency Shelters

I.D. No. TDA-25-16-00002-EP
Filing No. 522
Filing Date: 2016-06-02
Effective Date: 2016-06-02

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

Proposed Action: Addition of section 352.38 to Title 18 NYCRR.

Statutory authority: Social Services Law, sections 17(a)-(b), (i), 20(2)-(3), 34, 460-c and 460-d

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 regulation is necessary for the preservation of the public health, public safety, and general welfare and, specifically, to help assure that residents of emergency shelters are provided with safe and secure accommodations. The regulation will require the operator of each emergency shelter to submit to OTDA and the social services district ("SSD") in which the emergency shelter is located an annual security plan for the emergency shelter. The SSD will assess the adequacy of the plan and share the results of that assessment with OTDA. In addition, the regulation will require each SSD to submit an annual plan to OTDA to help ensure that emergency shelters operating within the SSD are providing security and taking appropriate measures to protect the physical safety of emergency shelter residents and staff. Additionally, the regulation would clarify not only that all serious incidents impacting upon the safety and well-being of shelter residents or staff must be timely reported to OTDA, but also OTDA's authority to direct an SSD or emergency shelter operator to take additional security measures where an incident is reported.

A number of media outlets have reported on violent and unfortunate incidents at emergency shelters and questioned the security of shelters and whether the residents of shelters are safe. Recent inspections of emergency shelters by OTDA have confirmed that security has been inadequate at some shelters and dangerous conditions have continued to exist. Failing to expand OTDA's oversight in this area would endanger the health, safety and welfare of the residents and staff of emergency shelters. The regulation will help to ensure that reasonable security measures are implemented at emergency shelters, and that the safety of emergency shelter residents and staff is protected. In the absence of this emergency regulation, the security measures at some emergency shelters will remain inadequate, dangerous conditions will continue to exist, and homeless individuals and families will avoid emergency shelters out of fear for their physical safety. 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, safety and general welfare of residents and staff of these emergency shelters, while at the same time permitting public funds to be expended to maintain dangerous conditions in the emergency shelters. Recent investigations have confirmed the existence of such dangerous conditions and underscore the imperative of acting quickly to help assure that residents and staff of these emergency shelters are safe and protected. Without this emergency regulation, some emergency shelters will maintain the status quo, thereby endangering individuals, families, and children.

Subject: Emergency shelters.

Purpose: To address security measures and incident reporting in shelters for the homeless.

Text of emergency/proposed rule: New Section 352.38 of Title 18 of the NYCRR is added to read as follows:

§ 352.38. Security Measures in Shelters for the Homeless.

(a) Commencing ninety (90) days after the filing of this section with the New York Department of State, and annually thereafter, the operator of each emergency shelter shall submit to the Office of Temporary and Disability Assistance (the "Office") and the social services district in which the emergency shelter is located a plan for the emergency shelter to provide security and help ensure the physical safety of residents and staff. The social services district shall assess the adequacy of the plan and shall share the results of that assessment with the Office. 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. Based upon the individual characteristics of each emergency shelter, including, but not limited to, the location of the emergency shelter and the extent to which the location is known in the community, the size of the emergency shelter, construction characteristics of the emergency shelter, the homeless population served by the emergency shelter, and use of the building or site location for purposes other than the provision of shelter and services to the homeless, the security plan shall address, among other things:

(1) measures taken to control access to the emergency shelter, including but not limited to admittance procedures in place for persons entering the facility and the installation and use of safety locks on exit and entry doors, security devices such as metal detectors, cameras and security or alarm systems;

(2) the surveillance of the grounds, facility and activities of the residents to prevent theft and resident harm;

(3) the training and deployment of staff responsible for security, and in the case of emergency shelters with mental health or domestic violence programs, the availability of security staff trained in recognizing and responding to mental health or domestic violence issues;

(4) fire safety measures, and the emergency shelter's emergency and disaster plans, including but not limited to, procedures for conducting and supervising facility evacuations and periodic evacuation drills; actions taken in advance of an emergency to prepare emergency shelter employees to be ready for an emergency;

(5) procedures for handling and documenting individual emergencies, including arranging for medical care or other emergency services, maintaining records of any special medical needs or conditions, the prescribed regimens to be followed, and the names and phone numbers of medical doctors to contact should an emergency arise concerning these conditions; and

(6) Safety measures provided for emergency shelter staff.

(b) Each social services district shall annually submit to the Office for review and approval a general plan to help ensure that emergency shelters operating within the social services district are providing security and protecting the physical safety of residents and staff. The commissioner of

the Office shall establish the date by which the annual plan must be submitted each year. Taking into consideration the characteristics of the types of emergency shelters operating within the social services district, such as the locations of the emergency shelters and the extent to which the locations of the emergency shelters are known in the community, the size of the emergency shelters, construction characteristics of the emergency shelters, the homeless populations served by the emergency shelters, and use of the buildings or site locations for purposes other than the provision of shelter and services to the homeless, the plan shall address generally, among other things, each of the items identified in subdivision (a) of this section.

(c) In the event of a serious incident impacting upon the safety and well-being of any resident of an emergency shelter or member of the emergency shelter's staff, including, but not limited to, deaths by unnatural causes or suicides, life-threatening injuries including drug overdoses, assaults, rapes, sexual assaults, or attempted rapes or sexual assaults, arrests for alleged child abuse, fires, disasters, or other events that cause evacuation of the building or injury to shelter residents, heating, water, electrical failure that is more than four hours in duration, discovery of any environmental hazard, such as lead paint or asbestos, that threatens resident health or well-being, domestic violence that results in injury of one or more residents, criminal activity on the part of emergency shelter staff, or any misconduct on the part of emergency shelter staff that results in harm to the residents or other staff members, the operator of the emergency shelter shall (1) immediately email both the social services district and the Office to report the serious incident, (2) telephone both the social services district and the Office within one business day to report the serious incident, and (3) submit a copy of the Office-prescribed Incident Report form to the Office within three business days.

(d) The operator must maintain a chronological record of serious incidents of the type described in subdivision (c) of this section using the Office-prescribed Incident Report form. In the case of injury, the operator must include a written statement of the resident's version of the events leading to an accident or incident involving such resident on all Incident Reports unless the resident objects.

(e) Where a security incident has been reported, or upon review of the operator's or social service district's annual plan, the Office may direct the social services district or the operator to take additional security measures including, but not limited to, directing that the emergency shelter deploy additional trained security staff or relocate residents to another facility or emergency shelter. The Office also may direct the social services district or the operator to (1) engage a qualified third party, who has been approved by the Office, to conduct an evaluation of the security measures employed by the facility, and (2) employ any or all of the recommendations made by the third party.

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 August 30, 2016.

Text of rule and any required statements and analyses may be obtained from: Matthew L. Tulio, New York State Office of Temporary and Disability Assistance, 40 North Pearl Street 16-C, Albany, NY 12243-0001, (518) 486-9586, email: matthew.tulio@otda.ny.gov

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

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

Regulatory Impact Statement

1. Statutory Authority:

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

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

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

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

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 media reports concerning the physical safety of public assistance recipients residing in New York City's emergency shelters, OTDA has taken action to inspect these placements and assess security measures taken by shelter operators to help assure that residents of emergency shelters are provided with safe and secure accommodations. The regulatory amendments will require the operator of each emergency shelter to submit to OTDA and the SSD in which the emergency shelter is located an annual security plan for the emergency shelter. The SSD will assess the adequacy of the plan and share the results of that assessment with OTDA. In addition, each SSD shall submit an annual plan to OTDA to help ensure that emergency shelters operating within the SSD are providing security and taking appropriate measures to protect the physical safety of emergency shelter residents and staff. Additionally, the regulatory amendments would clarify not only that reports of all serious incidents impacting upon the safety and well-being of shelter residents or staff must be timely submitted to OTDA, but also OTDA's authority to direct an SSD or emergency shelter operator to take additional security measures where an incident is reported. Among other things, OTDA may direct an SSD or emergency shelter provider to deploy additional trained security staff or to relocate residents to another facility or emergency shelter.

These regulatory amendments are necessary to protect vulnerable, low-income individuals and families who have limited or no housing options and have placed their trust and well-being in a system that should help ensure that these persons have safe and 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 paid to house these individuals and families are used effectively to provide safe, secure, quality housing. It is important for OTDA and the SSDs to be fiscally prudent and to help ensure that State, federal, and local funds are properly used when housing homeless individuals and families. The regulatory amendments confer full authority upon OTDA to take immediate action against facilities and SSDs that are not providing safe and secure emergency shelters.

4. Costs:

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

For urban local governments, the fiscal impact of the new regulations will be minimal as long as they are in compliance with existing security and fire safety standards. The new regulations require that the districts report compliance plans as well as violations under existing security and fire safety standards. Costs associated with the regulations would mostly be administrative costs incurred by the districts from the additional reporting requirements to OTDA. Where upgrades are required, corrective action plans will govern the nature, the extent and the costs of actions needed.

These new regulations will have a minimal impact on districts statewide as this information should be available.

There would also be an impact to the State due to the volume of submis-

sion of reports for review. This could impact OTDA from a resource/staffing perspective. OTDA is in the process of bringing on additional staff to address homeless shelter needs including shelter security concerns. We believe that these additional resources will satisfy this requirement.

5. Local Government Mandates:

Each SSD will be responsible for reviewing security plans submitted by emergency shelter operators and sharing the results of the reviews with OTDA, as well as submitting an annual security plan to OTDA. Upon OTDA's review of the SSD's and/or shelter operator's annual plans or after a security incident has been reported to OTDA, OTDA may direct the SSD and/or operator to take additional security measures including, but not limited to, (1) engaging a qualified third party to conduct an evaluation and make recommendations regarding the security measures employed by the facility or (2) when is it determined that the SSD or shelter operator is unable to provide sufficient security or safety measures, directing the relocation of residents to another facility or emergency shelter.

6. Paperwork:

The regulatory amendments will require the operator of each emergency shelter to submit to OTDA and the SSD in which the emergency shelter is located an annual security plan for the emergency shelter. The SSD will assess the adequacy of the plan and share the results of that assessment with OTDA. In addition, each SSD will submit an annual plan to OTDA to help ensure that emergency shelters operating within the SSD are providing security and taking appropriate measures to protect the physical safety of emergency shelter residents and staff. OTDA by means of policy directives will establish the date by which the SSDs must submit their annual plans each year. Additionally, the regulatory amendments will clarify that reports of all serious incidents impacting upon the safety and well-being of shelter residents or staff must be immediately submitted to the SSD and OTDA.

7. Duplication:

The regulatory amendments would not duplicate, overlap, or conflict with any existing State or federal regulations.

8. Alternatives:

Inaction would jeopardize the health and safety of these vulnerable individuals and families by allowing dangerous conditions to continue to exist and by failing to prevent future security incidents. OTDA does not consider this a viable alternative to the regulatory amendments.

9. Federal Standards:

The regulatory amendments would not conflict with federal statutes, regulations or policies.

10. Compliance Schedule:

To protect the public health, safety and general welfare of emergency shelter residents and staff, these regulations would be effective immediately on their filing date.

Regulatory Flexibility Analysis

1. Effect of rule:

Pursuant to the State Administrative Procedure Act § 102(8), a "small business," in part, is any business which is independently owned and operated and employs 100 or fewer individuals. This regulation will apply to small businesses that provide emergency shelters, namely approximately 800 shelters administered by not-for-profit agencies. This regulation will also apply to all 58 social services districts ("SSDs") in the State.

2. Compliance requirements:

The regulatory amendments will require the operator of each emergency shelter to submit to the Office of Temporary and Disability Assistance ("OTDA") and the SSD in which the emergency shelter is located an annual security plan for the emergency shelter. The SSD will assess the adequacy of the plan and share the results of that assessment with OTDA. In addition, each SSD will submit an annual plan to OTDA to help ensure that emergency shelters operating within the SSD are providing security and taking appropriate measures to protect the physical safety of emergency shelter residents and staff.

3. Professional services:

It is anticipated that the need for additional professional services will be limited. The regulation imposes reporting requirements upon operators of emergency shelters and the SSDs which OTDA anticipates should be fulfilled without the need for securing professional services.

4. Compliance costs:

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

For urban local governments, the fiscal impact of the new regulations will be minimal as long as they are in compliance with existing security and fire safety standards. The new regulations require that the districts report compliance plans as well as violations under existing security and fire safety standards. Costs associated with the regulations would mostly be administrative costs incurred by the districts from the additional reporting requirements to OTDA. Where upgrades are required, corrective action plans will govern the nature, the extent and the costs of actions needed.

These new regulations will have a minimal impact on districts statewide as this information should be available.

There would also be an impact to the State due to the volume of submission of reports for review. This could impact OTDA from a resource/staffing perspective. OTDA is in the process of bringing on additional staff to address homeless shelter needs including shelter security concerns. We believe that these additional resources will satisfy this requirement.

5. Economic and technological feasibility:

Operators of emergency shelters and SSDs should already have the economic and technological abilities to comply with the regulation.

6. Minimizing adverse impact:

OTDA does not anticipate that the reporting requirements imposed by the regulation will adversely impact emergency shelters and SSDs. The regulation should not provide exemptions, because this would not serve the purposes of helping to ensure 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 regulation and protecting the health, safety, and general welfare of residents and staff of emergency shelters.

Rural Area Flexibility Analysis

1. Types and estimated numbers of rural areas:

The 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 regulatory amendments will require the operator of each emergency shelter to submit to the Office of Temporary and Disability Assistance ("OTDA") and the social services district ("SSD") in which the emergency shelter is located an annual security plan for the emergency shelter. The SSD, including those in rural areas, will assess the adequacy of the plan and share the results of that assessment with OTDA. The regulation will also require each rural SSD to submit an annual plan to OTDA to help ensure that emergency shelters operating within the rural SSD are providing security and taking appropriate measures to protect the physical safety of emergency shelter residents and staff.

It is anticipated that the need for additional professional services will be limited. The regulation imposes reporting requirements upon operators of rurally-located emergency shelters and SSDs which OTDA anticipates should be fulfilled without the need for securing professional services.

3. Costs:

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

These new regulations will have a minimal impact on districts statewide as this information should be available.

4. Minimizing adverse impact:

OTDA does not anticipate that the reporting requirements imposed by the regulation will adversely impact rurally-located emergency shelters and SSDs. The regulations should not provide exemptions, because this would not serve the purposes of helping to ensure the health and safety of all emergency shelter residents in rural areas 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 regulation and protecting the health, safety, and general welfare of residents of rurally-located emergency shelters.

Job Impact Statement

A Job Impact Statement is not required for this regulation. The purpose of the regulation is to establish protections for residents and staff of emergency shelters by requiring the operator of each emergency shelter to submit to the Office of Temporary and Disability Assistance ("OTDA") and the social services district ("SSD") in which the emergency shelter is located an annual security plan for the emergency shelter. The SSD will assess the adequacy of the plan and share the results of that assessment with OTDA. The regulation will also require each local SSD to submit an annual plan to OTDA to help ensure that emergency shelters operating within the SSD are providing security and taking appropriate measures to protect the physical safety of emergency shelter residents and staff. Additionally, the regulation would clarify not only that all serious incidents impacting upon the safety and well-being of shelter residents or staff must be timely reported to OTDA, but also OTDA's statutory authority to direct an SSD or emergency shelter operator to take additional security measures where an incident is reported. It is apparent from the nature and the purpose of the regulation that it will not have a substantial adverse impact on jobs and employment opportunities in the private sector, in the SSDs, or in the State.

Thus, the regulatory amendments will not have an adverse impact on jobs and employment opportunities in New York State.

NOTICE OF ADOPTION

Temporary Housing Placements

I.D. No. TDA-39-15-00016-A
Filing No. 523
Filing Date: 2016-06-02
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 sections 352.8(b)(1) and 352.3(h); and addition of section 352.3(m) to Title 18 NYCRR.

Statutory authority: Social Services Law, sections 20(2) and (3)(d), 34 and 131-v(4)

Subject: Temporary Housing Placements.

Purpose: Adjust the rate approval process for temporary housing placements and expand the scope of inspections for such placements.

Text of final rule: Paragraph (1) of subdivision (b) of section 352.8 of Title 18 NYCRR is amended to read as follows:

(1) An allowance for each recipient or family purchasing room and/or board to cover the cost of board, room rent and other expenses, except where such items and services are furnished by a legally responsible relative or a recipient of public assistance. This allowance*, including but not limited to rates set for entities governed by section 352.3(e) of this Part,* is subject to review and approval *by the Office of Temporary and Disability Assistance (the office) pursuant to a timetable established by the office* in accordance with paragraph (2) of this subdivision. For each recipient or family purchasing room and/or board from an individual, family or from a commercially operated boarding house, such allowance cannot exceed the sum of the statewide monthly grant and allowance, the statewide monthly home energy payments, the statewide monthly supplemental home energy payments and the local agency monthly shelter allowance schedule without children as contained in section 352.3(a)(1) of this Part.

Subdivision (h) of section 352.3 of Title 18 NYCRR is amended to read as follows:

(h) Inspection. Local social services districts which make hotel/motel referral must inspect at least once every six months the hotels/motels in which families are placed. In addition to verifying that the hotel/motel meets the requirements set forth in subdivision (g) of this section, the local district shall make appropriate inquiries to determine whether the hotel/motel is in compliance with all applicable State and local laws, regulations, codes and ordinances. Any violation found during the on-site inspection shall be reported to appropriate authorities. Further, each inspection shall at least review arrangements for hygiene, vermin control, security, furnishings, cleanliness and maintenance and shall include a review of any applicable documents pertaining to compliance with any local laws or codes. A written report shall be made of each such inspection and shall be maintained at the office of the local district together with such other information as the district may maintain concerning the families placed in the hotel/motel. *A copy of any such inspection report shall be provided to the Office of Temporary and Disability Assistance within thirty days of its completion.*

A new subdivision (m) is added to section 352.3 of Title 18 NYCRR to read as follows:

(m) Inspection of Shelter Placements. Social services districts that make referrals for temporary emergency shelter for eligible homeless households to temporary housing units, which will be paid for by public funds, that are not otherwise governed by section 460 of the Social Services Law, Parts 900 and 491 of this Title, or section 352.3(h) of this Part, shall submit for approval by the Office of Temporary and Disability Assistance health and safety standards for those units which comport with all applicable State and local laws, regulations, codes and ordinances. Additionally, social services districts shall be responsible for the inspection of such temporary housing units at least once every 12 months to confirm that such standards are satisfied. A written report shall be made of each such inspection and shall be maintained at the office of the social services district together with such other information as the social services district may maintain concerning the households placed in the temporary housing unit. A copy of any such inspection report shall be provided to the Office of Temporary and Disability Assistance within thirty days of its completion.

Final rule as compared with last published rule: Nonsubstantive changes were made in section 352.3(m).

Text of rule and any required statements and analyses may be obtained from: Jeanine S. Behuniak, NYS Office of Temporary and Disability Assistance, 40 North Pearl Street, 16 C, Albany, New York 12243, (518) 474-9779, email: Jeanine.Behuniak@otda.ny.gov

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

Changes made to the published rule do not necessitate revision to the previously published Regulatory Impact Statement, Revised Regulatory Flexibility Analysis, Revised Rural Area Flexibility Analysis and Revised Job Impact Statement. In the new subdivision 18 NYCRR § 352.3(m), the term "dwelling unit" was replaced with "temporary housing unit." This revision was made in response to public comments and merely clarifies the type of units which the amendment is intended to address. The published Regulatory Impact Statement, Revised Regulatory Flexibility Analysis, Revised Rural Area Flexibility Analysis and Revised Job Impact Statement did not use the term "dwelling unit."

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

The Office of Temporary and Disability Assistance (OTDA) received comments regarding the proposed amendments of 18 NYCRR §§ 352.3 and 352.8, which give OTDA rate approval authority over all shelter types; require the local districts to submit reports of the bi-annual inspections of hotels/motels used as temporary housing placements; and require local districts to be responsible for annual inspections of all uncertified shelters and submit reports of those inspections to OTDA.

18 NYCRR § 352.3(h): Submission of Inspection Reports for Hotel/Motel Placements

Currently, per § 352.3, local social services districts (local districts) are required to inspect the hotels/motels to which they make referrals for temporary housing placements. This regulation, which has been in place since 1983, provides a detailed list of items that the inspections must address. This regulation is in place not to limit the number of hotels/motels available for placements, but to ensure that those which are available are in conditions that do not jeopardize the health and safety of the individuals and families inhabiting them. The proposed amendment to this regulation would require that reports created as the result of the inspections are sent to OTDA.

Comments stated that the frequency of the inspections is overly burdensome and will result in fewer hotels/motels conducting business with the local districts. However, existing regulations already require local districts to inspect hotels/motels at least once every six months and report violations to the appropriate authorities. OTDA will not be adjusting the required number of inspections at this time.

Comments state that OTDA has dramatically underestimated the amendment's impact on local districts in terms of time and manpower. OTDA does not agree with this assertion. The only amendment being made to § 352.3(h) is the requirement that local districts submit their inspection reports to OTDA.

Comments also expressed concern regarding the ability of local agency staff to perform inspections and enforce compliance. Due in part to these comments, OTDA intends to issue administrative guidance that will offer further clarification regarding how existing inspections may be accomplished. OTDA intends to coordinate with the local districts when drafting the guidance so that business practices can be developed that allow for the inspections to be accomplished in the least burdensome manner. OTDA expects that local districts will coordinate with other entities, such as local code enforcement officials, public health officials, etc. to see that these bi-annual inspections are being completed and that the reports are sent to OTDA. One comment suggested that if a district has to conduct an interim inspection to address a complaint or for any other reason, that is to be counted as a bi-annual inspection and reset the six month time clock. OTDA plans to look further into the impact that interim inspections will have on the bi-annual requirement and address this issue in its guidance.

352.3(m): Inspection of Uncertified Shelters

The addition of subdivision (m) to § 325.3 will require local districts to be responsible for annual inspections of all uncertified homeless shelters to which they make referrals and payments. This amendment does not mandate that the local districts conduct the inspections themselves, instead it allows local districts to partner with other entities to ensure inspections are completed. Local districts are encouraged, where possible, to partner with code enforcement officials, public health officials, etc. to ensure that inspections are being completed. Local districts will be required to submit the subsequent inspection report to OTDA.

OTDA maintains that the amendment will help establish a cohesive housing inspection plan, and OTDA will work with local districts to identify uncertified shelters that meet the requirements for certification. For those shelters that meet certification requirements and have submitted an application for certification, OTDA will take over the annual inspec-

tion process. Parts 491 and 900 of Title 18 NYCRR are very clear regarding which shelters are eligible for certification and subject to State inspection. Uncertified shelters do not meet those standards and therefore it is the responsibility of the local districts to ensure the safe and healthy administration of those shelters. For shelters that were built with OTDA capital funding through the Homeless Housing Assistance Program, OTDA will conduct the annual inspection of these facilities.

A comment suggested that OTDA alone should be responsible for inspecting all types of shelters throughout the State in order to promote efficiency and consistent standards. OTDA does not agree with this suggestion. The local districts should be responsible for inspecting the uncertified homeless shelters to which they make referrals and payments. Each local district knows its temporary shelter options and works hard to maximize those options to meet the needs of homeless households.

A comment suggested that OTDA should accept the inspection reports of other agencies "as is" because the local districts do not have legal authority to require other agencies to follow OTDA-specific requirements. While OTDA will encourage cooperation between local districts and other agencies to complete the annual inspections, OTDA cannot accept the "as is" recommendation. Temporary housing units need to comport with State and local laws, regulations, codes and ordinances in order to foster a safe, clean environment for persons in need.

OTDA is willing to work with each district to determine the most effective ways that the inspection requirement set forth in § 352.3(m) can be met, ensuring safe and healthy placements for clients while minimizing the additional work for the local districts. To that end, OTDA will be issuing administrative guidance to accompany the amended regulations and would like local district participation in the creation of the guidance. OTDA will offer guidance on how to work with service providers to help obtain compliance with all new requirements. OTDA plans to address the appropriate steps for local districts to take if a shelter provider refuses to participate in an inspection. OTDA agrees with the commenters who asserted that they do not want the new inspection requirements to inadvertently result in the loss of temporary housing units.

A comment indicated that OTDA should identify all existing inspections at all levels for each county. OTDA maintains that a collaborative approach between itself and the local districts will be needed to compile the most beneficial information and to develop strategies for confirming that thorough inspections are completed.

A comment stated that OTDA's assertion that the inspection of shelters corresponds with the local district's responsibility to provide fraud prevention activities is misdirected and not supported by regulation. In response, OTDA maintains that if local district fraud investigators have received the needed training and possess the required skills, one option for conducting shelter inspections is to have the inspections done by the investigators who might be visiting shelters to determine if those for whom hotel/motel stays that are paid for by the district are actually staying there. This is only a suggestion in order to make use of existing local district resources, and not a requirement.

Comments suggested that the use of the term "dwelling unit" in § 352.3(m) is too broad and could result in confusion. OTDA agrees with this comment and has replaced the term "dwelling unit" with "temporary housing unit" in the text of § 352.3(m) to clarify the type of units that the amendment was intended to address. This change is consistent with the supporting documents, which did not use the term "dwelling unit," but instead referred to "temporary housing placements."

18 NYCRR § 352.8(b)(1): Rate Setting

Several entities/organizations commented on the feasibility of OTDA approving all rates and the burdensome process that would be the result of this change. Additionally, several entities/organizations commented that due to their 71% share in Safety Net Assistance, the local districts already have incentives to limit costs. A comment described this amendment as an overreach of OTDA's authority. In response, it is noted that this amendment simply extends OTDA's existing rate approval authority for Tier II shelters to all shelter types. OTDA intends to work with the local districts to develop business practices that will make the implementation of these regulations as streamlined as possible. OTDA anticipates that administrative guidance will address such issues as the submission of paperwork, permissible review times and requests for reconsideration.

A comment was received in support of this amendment. OTDA maintains that establishing this rate setting authority at the State level will help prevent temporary housing providers from obtaining excessive rates and thus ultimately help safeguard State and local funds.

Two comments asserted that the term "temporary emergency housing" used in the Rural Area Flexibility Analysis (RAFA) to describe housing subject to the rate approval process is too broad. OTDA maintains that it is not; this section was intended to cover all situations in which a local district enters into a contract with an outside entity to provide shelter, where the cost is charged as public assistance expenditure.

Fiscal impact

Comments took issue with OTDA's statement that the costs to the local districts for implementation would be manageable. OTDA reaffirms its statement. The amendment to § 352.3(h) does not require additional inspections of hotels/motels, instead it requires that local districts submit their hotel/motel inspection reports to OTDA. OTDA anticipates that local districts will coordinate with other entities that are already conducting periodic inspections to help satisfy the annual inspection requirement set forth in § 352.3(m). Lastly, OTDA plans to coordinate with the local districts and develop streamlined business practices for the review and approval of rates pursuant to § 352.8(b)(1).

OTDA received comments stating that it is counterintuitive for OTDA to say that it needs additional funding and staffing to implement the regulation, but that the counties would require only a small amount of local resources to implement them. While the additional activities engaged in by each local district would be relatively minimal, the staff time involved in reviewing all of the inspection reports submitted on a statewide basis, monitoring the quality of inspections conducted by the local districts, and conducting follow up inspections on facilities found to be in noncompliance is considerable. It should also be noted that the Department of Homeless Services in NYC, which has more than 75% of the uncertified shelters, has voluntarily adopted the practice of inspecting uncertified shelters and submitting them for OTDA review. It is the time involved in monitoring NYC's compliance with these shelters that is likely to consume the largest percentage of the time of the newly-added OTDA staff.

Local government participation

Comments objected to OTDA's description of NYPWA's and the local districts' participation in the rulemaking process. The comments asserted that there were only two phone conferences, and the local districts' feedback was not considered. OTDA's comments in the Regulatory Flexibility Analysis and the RAFA accurately characterized the two conference calls. OTDA did not assert that NYPWA or its members agreed with the proposed regulations, but rather that OTDA informed them of the proposed regulations and its intent to work with local districts in the process of implementing them. It is also noted that OTDA revised its proposal in response to suggestions made during the second conference call.

Additional issues

Comments asserted that the emphasis on inspections directs attention away from the fundamental need for more affordable housing. One comment recommended that instead of adopting these regulations, OTDA should create a competitive grant process to encourage local districts to come up with permanent solutions to homeless. In response, OTDA agrees that additional affordable housing would be very helpful. However, OTDA also maintains that the regulatory amendments are needed to help ensure that temporary housing placements are to safe and healthy environments. Both goals – safe, secure temporary housing placements and additional permanent housing – need to be pursued. It is noted that the suggestion to create a competitive grant process is outside the scope of this regulatory amendment.

One comment indicated that it was unfair that OTDA was penalizing a rural county, which has fewer housing options and places homeless persons in safe, clean housing. Another comment stated that OTDA had underestimated the impact the amendments would have on local districts, particularly large urban districts. This comment asserted that the new requirements would result in fewer homeless shelters in small counties with a resulting increase in persons being encouraged to use hotels/motels in large urban counties. In response, OTDA maintains that the new requirements need to apply equally throughout the State. All temporary housing placements whether in rural areas or urban centers need to be regularly inspected with their conditions documented. The goal is that all placements will provide clean, safe environments for homeless persons.

One comment suggested that a Performance Management Workgroup be formed to develop recommendations and regulatory amendments that would satisfy the goals of both OTDA and the local districts. Comments have suggested that LEAN principles be applied to this process. OTDA feels that collaboration with the local districts will be very helpful. OTDA is planning to work closely with the local districts to develop the most effective means of implementing the regulatory amendments.

Comments suggested that the State should take additional fiscal responsibility for the Safety Net Assistance program and recommended statutory amendments to this effect. A comment also suggested that the State provide additional annual funding to the NYS Supportive Housing Program, the Homeless Housing Assistance Program and the Solutions to End Homeless Program. OTDA maintains that these comments requesting statutory amendments and/or budget appropriations are outside the scope of this regulatory amendment.