# 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

**Various Trees and Plants of the Prunus Species**

**I.D. No.** AAM-19-16-00003-EP
**Filing No.** 420
**Filing Date:** 2016-04-21
**Effective Date:** 2016-04-21

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

***Proposed Action:*** Amendment of Part 140 of 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 amendments to Part 140 of 1 NYCRR are being adopted as an emergency measure because of the threat that the Plum Pox Virus (PPV) will spread outside the areas it now infects in New York State.

PPV is a serious viral disease of stone fruit trees that affects many of the Prunus species, including species of plum, peach, apricot, almond and nectarine. PPV does not kill infected plants, but debilitates the productive life of the trees. This affects the quality and quantity of the fruit, which reduces the fruit's marketability. Symptoms of the PPV may manifest themselves on the leaves, flowers and fruits of infected plants and include green or yellow veining on leaves; streaking or pigmented ring patterns on the petals of flowers; and ring or spot blemishing on the fruit which may also become misshapen. Infected trees often display no symptoms. There is no known treatment or cure for this virus. The virus is spread naturally by several aphid species. These insects serve as vectors for the spread of PPV by feeding on the sap of infected trees and then feeding on plants which aren't infected with the virus. PPV may also be spread through the exchange of budwood and its propagation.

PPV was first reported in Bulgaria in 1915 and was first documented in the United States in 1999. In 2000, PPV was discovered in Canada's Ontario province within five miles of its border with New York. By 2006, PPV was detected in two locations in Niagara County near the Canadian border, prompting adoption of and subsequent amendments to, a PPV quarantine as the virus spread.

The latest PPV detection is a tree in Ulster County. This latest find is prompting this rule, which implements a quarantined area in Orange and Ulster Counties. Ten municipalities in Dutchess, Orange and Ulster Counties will also be under quarantine. A regulated area will be established in a one mile radius around the infected tree. One quarantined area is also being maintained in Niagara County, since only four years have passed since positive detections of PPV and the proximity of this area to an active PPV infestation in Canada's Ontario province. These provisions are designed to prevent the further spread of PPV throughout New York State as well as into neighboring states and provinces.

This rule also lifts the quarantine in all other areas of Niagara County and all of the quarantines in Orleans and Wayne Counties. These quarantines are being lifted since there have been no PPV detections in these areas in the past six years. This effectively lifts a regulatory burden for approximately 256 regulated parties in these areas.

A further spread of PPV would have adverse economic consequences to the stone fruit industry in New York State, both from the destruction of the regulated articles upon which these industries depend, and from the more restrictive quarantines that could be imposed by the federal government and by other states. Further, if this rule is not adopted, USDA-APHIS might decide to withhold or withdraw its funding of 85% of the cost for removal of infected trees.

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 subdivision one of section 202 of the State Administrative Procedure Act would be contrary to the public interest.

***Subject:*** Various trees and plants of the Prunus species.

***Purpose:*** To amend the plum pox virus quarantined and regulated areas for purposes of helping prevent the further spread of this virus.

***Text of emergency/proposed rule:*** Subdivision (k) of section 140.1 of 1 NYCRR is repealed and a new subdivision (k) is added to read as follows:

*(k) Nursery stock regulated area means any town a portion of which is within 11 and one-half kilometers of any location where the plum pox virus has been detected within the preceding six years.*

Subdivision (o) of section 140.1 of 1 NYCRR is amended to read as follows:

(o) Regulated articles means plant and plant materials, including trees, seedlings, root stock, budwood, branches, *scion,* twigs and leaves of the following varieties of the Prunus species:

Paragraphs (2) and (3) of subdivision (o) of section 140.1 of 1 NYCRR are amended to read as follows:

(2) Ornamental varieties including all cultivars of:

| Scientific Name | Common Name |
|---|---|
| Prunus cerasifera | Purple Leaf Plum |
| Prunus x cistena | Purple Leaf Sand Cherry |
| Prunus glandulosa | Flowering Almond |
| Prunus persica | Flowering Peach & Purple Leaf Peach |

| | |
|---|---|
| Prunus pumila | Sand Cherry *and Western Sand Cherry* |
| Prunus spinosa | Black Thorn and Sloe |
| Prunus serrulata | Japanese Flowering Cherry & Kwanzan Cherry |
| Prunus tomentosa | Nanking Cherry & Hansen's Bush Cherry |
| Prunus triloba | Flowering Plum |

(3) For the purposes of this Part, the following varieties of the Prunus species are not regulated articles: Prunus avium; Prunus cerasus; [Prunus effuse;] Prunus laurocerasus; Prunus mahaleb; Prunus padus; Prunus sargentii; Prunus serotina; Prunus serrula; Prunus subhirtella; Prunus yedoensis; and Prunus virginiana.

Subdivisions (a), (b) and (c) of section 140.2 of 1 NYCRR are repealed, and new subdivisions (a) and (b) are added to read as follows:

*(a) That area of Niagara County which is bordered on the north by Lake Ontario and bordered on the east by the town line of the towns of Newfane and Somerset, extending south to the town line of the towns of Newfane and Hartland, extending south on the town lines of the towns of Newfane and Hartland to the intersection of Route 104 (Ridge Road), extending west on Route 104 (Ridge Road), to the intersection of Route 425 (Cambria-Wilson Road/Lake Street), extending north on Route 425 to Lake Ontario to the north.*

*(b) The following cities, towns, and hamlets are under quarantine for the plum pox virus:*

*(1) City of Newburgh in Orange County;*
*(2) Town of Newburgh in Orange County;*
*(3) City of Poughkeepsie in Dutchess County;*
*(4) Town of Poughkeepsie in Dutchess County;*
*(5) Town of Marlborough in Ulster County;*
*(6) City of Beacon in Dutchess County;*
*(7) Town of Plattekill in Ulster County;*
*(8) Town of Fishkill in Dutchess County;*
*(9) Town of Wappinger in Dutchess County; and*
*(10) Hamlet of Marlboro in Ulster County.*

Subdivisions (a) through (e) of section 140.3 of 1 NYCRR are repealed, and a new subdivision (a) is added to read as follows:

*(a) That area of Ulster and Orange Counties that intersects and lies within the following one mile radius circle: (GPS coordinates 41.59229. -73.97927), that intersect with Route 9W on the north, following an imaginary line east to the intersection of Mill House Road, (GPS coordinates 41.58775. -73.97780), following an imaginary line south-west to the intersection of McDonald Drive, (GPS coordinates 41.57976, -73.97993), following an imaginary line south-west to the intersection of Levinson Heights Road, (GPS coordinates 41.57397, -73.98737), following an imaginary line south to the intersection of Old Post Road, (GPS coordinates 41.57295, -73.99007), following an imaginary line south to the intersection of Route 9W on the south, (GPS coordinates 41.57271, -73.99096), following an imaginary line south-west to the intersection of Lattintown Road (GPS coordinates 41.57393, -74.00663), following an imaginary line north-west to the intersection of Candlestick Hill Road, (GPS coordinates 41.58121, -74.01490), following an imaginary line north-west to the intersection of Bingham Road, (GPS coordinates 41.58945, -74.01589), following an imaginary line north to the intersection of Hampton Road, (GPS coordinates 41.59138, -74.01522), following an imaginary line north-east to the intersection of Gobblers Knob Road, (GPS coordinates 41.59830, -74.00813), following an imaginary line north-east to the intersection of Gobblers Knob Road, (GPS coordinates 41.59872, -74-00733), following an imaginary line north-east to the intersection of South Street, (GPS coordinates 41.60023, -74.00320), following an imaginary line north-east to the intersection of Lattintown Road, (GPS coordinates 41.60084, -73.99983), following an imaginary line east to the intersection of Lu El Ann Road, (GPS coordinates 41.60084, -73.99450), following an imaginary line south-east to the intersection of Cross Road, (GPS coordinates 41.59916, -73.98775), following an imaginary line south-east to the intersection of South Street/Rosa Drive, (GPS coordinates 41.59774, -73.98483), following an imaginary line south-east to the intersection of Highland Avenue, (GPS coordinates 41.59639, -73.98296), following an imaginary line south-east to Vineyard Lane, (GPS coordinates 41.5960, -73.98245), following an imaginary line south-east back to the intersection of Route 9W, (GPS coordinates 41.59229, -73.97927), to close the imaginary line in a one mile circle.*

Subdivision (a) is amended and new subdivisions (b) and (c) of section 140.5 of 1 NYCRR are added to read as follows:

(a) Regulated articles originating from or growing within the regulated area of the nursery stock regulated area shall not be used as a source of propagated material (either root stock, scion, *budwood* or seed).

*(b) Regulated articles originating from or growing within Niagara County shall not be used as a source of propagated material (either root stock, scion, budwood or seed), except as allowed in subdivision (c) of this section.*

*(c) On-farm propagation of regulated articles for the purposes of fruit production shall only be allowed pursuant to a compliance agreement.*

Paragraph (6) is amended and a new paragraph (8) of subdivision (a) of section 140.6 of 1 NYCRR is added to read as follows:

(6) The digging [or] *and* moving of regulated articles by nursery dealers and nursery growers within the nursery stock regulated area is prohibited.

*(8) The planting and over-wintering of regulated articles by nursery dealers and nursery growers within Niagara County is prohibited.*

Section 140.7 of 1 NYCRR is amended to read as follows:

Nursery dealers and nursery growers handling regulated articles within [the] *a* nursery stock regulated area *that is adjacent to a regulated area* shall compile, maintain and make available for inspection, for a period of two years, records of inventory and sales of regulated articles on a form or forms prescribed by the commissioner.

Subdivision (a) of section 140.8 of 1 NYCRR is repealed and a new subdivision (a) is added to read as follows:

*(a) Certificates may be issued for the intrastate movement of regulated articles when they have been grown, produced, manufactured, stored or handled in such a manner that, in the judgment of the inspector, no infection would be transmitted thereby, provided that subsequent to certification, the regulated articles will be loaded, handled and shipped under such protection and safeguards against reinfection as are required by the inspector.*

***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 July 19, 2016.

***Text of rule and any required statements and analyses may be obtained from:*** Christopher A. Logue, Director, Division of Plant Industry, New York State 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.

***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 enacted.

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. Said Section 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 as he may deem necessary.

2. Legislative objectives.

The proposed rule establishing a quarantine accords with the public policy objectives the Legislature sought to advance by enacting the statutory authority in that it will help to prevent the further spread within the State of a serious viral infection of plants, the plum pox virus (Potyvirus).

3. Needs and benefits.

Plum pox virus (PPV) is a serious viral disease of stone fruit trees that affects many of the Prunus species, including species of plum, peach, apricot, almond and nectarine. PPV does not kill infected plants, but debilitates the productive life of the trees. This affects the quality and quantity of the fruit, which reduces its marketability. Symptoms of the PPV may manifest themselves on the leaves, flowers and fruits of infected plants and include green or yellow veining on leaves; streaking or pigmented ring patterns on the petals of flowers; and ring or spot blemishing on the fruit which may also become misshapen. Infected trees often display no symptoms. There is no known treatment or cure for this virus. The virus is spread naturally by several aphid species. These insects serve as vectors for the spread of PPV by feeding on the sap of infected trees and then feeding on plants which aren't infected with the virus. PPV may also be spread through the exchange of budwood and its propagation.

PPV was first reported in Bulgaria in 1915. It subsequently spread

throughout Europe, the Middle East and Africa. PPV was first discovered in North America in 1999 when trees in an orchard in Pennsylvania were found to be infected with the virus. In the summer of 2000, PPV was discovered in Canada's Ontario province within five miles of its border with New York. This find resulted in the Department, with the support of the United States Department of Agriculture (USDA), beginning annual PPV surveys of stone fruit orchards in New York. From 2000 through 2005, more than 89,000 leaf samples were taken, analyzed and found to be negative for plum pox.

In 2006, PPV was detected in two locations in Niagara County near the Canadian border. In 2007, the Department adopted a rule which immediately established a PPV quarantine in those areas in Niagara County. PPV was subsequently detected in 17 locations in Niagara, Orleans and Wayne Counties between 2007 and 2011. The Department adopted rules extending the quarantine to Orleans and Wayne County as well as a larger area of Niagara County.

When initially adopting the rule, the Department created three areas designed to regulate the planting, movement and sale of prunus in areas where PPV has been detected.

The regulated area is an area in which one or more prunus have been found to be infected with PPV. The perimeter of the regulated area is one mile from the infestation. Prunus cannot be planted, sold or moved within the regulated area.

The quarantined area is a large area in which the regulated area is located. The quarantined area extends 11.5 kilometers from the infestation. Prunus can be moved within the quarantined area under a compliance agreement, but cannot be moved out of the quarantined area or into the regulated area. Prunus can be planted anywhere in the quarantined area, except in the regulated area. Prunus cannot be propagated in the quarantined area. Prunus cannot over-winter within the quarantined area and must be sold or destroyed by the end of the season. This ensures that exposure of plants to PPV is limited.

The nursery stock regulated area is the quarantined area exclusive of the regulated area. Prunus may be planted and moved within the nursery stock regulated area with a compliance agreement, but cannot be propagated.

This rule makes changes to the quarantined area (section 140.2 of 1 NYCRR). Under the rule, quarantined areas are lifted in all but one part of Niagara County adjacent to the Canadian border. This quarantined area and propagation ban is being implemented to reduce the risk of the spread of the virus from an active PPV infestation in Canada's Ontario province. Quarantined areas are also being lifted in all of Orleans and Wayne Counties. The quarantine is being lifted in these areas since surveys for PPV, dating back six years, have been negative for the virus. However, due to a finding of a prunus tree positive for PPV in Ulster County, the rule implements a quarantined area in Orange and Ulster Counties. Ten municipalities in Dutchess, Orange and Ulster Counties are also under quarantine. Additionally, prunus originating from or growing within all of Niagara County shall not be used as a source of propagated material, except for on-farm propagation for purposes of fruit production.

The rule also makes changes to the regulated area (section 140.3 of 1 NYCRR). The rule establishes a regulated area in Orange and Ulster Counties, due to the positive find of PPV in a tree in Ulster County.

Finally, the rule amends the definitions of nursery stock regulated area and regulated article [sections 140.1(k) and 140.1(o)]; amends the list of ornamental species of prunus [section 140.1(o)(2) and (3)]; prohibits nursery growers and dealers from planting and over-wintering prunus within Niagara County [section 140.6(a)(1)]; and requires that nursery dealers and nursery growers compile and maintain for two years, records of inventories and sales of prunus if they are adjacent to a regulated area [section 140.7].

This rule is necessary, since it would bring the State's quarantined and regulated areas in line with those established at the federal level by USDA-APHIS. This is important to ensure that APHIS continues to pay 85-percent of costs to prunus growers for removal of the trees which are located within 500 meters of a positive find.

This rule is also necessary since USDA-APHIS could decide to quarantine the entire State of New York against PPV if the State does not establish an internal, parallel quarantine.

Finally, this rule is necessary, since it would help prevent the further spread of PPV throughout New York and neighboring states. This would not only result in damage to the stone fruit industry of New York, but could also result in the imposition on New York of a federal quarantine (as noted above) or quarantines by other states. Such quarantines would cause economic hardship for New York's nurseries and stone fruit growers, since such quarantines may encompass the entire state. The consequent loss of business would harm industries which are important to New York's economy and as such, would harm the general welfare.

4. Costs.

(a) Costs to the State government:

Under this rule, regulated articles exposed to PPV in the newly established regulated area would be destroyed. Compensation for the regulated articles is predicated upon the age of the plants and trees. Compensation would range from $3,302.00 to $29,743.00 per acre, of which USDA-APHIS would pay 85% of the compensation. Accordingly, New York's 15% share of the compensation would be $495.30 to $4,461.45 per acre, provided the owners of the regulated articles in question submit verified claims to the Department in accordance with section 165 of the Agriculture and Markets Law, and provided further that damages are awarded based on those claims. New York State also pays up to $1,000.00 per acre in costs to remove host trees from infected orchards.

Nursery dealers and nursery growers would also be eligible to receive compensation for regulated articles planted in the newly established quarantined areas that would otherwise be prohibited from sale. Compensation for these trees would be $10.80 per tree of which USDA-APHIS would pay 85% of the compensation and New York would pay the remaining 15%.

(b) Costs to local government:

None.

(c) Costs to private regulated parties:

Regulated parties handling regulated articles in the newly established quarantined areas, pursuant to a compliance agreement, may only sell host prunus within the nursery stock regulated area, which consists of the quarantined area, absent the regulated area.

Regulated parties would also incur those removal costs which exceed $1,000 per acre for removal of regulated articles planted in the newly established regulated areas and nursery stock regulated areas.

(d) Costs to the regulatory agency:

It is anticipated that the regulatory oversight and enforcement of the expanded quarantined and regulated areas under this rule would be accomplished through use of existing staff and resources.

5. Local government mandate.

None.

6. Paperwork.

Nursery dealers and nursery growers handling regulated articles in the newly established nursery stock regulated areas would require a compliance agreement with the Department. They would also be required to maintain inventory and sales records of prunus for two years.

7. Duplication.

None.

8. Alternatives.

None. The failure of the State to establish and extend the quarantine under this rule in response to the most recent findings of the PPV, could result in the establishment of quarantines by the federal government or other states. It could also place the State's own stone fruit industry at risk from the further spread of PPV which could result from the unrestricted movement of regulated articles in and out of the quarantined area. Failure to implement this rule which would make the State's quarantined and regulated areas consistent with those established by USDA-APHIS could result in APHIS withholding or withdrawing 85% of the funding for removal of regulated articles in the regulated areas. In light of these factors, there does not appear to be any viable alternative to this rule.

9. Federal standards.

Sections 301.74 through 301.74-5 of Title 7 of the Code of Federal Regulations (CFR) restrict the interstate movement of regulated articles susceptible to PPV. The proposed amendments do not exceed any minimum standards for the same or similar subject areas, since it restricts the intrastate, rather than interstate, movement of regulated articles by establishing a PPV quarantine in New York State.

10. Compliance schedule.

It is anticipated that regulated parties would be able to comply with this rule immediately.

***Regulatory Flexibility Analysis***

1. Effect of rule.

In response to the detection of the plum pox virus (PPV) in Ulster County, this rule establishes a quarantine in ten municipalities in Dutchess, Orange and Ulster Counties, as well as a separate quarantined area in Orange and Ulster Counties. This rule also establishes a regulated area in Orange and Ulster Counties where a prunus tree was found positive for PPV. One quarantined area is also being maintained in Niagara County, since only four years have passed since positive detections of PPV and the proximity of this area to an active PPV infestation in Canada's Ontario province. Finally, this rule lifts the quarantine in all other areas of Niagara County and all of the quarantines in Orleans and Wayne Counties. These quarantines are being lifted since there have been no PPV detections in these areas in the past six years.

It is estimated that there are 16 regulated parties in the area of Niagara County where the quarantine is being maintained; 79 regulated parties in the ten municipalities in Dutchess, Orange and Ulster Counties where a quarantine has been established; and four regulated parties in the regulated

area created within the quarantined area in Orange and Ulster Counties. There are also 256 regulated parties in areas of Niagara County and all of Orleans and Wayne Counties where the quarantines are being lifted. These regulated parties are stone fruit growers, nursery growers and nursery dealers, most of whom are small businesses.

It is not anticipated that local governments would be involved in the handling or movement of regulated articles within any part of the regulated and quarantined areas.

2. Compliance requirements.

Any regulated parties in the quarantined areas established by this rule would be prohibited from the propagation of regulated articles as well as restricted from the sale of nursery stock outside the quarantined areas. In an effort to help prevent the human-assisted movement of PPV, nursery growers and nursery dealers who wish to handle regulated articles within these newly established areas would be required to enter into compliance agreements.

The rule would prohibit regulated parties in the newly established quarantined areas from digging and moving regulated articles and planting or over-wintering regulated articles. In addition, regulated parties in these newly established areas would be required to maintain inventory and sales records of regulated articles for a period of two years.

All regulated parties in the regulated area established under this rule would be prohibited from moving regulated articles within those areas. Regulated parties would, however, be able to move regulated articles within the newly established nursery stock regulated areas pursuant to a compliance agreement.

3. Professional services.

None.

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 proposed rule: None.

(b) Annual cost for continuing compliance with the proposed rule:

Regulated parties handling regulated articles in the newly established quarantined areas, pursuant to a compliance agreement, may not over-winter regulated articles and would be required to destroy unsold plants, at an undetermined cost.

Regulated parties handling regulated articles in Niagara County are prohibited from propagating plants and/or over-wintering prunus which is also prohibited in the quarantined areas. Regulated parties would be required to destroy unsold plants at the end of the season, at an undetermined cost.

Regulated parties would also incur removal costs which exceed $1,000 per acre for removal of regulated articles within 500 meters of a PPV-infected tree.

It is not anticipated that local governments would be involved in the handling of regulated articles within any part of the regulated and quarantined areas.

5. Economic and technological feasibility.

The economic and technological feasibility of compliance with the proposed rule by small businesses and local governments has been addressed and such compliance has been determined to be feasible. Nursery dealers and nursery growers handling regulated articles within the newly established quarantined areas, would be allowed to move or sell these articles within the quarantined area, exclusive of the regulated area (i.e., the nursery stock regulated area), under a compliance agreement.

6. Minimizing adverse impact.

The Department has designed the proposed rule to minimize adverse economic impact on small businesses and local governments. The rule establishes and extends the regulated area and quarantined areas to only those areas where PPV has been detected. Additionally, the proposal lifts the quarantine in areas of Niagara County and all of Orleans and Wayne Counties where the virus has not been detected for six years. The approaches for minimizing adverse economic impact required by section 202-a(1) of the State Administrative procedure Act and suggested by section 202-b(1) of the State Administrative Procedure Act were considered. Given all of the facts and circumstances, it is submitted that the proposed rule minimizes adverse economic impact as much as is currently possible.

7. Small business and local government participation.

Two meetings were held (one in the afternoon; one in the evening) on November 18, 2015 in Highland, which is in Ulster County. The purpose of the meetings was to inform stone fruit growers about the detection of PPV in Ulster County. Department and federal officials briefed the attendees on the disease and its impact on the stone fruit crop. Management of the disease and proposed regulatory action were also discussed. Maps of the proposed regulated and quarantined areas were also presented. Growers were afforded the opportunity to review the maps individually and to discuss the impact of the regulations on their businesses. A total of 14 stone fruit growers participated in the two meetings.

On February 17, 2016, Department officials presented a program on PPV eradication in Kingston. Approximately 150 stone fruit growers attended.

Since March of this year, Department inspectors have been meeting individually with regulated parties to inform them of the proposed regulations and to determine whether they wanted to enter into a compliance agreements.

***Rural Area Flexibility Analysis***

1. Type and estimated numbers of rural areas.

In response to the detection of the plum pox virus (PPV) in Ulster County, this rule establishes a quarantine in ten municipalities in Dutchess, Orange and Ulster Counties, as well as a separate quarantined area in Orange and Ulster Counties. This rule also establishes a regulated area in Orange and Ulster Counties where a prunus tree was found positive for PPV. One quarantined area is also being maintained in Niagara County, since only four years have passed since positive detections of PPV and the proximity of this area to an active PPV infestation in Canada's Ontario province. Finally, this rule lifts the quarantine in all other areas of Niagara County and all of the quarantines in Orleans and Wayne Counties. These quarantines are being lifted since there have been no PPV detections in these areas in the past six years.

It is estimated that there are 16 regulated parties in the area of Niagara County where the quarantine is being maintained; 79 regulated parties in the ten municipalities in Dutchess, Orange and Ulster Counties where a quarantine has been established; and four regulated parties in the regulated area created within the quarantined area in Orange and Ulster Counties. There are also 256 regulated parties in areas of Niagara County and all of Orleans and Wayne Counties where the quarantines are being lifted.

All of these regulated parties are stone fruit growers, nursery growers and nursery dealers, most of whom are in rural areas.

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

Any regulated parties in the quarantined areas established by this rule would be prohibited from the propagation of regulated articles as well as restricted from the sale of nursery stock outside the quarantined areas. In an effort to help prevent the human-assisted movement of PPV, nursery growers and nursery dealers who wish to handle regulated articles within these newly established areas would be required to enter into compliance agreements.

The rule would prohibit regulated parties in the newly established quarantined areas from digging and moving regulated articles and planting or over-wintering regulated articles. In addition, regulated parties in these newly established areas would be required to maintain inventory and sales records of regulated articles for a period of two years.

All regulated parties in the regulated area established under this rule would be prohibited from moving regulated articles within those areas. Regulated parties would, however, be able to move regulated articles within the newly established nursery stock regulated areas pursuant to a compliance agreement.

3. Costs.

Regulated parties handling regulated articles in the newly established quarantined areas, pursuant to a compliance agreement, may not over-winter regulated articles and would be required to destroy unsold plants, at an undetermined cost.

Regulated parties handling regulated articles in Niagara County are prohibited from propagating plants and/or over-wintering prunus which is also prohibited in the quarantined areas. Regulated parties would be required to destroy unsold plants at the end of the season, at an undetermined cost.

Regulated parties would also incur removal costs which exceed $1,000 per acre for removal of regulated articles within 500 meters of a PPV-infected tree(s).

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. The rule establishes and extends the regulated area and quarantined areas to only those areas where PPV has been detected. Additionally, the proposal lifts the quarantine in areas of Niagara County and all of Orleans and Wayne Counties where the virus has not been detected for six years. The approaches for minimizing adverse economic impact required by the State Administrative Procedure Act were considered. Given all of the facts and circumstances, it is submitted that the rule minimizes adverse economic impact as much as is currently possible.

5. Rural area participation.

Two meetings were held (one in the afternoon; one in the evening) on November 18, 2015 in Highland, which is in Ulster County. The purpose of the meetings was to inform stone fruit growers about the detection of PPV in Ulster County. Department and federal officials briefed the attendees on the disease and its impact on the stone fruit crop. Management of the disease and proposed regulatory action were also discussed. Maps

of the proposed regulated and quarantined areas were also presented. Growers were afforded the opportunity to review the maps individually and to discuss the impact of the regulations on their businesses. A total of 14 stone fruit growers participated in the two meetings.

On February 17, 2016, Department personnel presented a program on PPV eradication in Kingston. Approximately 150 stone fruit growers attended.

Since March of this year, Department inspectors have been meeting individually with regulated parties to inform them of the proposed regulations and to determine whether they wanted to enter into a compliance agreements.

***Job Impact Statement***

In response to the detection of the plum pox virus (PPV) in Ulster County, this rule establishes a quarantine in ten municipalities in Dutchess, Orange and Ulster Counties, as well as a separate quarantined area in Orange and Ulster Counties. This rule also establishes a regulated area in Orange and Ulster Counties where a prunus tree was found positive for PPV. One quarantined area is also being maintained in Niagara County, since only four years have passed since positive detections of PPV and the proximity of this area to an active PPV infestation in Canada's Ontario province. Finally, this rule lifts the quarantine in all other areas of Niagara County and all of the quarantines in Orleans and Wayne Counties. These quarantines are being lifted since there have been no PPV detections in these areas in the past six years.

It is estimated that there are 16 regulated parties in the area of Niagara County where the quarantine is being maintained; 79 regulated parties in the ten municipalities in Dutchess, Orange and Ulster Counties where a quarantine has been established; and four regulated parties in the regulated area created within the quarantined area in Orange and Ulster Counties. There are also 256 regulated parties in areas of Niagara County and all of Orleans and Wayne Counties where the quarantines are being lifted.

The establishment and extension of the plum pox virus quarantine is designed to prevent the further spread of this viral infection throughout New York State as well as into neighboring states and provinces. A further spread of this plant disease would have very adverse economic consequences to these industries in New York State, both from the destruction of the regulated articles upon which these industries depend, and from the more restrictive quarantines that could be imposed by the federal government and by other states. By helping to prevent the further spread of the plum pox virus, the proposed rule would help to prevent such adverse economic consequences and in so doing, protect the jobs and employment opportunities associated with the State's stone fruit and nursery industries.

# Office of Children and Family Services

## NOTICE OF ADOPTION

### Eligibility of Successor Guardians for Kinship Guardianship Assistance Payments

**I.D. No.** CFS-07-16-00012-A

**Filing No.** 421

**Filing Date:** 2016-04-21

**Effective Date:** 2016-05-11

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

***Action taken:*** Amendment of sections 436.1, 436.3, 436.4, 436.5, 436.6, 436.8 and 436.10 of Title 18 NYCRR.

***Statutory authority:*** Social Services Law, sections 20(3)(d), 34(3)(f), 458-a, 458-b, 458-d and 458-f

***Subject:*** Eligibility of successor guardians for kinship guardianship assistance payments.

***Purpose:*** To enact standards for the appointment and approval of a successor guardian upon the death or incapacity of a relative guardian.

***Substance of final rule:*** The proposed amendment of 18 NYCRR 436.1 would add definitions of the terms "successor guardian", "prospective successor guardian", and " incapacity".

The proposed addition of 18 NYCRR 436.3(b) would address the statutory requirement that the prospective successor guardian's financial status cannot be considered when determining eligibility for kinship guardianship assistance payments.

The proposed addition to 18 NYCRR 436.3(c)(3) would address the clearance requirements that must be completed prior to approving a prospective successor guardian to receive kinship guardianship assistance payments.

The proposed amendment to 18 NYCRR 436.3(c)(4) would implement the requirement that the prospective successor guardian must inform in writing the social services official that has entered into an agreement with the relative guardian for kinship guardianship payments of the death or incapacity of the relative guardian and of the prospective successor guardian's desire to enforce the provisions in the agreement that authorize kinship guardianship assistance payments to him or her in the event of the death or incapacity of the relative guardian.

The proposed amendment to 18 NYCRR 436.3(c)(5) would require that the clearances required by section 436.3(c)(3) on the successor guardian must be conducted by the social services official when the written communication regarding the relative guardian's death or incapacity is received.

The proposed amendment to 18 NYCRR 436.3(f) would allow a child to remain eligible for kinship guardianship assistance payments when a successor guardian assumes care and guardianship of the child.

The proposed amendments to 18 NYCRR 436.4(f) would allow the original kinship guardianship assistance agreement and any amendments made to the agreement to name an appropriate person to act as a successor guardian for the purpose of providing care and guardianship for a child in the event of the death or incapacity of the relative guardian. It clarifies that relative guardians are not required to name a prospective successor guardian as a condition for the approval of a kinship guardianship assistance agreement.

The proposed amendment to 18 NYCRR 436.4(g) would allow the amendment of the kinship guardianship assistance agreement in order to add or modify terms and conditions mutually agreeable to the relative guardian and the social services official, including the naming of an appropriate person to provide care and guardianship for a child in the event of death or incapacity of the relative guardian.

The proposed amendment to 18 NYCRR 436.4(h) would require the social services official to inform the relative guardian of the right to name an appropriate person to act as a successor guardian in the original kinship guardianship assistance agreement or through an amendment to such agreement.

The proposed amendments to 18 NYCRR 436.4(i) would address the conditions for the termination of a kinship guardianship assistance agreement between a relative guardian or a successor guardian and a social services official.

The proposed addition of 18 NYCRR 436.5(a)(2) would require that in the event of the death or incapacity of a relative guardian, a social services official must make monthly kinship guardianship assistance payments for the care and maintenance of a child to a successor guardian that has been approved pursuant to Part 436.

The proposed addition of 18 NYCRR 436.5(a)(3) would address the criteria for the approval of a prospective successor guardian following the death or incapacity of the relative guardian. Such criteria include, but are not limited to, that no approval can be issued unless the prospective successor guardian has been awarded guardianship or permanent guardianship of the child by the court and the clearances required by section 436. 3 of this Part have been conducted.

The proposed addition of 18 NYCRR 436.5(a)(4) would address the standards for retroactive payments where a successor guardian assumes care of the child prior to being approved.

The proposed addition of 18 NYCRR 436.5(a)(5) would address the standards for the resumption of payments to the relative guardian following the end of the relative guardian's incapacity.

The proposed amendment of 18 NYCRR 436.5(5)(e) would include successor guardian(s) to the individuals who may receive kinship guardianship assistance payments until the child's 18th birthday or, up to the age of 21 if the child had attained 16 years of age before the kinship guardianship assistance agreement became effective and the successor guardian certifies and provides satisfactory documentation to the social services official that the child is: completing secondary education or a program leading to an equivalent credential; enrolled in an institution which provides post-secondary or vocational education; employed for at least 80 hours per month; participating in a program or activity designed to promote, or remove barriers to employment; or is incapable of any of such activities due to a medical condition, which incapacity is supported by regularly updated information in the child's case record.

The proposed amendment of 18 NYCRR 436.5(5)(f)(1) would address the circumstances in which no kinship guardianship assistance payments may be made by a social services official to a successor guardian to include when the child is removed from the home of the successor guardian, placed into foster care and the Family Court has approved a permanency planning goal for the child other than return to the home of the successor guardian

or when the status of legal guardian is revoked, terminated, suspended or surrendered.

The proposed amendment of 18 NYCRR 436.5(5)(f)(2) would address the requirement that no kinship guardianship assistance payments may be made to a successor guardian if the social services official determines that the successor guardian is no longer legally responsible for the support of the child, including if the status of the successor guardian is terminated or the child is no longer receiving any support from such guardian. A successor guardian who has been receiving kinship guardianship assistance payments on behalf of a child under this Part must keep the social services official informed, on an annual basis, of any circumstances that would make the successor guardian ineligible for such payments or eligible for payments in a different amount.

The proposed amendment of 18 NYCRR 436.5(5)(f)(3)(i) would address the actions a social services district may take when it has reasonable cause to suspect that the successor guardian is either no longer legally responsible for the support of the child or is no longer providing any support for the child. The proposed regulation would also address the obligations of the successor guardian to cooperate and to reply to requests for documentation.

The proposed amendment of 18 NYCRR 436.5(5)(g) would require the successor guardian who has been receiving kinship guardianship assistance payments on behalf of a child to keep the social services official informed of any circumstances that would make the successor guardian ineligible for such payments or eligible for payments in a different amount, with written notification within 30 days of any such circumstance or event.

The proposed amendment of 18 NYCRR 436.5(5)(h) would address the requirement that the placement of the child with the successor guardian and any kinship guardianship assistance payments made on behalf of the child must be considered never to have been made when determining eligibility for adoption subsidy payments.

The proposed amendment of 18 NYCRR 436.6(a) would require the social services official to remind the successor guardian on an annual basis of their obligation to support the child and to notify the social services official if they are longer providing any support or are no longer legally responsible for the support of the child. Where the child is school age under the laws of the state in which the child resides, such notification must include a requirement that the successor guardian must certify and provide satisfactory documentation to the district that the child is a full-time elementary or secondary student or has completed secondary education.

The proposed amendment of 18 NYCRR 436.6(b)would require that where the child had attained the age of 16 years before the kinship guardianship assistance agreement became effective and is over the age or 18 but under 21 years of age, the successor guardian must certify and provide satisfactory documentation to the district that the child is: completing secondary education or a program leading to an equivalent credential; enrolled in an institution which provides post-secondary or vocational education; employed for at least 80 hours per month; participating in a program or activity designed to promote, or remove barriers to employment; or is incapable of any of such activities due to a medical condition, which incapacity is supported by regularly updated information in the child's case record.

The proposed amendment of 18 NYCRR 436.6(d) would require the successor guardian to certify to the district whether the child continues to reside in his or her home or, if not, the successor guardian must inform the district where the child currently resides.

The proposed amendment of 18 NYCRR 436.6(e) would require the successor guardian to return the certification referenced in this section along with required documentation to the social services official within 30 days of the receipt by the successor guardian.

The proposed amendment of 18 NYCRR 436.8(b) would address the requirement and standards when a social services official must make payments for the cost of care, services and supplies payable under the State's program of medical assistance for needy persons provided to any child for whom kinship guardianship assistance payments are being made who is not eligible for medical assistance and for whom the or successor guardian is unable to obtain medical coverage through any other available means, regardless of whether the child otherwise qualifies for medical assistance for needy persons.

The proposed amendments to 18 NYCRR 436.10(a) would add to the person entitled to fair hearings in regard to the kinship guardianship assistance program any person aggrieved by the failure of a social services district to agree to a prospective successor guardian being named in an agreement or to approve a prospective successor guardian pursuant to 18 NYCRR 436.5(a)(1), or the decision of a social services district to terminate an agreement pursuant to 18 NYCRR 436.4(i), to appeal to the office.

The proposed amendments to 18 NYCRR 436.10(b) would add to the issues that may be raised in a fair hearing to include whether the social services official has improperly denied an application to name a prospective successor guardian in the original kinship guardianship assistance agreement for payments pursuant to 18 NYCRR Part 436.

***Final rule as compared with last published rule:*** Nonsubstantive changes were made in sections 436.1(i) and 436.3(c)(3).

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

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

Changes made to the last published rule do not necessitate revision to the previously published regulatory impact statement, regulatory flexibility analysis, rural area flexibility analysis and job impact statement.

***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 Children and Family Services (OCFS) received comments from one local department of social services on the successor guardian regulations.

1. Multiple Successor Guardians.

The commenter requested clarification whether there may be more than one successor guardian at the same time.

The current proposed definition of a successor guardian in section 436.1(i) addresses this issue by its reference to "a person or persons".

The regulation was not changed.

2. Payment of Kinship Guardianship Assistance Prior to Notification.

The commenter asked the question whether a local department of social services may make kinship guardianship assistance payments to a successor guardian who secured guardianship prior to notification of the death or incapacity of the relative guardian.

OCFS addressed this question in 15-OCFS-ADM-15, Continuation of the Kinship Guardianship Assistance Program (KinGAP) to a Successor Guardian.

The regulation was not changed.

3. Clearances.

The commenter questioned whether it is expected that the child is to be removed from the home of the prospective successor guardian if the prospective successor guardian does not pass all clearances when such clearances are completed post-death or incapacitation of the relative guardian or whether the prospective guardian will solely not qualify for kinship guardianship payments. The commenter also asked if clearances may be redone on the relative guardian who reassumes guardianship after incapacity.

OCFS will address these questions in an FAQ.

The regulation was not changed.

4. Identification of Adult Household Members.

The commentator asked the question how agencies will be certain that the prospective successor guardian has identified all adult household members.

OCFS will address this question in an FAQ.

The regulation was not changed.

5. Out-of-State Successor Guardians.

The commentator asked how agencies are to proceed in cases where the prospective successor guardian resides out of state.

OCFS will address this comment in an FAQ.

The regulation was not changed.

6. Order of Definitions.

The commentator recommended that the regulatory definitions be rearranged in alphabetical order.

The regulation was not changed.

7. When Payments Commence to the Successor Guardian.

The commenter stated that the proposed section 436.3(f) was confusing as to when kinship guardianship assistance payments may commence.

The proposed subdivision states that a child remains eligible for kinship guardianship assistance when a successor guardian has assumed both physical custody and legal guardianship of the child. This provision is consistent with statute. When payment may commence in relation to the securing of physical care and legal guardianship is addressed elsewhere in the regulations in section 436.5(a)(4).

The regulation was not changed and the question was addressed in 15-OCFS-ADM-15, Continuation of the Kinship Guardianship Assistance Program (KinGAP) to a Successor Guardian. .

8. Termination of Kinship Guardianship Assistance Payments.

The commenter raised a question in regard to section 436.5(f)(1)(i) in regard to when kinship guardianship assistance payments must end. The

comment was that the proposed regulation requires that payments must end when the status of legal guardian is revoked, terminated, suspended or surrendered. The commenter stated that section 458-b(7)(b)(i) of the Social Services Law only refers to where guardianship is terminated. The proposed regulation is consistent with the requirement of that section of statute that payments must cease where the individual is no longer legally responsible for the support of the child, which occurs when the legal status of guardian is no longer exists because it has been revoked, terminated, surrendered or suspended.

The regulation was not changed.

9. Typos.

The commenter noted minor typos on section 436.1(i) and 436.3(c)(3).

The typos were corrected.

# Education Department

## EMERGENCY RULE MAKING

### School Receivership

**I.D. No.** EDU-27-15-00008-E

**Filing No.** 424

**Filing Date:** 2016-04-22

**Effective Date:** 2016-04-22

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

***Action taken:*** Addition of section 100.19 to Title 8 NYCRR.

***Statutory authority:*** Education Law, sections 207 (not subdivided), 211-f(15), 215 (not subdivided), 305(1), (2), (20), 308 (not subdivided) and 309 (not subdivided); L. 2015, ch. 56, subpart H, part EE

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

***Specific reasons underlying the finding of necessity:*** The purpose of the proposed rulemaking is to implement section 211-f of Education Law, as added by Subpart H of Part EE of Chapter 56 of the Laws of 2015, pertaining to school receivership. Section 211-f designates current Priority Schools that have been in the most severe accountability status since the 2006-07 school year as "Persistently Failing Schools" and vests the superintendent of the district with the powers of an independent receiver. The superintendent is given an initial one-year period to use the enhanced authority of a receiver to make demonstrable improvement in student performance at the "Persistently Failing School" or the Commissioner will direct that the school board appoint an independent receiver and submit the appointment for approval by the Commissioner. Failing Schools, schools that have been Priority Schools since the 2012-13 school year, will be given two years under a "superintendent receiver" (i.e., the superintendent of schools of the school district vested with the powers a receiver would have under section 211-f) to improve student performance. Should the school fail to make demonstrable progress in two years then the district will be required to appoint an independent receiver and submit the appointment for approval by the Commissioner. Independent Receivers are appointed for up to three school years and serve under contract with the Commissioner.

The proposed rulemaking adds a new section 100.19 to align the Commissioner's Regulations with Education Law 211-f, and addresses the Regents Reform Agenda and New York State's updated accountability system. Adoption of the proposed amendment is necessary to ensure seamless implementation of the provisions of Education Law § 211-f, and will provide school districts with additional powers to impact improvement in academic achievement for students in the lowest performing schools.

The proposed rule was originally adopted as an emergency action at the June 2015 Regents meeting, effective June 23, 2015 and revised and adopted as an emergency action at the September and October 2015 Regents meetings, and readopted as an emergency action at the December 2015 and January 2016 Regents meeting. A Notice of Revised Rule Making was subsequently published in the State Register on February 24, 2016 to, among other things, specify that certain timelines be determined using calendar days. The proposed rule was further revised and a second Notice of Revised Rule Making was published in the State Register on March 16, 2016 to, among other things, specify that business days be used with respect to a certain timeline.

Since the Board of Regents meets at fixed intervals, the earliest the revised proposed rule can be presented for regular (non-emergency) adoption, after expiration of the required 30-day public comment period provided for in State Administrative Procedure Act (SAPA) section 202(4-a), would be the May 16-17, 2016 Regents meeting. Furthermore, pursuant to SAPA section 203(1), the earliest effective date of the proposed rule, if adopted at the November meeting, would be June 1, 2016, the date a Notice of Adoption would be published in the State Register. However, the January emergency rule will expire on April 21, 2016, 60 days after its filing with the Department of State on February 22, 2016.

Emergency action at the April 18-19, 2016 Regents meeting is necessary for the preservation of the general welfare in order to immediately adopt revisions to the proposed amendment to clarify certain timelines in the regulation, and to otherwise ensure that the emergency rule adopted at the January 11-12, 2016 Regents meeting remains continuously in effect until the effective date of its adoption as a permanent rule.

It is anticipated that the proposed rule will be presented for adoption as a permanent rule at the May 16-17, 2016 Regents meeting, which is the first scheduled meeting after expiration of the 30-day public comment period prescribed in the State Administrative Procedure Act for State agency revised rule makings.

***Subject:*** School receivership.

***Purpose:*** To implement Education Law section 211-f, as added by part EE, subpart H of chapter 56 of the Laws of 2015.

***Substance of emergency rule:*** The Commissioner of Education proposes to add a new section 100.19 of the Commissioner's Regulations. The proposed rule was originally adopted as an emergency action at the June 2015 Regents meeting, effective June 23, 2015 and revised and adopted as an emergency action at the September and October 2015 Regents meetings, and readopted as an emergency action at the December 2015 and January 2016 Regents meeting. A Notice of Revised Rule Making was subsequently published in the State Register on February 24, 2016. The proposed rule was further revised and a second Notice of Revised Rule Making was published in the State Register on March 16, 2016. The revised rule, as published on March 16, 2016, has now been adopted as an emergency action at the April 18-19, 2016 Regents meeting. The following is a summary of the substantive provisions of the emergency rule.

Section 100.19(a), Definitions, provides the definitions used in the section, including the definitions of Failing School (Struggling School), Persistently Failing School (Persistently Struggling School), Priority School, School District in Good Standing, School District Superintendent Receiver, Independent Receiver, School District, Community School, Board of Education, Department-approved Intervention Model, School Intervention Plan, School Receiver, Diagnostic Tool for School and District Effectiveness, Consultation and Cooperation, Consultation, Consulting and Day.

§ 100.19(b), Designation of Schools as Failing and Persistently Failing, explains the process by which the Commissioner shall designate schools as Struggling or Persistently Struggling and clarifies that school districts will have the opportunity to present data and relevant information concerning extenuating or extraordinary circumstances faced by the school that should cause it not to be identified as a Struggling or a Persistently Struggling School.

§ 100.19(c), Public Notice and Hearing and Community Engagement, details the process and timeline for notifying parents and the community regarding the Struggling or Persistently Struggling designation, the establishment of a Community Engagement Team, and the role of the Community Engagement Team in the development of recommendations for the identified school. The regulations would require at least one public meeting or hearing annually regarding the status of the school and annual notification to parents of the school's designation and its implications. The regulations also detail the process by which the hearing shall be conducted and notifications made. Additionally, the subdivision specifies that the district superintendent receiver is required to develop a community engagement plan for approval by the Commissioner.

§ 100.19(d), School District Receivership, specifies that the superintendent shall be vested with the powers of the receiver for Persistently Struggling Schools for the 2015-16 school year and with the powers of the receiver for Struggling Schools for the 2015-16 and 2016-17 school years, provided that there is a Department approved intervention model or comprehensive education plan in place for these school years that includes rigorous performance metrics. The school district superintendent receiver shall provide quarterly written reports regarding implementation of the department-approved intervention model or school comprehensive education plan, and such reports, together with a plain-language summary thereof, shall be made publicly available. At the end of the 2015-16 school year, the Commissioner will review (in consultation and collaboration with the district) the performance of the Persistently Struggling School to determine whether the school can continue under the superintendent receivership or whether the district must appoint an independent receiver for the school. Similarly, the Department will review the performance of

Struggling Schools after two years to determine whether the schools can continue under the superintendent receivership or whether the district must appoint an independent receiver for the school.

§ 100.19(e), Appointment of an Independent Receiver, details the timeline and process for appointment of an independent receiver for Persistently Struggling and Struggling Schools and the process by which the Commissioner approves and contracts with the independent receiver. The section also details the power of the Commissioner to appoint an independent receiver if the district fails within sixty days to appoint an independent receiver that meets the Commissioner's approval. The subdivision clarifies that districts may appoint independent receivers from a department approved list or provide evidence of qualifications of a receiver not on the approved list. Additionally, the subdivision specifies what happens when the Commissioner must appoint an interim receiver.

§ 100.19(f), School Intervention Plan, describes the timeline and process by which the independent receiver will submit to the Commissioner for approval a school intervention plan and the specific components of that plan, including the metrics that will be used to evaluate plan implementation. Each approved school intervention plan must be submitted within six months of the independent receiver's appointment and this approval is authorized for a period of no more than three years. Each approved school intervention plan must be based on input from stakeholders delineated in the subdivision and a stakeholder engagement plan must be provided to the Commissioner within ten days of the independent receiver entering into a contract with the Commissioner. The school intervention plan must also be based upon recent diagnostic reviews and student achievement data. The independent receiver must provide quarterly reports, and plain-language summaries thereof, regarding the progress of implementing the school intervention plan to the local board of education, the Board of Regents, and the Commissioner. In order to provide additional direction to school districts, the regulations further delineate that in converting a school to a community school, the receiver must follow a particular process and meet minimum program requirements. The subdivision further clarifies that if the independent receiver cannot create an approvable plan, the Commissioner may appoint a new independent receiver.

§ 100.19(g), Powers and Duties of a Receiver, delineates the powers and duties of a school receiver, and the powers and duties that an independent receiver has in developing and implementing a school intervention plan. The independent receiver is required to convert the school to a community school and to submit an approvable school intervention plan to the Commissioner. The receiver (both the superintendent receiver and the independent receiver) has powers that may be exercised in the areas of school program and curriculum development; staffing, including replacement of teachers and administrators; school budget; expansion of the school day or year; professional development for staff; conversion of the school to a charter school; and requesting changes to the collective bargaining agreement at the identified school in areas that impact implementation of the school intervention plan. This section also describes the power of the receiver (both the superintendent and the independent receiver) to supersede decisions, policies, or local school district regulations that the receiver, in his/her sole judgment, believes impedes implementation of the school intervention plan.

Under the provisions of this subdivision, the receiver must notify the board of education, superintendent, and principal when the receiver is superseding their authority. The receiver must provide a reason for the supersession and an opportunity for the supersession to be appealed, all within a timeline prescribed in the regulations. This subdivision also delineates a similar process by which the receiver reviews and makes changes to the school budget and supersedes employment decisions regarding staff employed in schools operating under receivership.

§ 100.19(h), Annual Evaluation of Schools with an Appointed Independent Receiver, describes how the Commissioner, in collaboration and consultation with the district, will conduct an annual evaluation of each school to determine whether the school is meeting the performance goals and progressing in implementation of the school intervention plan. As a result of this evaluation, the Commissioner may allow the receiver to continue with the approved plan or require the receiver to modify the school intervention plan.

§ 100.19(i), Expiration of School Intervention Plan, describes the process by which the Commissioner evaluates the progress of the school under the receiver's school intervention plan after a three year period. Based on the results of the evaluation, the Commissioner may renew the plan with the independent receiver for not more than three years; terminate the independent receiver and appoint a new receiver; or determine that the school has improved sufficiently to be removed from Failing or Persistently Failing status.

§ 100.19(j), Phase-out and Closure of Failing and Persistently Failing School, states that nothing in these regulations shall prohibit the Commissioner from directing a school district to phase out or close a school, the Board of Regents from revoking the registration of a school, or a district from closing or phasing out a school with the approval of the Commissioner.

§ 100.19(k), regarding the Commissioner's evaluation of a school receivership program, requires the school receiver to provide any reports or other information requested by the Commissioner, in such form and format and according to such timeline as may be prescribed by the Commissioner, in order for the Commissioner to conduct an evaluation of the school receivership program.

***This notice is intended*** to serve only as a notice of emergency adoption. This agency intends to adopt the provisions of this emergency rule as a permanent rule, having previously submitted to the Department of State a notice of proposed rule making, I.D. No. EDU-27-15-00008-EP, Issue of July 8, 2015. The emergency rule will expire June 20, 2016.

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

***Regulatory Impact Statement***

1. STATUTORY AUTHORITY:

Education Law § 207 empowers Regents/Commissioner to adopt rules to carry out State education laws and functions/duties conferred by law.

Education Law § 305(1) and (2) provide Commissioner, as chief executive officer, with general supervision over schools and institutions subject to Education Law or education-related statutes, and responsibility for executing all Regents educational policies. § 305(20) provides Commissioner has additional powers/duties as charged by Regents.

Education Law § 211-f, as added by Part EE, Subpart H of Ch. 56, L. 2015, provides for appointment of receivers to assist low-performing schools to make demonstrable improvement in student performance.

Education Law § 215 authorizes Commissioner to require schools/districts to submit reports containing information prescribed by Commissioner.

Education Law § 308 authorizes Commissioner to enforce/give effect to Education Law provisions or other general/special law pertaining to education.

Education Law § 309 charges Commissioner with general supervision of schoolboards.

2. LEGISLATIVE OBJECTIVES:

The rule is consistent with the above authority and is necessary to implement Education Law § 211-f, by establishing criteria for appointment of receivers to assist low-performing schools.

3. NEEDS AND BENEFITS:

Education Law § 211-f designates current Priority Schools that have been in most severe accountability status since 2006-07 school year as "Persistently Failing Schools" (identified in rule as "Persistently Struggling Schools"), vests school district superintendent with powers of an independent receiver; and gives superintendent initial one-year period to use enhanced authority of receiver to make demonstrable improvement in student performance at the "Persistently Struggling School" or Commissioner will direct that schoolboard appoint independent receiver and submit appointment for Commissioner's approval. Independent receivers are appointed for up to three school years and serve under contract with Commissioner. Additionally, school will be eligible for a portion of $75 million in State aid to support/implement its turnaround efforts over a two-year period. Failing Schools (identified in rule as "Struggling Schools"), schools that have been Priority Schools since 2012-13 school year, will be given an initial two-year period under a "superintendent receiver" (i.e., school district superintendent of schools vested with powers of receiver) to improve student performance. Should school fail to make demonstrable improvement in two years then district must appoint independent receiver and submit appointment for Commissioner's approval.

§ 211-f provides persons/entities vested with powers of receiver new authority to develop school intervention plan; convert schools to community schools providing wrap-around services; reallocate funds in school's budget; expand school day/school year; establish professional development plans; order conversion of school to charter school; remove staff and/or require staff to reapply for employment in collaboration with staffing committee; and negotiate collective bargaining agreements, with unresolved issues submitted to Commissioner for decision.

At end of one- or two-year period in which Persistently Struggling or Struggling school remains under district control, and annually thereafter, Commissioner must determine whether school should be removed from designation, allowed to continue to be operated by school district under superintendent receiver, or be placed under independent receiver appointed by schoolboard with sole responsibility to manage/operate school. Schools operating under independent receiver must be annually evaluated by Commissioner to determine whether school intervention plan should be continued/modified. At end of independent receivership period, Commis-

sioner must decide whether to end receivership, continue it, or appoint new receiver. Additionally, Commissioner may order closure of Struggling school and Regents may revoke school's registration.

4. COSTS:

(a) Costs to State government: $75 million is appropriated for period July 1, 2015 to March 31, 2017 to support turnaround efforts in Persistently Struggling Schools.

(b) Costs to local government: The rule is necessary to implement Education Law § 211-f and, consequently, major mandates of rule are statutorily imposed. SED anticipates because $75 million has been appropriated to support turnaround efforts in Persistently Struggling Schools during the 2015-16 and 2016-17 school years, there will be no costs to local governments for implementing school receivership in these schools during these years.

There are currently 17 schools/districts that may potentially have one or more schools identified as Struggling or Persistently Struggling. Annual costs to implement school receivership will vary widely depending on number of factors, including but not limited to: size of school enrollment, demographics of school population and grade configuration of the school; whether independent receiver is assigned to a school and district required to convert school to community school; and degree to which school receiver chooses to use receiver's authority to take actions such as extending school day/school year; expanding/modifying curriculum/program offerings; replacing teachers/administrators; increasing salaries of teachers/administrators; improving hiring, induction, teacher evaluation, professional development, teacher advancement, school culture, organizational structure; adding kindergarten or pre-kindergarten programs; and/or re-staffing school. SED estimates on average it will cost district approximately $50,000 per school to meet rule's requirements regarding providing written annual notifications to parents of students attending Struggling or Persistently Struggling school; conducting at least one public meeting/hearing annually to discuss school's performance and the construct of receivership; establishing and implementing community engagement team; providing quarterly written reports to schoolboard, Commissioner and the Regents; amending comprehensive school improvement plans or Department-approved intervention plans to meet rule's requirements; and submitting information necessary to allow Commissioner to determine whether school is making demonstrable improvement. SED estimates in event that large high school (2,000 plus students) is placed in independent receivership, is implementing community school program, and independent receiver chooses to utilize all of receiver's authority, annual costs of implementation of receivership could be in range of $4 million to $5.5 million dollars.

(c) Costs to private regulated parties: None.

(d) Costs to regulating agency for implementation and continued administration of this rule: SED has received no additional funding to administrate this program. However, SED estimates it will cost annually between $65,000 and $800,000 per year to conduct additional visits to receivership schools to provide information in support of determinations on whether schools have made demonstrable improvement, depending on size and composition of review teams, length of visits, and type of reports written. SED further anticipates it will need to devote approximately $500,000 per year in staff time to coordinate receivership program, including providing technical assistance/support, evaluating performance, selecting independent receivers, and developing/overseeing their contracts. To extent SED does not receive additional funding, SED will be required to reallocate existing resources and diminish support for other program initiatives.

5. LOCAL GOVERNMENT MANDATES:

The rule is necessary to implement Education Law § 211-f by establishing criteria for appointment of receivers to assist low-performing schools to make demonstrable improvement in student performance. Consequently, major mandates of rule are statutorily imposed.

Upon Commissioner's designation of a school as Struggling or Persistently Struggling, the schoolboard shall conduct at least one public meeting/ hearing annually to discuss the performance of designated school and receivership, and provide translators and provide reasonable notice to public of meeting/hearing.

No later than twenty days following designation, district shall establish community engagement team, comprised of community stakeholders with direct ties to the school, to develop recommendations for improvement of the school and solicit input through public engagement.

The superintendent receiver shall develop community engagement plan in such form. format and according to such timeline as prescribed by Commissioner and shall submit such plan for Commissioner's approval.

The district shall continue to operate a Persistently Struggling school for an additional school year and a Struggling school for an additional two school years, provided there is a Department-approved intervention model or comprehensive education plan in place that includes rigorous performance metrics and goals, and a community engagement plan. The superintendent shall be vested with the powers of independent receiver but shall not be required to prepare school intervention plan or convert school to community school.

In the event SED revokes provisional approval or approval of an intervention model or comprehensive education plan, Commissioner shall require district to appoint and submit for Commissioner's approval an independent receiver to manage and operate the school.

The district shall consult with community engagement team, in accordance with approved community engagement plan, with respect to modifications to district's approved intervention model or comprehensive education plan.

Within 60 days of Commissioner's determination to place a school into receivership, district shall appoint an independent receiver and submit appointment for Commissioner's approval. If district fails to appoint independent receiver that meets the Commissioner's approval, Commissioner shall appoint independent receiver.

The district shall fully cooperate with independent receiver and willful failure to cooperate with or interference with functions of such receiver shall constitute willful neglect of duty under Education Law § 306.

No later than 30 business days prior to presentation of a school budget at budget hearing, the schoolboard shall provide school receiver with a copy of proposed district budget including any school-based budget, that shall include a specific delineation of all funds and resources the school receiver shall have available to manage and operate the school and services and resources that the district shall provide to the school. Upon receipt of the school receiver's proposed budget modifications, the schoolboard shall incorporate the modifications into the proposed budget and present it to the public or return modifications for reconsideration for reasons specified in writing. The school receiver shall notify schoolboard in writing of receiver's decision and determination of the school receiver shall be incorporated into the budget. The school receiver and the schoolboard shall provide the Commissioner with an electronic copy of all correspondence related to modification of the school budget.

6. PAPERWORK:

Upon Commissioner's designation of a school as Struggling or Persistently Struggling, the schoolboard shall provide written notice of designation to parents/persons in parental relation no later than 30 days following designation, and by June 30th of each school year the school remains so identified.

The district shall provide written notice of public meeting/hearing held annually for purposes of discussing the performance of the designated school and receivership.

The superintendent receiver shall provide quarterly written reports regarding implementation of the Department-approved intervention model or school comprehensive education plan, and such reports, together with a plain-language summary thereof, shall be publicly available.

Quarterly reports of school receiver shall be publicly available in school district's offices and posted on school district's website, if one exists.

No later than ten business days after a schoolboard has acted upon an employment decision pertaining to staff assigned to a Struggling or Persistently Struggling school, or a school that the Commissioner has determined shall be placed into receivership, the schoolboard shall provide school receiver with a copy of the action taken, which shall not go into effect until it has been reviewed by the school receiver. Upon receipt of any proposed modifications to an employment decision, the schoolboard shall adopt the modifications at the next regularly scheduled board meeting or return the modification within 10 days for reconsideration with the reasons specified in writing. The board shall approve modifications required by receiver at its next regularly scheduled meeting. The receiver and schoolboard shall provide Commissioner with an electronic copy of all correspondence related to such employment decisions.

The school receiver shall provide Commissioner with any reports or other information requested, in such form and format and according to such timeline as may be prescribed, in order for Commissioner to conduct an evaluation of the receivership program.

7. DUPLICATION:

The rule is necessary to implement Education Law § 211-f and does not duplicate, overlap or conflict with State or federal legal requirements.

8. ALTERNATIVES:

The rule is necessary to implement Education Law § 211-f by establishing criteria for the appointment of receivers to assist low-performing schools to make demonstrable improvement in student performance. Consequently, the major provisions of the rule are statutorily imposed, and there are no significant alternatives and none were considered.

9. FEDERAL STANDARDS:

There are no applicable federal standards for the appointment of receivers pursuant to Education Law § 211-f.

10. COMPLIANCE SCHEDULE:

The rule is necessary to implement Education Law § 211-f by establishing criteria for the appointment of receivers for Persistently Struggling

Schools and Struggling Schools. Consequently, the major provisions of the proposed rule are statutorily imposed. It is anticipated that regulated parties can achieve compliance with the proposed rule by its effective date.

***Regulatory Flexibility Analysis***

Small Businesses:

The proposed rule is necessary to implement Education Law § 211-f, as added by Subpart H of Part EE of Chapter 56 of the Laws of 2015, by establishing criteria for the appointment of receivers to assist low performing schools and does not impose any adverse economic impact, reporting, recordkeeping or any other compliance requirement on small businesses. Because it is evident from the nature of the rule that it does not affect small businesses, no further measures were needed to ascertain that fact and none were taken. Accordingly, a regulatory flexibility analysis for small businesses is not required and one has not been prepared.

Local Government:

1. EFFECT OF RULE:

The proposed rule applies to those school districts that have:

(1) "Persistently Failing Schools" (identified in the regulation as a "Persistently Struggling Schools"), which are Priority Schools that have been in the most severe accountability status since the 2006-07 school year, and/or

(2) Failing Schools (identified in the regulation as "Struggling Schools"), which are schools that have been in Priority Schools status since the 2012-13 school year.

There are currently 17 school districts that have Persistently Struggling Schools and/or Struggling Schools.

2. COMPLIANCE REQUIREMENTS:

The rule is necessary to implement Education Law section 211-f by establishing criteria for the appointment of receivers to assist low-performing schools to make demonstrable improvement in student performance. Consequently, the major mandates of the proposed rule are statutorily imposed. Major mandates of the proposed rule include: the development of a community engagement plan in a form and format and according to a timeline as prescribed by the Commissioner, the creation of a community engagement team, full cooperation of the district with the independent receiver, and the completion of quarterly reports by the independent receiver. In April 2015, Subpart H of Part EE of Chapter 56 of the Laws of 2015 created a new Education Law § 211-f. The statute designates current Priority Schools that have been in the most severe accountability status since the 2006-07 school year as "Persistently Failing Schools" (identified in the proposed regulation as "Persistently Struggling Schools" and vests the superintendent of the district with the powers of an independent receiver. The superintendent is given an initial one-year period to use the enhanced authority of a receiver to make demonstrable improvement in student performance at the "Persistently Struggling School" or the Commissioner will direct that the school board appoint an independent receiver and submit the appointment for approval by the Commissioner. Additionally, the school will be eligible for a portion of $75 million in State aid to support and implement its turnaround efforts over a two-year period. Failing Schools (identified in the regulation as "Struggling Schools"), schools that have been Priority Schools since the 2012-13 school year, will be given two years under a "superintendent receiver" (i.e., the superintendent of schools of the school district vested with the powers a receiver would have under § 211-f) to improve student performance. Should the school fail to make demonstrable improvement in two years then the district will be required to appoint an independent receiver and submit the appointment for approval by the Commissioner. Independent receivers are appointed for up to three school years and serve under contract with the Commissioner.

Education Law § 211-f provides persons or entities vested with the powers of a receiver new authority to, among other things, develop a school intervention plan; convert schools to community schools providing wrap-around services; reallocate funds in the school's budget; expand the school day or school year; establish professional development plans; order the conversion of the school to a charter school consistent with applicable state laws; remove staff and/or require staff to reapply for their jobs in collaboration with a staffing committee; and negotiate collective bargaining agreements, with any unresolved issues submitted to the Commissioner for decision.

At the end of the one- or two-year period in which a school designated as Persistently Struggling or as Struggling remains under district control, and annually thereafter, the Commissioner must determine whether the school should be removed from such designation; allowed to continue to be operated by the school district with the superintendent receiver; or be placed under an independent receiver who shall be appointed by the school board and shall have the responsibility to manage and operate the school. Schools operating under an independent receiver must also be annually evaluated by the Commissioner to determine whether the school intervention plan should be continued or modified. At the end of the independent receivership period, the Commissioner must decide whether to end the receivership, continue it, or appoint a new receiver. Additionally, the Commissioner may order the closure of a Persistently Struggling or Struggling School and the Board of Regents may revoke the registration of a school.

Upon the Commissioner's designation of a school as Struggling or Persistently Struggling, the board of education shall conduct at least one public meeting or hearing annually for purposes of discussing the performance of the designated school and receivership. The district shall provide translators and provide reasonable notice to the public of the meeting/hearing.

The school district superintendent receiver shall provide quarterly written reports regarding implementation of the department-approved intervention model or school comprehensive education plan, and such reports, together with a plain-language summary thereof, shall be made publicly available.

No later than twenty days following designation, the school district shall establish a community engagement team, comprised of community stakeholders with direct ties to the school, to develop recommendations for improvement of the school and solicit input through public engagement.

The superintendent shall develop a community engagement plan in such form and format and according to such timeline as may be prescribed by the Commissioner and shall submit such plan to the Commissioner for approval.

The school district shall continue to operate a school identified as Persistently Struggling for one additional school year and a school identified as Struggling for two additional school years, provided there is a Department-approved intervention model or comprehensive education plan in place that includes rigorous performance metrics and goals, and a community engagement plan. The superintendent shall be vested with the powers of an independent receiver.

In the event the Department revokes the provisional approval or approval of an intervention model or comprehensive education plan, the Commissioner shall require the school district to appoint and submit for the Commissioner's approval an independent receiver to manage and operate the school.

The district shall consult with the community engagement team in accordance with the approved community engagement plan, with respect to modifications to the district's approved intervention model or comprehensive education plan.

Within 60 days of Commissioner's determination to place a school into receivership, the district shall appoint an independent receiver and submit the appointment to the Commissioner for approval. If the school district fails to appoint an independent receiver that meets the Commissioner's approval, the Commissioner shall appoint the independent receiver.

The school district shall fully cooperate with the independent receiver and willful failure to cooperate with or interfere with the functions of such receiver shall constitute willful neglect of duty under Education Law section 306.

No later than 30 business days prior to presentation of a school budget at the budget hearing, the school board shall provide the school receiver with a copy of the proposed district budget including any school-based budget, that shall include a specific delineation of all funds and resources the school receiver shall have available to manage and operate the school and the services and resources that the school district shall provide to the school. Upon receipt of the school receiver's proposed budget modifications, the school board shall incorporate the modifications into the proposed budget and present it to the public or return the modifications for reconsideration for reasons specified in writing. The school receiver shall notify the school board in writing of the decision and the determination shall be incorporated into the budget. The school receiver and the school board shall provide the Commissioner with an electronic copy of all correspondence related to modification of the school budget.

Upon the Commissioner's designation of a school as Struggling or Persistently Struggling, the board of education shall provide written notice of the designation to parents/persons in parental relation no later than 30 days following designation, and by June 30th of each school year the school remains so identified.

The school district shall provide written notice of the public meeting or hearing held annually for purposes of discussing the performance of the designated school and receivership.

The school district superintendent receiver shall provide quarterly written reports regarding implementation of the department-approved intervention model or school comprehensive education plan, and such reports, together with a plain-language summary thereof, shall be publicly available.

Quarterly reports of the independent receiver shall be publicly available in the school district's offices and posted on the school district's website, if one exists.

No later than ten business days after a school board has acted upon an

employment decision pertaining to staff assigned to a Struggling or Persistently Struggling School, or a school that the Commissioner has determined shall be placed into receivership, the school board shall provide the school receiver with a copy of the action taken, which shall not go into effect until it has been reviewed by the school receiver. Upon receipt of any proposed modifications to an employment decision, the school board shall adopt the modifications at the next regularly scheduled board meeting or return the modification within 10 days for reconsideration with the reasons specified in writing. The board shall approve modifications required by the receiver at its next regularly scheduled meeting. The receiver and school board shall provide the Commissioner with an electronic copy of all correspondence related to such employment decisions.

The school receiver shall provide the Commissioner with any reports or other information requested, in such form and format and according to such timeline as may be prescribed, in order for the Commissioner to conduct an evaluation of the receivership program.

3. PROFESSIONAL SERVICES:

The rule is necessary to implement Education Law § 211-f by establishing criteria for the appointment of receivers to assist low performing schools. The proposed rule does not impose any additional professional services requirements beyond those inherent in the statute.

4. COMPLIANCE COSTS:

The proposed rule is necessary to implement Education Law § 211-f and, consequently, the major mandates of the proposed rule are statutorily imposed. The Department anticipates that because $75 million has been appropriated to support turnaround efforts in Persistently Struggling Schools during the 2015-16 and 2016-17 school years, there will be no costs to local governments for implementing school receivership in these schools during these years.

There are currently 17 schools districts that may potentially have one or more schools identified as Struggling or Persistently Struggling. Annual costs to implement school receivership will vary widely depending on a number of factors, including but not limited to: the size of school enrollment, the demographics of the school population and the grade configuration of the school; whether an independent receiver is assigned to a school and the district is required to convert the school to a community school; and the degree to which the school receiver chooses to use the receiver's authority to take actions such as extending the school day or school year; expanding or modifying curriculum and program offerings; replacing teachers and administrators; increasing salaries of teachers and administrators; improving hiring, induction, teacher evaluation, professional development, teacher advancement, school culture and/or organizational structure; adding kindergarten or pre-kindergarten programs; and/or restaffing the school. The Department estimates that on average it will cost a district approximately $50,000 per school to meet the requirements of the regulations regarding providing written annual notifications to parents of, or persons in parental relation to, students attending a struggling or a persistently struggling school; conducting at least one public meeting or hearing annually for purposes of discussing the performance of the designated school and the construct of receivership; establishing a community engagement team and implementing the provisions of the regulations regarding such teams; providing quarterly written reports to the board of education, the Commissioner and the Board of Regents; amending comprehensive school improvement plans or department approved intervention plans to meet the requirements of the regulations; and submitting information necessary to allow the Commissioner to determine whether a school is making demonstrable improvement. The Department estimates that in the event that a large high school (2,000 plus students) is placed in independent receivership, is implementing a community school program, and the independent receiver chooses to utilize all of the authority of the receiver as specified in subdivision 100.19(g), the annual costs of implementation of receivership could be in the range of $4 million to $5.5 million dollars.

5. ECONOMIC AND TECHNOLOGICAL FEASIBILITY:

The proposed rule requires school districts to provide notice to the public regarding public meetings or hearings by posting the notice on a school district website, if one exists. In addition, the School Intervention Plan must be publicly available by the independent receiver in the school district's offices and posted on the school district's website, if one exists. Quarterly reports must be publicly available in the school district's offices and posted on the school district's website, if one exists.

Economic feasibility is addressed in the Costs section above.

6. MINIMIZING ADVERSE IMPACT:

The rule is necessary to implement Education Law section 211-f by establishing criteria for the appointment of receivers to assist low performing schools. Consequently, the major provisions of the rule are statutorily imposed and it is not feasible to establish differing compliance or reporting requirements or timetables, or to exempt school districts from coverage by the rule. Nevertheless, a substantial effort was made to involve school districts and other interested parties in the development of this rule, and their comments were considered in drafting the proposed rule.

The Department intends to take steps to provide sufficient notice of the proposed rule to ensure that school districts are made aware of the rule's requirements so they may suitably prepare for and implement this requirement. The Department will also take steps to share a variety of resources with school districts to provide guidance with the implementation process.

7. LOCAL GOVERNMENT PARTICIPATION:

With the approval of the Board of Regents at its May 18-19, 2015 meeting, Department staff solicited comments and recommendations from groups that included teams from school districts with one or more eligible priority schools; district superintendents; Statewide representatives of parents, teachers, principals, superintendents, and school boards; educational partnership organizations; representatives of State agencies that provide health, mental health, child welfare, and job services; representatives of organizations involved in and concerned with the education of English language learners, students with disabilities and students in temporary housing; and technical experts in school receivership, expanded learning, and community school models. A meeting of these key stakeholders was held on May 27, 2015, where more than 100 participants provided their feedback on draft express terms that were presented to the Board of Regents in May, and many of their suggestions were incorporated in the proposed rule presented for emergency adoption at the June 15-16, 2015 Regents meeting.

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

Pursuant to State Administrative Procedure Act section 207(1)(b), the State Education Department proposes that the initial review of this rule shall occur in the fifth calendar year after the year in which the rule is adopted, instead of in the third calendar year. The justification for a five year review period is that the proposed rule is necessary to implement Education Law section 211-f, as added by Part EE, Subpart H of Ch. 56 of the Laws of 2015, by establishing criteria for the appointment of receivers to assist low-performing schools to make demonstrable improvement in student performance. Consequently, the major, substantive provisions of the proposed rule are statutorily imposed and cannot be changed without further Legislative action.

The Department invites public comment on the proposed five year review period for this rule. Comments should be sent to the agency contact listed in item number 10 of the Notice of Proposed Rule Making published herewith, and must be received within 45 days of the date the Notice is published in the State Register.

***Rural Area Flexibility Analysis***

1. TYPES AND ESTIMATED NUMBER OF RURAL AREAS:

The proposed rule applies to those school districts that have:

(1) "Persistently Failing Schools" (identified in the regulation as a "Persistently Struggling Schools"), which are Priority Schools that have been in the most severe accountability status since the 2006-07 school year, and/or

(2) Failing Schools (identified in the regulation as a "Struggling Schools"), which are schools that have been in Priority Schools status since the 2012-13 school year.

There is currently one school district that has one Struggling School located in a rural area (i.e. the 44 rural counties with less than 200,000 inhabitants and the 71 towns in urban counties with a population density of 150 per square mile or less).

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

The proposed rule is necessary to implement Education Law section 211-f by establishing criteria for the appointment of receivers to assist low-performing schools to make demonstrable improvement in student performance. In April 2015, Subpart H of Part EE of Ch. 56 of the Laws of 2015 created a new Education Law § 211-f. The statute designates current Priority Schools that have been in the most severe accountability status since the 2006-07 school year as "Persistently Failing Schools" (identified in the proposed regulation as "Persistently Struggling Schools" and vests the superintendent of the district with the powers of an independent receiver. The superintendent is given an initial one-year period to use the enhanced authority of a receiver to make demonstrable improvement in student performance at the Persistently Struggling School or the Commissioner will direct that the school board appoint an independent receiver and submit the appointment for approval by the Commissioner. Independent receivers are appointed for up to three school years and serve under contract with the Commissioner. Additionally, the school will be eligible for a portion of $75 million in State aid to support and implement its turnaround efforts over a two-year period. Failing Schools (identified in the regulation as "Struggling Schools"), schools that have been Priority Schools since the 2012-13 school year, will be given two years under a "superintendent receiver" (i.e., the superintendent of schools of the school district vested with the powers of a receiver under § 211-f) to improve

student performance. Should the school fail to make demonstrable improvement in two years then the district will be required to appoint an independent receiver and submit the appointment for approval by the Commissioner. Education Law § 211-f provides persons or entities vested with the powers of a receiver new authority to, among other things, develop a school intervention plan; convert schools to community schools providing wrap-around services; reallocate funds in the school's budget; expand the school day or school year; establish professional development plans; order the conversion of the school to a charter school consistent with applicable state laws; remove staff and/or require staff to reapply for their jobs in collaboration with a staffing committee; and negotiate collective bargaining agreements, with any unresolved issues submitted to the Commissioner for decision.

At the end of the one- or two-year period in which a school designated as Persistently Struggling or as Struggling remains under district control, and annually thereafter, the Commissioner must determine whether the school should be removed from such designation; allowed to continue to be operated by the school district with the superintendent receiver; or be placed under an independent receiver who shall be appointed by the school board with the responsibility to manage and operate the school. Schools operating under an independent receiver must also be annually evaluated by the Commissioner to determine whether the school intervention plan should be continued or modified. At the end of the independent receivership period, the Commissioner must decide whether to end the receivership, continue it, or appoint a new receiver. Additionally, the Commissioner may order the closure of a Struggling or Persistently Struggling School and the Board of Regents may revoke the registration of the school.

Upon the Commissioner's designation of a school as Struggling or Persistently Struggling, the board of education shall conduct at least one public meeting or hearing annually for purposes of discussing the performance of the designated school and receivership. The district shall provide translators and provide reasonable notice to the public of the meeting or hearing.

The superintendent receiver shall provide quarterly written reports regarding implementation of the department-approved intervention model or school comprehensive education plan, and such reports, together with a plain-language summary thereof, shall be publicly available.

No later than twenty days following designation, the school district shall establish a community engagement team, comprised of community stakeholders with direct ties to the school, to develop recommendations for improvement of the school and solicit input through public engagement.

The superintendent receiver shall develop a community engagement plan in such form and format and according to such timeline as may be prescribed by the Commissioner and shall submit such plan to the Commissioner for approval.

The school district shall continue to operate a school identified as Persistently Struggling for one additional school year and a school identified as Struggling for two additional school years, provided there is a Department-approved intervention model or comprehensive education plan in place that includes rigorous performance metrics and goals, as well as a community engagement plan. The superintendent shall be vested with the powers of an independent receiver, except that superintendent is not required to develop a school intervention plan or convert the school to a community school.

In the event the Department revokes the provisional approval or approval of an intervention model or comprehensive education plan, the Commissioner shall require the school district to appoint and submit for the Commissioner's approval an independent receiver to manage and operate the school.

The district shall consult with the community engagement team in accordance with the approved community engagement plan, with respect to modifications to the district's approved intervention model or comprehensive education plan.

Within 60 days of the Commissioner's determination to place a school into receivership, the district shall appoint an independent receiver and submit the appointment to the Commissioner for approval. If the school district fails to appoint an independent receiver that meets the Commissioner's approval, the Commissioner shall appoint the independent receiver.

The school district shall fully cooperate with the independent receiver and willful failure to cooperate with or interfere with the functions of such receiver shall constitute willful neglect of duty under Education Law section 306.

No later than 30 business days prior to the presentation of a school budget at the budget hearing, the school board shall provide the school receiver with a copy of the proposed district budget including any school-based budget, that shall include a specific delineation of all funds and resources the school receiver shall have available to manage and operate the school and the services and resources that the school district shall provide to the school. Upon receipt of the school receiver's proposed budget modifications, the school board shall incorporate the modifications into the proposed budget and present it to the public or return the modifications for reconsideration for reasons specified in writing. The school receiver shall notify the school board in writing with a decision and that determination shall be incorporated into the budget. The school receiver and the school board shall provide the Commissioner with an electronic copy of all correspondence related to modification of the school budget.

Upon the Commissioner's designation of a school as Struggling or Persistently Struggling, the board of education shall provide written notice of the designation to parents/persons in parental relation no later than 30 days following designation, and by June 30th of each school year the school remains so identified.

The school district shall provide written notice of the public meeting or hearing held annually for purposes of discussing the performance of the designated school and receivership.

Quarterly reports of the independent receiver shall be publicly available in the school district's offices and posted on the school district's website, if one exists.

No later than ten business days after a school board has acted upon an employment decision pertaining to staff assigned to a Struggling or Persistently Struggling School, or a school that the Commissioner has determined shall be placed into receivership, the school board shall provide the school receiver with a copy of the action taken, which shall not go into effect until it has been reviewed by the school receiver. Upon receipt of any proposed modifications to an employment decision, the school board shall adopt the modifications at the next regularly scheduled board meeting or return the modification within 10 days for reconsideration with the reasons specified in writing. The board shall approve modifications required by the receiver at its next regularly scheduled meeting. The receiver and school board shall provide the Commissioner with an electronic copy of all correspondence related to such employment decisions.

The school receiver shall provide the Commissioner with any reports or other information requested, in such form and format and according to such timeline as may be prescribed, in order for the Commissioner to conduct an evaluation of the receivership program.

The rule is necessary to implement Education Law § 211-f by establishing criteria for the appointment of receivers to assist low performing schools, and does not impose any additional professional service requirements upon schools in rural areas beyond those inherent in the statute.

3. COMPLIANCE COSTS:

The proposed rule is necessary to implement Education Law § 211-f and, consequently, the major mandates of the proposed rule are statutorily imposed. The Department anticipates that because $75 million has been appropriated to support turnaround efforts in Persistently Struggling Schools during the 2015-16 and 2016-17 school years, there will be no costs to local governments for implementing school receivership in these schools during these years.

There are currently 17 schools districts that may potentially have one or more schools identified as Struggling or Persistently Struggling. Annual costs to implement school receivership will vary widely depending on a number of factors, including but not limited to: the size of school enrollment, the demographics of the school population and the grade configuration of the school; whether an independent receiver is assigned to a school and the district is required to convert the school to a community school; and the degree to which the school receiver chooses to use the receiver's authority to take actions such as extending the school day or school year; expanding or modifying curriculum and program offerings; replacing teachers and administrators; increasing salaries of teachers and administrators; improving hiring, induction, teacher evaluation, professional development, teacher advancement, school culture and/or organizational structure; adding kindergarten or pre-kindergarten programs; and/or re-staffing the school. The Department estimates that on average it will cost a district approximately $50,000 per school to meet the requirements of the regulations regarding providing written annual notifications to parents of, or persons in parental relation to, students attending a struggling or a persistently struggling school; conducting at least one public meeting or hearing annually for purposes of discussing the performance of the designated school and the construct of receivership; establishing a community engagement team and implementing the provisions of the regulations regarding such teams; providing quarterly written reports to the board of education, the Commissioner and the Board of Regents; amending comprehensive school improvement plans or department approved intervention plans to meet the requirements of the regulations; and submitting information necessary to allow the Commissioner to determine whether a school is making demonstrable improvement. The Department estimates that in the event that a large high school (2,000 plus students) is placed in independent receivership, is implementing a community school program, and the independent receiver chooses to utilize all of the author-

ity of the receiver as specified in subdivision 100.19(g), the annual costs of implementation of receivership could be in the range of $4 million to $5.5 million dollars.

4. MINIMIZING ADVERSE IMPACT:

The rule is necessary to implement Education Law section 211-f by establishing criteria for the appointment of receivers to assist low performing schools. Consequently, the major provisions of the rule are statutorily imposed and it is not feasible to establish differing compliance or reporting requirements or timetables or to exempt schools in rural areas from coverage by the proposed rule. Nevertheless, a substantial effort was made to involve school districts and other interested parties in the development of this rule, and their comments were considered in drafting the proposed rule.

The Department has taken steps to minimize the possible adverse impact of the proposed rule by including stakeholders in the decision making process. The Department also intends to take steps to provide sufficient notice of the proposed rule to ensure that school districts are made aware of the rule's requirements so they may timely prepare for implementation. The Department will also take steps to share a variety of resources with school districts to provide guidance with implementation.

5. RURAL AREA PARTICIPATION:

With the approval of the Board of Regents at its May 18-19, 2015 meeting, Department staff solicited comments and recommendations from groups that included teams from school districts with one or more eligible priority schools; district superintendents; Statewide representatives of parents, teachers, principals, superintendents, and school boards; educational partnership organizations; representatives of State agencies that provide health, mental health, child welfare, and job services; representatives of organizations involved in and concerned with the education of English language learners, students with disabilities and students in temporary housing; and technical experts in school receivership, expanded learning, and community school models. A meeting of these key stakeholders was held on May 27, 2015, where more than 100 participants provided their feedback on draft express terms that were presented to the Board of Regents in May, and many of their suggestions were incorporated in the proposed rule presented for emergency adoption at the June 15-16, 2015 Regents meeting.

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

Pursuant to State Administrative Procedure Act § 207(1)(b), the State Education Department proposes that the initial review of this rule shall occur in the fifth calendar year after the year in which the rule is adopted, instead of in the third calendar year. The justification for a five-year review period is that the proposed rule is necessary to ensure implementation of Education Law section 211-f, as added by Part EE, Subpart H of Ch. 56 of the Laws of 2015, by establishing criteria for the appointment of receivers to assist low-performing schools to make demonstrable improvement in student performance. Consequently, the major, substantive provisions of the proposed rule are statutorily imposed and cannot be changed without further Legislative action.

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

***Job Impact Statement***

The proposed rule relates to public school and school district accountability and is necessary to implement and otherwise conform the Commissioner's Regulations to Education Law section 211-f, as added by Part EE, Subpart H of Ch. 56 of the Laws of 2015, by establishing criteria for the appointment of receivers to assist low performing schools to make demonstrable improvement in student performance. The statute designates current Priority Schools that have been in the most severe accountability status since the 2006-07 school year as "Persistently Failing Schools" (identified in the proposed regulation as "Persistently Struggling Schools") and identifies schools that have been identified as Priority since the 2012-13 school year as "Failing Schools" (identified in the proposed regulation as "Struggling Schools") and vests the superintendent of the district with the powers of an independent receiver.

The proposed rule applies to public schools that are Struggling or Persistently Struggling and placed into receivership and will not result in an adverse impact on jobs or employment opportunities. In accordance with Education Law section 211-f(7)(b) and (c), a school receiver may abolish the positions of all members of the teaching and administrative and supervisory staff assigned to the Struggling or Persistently Struggling School and terminate the employment of any principal assigned to such a school and require staff members to reapply for their positions in the school if they so choose. Although the school receiver may choose not to rehire a maximum of fifty percent of the former staff, it is anticipated that those staff members will be replaced by other individuals and will not cause a net loss in positions at the school.

Furthermore, an apportionment of $75 million in State funds will be available to Persistently Struggling Schools for the implementation of the Receivership process during the 2015-16 and 2016-17 school years. Since school districts are expected to use a portion of this allocation to implement strategies that may require hiring of new staff for these schools, this will result in a net gain of jobs. It is also possible that to meet the requirements of school receivership in Struggling Schools, which are not eligible for the $75 million grant, districts may choose to hire additional staff to implement the provisions of receivership.

***Assessment of Public Comment***

The agency received no public comment.

# Department of Environmental Conservation

## EMERGENCY/PROPOSED RULE MAKING HEARING(S) SCHEDULED

**Chemical Bulk Storage (CBS)**

**I.D. No.** ENV-19-16-00006-EP
**Filing No.** 434
**Filing Date:** 2016-04-25
**Effective Date:** 2016-04-25

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

***Proposed Action:*** Amendment of Part 597 of Title 6 NYCRR.

***Statutory authority:*** Environmental Conservation Law, sections 1-0101, 3-0301, 3-0303, 17-0301, 17-0303, 17-0501, 17-1743, 27-1301, 37-0101 through 37-0107 and 40-0101 through 40-0121

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

***Specific reasons underlying the finding of necessity:*** The New York State Department of Health (NYSDOH) has requested that the New York State Department of Environmental Conservation (DEC) add perfluorooctanoic acid (PFOA-acid, Chemical Abstracts Service (CAS) No. 335-67-1), ammonium perfluorooctanoate (PFOA-salt, CAS No. 3825-26-1), perfluorooctane sulfonic acid (PFOS-acid, CAS No. 1763-23-1), and perfluorooctane sulfonate (PFOS-salt, CAS No. 2795-39-3) to 6 NYCRR Section 597.3, List of Hazardous Substances. DEC has concluded that these four substances meet the definition of a hazardous substance based upon the conclusion of the NYSDOH that prolonged exposure to significantly elevated levels of these compounds can affect health and, consequently, pose a threat to public health in New York State when improperly treated, stored, transported, disposed of or otherwise managed. NYSDOH scientists have concluded that it is essential to list these chemicals as hazardous substances. See the Regulatory Impact Statement for additional information, including NYSDOH's letter requesting that these chemicals be added to the List of Hazardous Substances (Section 597.3).

It is essential to immediately identify PFOA-acid, PFOA-salt, PFOS-acid, and PFOS-salt as hazardous substances pursuant to 6 NYCRR Section 597.3, thereby making them hazardous wastes pursuant to Environmental Conservation Law Section 27-1301, and enabling DEC to exert its enforcement authorities and to expend funds from the Hazardous Waste Remedial Fund to clean up the contaminant. The emergency rule will provide DEC with authority to take immediate action to protect public health. To the extent elevated levels of PFOA-related and PFOS-related substances are identified throughout the State, DEC needs the authority to act expeditiously.

***Subject:*** Chemical Bulk Storage (CBS).

***Purpose:*** To amend Part 597 of the CBS regulations.

***Public hearing(s) will be held at:*** 2:00 p.m., June 27, 2016 at Empire State Plaza, Meeting Rm. 6, Albany, NY; 2:00 p.m., June 28, 2016 at RIT Inn and Conference Center, 5257 W. Henrietta Rd., Henrietta, NY; and 2:00 p.m., June 30, 2016 at Nassau Community College, One Education Dr., Garden City, NY.

Details are available on NYSDEC's website at http://dec.ny.gov/regulations/104968.html

***Interpreter Service:*** Interpreter services will be made available to hearing impaired persons, at no charge, upon written request submitted within rea-

sonable 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 emergency/proposed rule:*** 6 NYCRR Part 597 is amended to read as follows:

Existing subdivision 597.1(a) through paragraph 597.1(b)(1) remain unchanged.

Existing paragraph 597.1(b)(2) is amended to read as follows:

(2) Chemical [a]*A*bstracts [s]*S*ervice number or CAS number is the unique identifier for a chemical substance assigned by the CAS division of the American Chemical Society.

Existing paragraph 597.1(b)(3) through section 597.2 remain unchanged.

Existing section 597.3 is amended to read as follows:

597.3 List of hazardous substances

Table 1 sets forth the list of hazardous substances in alphabetical order. Table 2 sets forth the list of hazardous substances in Chemical Abstract*s* Service (CAS) number order.

Table 1 and Table 2 are amended to read as follows:

Table 1 – Alphabetical Order

| CASRN | Substance | RQ Air *(pounds)* | RQ Land/ Water *(pounds)* | Notes |
|---|---|---|---|---|
| *3825-26-1* | *Ammonium Perfluorooctanoate* | *1* | *1* | |
| *2795-39-3* | *Perfluorooctane Sulfonate* | *1* | *1* | |
| *1763-23-1* | *Perfluorooctane Sulfonic Acid* | *1* | *1* | |
| *335-67-1* | *Perfluorooctanoic Acid* | *1* | *1* | |

Table 2 – CAS Number Order

| CASRN | Substance | RQ Air *(pounds)* | RQ Land/ Water *(pounds)* | Notes |
|---|---|---|---|---|
| *335-67-1* | *Perfluorooctanoic Acid* | *1* | *1* | |
| *1763-23-1* | *Perfluorooctane Sulfonic Acid* | *1* | *1* | |
| *2795-39-3* | *Perfluorooctane Sulfonate* | *1* | *1* | |
| *3825-26-1* | *Ammonium Perfluorooctanoate* | *1* | *1* | |

Existing subdivision 597.4(a) is amended to read as follows:

(a) Prohibition of releases.

The release of a hazardous substance which is required to be reported pursuant to subdivision (b) of this section is prohibited unless:

(1) such release is authorized; [or]

(2) such release is continuous and stable in quantity and rate and has been reported pursuant to paragraph (b)(4) of this section[.]*; or*

*(3) such release is of fire-fighting foam containing Perfluorooctanoic Acid (CAS No. 335-67-1), Ammonium Perfluorooctanoate (CAS No. 3825-26-1), Perfluorooctane Sulfonic Acid (CAS No. 1763-23-1), or Perfluorooctane Sulfonate (CAS No. 2795-39-3) used for fighting fires (but not for training purposes) and occurs on or before April 25, 2017. In the event there is a release of such foam that exceeds the reportable quantity of any hazardous substance, the release must be reported pursuant to subdivision (b) of this section.*

Existing subdivision 597.4(b) remains unchanged.

***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 July 23, 2016.

***Text of rule and any required statements and analyses may be obtained from:*** Russ Brauksieck, NYS Depratment of Environmental Conservation, 625 Broadway, Albany, NY 12233-7020, (518) 402-9553, email: derweb@dec.ny.gov

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

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

***Additional matter required by statute:*** Negative Declaration, Coastal Assessment Form, and Short Environmental Assessment Form have been completed for this proposed rule making.

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

***Summary of Regulatory Impact Statement***

Full text of the Regulatory Impact Statement is available on the New York State Department of Environmental Conservation's website at http://www.dec.ny.gov/regulations/104968.html

1. STATUTORY AUTHORITY

The State law authority that empowers the New York State Department of Environmental Conservation (Department) to create a list of hazardous substances is found in Title one of Article 37 of the Environmental Conservation Law (ECL), sections 37-0101 through 37-0111, entitled "Substances Hazardous to the Environment" (Article 37). The Department is authorized to adopt regulations to implement ECL provisions (ECL sections 3-0301(2)(a) and (m)) which includes listing "substances hazardous to the public health, safety or environment" which "because of their quantity, concentration, or physical, chemical or infectious characteristics cause physical injury or illness when improperly treated, stored, transported, disposed of, or otherwise managed" in 6 NYCRR Part 597.

2. LEGISLATIVE OBJECTIVES

The legislative objectives underlying Article 37 are directed toward establishing a list of hazardous substances which pose a threat to public health or the environment. The emergency rule adds perfluorooctanoic acid (PFOA-acid, Chemical Abstracts Service (CAS) No. 335-67-1), ammonium perfluorooctanoate (PFOA-salt, CAS No. 3825-26-1), perfluorooctane sulfonic acid (PFOS-acid, CAS No. 1763-23-1), and perfluorooctane sulfonate (PFOS-salt, CAS No. 2795-39-3) to the list of hazardous substances in 6 NYCRR Section 597.3 (Section 597.3). The proposed rule, upon adoption, makes the amendments permanent.

3. NEEDS AND BENEFITS

The purpose of the emergency rule and proposed rule is to:

1. Add PFOA-acid, PFOA-salt, PFOS-acid, and the PFOS-salt to Section 597.3;

2. Allow fire-fighting foam containing PFOA-acid, PFOA-salt, PFOS-acid, or PFOS-salt to be used to fight fires (but not for any other purposes) on or before April 25, 2017; and

3. Correct the list of hazardous substances by providing units for the reportable quantities (RQs).

Needs and Benefits of Adding PFOA-acid, PFOA-salt, PFOS-acid, and PFOS-salt to the List of Hazardous Substances

The Department promulgated an emergency rule on January 27, 2016 to add PFOA-acid to the list of hazardous substances in Section 597.3. Since then, the Department became aware of three additional substances that need to be added to the list of hazardous substances. These additional substances have physical, chemical, and toxicological properties similar to PFOA-acid. The Department decided to allow the January 27, 2016 emergency rule to expire and to undertake the emergency and proposed rule to include all four substances on the list of hazardous substances.

The Department has concluded that these four substances meet the definition of hazardous substance based upon the conclusion of the New York State Department of Health (NYSDOH) that the combined weight of evidence from human and experimental animal studies indicates that prolonged exposure to significantly elevated levels of these compounds can affect health and, consequently, pose a threat to public health in New York State when improperly treated, stored, transported, disposed of or otherwise managed. NYSDOH scientists have concluded that it is essential to list these chemicals as hazardous substances. See the Regulatory Impact Statement for additional information, including NYSDOH's letter requesting that these chemicals be added to the List of Hazardous Substances (Section 597.3).

There are at least three benefits of listing these substances as hazardous substances in Part 597. First, if a mixture containing one of these substances in concentrations of 1% or more is stored in an aboveground tank of 185 gallons or more or any size underground tank, the tank would be subject to the requirements of the Chemical Bulk Storage (CBS) regulations (6 NYCRR Parts 596 – 599) with the purpose of preventing leaks and spills to protect public health and the environment. Second, releases to the environment are prohibited (subdivision 597.4(a)). Any release of one pound or more of these substances must be reported to the Department's spill hotline (subdivision 597.4(b)). Third, if one of these substances is released, the Department is authorized to pursue clean-up of the contamination under one of the Department's remedial programs (6 NYCRR Part 375) and may expend funds under the "State Superfund" if a responsible party is unwilling or unable to undertake the remediation.

Need and Benefit of Allowing Continued Use of Fire-Fighting Foam

These four substances have been used in Aqueous Film-Forming Foam (AFFF). While their use was restricted or reportedly removed from new products by December 2015, AFFF containing these substances are likely stored at some facilities since the reported shelf-life of AFFF is up to 25 years. In accordance with existing 6 NYCRR subdivision 597.4(a), the release of a hazardous substance is prohibited. This rule adds a provision allowing entities with fire-fighting foam time to determine if stored foam contains these hazardous substances. If so, the facility would be required to arrange for proper disposal of the foam by April 25, 2017. Replacement foam may not contain a hazardous substance at a concentration that would result in the release of more than the RQ (one pound) when used as a fire-fighting foam. Prior to April 25, 2017, entities storing this foam would be allowed to use the foam, as needed, to fight fires to protect public safety but not for any other purpose such as training. If the foam is used to fight a fire and there is a release of one pound or more of a hazardous substance, the release must be reported to the Department's spill hotline to allow the Department to determine if remediation of the release is appropriate.

Need for Correction of the List of Hazardous Substances

A correction is being made to the tables listing hazardous substances. It was determined that the units for RQs were left off the table causing some uncertainty regarding when a release would need to be reported. This rule adds units back to the column heading of the table.

4. COSTS

Costs to Regulated Parties

Because the use of these chemicals is limited by United States Environmental Protection Agency (USEPA) and the CBS tank system requirements for handling and storing these chemicals do not apply until April 25, 2018, the Department expects that compliance costs will be minimal. For example, if a facility is storing one of these substances in a 5,000 gallon aboveground storage tank, the two-year registration fee would be $125. If the facility were to discontinue storage by April 25, 2018, when the storage and handling standards go into effect, there would be no substantive costs beyond payment of the registration fee. If the facility were to continue to store one of these substances, it would be subject to the costs of complying with the handling and storage requirements in Parts 598 and 599.

With one possible exception (entities with fire-fighting form), the release prohibition should not present unusual compliance costs for persons who may be in possession of PFOA-containing or PFOS-containing substances. Since the Department recognizes the important societal interest of ensuring the availability of materials to control fires, persons have until April 25, 2017 to determine if foam contains hazardous substances and replace the foam if necessary. If fire-fighting foam contains a hazardous substance, it cannot be released to the environment after April 25, 2017. The Department anticipates that replacement foams would be purchased and that old foam containing a hazardous substance would be disposed of in accordance with applicable requirements. The cost to replace the foam ranges from $16 to $32 per gallon, depending on the amount and type of foam. Since use of these substances has been restricted or phased-out, the Department is uncertain how many regulated parties may be in possession of fire-fighting foams that contain one of these substances.

The costs of complying with the requirements of Part 375 to implement a remedial program where the four substances are primary contaminants will vary widely as costs depend upon many factors. Thus, it is not possible to meaningfully estimate potential remedial costs other than to note that remedial program costs for other hazardous substances range from the thousands to millions of dollars.

Costs to the Department, State, and Local Government

The Department will incur costs to administer the CBS program and to oversee of site remediation by responsible parties. In cases where a responsible party is unwilling or unable to undertake remediation, the costs of the remediation would be incurred by the Department (subject to efforts to recover the costs).

State and local governments will incur costs making determinations regarding whether products containing one of these substances are stored at their facilities.

5. LOCAL GOVERNMENT MANDATES

No additional recordkeeping, reporting, or other requirements not already created by statute or described above would be imposed on local governments. This is not a local government mandate.

6. PAPERWORK

The emergency rule and proposed rule contain no substantive changes to existing reporting and record keeping requirements, except for those newly subject to this regulation.

7. DUPLICATION

The listing of PFOA-acid, PFOA-salt, PFOS-acid, and PFOS-salt as hazardous substances in Part 597 causes no duplication, overlap or conflict with any other state or federal government programs or rules.

8. ALTERNATIVES

The only alternative to listing PFOA-acid, PFOA-salt, PFOS-acid, and PFOS-salt as hazardous substances considered by the Department, the no action alternative, was not taken. The Department declined to take no action because, as determined by NYSDOH, the combined weight of evidence from human and experimental animal studies indicates that prolonged exposure to significantly elevated levels of these compounds can affect health and, consequently, pose a threat to public health in New York State when improperly treated, stored, transported, disposed of, or otherwise managed.

9. FEDERAL STANDARDS

Listing PFOA-acid, PFOA-salt, PFOS-acid, and PFOS-salt as hazardous substances exceeds the current federal approach, as USEPA has not listed these substances as any of the substances defined as hazardous substances under the federal Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), 42 U.S.C Section 9601, et seq., or under the applicable regulation, 40 CFR Part 302 ("Designation, Reportable Quantities, and Notification"). Under the Toxic Substances Control Act, USEPA worked with industry to voluntarily phase out the use of PFOA-related substances by December 2015, and proposed a significant new use rule, completed in 2002, to limit production and importation of PFOA-related substances.

10. COMPLIANCE SCHEDULE

A facility that stores one of these substances that is subject to the CBS registration requirements is required to submit its registration application to the Department when it becomes subject to regulation. If a facility is already storing one of these substances and is subject to the registration requirements, the requirement became effective on April 25, 2016, the effective date of this emergency rule. If a facility begins storing one of these substances and is subject to the registration requirements, it must obtain a valid registration certificate prior to storing the material. Facilities with existing storage are not required to comply with the handling and storage requirements for hazardous substances until April 25, 2018 (6 NYCRR subdivision 598.1(h)). The Department expects that facilities that currently store one of these substances will phase out storage of the substance prior to April 25, 2018, and, therefore, will not have significant CBS compliance requirements beyond the registration requirement.

Existing Part 597 prohibits the release of a hazardous substance to the environment (subdivision 597.4(a)). This emergency rule and proposed rule allow entities storing fire-fighting foam to use the foam until April 25, 2017 while they determine if the foam contains one of these hazardous substances. If the foam does contain one of the substances, the foam must not be released to the environment after April 25, 2017. However, if the foam is used to fight a fire and there is a release of one pound or more of a hazardous substance, the release needs to be reported to the Department's spill hotline (subdivision 597.4(b)).

Listing these substances as hazardous substances results in sites contaminated with one of these substances being subject to the inactive hazardous waste disposal sites regulatory requirements of Part 375, which sets forth requirements for remediation. Remedial programs for a site tend to be complex, multi-phased, and take from a few to many years to complete.

***Summary of Regulatory Flexibility Analysis***

Full text of the Regulatory Flexibility Analysis for Small Businesses & Local Governments is available on the New York State Department of Environmental Conservation's website at http://www.dec.ny.gov/regulations/104968.html

1. EFFECT OF RULE

The purpose of the emergency rule and proposed rule is to:

1. Add perfluorooctanoic acid (PFOA-acid, Chemical Abstracts Service (CAS) No. 335-67-1), ammonium perfluorooctanoate (PFOA-salt, CAS No. 3825-26-1), perfluorooctane sulfonic acid (PFOS-acid, CAS No. 1763-23-1), and perfluorooctane sulfonate (PFOS-salt, CAS No. 2795-39-3) to 6 NYCRR Section 597.3;

2. Allow fire-fighting foam containing PFOA-acid, PFOA-salt, PFOS-acid, or PFOS-salt (all four substances) to be used to fight fires (but not for training or any other purposes) on or before April 25, 2017, a use which would not otherwise be allowed under the regulation since the release of a hazardous substance is prohibited; and

3. Correct the list of hazardous substances by providing units for reportable quantities (RQs).

The emergency rule and proposed rule apply statewide in all 62 counties of New York State (State). The listing of the hazardous substances has two effects. First, facilities storing all four substances are now (upon the effective date of the emergency rule) subject to registration requirements (6 NYCRR Part 596) with the New York State Department of Environmental Conservation (Department) under the Department's Chemical Bulk Storage (CBS) program. Facilities must comply with the applicable handling and storage requirements (6 NYCRR Parts 598-599).

Production of all four substances has already been restricted or report-

edly phased out and replaced with alternative substances. Facilities storing products containing any of the four substances manufactured prior to the manufacturing phase-out will be subject to CBS registration requirements. Older stocks of fire-fighting foam containing any of the four substances will be subject to the CBS registration requirements. If the stored foam contains PFOA-acid, PFOA-salt, PFOS-acid, and PFOS-salt, the facility would be required to arrange for the proper disposal of the foam by April 25, 2017. Small businesses are not likely to store these foams in quantities (explained below). Large local government agencies (fire departments, fire districts) possibly maintain stocks of fire-fighting foam that could be subject to the registration requirement. The number of facilities that would be required to register as CBS facilities is expected to be small and go to zero as stocks of the four substances are eliminated.

Most facilities subject to the CBS regulations are municipal facilities, manufacturing facilities, and utilities. There are over 1,400 registered CBS facilities. The Department believes that the great majority of facility owners and operators are likely small businesses. Local governments have registered over 580 CBS facilities. The Department believes that the types of facilities registered by local governments are water and wastewater treatment facilities and are not expected to store any of the four substances.

The Department only collects information regarding the name, address, and contact information for the owner and operator of registered facilities. Hence, the Department cannot estimate the number of small businesses which are CBS regulated (6 NYCRR Parts 596 through 599) or will be regulated due to the emergency rule and proposed rule.

The second effect of the promulgation of this rule is the permanent prohibition of releases of any of the four substances to the environment. The prohibition takes effect on April 25, 2017 for fire-fighting foams. The release prohibition now applies to the four substances including any older stocks of fire-fighting foams and any material containing the four substances stored by small businesses or local governments. This will require local government and small businesses to dispose of materials containing the four substances. Releases of listed hazardous substances above the reportable quantity (RQ) given in Part 597 (one pound for the four substances) must be reported to the Department's Spill Hotline (subdivision 597.4(b)).

The number of sites that will become remedial sites because of the addition of these four substances to Part 597 is unknown. The Department has placed one site on the Registry of Inactive Hazardous Waste Disposal Sites (Registry) as a result of adding PFOA-acid to Part 597 (Site Registry ID No. 442046). The Department expects that other sites that used the any of the four substances in commercial or industrial processes may have environmental contamination. Locations where disposal of the substances occurred or where the substances were components of materials released to the environment may become remedial sites subject to the requirements of Part 375.

The Department anticipates that remediation issues would be most significant for areas where the substances were either manufactured, used to make other products, released, or disposed of. Based upon currently available information, the four substances have not been manufactured in New York State, but have been used here to create other products. It is not known how many small businesses or local governments own properties that will be subject to the regulatory requirements of Part 375because of contamination from these four substances.

2. COMPLIANCE REQUIREMENTS

This rule makes no changes to any substantive requirement for CBS facilities other than to place the four substances on the list of hazardous substances in Part 597.

Facilities that store the any of the four substances in amounts and in tanks that make them subject to the registration requirements of 6 NYCRR Part 596 must include tank systems on facility registrations with the Department and pay the registration fee associated with the CBS program. The fees range from $50 per tank for tanks with capacities less than 550 gallons to $125 per tank for capacities greater than 1,100 gallons.

If a facility is already storing any of the four substances and is subject to the registration requirements, the registration requirement became effective on April 25, 2016, the effective date of this emergency rule. A facility planning to start storing PFOA-acid, PFOA-salt, PFOS-acid, or PFOS-salt must obtain a valid registration certificate prior to storage. Facilities with existing storage of these substances are not required to comply with the handling and storage requirements for hazardous substances until April 25, 2018 (6 NYCRR subdivision 598.1(h)). The Department anticipates that facilities that currently store any of the four substances will phase out their storage of the substance prior to April 25, 2018 and therefore would not have substantive CBS compliance requirements beyond the registration requirement.

Listing the four substances as hazardous results in sites otherwise meeting regulatory criteria to be subject to the inactive hazardous waste disposal sites regulatory requirements of Part 375 for the first time. In these cases, requirements for investigation and cleanup are established by Part 375 and by Department orders and agreements with regulated entities. Part 375 sets forth site investigation requirements which determine the nature and extent of environmental contamination, evaluate remedial alternatives, design and construct a remedy, complete the operation and maintenance activities required to achieve the site remedial action objectives, and maintain any institutional or engineering controls which make the remedy effective. Remedial programs for a site tend to be complex, multi-phased, and take from a few to many years to complete.

3. PROFESSIONAL SERVICES

No new or additional professional services will be needed for small businesses or local governments to comply with this rule. Facilities continuing to store the substances after April 25, 2018, when the storage and handling standards go into effect, may need professional services to meet hazardous substances handling and storage requirements.

A small business or local government which becomes a remedial party subject Part 375 remedial program requirements, will require consulting and contractual services, including professional engineers or qualified environmental professionals as defined in Part 375 and contractual services needed to undertake site investigation field work, analyses of environmental samples, or other specialized services.

4. COMPLIANCE COSTS

Production of the four substances has been phased out and the substantive CBS tank system requirements for their handling and storage will not apply until April 25, 2018. The Department expects that the compliance costs for meeting the CBS requirements will be minimal. If the facility discontinues storage by April 25, 2018, when the storage and handling standards go into effect, there will be no other substantive costs.

The release prohibition will not present significant compliance costs for small businesses and local governments.

Part 375 compliance costs for remedial program implementation where any of the four substances are the primary contaminants will vary widely. Costs are related to the following: quantity released to the environment, media contaminated (e.g., soil, groundwater, surface water, sediment, bedrock), the horizontal and vertical extent of contamination, the accessibility of contamination, whether there are human or environmental receptors to protect while a remedial program is undertaken, the difficulty of removing the substances from the contaminated environmental media, the anticipated future use of the area of contamination, and other factors. It is not possible to meaningfully estimate the potential costs to small businesses and local governments resulting from listing the substances as hazardous. Remedial program costs for other hazardous substances have ranged from the thousands to millions of dollars on a case-by-case basis.

5. ECONOMIC AND TECHNOLOGICAL FEASIBILITY

The economic and technological feasibility for small businesses or local governments related to compliance with this rule depends upon which requirements apply. If small businesses or local governments are required to comply with CBS registration requirements only, no significant impediments will be faced. If a CBS facility decides to store the substances after April 25, 2018, when the storage and handling standards go into effect, costs would be incurred to comply with handling and storage requirements. Costs could include design, construction, and maintenance of tank systems to meet the technical requirements for release prevention, release detection, and containment of potential spills. No technological feasibility issues will exist, but costs would be incurred commensurate with storage amounts.

The economic and technical feasibility of complying with the requirements to remediate a site contaminated by the substances for a small business or local government is explained above in compliance costs.

6. MINIMIZING ADVERSE IMPACT

The Department is adopting this emergency rule and proceeding with this proposed rule based upon the conclusion of NYSDOH that the combined weight of evidence from human and experimental animal studies indicates that prolonged exposure to significantly elevated levels of these compounds can affect health and, consequently, pose a threat to public health in New York State when improperly treated, stored, transported, disposed of or otherwise managed. See the Regulatory Impact Statement for additional information, including NYSDOH's letter requesting that these chemicals be added to the List of Hazardous Substances (Section 597.3).

7. SMALL BUSINESS AND LOCAL GOVERNMENT PARTICIPATION

The Department will ensure public notice and input by issuing public notices in the State Register and newspapers, publication in the Department's Environmental Notice Bulletin, holding a comment period of at least 45 days, and holding public hearings. Interested parties, including small businesses and local governments, will have the opportunity to submit comments and participate in public hearings. The Department will post relevant rule making documents on the Department's website.

8. CURE PERIOD OR OTHER OPPORTUNITY FOR AMELIORATIVE ACTION

There can be no ameliorative actions or cure period regarding the prohibition against releasing the four substances to the environment because the prohibition is absolute and intended to prevent the harm that would come to public health. Prolonged exposure to significantly elevated levels of these compounds can affect health and, consequently, pose a threat to public health in New York State when improperly treated, stored, transported, disposed of or otherwise managed. The concept of a cure period does not apply in the case of a remedial program.

If a facility subject to the CBS facility registration requirement for the any of the four substances fails to register its facility in accordance with Part 596, the facility owner/operator will be subject to penalties that have been in place and exercised by the Department for all types of parties for decades, including small businesses and local governments. Therefore, no additional ameliorative actions or cure period established for this rule regarding CBS registration or handling and storage requirements.

9. INITIAL REVIEW OF THE RULE

DEC would conduct an initial review of the rule within three years of the promulgation of the final rule.

***Rural Area Flexibility Analysis***

1. TYPES AND ESTIMATED NUMBER OF RURAL AREAS

There are 44 counties in New York State (State) that have populations of less than 200,000 people and 71 towns in non-rural counties where the population density is less than 150 people per square mile. Since the emergency rule and proposed rule apply statewide, they apply to all rural as well as non-rural areas of the State. The emergency rule adds perfluorooctanoic acid (PFOA-acid, Chemical Abstracts Service (CAS) No. 335-67-1), ammonium perfluorooctanoate (PFOA-salt, CAS No. 3825-26-1), perfluorooctane sulfonic acid (PFOS-acid, CAS No. 1763-23-1), and perfluorooctane sulfonate (PFOS-salt, CAS No. 2795-39-3) to the list of hazardous substances in 6 NYCRR Section 597.3 (Section 597.3). This rule also provides time for facilities storing fire-fighting foam containing one or more of these newly listed hazardous substances to properly dispose of it, and makes a correction to the tables of hazardous substances in Part 597 by providing units for reportable quantities (RQs). There is no reason to believe that the actions under this rule will disproportionally impact rural areas.

2. REPORTING, RECORDKEEPING, OTHER COMPLIANCE REQUIREMENTS, AND NEED FOR PROFESSIONAL SERVICES

This emergency rule and proposed rule makes no changes to reporting, recordkeeping, or other compliance requirements for Chemical Bulk Storage (CBS) facilities other than to place PFOA-acid, PFOA-salt, PFOS-acid, and PFOS-salt on the list of hazardous substances in Section 597.3.

Facilities that store PFOA-acid, PFOA-salt, PFOS-acid, or PFOS-salt in specified quantities and use certain tanks that make them subject to the registration requirements of 6 NYCRR Part 596 must include these tank systems in their facility registration with the Department, and pay a registration fee associated with the CBS program. Facilities regulated under 6 NYCRR Parts 596-599 most commonly store hazardous substances in stationary aboveground tank systems with a capacity greater than 185 gallons.

A facility that stores PFOA-acid, PFOA-salt, PFOS-acid, or PFOS-salt that is subject to the CBS registration requirements, as explained above, must submit its registration application to the Department and pay the commensurate fee at the time it becomes subject to regulation. If the facility is already storing PFOA-acid, PFOA-salt, PFOS-acid, or PFOS-salt, and is subject to the registration requirements, the registration requirements became effective on April 25, 2016, the effective date of this emergency rule. If a facility plans to start storing PFOA-acid, PFOA-salt, PFOS-acid, or PFOS-salt, and is subject to the registration requirement, it must obtain a valid registration certificate prior to storing the material. A facility with existing storage of PFOA-acid, PFOA-salt, PFOS-acid, or PFOS-salt is not required to comply with the handling and storage requirements for hazardous substances until April 25, 2018 (subdivision 598.1(h)). Since the Department anticipates that facilities that currently store PFOA-acid, PFOA-salt, PFOS-acid, or PFOS-salt will phase out storage of the substance prior to April 25, 2018, they will not have substantive CBS compliance requirements regarding these chemicals beyond the registration requirement.

Existing Part 597 prohibits the release of a hazardous substance to the environment unless a release is authorized or is continuous and stable and has been reported to the Department (subdivision 597.4(a)). This rule in addition allows entities with fire-fighting foam to use the foam to fight fires on or before April 25, 2017 while they determine if the foam contains PFOA-acid, PFOA-salt, PFOS-acid, or PFOS-salt. If the foam contains one of these hazardous substances, the foam must be disposed of in accordance with appropriate regulations by April 25, 2017. Replacement foam may not contain a hazardous substance at a concentration that would result in the release of more than the RQ (one pound) when used as a fire-fighting foam. However, if the foam is used to fight a fire and there is a release of a hazardous substance above the RQ stated in Part 597 for the substance (one pound for these hazardous substances), the release must be reported to the Department's spill hotline (subdivision 597.4(b)).

Listing PFOA-acid, PFOA-salt, PFOS-acid, and PFOS-salt as hazardous substances results in sites contaminated with PFOA-acid, PFOA-salt, PFOS-acid, or PFOS-salt being subject to the inactive hazardous waste disposal sites regulatory requirements of 6 NYCRR Part 375. In these cases, requirements for investigation and cleanup are established by Part 375 and by Department orders and agreements with regulated entities. Part 375 sets forth requirements for the investigation of site conditions to determine the nature and extent of environmental contamination, evaluate remedial alternatives, design and construct a remedy, complete the operation and maintenance activities required to achieve the remedial action objectives for the site, and maintain any institutional or engineering controls needed to maintain the effectiveness of the remedy. Remedial programs for a site tend to be complex, multi-phased, and take from a few to many years to complete.

No new or additional professional services are anticipated to be needed by facilities located in rural areas to comply with the emergency rule and proposed rule regarding the CBS requirements if they discontinue storing PFOA-acid, PFOA-salt, PFOS-acid, and PFOS-salt before the handling and storage requirements take effect on April 25, 2018. If facilities continue to store after April 25, 2018, when the storage and handling standards go into effect, facility owners/operators may need professional services to assist them in meeting the handling and storage requirements for hazardous substances.

If an owner/operator in a rural area becomes a remedial party subject to requirements to implement a remedial program under Part 375, it would likely require consulting and contractual services to assist in carrying out the remedial program. This could include professional engineers or qualified environmental professionals, as defined in Part 375, and contractual services needed to complete site investigation field work, analyses of environmental samples, or other specialized services.

3. COSTS

The Department does not anticipate a variation in compliance costs for different types of public and private entities in rural areas. Since PFOS-acid, PFOS-salt, and PFOS-related substances was restricted beginning in 2002 and, under the EPA's Stewardship Program addressing PFOA-related substances, eight companies voluntarily removed PFOA-acid, PFOA-salt, and PFOA-related substances from new products by December 2015, and because the substantive CBS tank system requirements for handling and storing PFOA-acid, PFOA-salt, PFOS-acid, and PFOS-salt will not apply until April 25, 2018, the Department expects that the compliance costs for meeting the CBS requirements will be minimal. Hazardous substances regulated under Parts 596-599 are most commonly stored in stationary aboveground tank systems with a capacity greater than 185 gallons. Registration fees apply to each regulated tank and depend upon the capacity of each tank. The fees range from $50 per tank for tanks with capacities less than 550 gallons to $125 per tank for capacities greater than 1,100 gallons. If a facility discontinues storage by April 25, 2018, when the storage and handling standards go into effect, there will be no other substantive costs.

The prohibition of releases of hazardous substances is not expected to present significant compliance costs for public or private entities in rural areas with the possible exception of entities in possession of fire-fighting foams (Aqueous Film Forming Foam - AFFF) that contain PFOA-related or PFOS-related substances. This emergency rule and proposed rule adds a provision to allow facilities with fire-fighting foam the time necessary to determine if stored foam contains one or more of these substances. If the stored foam contains one of these substances, the facility would be required to arrange for the disposal of the foam by April 25, 2017. Replacement foam may not contain a hazardous substance. The older foams may be disposed of as solid waste in a permitted landfill since these substances do not meet the definition of Resource Conservation and Recovery wastes when disposed properly. The cost to replace the foam ranges from $16 to $32 per gallon, dependent on the amount and type of foam that is being stored. Prior to April 25, 2017, entities storing this foam will be allowed to use the foam, as needed, to fight fires to protect public safety. However, if the foam containing one or more of these hazardous substances is released to the environment in an amount that exceeds the RQ (one pound), the release must be reported to the spill hotline to allow the Department to determine if any remediation of the release is appropriate.

The costs of complying with the requirements of Part 375 to implement a remedial program where PFOA-acid, PFOA-salt, PFOS-acid, or PFOS-salt are the primary contaminants, will vary widely as the costs depend upon many factors. These include the quantity released to the environment, the media contaminated (e.g., soil, groundwater, surface water, sediment, bedrock), the horizontal and vertical extent of contamination for each medium, the accessibility of the contamination, whether there are human or environmental receptors that must be protected while a remedial program is being undertaken, the difficulty of removing PFOA-acid,

PFOA-salt, PFOS-acid and PFOS-salt from the contaminated environmental media, the future anticipated use of the area of contamination, and other factors. Because of the wide variety of scenarios, it is not possible to meaningfully estimate the potential costs to persons managing PFOA-acid, PFOA-salt, PFOS-acid and PFOS-salt in rural areas resulting from the listing of PFOA-acid, PFOA-salt, PFOS-acid and PFOS-salt as hazardous substances other than to note that remedial program costs for other hazardous substances can range from the thousands to millions of dollars on a case-by-case basis.

4. MINIMIZING ADVERSE IMPACT

The Department is adopting this emergency rule and proceeding with this proposed rule based upon the conclusion of the New York State Department of Health (NYSDOH) that the combined weight of evidence from human and experimental animal studies indicates that prolonged exposure to significantly elevated levels of these compounds can affect health and, consequently, pose a threat to public health in New York State when improperly treated, stored, transported, disposed of or otherwise managed. NYSDOH scientists have concluded that it is essential to list these chemicals as hazardous substances. See the Regulatory Impact Statement for additional information, including NYSDOH's letter requesting that these chemicals be added to the List of Hazardous Substances (Section 597.3).

This action does not lend itself to the mitigating measures listed in State Administrative Procedure Act section 202-bb(2), but there are existing requirements established in the regulations that help to minimize adverse impacts. For example, the CBS regulations allow a two-year period after a new chemical is added to the list of hazardous substances before the handling and storage requirements of Part 598 apply to facilities with existing storage of the chemical (subdivision 598.1(h)). In addition, the Department has determined through other rule making actions that the remaining regulatory compliance provisions, including the storage, handling, release prohibition, and disposal provisions, appropriately apply to persons managing hazardous substances in rural areas.

5. RURAL AREA PARTICIPATION

The Department is providing statewide outreach to persons who are subject to this emergency and proposed rule, including those in rural areas. The Department will ensure public notice and input by issuing public notices in the State Register, newspapers, and the Department's Environmental Notice Bulletin; holding a comment period of at least 45 days; and holding public hearings. Interested parties will have the opportunity to submit written comments and participate in the public hearings. The Department will also post relevant rule making documents on the Department's website.

6. INITIAL REVIEW OF THE RULE

The Department will conduct an initial review of the rule within three years of the promulgation of the final rule.

***Job Impact Statement***

1. NATURE OF IMPACT

Through the emergency rule and proposed rule, the New York State Department of Environmental Conservation (Department):

1. Adds perfluorooctanoic acid (PFOA-acid, Chemical Abstracts Service No. 335-67-1), ammonium perfluorooctanoate (PFOA-salt, CAS No. 3825-26-1), perfluorooctane sulfonic acid (PFOS-acid, CAS No. 1763-23-1), and perfluorooctane sulfonate (PFOS-salt, CAS No. 2795-39-3) to the list of hazardous substances in 6 NYCRR Section 597.3 (Section 597.3);

2. Allows fire-fighting foam containing PFOA-acid, PFOA-salt, PFOS-acid, or PFOS-salt to be used to fight fires (but not for training or any other purposes) on or before April 25, 2017, a use which would not otherwise be allowed under the regulation since the release of a hazardous substance is prohibited; and

3. Corrects the list of hazardous substances by providing units for reportable quantities (RQs).

The substantive effects of listing of these substances in Section 597.3 is to (1) make the handling and storage of PFOA-acid, PFOA-salt, PFOS-acid, and PFOS-salt subject to the registration and other regulatory standards for Chemical Bulk Storage (CBS) facilities (6 NYCRR Parts 596-599); (2) prohibit the unauthorized release of PFOA-acid, PFOA-salt, PFOS-acid, and PFOS-salt to the environment (subdivision 597.4(a)) and require that any releases above the RQ (one pound) be reported to the Department (subdivision 597.4(b)); and (3) make the investigation and remediation of releases of PFOA-acid, PFOA-salt, PFOS-acid, and PFOS-salt to the environment subject to the Department's remedial program requirements (6 NYCRR Part 375).

The substantive effect of allowing fire-fighting foam to be used to fight fires (but not for training or any other purposes) on or before April 25, 2017 is to provide entities the time necessary to determine if stored foam contains one or more of these hazardous substances and replace any foams as necessary. If stored foam contains one of these substances, a facility would have to arrange for the proper disposal of the foam in accordance with all local, state, and federal requirements. Replacement foam may not contain a hazardous substance at a concentration that would result in the release of more than the RQ (one pound) when used as a fire-fighting foam. The older foams may be disposed of as solid waste in a permitted landfill since these substances are not Resource Conservation and Recovery Act wastes when disposed properly.

The effect of correcting the tables listing hazardous substances is to include the units for RQs to remove uncertainty regarding when a release must be reported.

Under the federal Toxic Substances Control Act, the United States Environmental Protection Agency (USEPA) has worked with industry to voluntarily phase out the use of PFOA-related substances by December 2015, and proposed a significant new use rule (SNUR) to limit the production and importation of PFOA-related substances in anticipation of the phase-out deadline (80 FR 2885; January 21, 2015). USEPA completed the SNUR to limit the production and importation of PFOS-related substances in 2002.

Since production of PFOA-related and PFOS-related substances has already been reportedly phased out or restricted, and alternative substances have been developed to take the place of these hazardous substances, the Department does not expect this rule to have a significant impact on jobs and employment either in terms of lost jobs or the creation of new jobs. Employment opportunities should remain the same or may increase somewhat due to remediation activities.

2. CATEGORIES AND NUMBERS AFFECTED

Since PFOA-acid, PFOA-salt, PFOS-acid, and PFOS-salt are reportedly no longer being produced in the United States, the CBS regulations would only apply to stored PFOA-containing or PFOS-containing materials produced before the phase-out. Since replacement materials are already in place and the number of facilities storing PFOA or PFOS in quantities large enough to be subject to the CBS regulations is expected to be small, the number of jobs affected is expected to be small. Existing employees may be required to arrange for the disposal of older stocks of PFOA-acid, PFOA-salt, PFOS-acid, and PFOS-salt containing materials, but this should not require the creation of new jobs or the loss of existing jobs.

Where PFOA-acid, PFOA-salt, PFOS-acid, and PFOS-salt has previously been released to the environment in ways that make the resulting contamination subject to a 6 NYCRR Part 375 remedial program, a limited number of jobs may be created in order to complete the necessary investigations and remediation of the sites. Job categories would include, for example, drilling contractors and other heavy equipment operators, field investigation technicians, hydrogeologists, engineers, analytical chemists and technicians, and others with training and experience related to site remediation.

The number of sites that may become remedial sites because of the addition of PFOA-acid, PFOA-salt, PFOS-acid, and PFOS-salt to Section 597.3 is unknown. The Department has placed one site on the Registry of Inactive Hazardous Waste Disposal Sites (Registry) as a result of adding PFOA-acid to Section 597.3 (Site Registry ID No. 442046). The Department expects that other sites that used PFOA-acid, PFOA-salt, PFOS-acid, or PFOS-salt in commercial or industrial processes may have PFOA-acid, PFOA-salt, PFOS-acid, or PFOS-salt environmental contamination. Locations where PFOA-acid, PFOA-salt, PFOS-acid, or PFOS-salt disposal occurred or where PFOA-acid, PFOA-salt, PFOS-acid, or PFOS-salt were components of materials released to the environment may become remedial sites subject to the requirements of Part 375. Nationally, research by the United States Department of Defense (DoD) found that approximately 600 DoD sites are categorized as fire/crash/training areas and thus have the potential for contamination with perfluoroalkyl compounds (including PFOA-related and PFOS-related substances) due to historical use of aqueous film-forming foams (AFFF) [Strategic Environmental Research and Development Program (SERDP), FY 2014 Statement of Need (SON), Environmental Restoration (ER) Program Area, "In Situ Remediation of Perfluoroalkyl Contaminated Groundwater," SON Number: ERSON-14-02, October 25, 2012]. It is possible that the Department will list additional Registry sites. The work needed to investigate and remediate these sites may be accomplished by existing staff or new jobs may be added depending upon the number and complexity of sites.

3. REGIONS OF ADVERSE IMPACT

There are no regions of the State expected to be disproportionately impacted by the emergency rule and proposed rule as they apply statewide. There is no reason to expect that PFOA-acid, PFOA-salt, PFOS-acid, or PFOS-salt issues will be concentrated in one area over another to any significant degree.

4. MINIMIZING ADVERSE IMPACT

For the reasons described above, the emergency rule and proposed rule are not expected to have a significant adverse impact on jobs and employment.

5. SELF-EMPLOYMENT OPPORTUNITIES

The emergency rule and proposed rule are not expected to impact self-employment opportunities.

6. INITIAL REVIEW OF RULE
The Department will conduct an initial review of the rule within three years of the promulgation of the final rule.

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

### Deer and Bear Hunting

**I.D. No.** ENV-19-16-00001-P

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

***Proposed Action:*** Amendment of sections 1.11, 1.18 and 1.31 of Title 6 NYCRR.

***Statutory authority:*** Environmental Conservation Law, sections 11-0303, 11-0903 and 11-0907

***Subject:*** Deer and Bear Hunting.

***Purpose:*** To revise regulations governing deer hunting seasons, issuance and use of deer hunting tags, and hunting black bear.

***Text of proposed rule:*** The table in 6 NYCRR Paragraph 1.11(d)(7) is amended as follows:

| Season | Open WMUs for harvest of deer of either sex | Open WMUs for harvest of antlerless deer only | Open WMUs for harvest of antlered deer only |
|---|---|---|---|
| Early Muzzleloader | 5A, 5C, 5F, 5G, 5H, 5J, 6C, [6F,] 6G, 6H, [6J,] 6K | | 6A, *6F, 6J,* 6N |
| Late Muzzleloader | 5A, 5G, 5J, 6A, 6C, 6G, 6H | | |

Subparagraphs 1.11(d)(8) and (9) are repealed.

Subparagraphs 1.18(d)(2) and (3) are amended as follows:

(2) A bow/mz season either sex tag is valid for the taking of a deer of either sex*, in any special seasons and with any implement legal during that season* [and is valid only for the special implement season for which the hunter is licensed, except as specified in section 1.22 of this Part]. Bow/mz season either sex tags are not valid for use during the regular seasons, except in Westchester and Suffolk Counties or by junior archers hunting during regular seasons.

(3) A bow/mz season antlerless tag is valid for the taking of antlerless deer only, in any special season and with any [legal] implement *legal during that season* [, except as specified in section 1.22 of this Part]. Bow/mz season antlerless tags are not valid for use during the regular seasons, except in Westchester and Suffolk Counties.

A new subparagraph (5) is added to 1.31(b) to read as follows:

*(5) Youth bear season:*

| *Bear range* | *Season dates* | *Wildlife management unit (WMU)* |
|---|---|---|
| *Northern* | *3 consecutive days beginning on the Saturday of Columbus Day weekend* | *5A, 5C, 5F, 5G, 5H, 5J, 6A, 6C, 6F, 6G, 6H, 6J, 6K, and 6N* |
| *Southern* | *3 consecutive days beginning on the Saturday of Columbus Day weekend* | *3A, 3C, 3F, 3G, 3H, 3J, 3K, 3M, 3N, 3P, 3R, 3S,4A, 4B, 4C, 4F, 4G, 4H, 4J, 4K, 4L, 4O, 4P, 4R, 4S, 4T, 4U, 4W, 4Y, 4Z, 5R, 5S, 5T, 6P, 6R, 6S, 7A, 7F, 7H, 7J, 7M, 7P, 7R, 7S, 8A, 8C, 8F, 8G, 8H, 8J, 8M, 8N, 8P, 8R, 8S, 8T, 8W, 8X, 8Y, 9A, 9F, 9G, 9H, 9J, 9K, 9M, 9N, 9P, 9R, 9S, 9T, 9W, 9X, and 9Y* |

*(i) Legal implements for youth bear season are the same as for regular bear season, except that black bear may only be taken by longbow in Westchester County (WMU 3S) and in WMUs 4J and 8C.*

*(ii) During the youth bear season, junior bowhunters, hunting pursuant to a junior bowhunting license, may only take bear by longbow. Junior hunters, hunting pursuant to a junior hunting license, may take bear with a firearm.*

*(iii) Any youth participating in the youth bear season shall be accompanied by an adult as required by Environmental Conservation Law section 11-0929. An adult who is accompanying a junior hunter or bowhunter during the youth bear season may not possess a firearm, longbow or crossbow and shall not be actively engaged in any other hunting.*

Subparagraph 1.31(c)(3) is amended as follows:

(3) It is unlawful for any person to take more than one bear during a license year (*youth,* regular, early, archery and muzzleloading seasons combined).

***Text of proposed rule and any required statements and analyses may be obtained from:*** Jeremy Hurst, Department of Environmental Conservation, 625 Broadway, Albany, NY 12233-4754, (518) 402-8867, email: jeremy.hurst@dec.ny.gov

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

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

***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 11-0303 of the Environmental Conservation Law (ECL) directs the Department of Environmental Conservation (Department) to develop and carry out programs that will maintain desirable species in ecological balance, and to observe sound management practices. This directive is to be met with regard to: ecological factors, the compatibility of production and harvest of wildlife with other land uses, the importance of wildlife for recreational purposes, public safety, and protection of private premises. Section 11-0903 provides the Department specific authority to set manner of taking, possession, open seasons and bag limits for the harvest of deer and bear. Section 11-0907 governs open seasons and bag limits for deer and bear.

2. Legislative objectives:

The legislative objective behind the statutory provisions listed above is to establish, or authorize the Department to establish by regulation, certain basic wildlife management tools, including the setting of open seasons and bag limits and restrictions on methods of take and possession. These tools are used by the Department to maintain desirable wildlife species in ecological balance, while observing sound management practices.

3. Needs and benefits:

This rule making addresses four issues: (1) it increases hunting opportunities for junior hunters by allowing them to take bear as well as deer during the youth firearms hunt over Columbus Day weekend. This is a component of the Department's effort to combat long-term declines in hunter recruitment and retention by increasing hunter satisfaction and provide additional opportunities for young hunters; (2) it rescinds an antlerless-only requirement established in 2015 during portions of the bow and muzzleloader season in some Wildlife Management Units (WMUs). This requirement, in addition to generating dissatisfaction among some hunters, did not appear to accomplish the management objectives for which it was designed; (3) it prohibits antlerless deer harvest during the early muzzleloader season in WMUs 6F and 6J with the goal of reversing observed population declines in those units; and (4) it corrects language regarding use of deer tags to clarify that bow/mz either-sex and antlerless-only deer tags may both be used during either bow or muzzleloader seasons by hunters who purchased both bow and muzzleloader privileges. This has always been the Department's intent and how the regulation has been applied, but ambiguity in the current wording can lead to confusion.

The change allowing junior hunters to take black bear during the Youth Firearms Deer Hunt is not expected to substantially alter bear harvest numbers, because opportunities for hunters to take bear are generally infrequent. For the same reason, it may provide a very meaningful experience for those junior hunters and their mentors who are fortunate enough to encounter a bear during the youth hunt.

The removal of the antlerless-only requirement for portions of the bow and muzzleloader seasons in WMUs 1C, 3M, 3S, 4J, 8A, 8C, 8F, 8G, 8H, 8N, 9A, and 9F represents a return to pre-2015 regulations in those units. Based on the 2015 deer harvest reports submitted by hunters, it appears that the antlerless-only rule promulgated in 2015 did not result in substantially increased antlerless harvest and was therefore not an effective tool for reducing deer populations in those WMUs as needed. The antlerless-only rule, which was unpopular with most hunters who provided input to the Department, was implemented as Phase 2 of a 3-phase process to increase antlerless harvest, as outlined in Strategy 2.2.6 of the Department's Management Plan for White-tailed Deer in New York State, 2012-2016. An alternative approach must soon be implemented to decrease deer populations in those WMUs, and the management plan calls for creation of a special antlerless-only season for muzzleloader hunters as Phase 3, but details of this approach have not been ironed out. The Department

intends to use the next year to discuss with hunters the best way to implement Phase 3, or an alternative approach, to effectively reduce deer populations as necessary in these areas.

The restriction on antlerless deer harvest during the early muzzleloader season in WMUs 6F and 6J is a response to declining population indices. Recent deer harvests in those WMUs have fallen well below long-term averages, and the harvest in both WMUs in 2014 was the lowest in recent times at 0.5 bucks taken per square mile. Winter weather conditions are a primary driver of deer abundance in those units, and the winters of 2013 and 2014 were especially harsh. Preliminary assessments of 2015 deer harvest reports suggest that harvest likely declined again. Further reducing the harvest of antlerless deer should allow populations to rebound, particularly in light of the mild winter of 2015-16.

The technical correction to the language on use of bow/mz tags will simply remove some ambiguity in the wording so that it more clearly conveys the intent of the regulation. Bow and muzzleloader hunters are awarded a bow/mz either-sex tag with the purchase of their first special season privilege and an antlerless-only tag with their second special season privilege. The current regulatory language could be interpreted as though the bow/mz either-sex tag may only be used during the special season for which it was purchased (bow or muzzleloader) regardless of whether hunters also purchased the second privilege. However, since this tag structure was implemented in 2002, the Department's intent and hunters' understanding has been that hunters who hold both privileges could use both tags in either season.

4. Costs:

The costs associated with adopting the proposed regulation relate to the outreach needed to inform hunters and other members of the regulated community of these changes. These costs are minimal and entail such things as production of press releases, notifications in the Department's annual Hunting & Trapping Regulations Guide, and updates to the Department's website.

5. Local government mandates:

The proposed changes do not impose any mandates on local governments.

6. Paperwork:

The proposed changes do not require any additional paperwork by any regulated entity.

7. Duplication:

The proposed changes do not duplicate any state or federal requirement.

8. Alternatives:

Youth Hunt: Retain the existing rules. Junior hunters would not be allowed to take black bear during the youth deer hunt. This would not address the Department's hunter recruitment and retention goal of increasing opportunities for young hunters.

Antlerless-only rules in WMUs 1C, 3M, 3S, 4J, 8A, 8C, 8F, 8G, 8H, 8N, 9A, and 9F:

(1) Rescind the existing Phase 2 approach of the antlerless-only portion of the bow and muzzleloader season and propose immediate implementation of Phase 3 (new muzzleloader season for antlerless deer). The Department believes it may be more productive to use this coming year to discuss several options with hunters and identify the best form of Phase 3 which may increase antlerless harvest, provide new opportunity, and be compatible with hunter interests.

(2) Retain the antlerless-only portion of the bow and muzzleloader season. This would yield an additional year of data, but would be likely to further degrade hunter satisfaction, and would probably not improve the Department's ability to manage deer in those units.

Antlerless harvest in 6F and 6J:

(1) Restrict antlerless deer harvest during both the bow and muzzleloader season in WMUs 6F and 6J. About 1/4 as many antlerless deer in 6F and 6J are taken during bowhunting season as during muzzleloading season. Restricting antlerless harvest during bowhunting season would not appreciably change the herd structure and would be inconsistent with similar season structures in WMU 6A and 6N where DEC limits take of antlerless deer for muzzleloader hunters but not archery hunters.

(2) Restrict antlerless deer harvest during muzzleloader season in all Adirondack WMUs. Wildlife Management Units in the eastern Adirondacks have not shown a consistent decline in deer harvests similar to WMUs 6F and 6J. Harvests in the eastern WMUs have varied according to winter severity, but overall have stayed stable or increased in the past decade. There may be small sections of the eastern WMUs where deer harvests have decreased locally, but the units as a whole are faring well, so there is no need to reduce antlerless harvests.

(3) Restrict antlerless deer harvest during muzzleloader season in WMU 6F only. Region 6 staff heard most concern from hunters in St. Lawrence County specifically about WMU 6F. WMU 6J is included in the current proposal because the harvest trends were similar in both units and St. Lawrence County also includes a large portion of 6J.

(4) Reduce or eliminate the DMAP in WMUs 6F and 6J. DMAP is an important tool for landowners to conduct site-specific management to achieve their land or deer management goals and should not affect overall deer population size in the units. In recent years, average DMAP harvest equates to 1 antlerless deer per 18-20 square miles in WMUs 6F and 6J. Department staff will continue to scrutinize DMAP applications to ensure that permits are only being approved for properties with sufficient need.

(5) Maintain current muzzleloader hunting opportunity in both 6F and 6J. This might lead to further deer population declines in these units.

Use of bow/mz tags: Retain the existing language. This would perpetuate confusion for hunters and law enforcement interpreting the regulations.

9. Federal standards:

There are no federal government standards associated with this proposal.

10. Compliance schedule:

Hunters will be required to comply with the new regulations beginning with the 2016-17 license year, which starts on September 1, 2016.

***Regulatory Flexibility Analysis***

The proposed regulation would amend the Department of Environmental Conservation's (department) white-tailed deer and black bear hunting regulations to reduce harvest of antlerless deer in two Wildlife Management Units (WMUs) in northern New York, rescind an unpopular and ineffective rule of 2015, increase opportunity for junior hunters to take black bear, and make a technical correction to a rule about use of certain special season deer tags. The department has historically made regular revisions to its hunting regulations in New York. Based on the department's experience in promulgating those revisions and the familiarity of the department's regional personnel with the affected areas, the department has determined that this rule making will not have an adverse economic effect on small businesses or local governments.

All reporting, recordkeeping, and compliance requirements associated with deer hunting is administered by the department. Therefore, the department has determined that this rule making will not impose any reporting, recordkeeping, or other compliance requirements on small businesses or local governments.

Therefore, the department has determined that a Regulatory Flexibility Analysis for Small Businesses and Local Governments is not needed.

***Rural Area Flexibility Analysis***

1. Types and estimated numbers of rural areas:

White-tailed deer are ubiquitous and black bear common in New York. Consequently, the proposed regulation impacts rural areas throughout New York State.

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

All reporting, recordkeeping and other compliance requirements; and professional services associated with white-tailed deer and black bear are the responsibility of the New York State Department of Environmental Conservation (department).

3. Costs:

All costs associated with the implementation and enforcement of the proposed regulation are the responsibility of the department.

4. Minimizing adverse impact:

The proposed rule making will reduce harvest of antlerless deer in Wildlife Management Units (WMUs) 6F and 6J in portions of Franklin, Hamilton, Herkimer, Lewis, and St. Lawrence counties where deer populations are below the level desired by local stakeholders. The proposed rule making also seeks to rescind an unpopular and ineffective rule of 2015 which sought to increase the harvest of antlerless deer in a number of WMUs in southeastern New York and throughout the Lake Plains and northern Finger Lakes area of central and western New York. The proposed rule also will create additional opportunity for junior hunters by allowing them to take black bear during the youth firearms season. Because this rulemaking seeks to balance deer populations with the recommendations of local stakeholders and increase opportunity for hunters, the proposed changes are expected to have a positive effect on rural areas.

5. Rural area participation:

A key component of the New York State White-tailed Deer Management Program is the use of stakeholder engagement processes to discuss local deer-related impacts. This rulemaking furthers the department's effort to align deer populations to the interests expressed by local stakeholders.

***Job Impact Statement***

The proposed regulation would amend the Department of Environmental Conservation's (department) white-tailed deer and black bear hunting regulations to reduce harvest of antlerless deer in two Wildlife Management Units (WMUs) in northern New York, rescind an unpopular and ineffective rule of 2015, increase opportunity for junior hunters to take black bear, and make a technical correction to a rule about use of certain special season deer tags. Few, if any, persons hunt as a means of employment. Such a person, for whom hunting is an income source (e.g.,

professional guides), are not expected to suffer substantial adverse impact as a result of this proposed rule making. Though this rule will reduce hunting opportunity for antlerless deer during the 7-day early muzzleloader season in WMUs 6F and 6J but will increase opportunity for antlered deer in several WMUs for during a portion of the early bowhunting season and all of the late bow and muzzleloader seasons. Ample opportunity to hunt deer remains in other seasons and throughout the state. For this reason, the department anticipates that this rule making will have no impact on jobs and employment opportunities.

Therefore, the department has concluded that a job impact statement is not required.

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

**Management of Menhaden**

**I.D. No.** ENV-19-16-00002-P

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

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

***Statutory authority:*** Environmental Conservation Law, section 13-0333

***Subject:*** Management of menhaden.

***Purpose:*** To add menhaden and the menhaden trip limit to Table B - Commercial Fishing of 6 NYCRR subdivision 40.1(i).

***Text of proposed rule:*** Part 40.1(i) Table B – Commercial Fishing of 6 NYCRR is amended read as follows:

Species Striped bass through Anadromous river herring remain the same.

New species Atlantic menhaden is adopted to read as follows:

| Species | Open season | Minimum length | Trip Limit |
|---|---|---|---|
| *Atlantic menhaden* | *All year* | *No minimum size limit* | *A trip limit set by the department to be consistent with the requirements of the Interstate Fishery Management Plan for Atlantic menhaden.* |

***Text of proposed rule and any required statements and analyses may be obtained from:*** Karen Graulich, New York State Department of Environmental Conservation, 205 North Belle Mead Road, Suite 1, East Setauket, New York 11733, (631) 444-5636, email: karen.graulich@dec.ny.gov

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

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

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

***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:

Environmental Conservation Law (ECL) section 11-0333 authorize the Department of Environmental Conservation (DEC) to adopt regulations to prohibit or further limit menhaden fishing when required by, and consistent with, the Interstate fishery management plan for Atlantic menhaden.

2. Legislative objectives:

It is the objective of the above-cited legislation that DEC manages marine fisheries in such a way as to protect these natural resources for their intrinsic value to the marine ecosystem and to optimize resource use for commercial and recreational harvesters through the implementation of sound management practices that remain compliant with marine fisheries conservation and management policies and interstate fishery management plans.

3. Needs and benefits:

This rule making is necessary to correct a technical error and previous oversight, which failed to include menhaden in Table B when the regulatory authority to establish trip limits under subparagraph 40.1(x)(2)(iii) was implemented. This subparagraph, which deals with quota harvest and trip limits for menhaden, specifically refers to Table B, but menhaden is not included in that table. The proposed amendment will maintain compliance with the Interstate Fishery Management Plan (FMP) adopted by the Atlantic States Marine Fisheries Commission (ASMFC). Failure to adopt this regulatory amendment will result in a continuing discordance between subdivisions 40.1(i) and 40.1(x). The reference in subparagraph 40.1(x)(2)(iii) to subdivision 40.1(i) would remain meaningless and may allow for confusion on the part of commercial fishermen targeting menhaden. Menhaden also already appears in Table A – Recreational Fishing. For consistency, the commercial management measures should be included in Table B.

4. Costs:

The proposed rule does not impose any costs to the department, local municipalities, or the regulated public.

5. Local government mandates:

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

6. Paperwork:

None.

7. Duplication:

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

8. Alternatives:

1. "No action" alternative: Under this alternative New York State would not amend 6 NYCRR Section 40.1 Marine Fish. This alternative was rejected because would result in a continuing discordance between subdivisions 40.1(i) and 40.1(x). The reference to subdivision 40.1(i) in subparagraph 40.1(x)(2)(iii) would remain meaningless and may allow for confusion on the part of commercial fishermen targeting menhaden.

2. Remove the phrase "as provided in Table B of subdivision (i)" from subparagraph 40.1(x)(2)(iii): Under this alternative New York State would amend 6 NYCRR subdivision 40.1(x) and remove the phrase "as provided in Table B of subdivision (i)" rather than incorporating menhaden into Table B of subdivision 40.1(i). This alternative was rejected because it would undermine the usefulness of Table B as a reference guide to commercial fisheries season, length and trip limit information. Menhaden also already appears in Table A – Recreational Fishing. For consistency, the commercial management measures should be included in Table B.

9. Federal standards:

The proposed amendment to 6 NYCRR 40.1 is in compliance with the ASMFC and Regional Fishery Management Council FMPs for Atlantic menhaden.

10. Compliance schedule:

The proposed amendment will not require any action or compliance changes for the regulated public. The proposed regulations will take effect upon filing with the Department of State after the 45-day public comment period.

***Regulatory Flexibility Analysis***

1. Effect of rule:

DEC proposes to amend existing regulations for the management of Atlantic menhaden by adding menhaden to the list of species provided in subdivision 40.1(i) Table B – Commercial Fishing. This amendment is proposed to correct a previous oversight, which failed to include menhaden in Table B when the regulatory authority to establish trip limits under subparagraph 40.1(x)(2)(iii) was implemented. This subparagraph, which deals with quota harvest and trip limits for menhaden, specifically refers to Table B, but menhaden is not included in that table.

2. Compliance requirements:

None.

3. Professional services:

None.

4. Compliance costs:

There are no costs that will be incurred by a regulated business or industry to comply with the proposed rule.

5. Economic and technological feasibility:

The proposed amendment does not require any expenditure on the part of regulated parties to comply with the proposed change.

6. Minimizing adverse impact:

This amendment is proposed to correct a previous oversight, which failed to include menhaden in Table B when the regulatory authority to establish trip limits under subparagraph 40.1(x)(2)(iii) was implemented. The changes will not have an adverse impact on the commercial fishing industry and will not require any action or compliance changes for the regulated public. The proposed regulatory change will clarify the existing regulations for the management of Atlantic menhaden and maintain compliance with the existing ASMFC Interstate Fishery Management Plan.

7. Small business and local government participation:

This amendment is proposed to correct a technical error and previous oversight, which failed to include menhaden in Table B when the regulatory authority to establish trip limits under subparagraph 40.1(x)(2)(iii) was implemented. Commercial fishermen had the opportunity to participate and comment when the rule to establish trip limits was originally

proposed and adopted. Provisions of this rule making will be presented to the Marine Resources Advisory Council by DEC at the next meeting. There was no special effort to contact local governments because the proposed rule does not affect them.

8. Cure period or other opportunity for ameliorative action:

Pursuant to SAPA 202-b(1-a)(b), no such cure period is included in the rule because of the potential adverse impact on the resource. Cure periods for the illegal taking of fish or wildlife are neither desirable nor recommended. Immediate compliance is required to ensure the general welfare of the public and the resource is protected. The proposed amendment also provides a clarification of the existing regulations and does not require any actions or changes by the regulatory community to comply with this amendment.

9. Initial review of rule:

DEC will conduct an initial review of the rule within three years as required by SAPA section 207.

***Rural Area Flexibility Analysis***

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

***Job Impact Statement***

1. Nature of impact:

DEC is proposing to amend the regulations that manage Atlantic menhaden within New York State marine waters. The proposed rule will be consistent with existing federal rules and the provisions of the Atlantic States Marine Fisheries Commission Interstate Fishery Management Plan for Atlantic menhaden. The proposed rule will not have an adverse impact on New York State commercial fishermen or recreational anglers. This amendment is proposed to correct a technical error and previous oversight, which failed to include menhaden in Table B when the regulatory authority to establish trip limits under subparagraph 40.1(x)(2)(iii) was implemented. This subparagraph, which deals with quota harvest and trip limits for menhaden, specifically refers to Table B, but menhaden is not included in that table.

2. Categories and numbers affected:

DEC proposes to amend regulations that implement commercial management measures for Atlantic menhaden, a quota-managed bait species in New York. In 2014 there were 1,015 marine food fishing license holders in New York, 21 menhaden purse seine license holders, 81 marine bait permit holders and 41 lobster bait gill net permit holders, all of whom are licensed to harvest commercial quantities of menhaden.

3. Regions of adverse impact:

The regions most likely to receive any adverse impact are within the marine and coastal district of the State of New York. This area included all the waters of the Atlantic Ocean within three nautical miles from the coast line and all other tidal waters within the state, including Long Island Sound and the portion of the Hudson River within the marine and coastal district.

4. Minimizing adverse impact:

This proposed rule is not expected to have an adverse impact on New York State commercial fishermen or recreational anglers. This amendment is proposed to correct a previous oversight, which failed to include menhaden in Table B when the regulatory authority to establish trip limits under subparagraph 40.1(x)(2)(iii) was implemented.

5. Self-employment opportunities:

This amendment is proposed to correct a technical error and previous oversight, which failed to include menhaden in Table B when the regulatory authority to establish trip limits under subparagraph 40.1(x)(2)(iii) was implemented. Although commercial fishermen are, for the most part, small businesses, usually operated by the owner, this proposed amendment is not expected to have any impact on existing or new fishermen in the commercial marine fishing industry.

6. Initial review of the rule, pursuant to SAPA § 207 as amended by L. 2012, ch. 462:

The department will conduct an initial review of the rule within three years as required by SAPA section 207.

## REVISED RULE MAKING NO HEARING(S) SCHEDULED

### Fisher Trapping Seasons and Bag Limits and General Trapping Regulations for Furbearers

**I.D. No.** ENV-19-15-00010-RP

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

***Proposed Action:*** Amendment of sections 6.2 and 6.3 of Title 6 NYCRR.

***Statutory authority:*** Environmental Conservation Law, sections 3-0301, 11-0303, 11-0917, 11-1101, 11-1103 and 11-1105

***Subject:*** Fisher trapping seasons and bag limits and general trapping regulations for furbearers.

***Purpose:*** Revise existing fisher seasons, establish a new season in central/western NY, update and clarify general trapping regulations.

***Text of revised rule:*** Title 6 / Part 6 of NYCRR, Section 6.2, entitled '' Mink, muskrat, raccoon, opossum, weasel, red fox, gray fox, skunk, coyote, fisher, bobcat and pine marten trapping seasons and bag limits,'' and Section 6.3, entitled "General regulations for trapping beaver, otter, mink, muskrat, raccoon, opossum, weasel, red fox, gray fox, skunk, coyote, fisher, bobcat and pine marten," are amended as follows:

Amend existing subparagraphs 6.2(a)(2), (a)(4), (a)(5), (c)(2)-(4) to read as follows:

§ 6.2 Mink, muskrat, raccoon, opossum, weasel, red fox, gray fox, skunk, coyote, fisher, bobcat and pine marten trapping seasons and bag limits.

(a) No person shall trap the following listed species except during the open trapping seasons corresponding to the listed wildlife management units, or parts of units. Refer to Section 4.1 of this Title for a description of wildlife management units.

(2) Raccoon, red fox, gray fox, skunk, coyote, opossum and weasel.

| Open season | Wildlife Management Units |
|---|---|
| November 1 to February 25, except closed for coyote | 1A, 1C and 2A |
| [October 25 to December 10] | [5A, 5C, 5F, 5G, 5H, 5J, 6A, 6C, 6F, 6G, 6H, 6J, 6K and 6N.] |
| [December 11 to February 15] | [5A, 5C, 5F, 5G, 5H, 5J, 6A, 6C, 6F, 6G, 6H, 6J, 6K and 6N. Body-gripping traps set on land may not be set with bait or lure.] |
| October 25 to February 15 | All other WMUs |

(4) Fisher.

| Open season | Wildlife Management Units |
|---|---|
| October 25 to December 10 | 3A, 3C, 3F, 3G, 3H, 3J, 3K, 3M, 3N, 3P, 4A, 4B, 4C, 4G, 4H, 4J, 4K, 4L, 4P, 4R, 4S, 4T, 4U, 4W, 4Y, 4Z, 5A, [5C, 5F, 5G, 5H, 5J,] 5R, 5S, 5T, 6A, 6C, [6F,] 6G, 6H, [6J,] 6K, 6N, 6R and 6S |
| *November 1 to November 30* | *5C, 5F, 5G, 5H, 5J, 6F, and 6J* |
| *October 25 to October 30* | *4F, 4O, 7A, 7M, 7P, 7R,7S, 8T, 8W, 8X, 8Y, 9J, 9K, 9M, 9N, 9P, 9R, 9S, 9T, 9W, 9X, 9Y* |
| Closed | All other WMUs |

(5) Pine Marten.

| Open season | Wildlife Management Units |
|---|---|
| *November 1 to November 30* [December 10] | 5C, 5F, 5G, 5H, 5J, 6F and 6J |
| Closed | All other WMUs |

(c) Bobcat *or Fisher* permit.

*(2) No person shall trap fisher in the Wildlife Management Units listed in paragraph 6.2(a)(4) unless the person holds a revocable special permit for fisher issued by the department.*

[(2)]*(3)* Requirements and procedures for obtaining a bobcat *or fisher*

permit will be described in the department's annual hunting and trapping syllabus and on the department's website.

[(3)]*(4)* The holder of a bobcat *or fisher* permit must comply with all conditions stated on the permit.

Repeal existing subparagraph 6.3(a)(1) and renumber subparagraphs (a)(2) through (a)(16) as subparagraphs (a)(1) through (a)(15).

Amend renumbered subparagraph 6.3(a)(1) to read as follows:

*(1)* [(2)] No person shall use traps of the leg - gripping type [that have teeth in the jaws or that have a spread of jaws] *with a dimension of* greater than 5 3/4 inches except that traps up to 7 1/4 inches may be used *when set* under water during the open season for trapping beaver or otter. No person shall set or use a [body] *leg* - gripping type trap [with a dimension of more than 7 1/2 inches except when used in water during the open season for trapping beaver and otter. No person shall set a trap] in such a manner that the animal, when caught, would be suspended. *No person shall use traps of the leg-gripping type that have teeth in the jaws.*

Amend renumbered subparagraphs 6.3(a)(5) and (a)(6) to read as follows:

*(5)* [(6)] [No person shall trap beaver or otter with traps of the leg - gripping type that have teeth in the jaws or that are set under water and have a spread of jaws greater than 7 1/4 inches.] No person shall set or use on land a body - gripping type trap with a dimension of more than 7 1/2 inches [for trapping beaver or otter]. *Body-gripping traps with a dimension of more than 7 ½ inches may be set in the water during the open season for beaver or otter.* No [person shall set a trap for beaver or otter] body-gripping trap may be set in such a manner that the animal*,* when caught*,* would be suspended. *No person shall use traps of the body-gripping type that have teeth in the jaws.*

*(6)* [(7)] It is unlawful for any person to disturb a beaver den or house (an aggregate of sticks and mud, either free-standing in water or connected to a bank) at any time. This restriction does not apply to holes in a bank without a den or house. It is unlawful for any person to trap on *or within 15 feet of* a beaver dam*, den or house,* [or within 15 feet thereof,] measured at ice or water level, except under the following conditions:

(i) During an open otter season*, traps of any legal size may be set on or within 15 feet of a beaver dam, but not on or within 15 feet of a beaver den or house*.

(ii) During [a] *an open or* closed otter season, [when using one] *any* of the following traps *may be set on or within 15 feet of a beaver dam, den, or house*:

Amend renumbered subparagraph 6.3(a)(11) to read as follows:

*(11)* [(12)] Trigger specifications for body gripping traps in the Southern Zone. In the Southern Zone, no person shall use or set a body gripping trap with a dimension of more than [nine] *8½* inches in any wildlife management unit where the river otter trapping season is closed, unless the trap has only one triggering device and such device is a ''two-way/parallel trigger'' possessing all of the following design features:

Add new subparagraph 6.3(a)(16) to read as follows:

*(16) In the northern zone (Wildlife Management Units 5A, 5C, 5F, 5G, 5H, 5J, 6A, 6C, 6F, 6G, 6H, 6J, 6K and 6N) body-gripping traps set on land may not be set with bait or lure during a closed season for fisher and/or marten. Refer to paragraphs 6.2(a)(4) and (5) for descriptions of fisher and pine marten seasons, respectively.*

***Revised rule compared with proposed rule:*** Substantial revisions were made in section 6.2(a)(2), (4), (5) and (c)(2).

***Text of revised proposed rule and any required statements and analyses may be obtained from*** Michael Schiavone, New York State Department of Environmental Conservation, 625 Broadway, Albany, NY 12233-4754, (518) 402-8886, email: michael.schiavone@dec.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

Section 3-0301 of the Environmental Conservation Law (ECL) directs the Department of Environmental Conservation (DEC or department) to provide for the propagation, protection, and management wildlife.

Section 11-0303 of the ECL directs DEC to develop and carry out programs that will maintain desirable species in ecological balance, and to observe sound management practices. This directive is to be met with regard to: ecological factors, the compatibility of production and harvest of wildlife with other land uses, the importance of wildlife for recreational purposes, public safety, and protection of private premises.

ECL sections 11-0917 and 11-1101 describe the conditions under which wild game may be possessed, transported, or sold, and which trapping activities are prohibited.

ECL section 11-1103 states that the department may by regulation permit trapping of beaver, fisher, otter, bobcat, coyote, fox, raccoon, opossum, weasel, skunk, muskrat, pine marten and mink and may regulate the taking, possession and disposition of such animals.

ECL section 11-1105 describes how traps may be set, how often they must be checked, and how animals may be dispatched.

2. Legislative Objectives

The legislative objectives behind the statutory provisions listed above are to authorize the department to establish, by regulation, certain basic wildlife management tools, including the setting of open areas for trapping fisher and other furbearers. These tools are used by the department in recognition of the importance of trapping for recreational purposes.

3. Needs and Benefits

The Division of Fish, Wildlife and Marine Resources (Division) proposes to establish a new 6-day fisher trapping season in select Wildlife Management Units (WMUs) in central and western New York that can sustain a limited harvest opportunity based on analyses of fisher population data and estimates of trapping pressure. In addition, the Division proposes a restriction of the fisher season in Adirondack WMUs from 46 days to 30 days based on scientific evidence that harvest rates in those units is exceeding 20%, the threshold for sustainable harvest. Finally, the Division is proposing minor revisions to the general trapping regulations for furbearers to improve clarity and ease compliance and enforcement.

4. Costs

None beyond normal administrative costs.

5. Paperwork

The proposed revisions require participants in fisher trapping seasons to obtain a special permit from DEC free of charge and to complete a trapping effort log. These requirements allow wildlife managers to obtain important information on trapping harvest, participation, and effort to ensure that harvest is sustainable.

6. Local Government Mandates

These amendments do not impose any program, service, duty or responsibility upon any county, city, town village, school district or fire district.

7. Duplication

There are no other regulations similar to this proposal.

8. Alternatives

Alternatives for Fisher Trapping in Adirondack WMUs in Northern New York

No changes to fisher trapping seasons in Adirondack WMUs. A fundamental part of fisher management is that populations can generally sustain annual harvest rates of approximately 20%. Harvest and trapping effort data from the Adirondacks indicate that the fisher population has declined in recent years and that harvest rates exceed 20%. Based on our analysis of fisher harvest data, DFWMR staff concluded that some changes to trapping regulations are necessary to ensure that fisher harvests are managed on a sustainable basis as a public trust resource.

Temporarily close fisher trapping seasons in Adirondack WMUs. Fisher trapping season closures were implemented in New York in 1977, 1983, and 1984; however, the recently observed fisher harvest declines do not warrant such action at this time. While such measures may provide immediate relief of harvest pressure on fisher populations, short-term season closures are unlikely to provide long-term benefits if other harvest restrictions are not implemented when seasons are re-opened. Furthermore, because fishers and martens are trapped using the same methods, the marten trapping season in the Adirondacks would also be closed under this alternative. Fishers would also continue to be harvested incidental to other terrestrial furbearers with concurrent seasons (e.g., fox, raccoon, coyote). Lastly, when trapping seasons are closed, the Department loses a valuable source of data (i.e., biological data collected during pelt sealing) that is used to assess population status and make management decisions.

Alternatives for Fisher Trapping in Central and Western New York

Maintain a closed season for trapping fishers. While maintaining a closed season for fisher trapping is a viable management option, providing regulated trapping opportunities is consistent with the NYSDEC Bureau of Wildlife's mission "To provide the people of New York the opportunity to enjoy all the benefits of the wildlife of the State, now and in the future." These benefits include opportunities to harvest and observe fishers in the wild. Even with the proposed opening of a limited trapping season Central/Western New York, we expect fisher populations to continue to expand to other areas of western New York (e.g., the Lake Plains) which will provide additional opportunities for the public to observe and enjoy this species in the future.

Open a fisher trapping season with harvest regulations similar to other areas of New York (existing or proposed). We considered this option to address potential concerns regarding inequity of harvest opportunities among fisher management zones or having different trapping seasons and regulations across the state. However, our assessment of fisher populations and harvest data from ecologically-similar areas of southeastern New York, suggested that a more conservative season than occurs elsewhere currently (46 days) or than is proposed for the Adirondack WMUs (30 days) was more appropriate for opening a new season. The proposed 6-day season will almost certainly be sustainable, provide some

new harvest opportunities, and provide data that we can use to evaluate possible season expansions in the future.

Alternatives for Revisions to General Trapping Regulations for Furbearers

Make no changes to existing general trapping regulations in NYCRR Section 6.3. We can continue to manage furbearers without making changes to the general regulations described in Section 6.3, but the current wording has led to confusion among both trappers and law enforcement personnel, making compliance and enforcement a challenge.

9. Federal Standards

There are no federal standards associated with fisher trapping.

10. Compliance Schedule

Trappers would have to comply with the new regulations beginning in the fall of 2016, if they are adopted as proposed.

***Revised Regulatory Flexibility Analysis***

The purpose of this rule making is to revise existing fisher trapping seasons in northern New York and establish a new six-day trapping season in select Wildlife Management Units in central and western New York. In addition, this rule making is needed to update and clarify general trapping regulations for furbearers. This rule will not impose any reporting, record-keeping, or other compliance requirements on small businesses or local government. Therefore, a Regulatory Flexibility Analysis is not required.

All reporting or record keeping requirements associated with trapping in general, and fisher trapping in particular, are administered by the New York State Department of Environmental Conservation (department). Small businesses may, and town or village clerks do, sell trapping licenses, but this rule does not affect that activity. Thus, there will be no effect on reporting or record keeping requirements imposed on those entities.

Based on the department's past experience in promulgating regulations of this nature, and based on the professional judgment of department staff, the department has determined that this rulemaking may slightly increase the number of participants or the frequency of participation in fisher trapping, particularly in select Wildlife Management Units in central and western New York. Some small businesses currently benefit from trapping because trappers spend money on goods and services, and thus an increase in trapper participation should lead to positive economic impacts on such businesses.

Additional trapping activity will not require any new or additional reporting or record-keeping by any small businesses or local governments. For these reasons, the department has concluded that this rulemaking does not require a Regulatory Flexibility Analysis.

***Revised Rural Area Flexibility Analysis***

The purpose of this rule making is to revise existing fisher trapping seasons in northern New York and establish a new six-day trapping season in select Wildlife Management Units in central and western New York. In addition, this rule making is needed to update and clarify general trapping regulations for furbearers. This rule will not impose any reporting, record-keeping, or other compliance requirements on public or private entities in rural areas, other than individual trappers.

All reporting or record keeping requirements associated with trapping are administered by the New York State Department of Environmental Conservation (DEC or department). Small businesses may, and town or village clerks do, issue trapping licenses, but this rule making does not affect that activity.

Additional trapping activity will not require any new or additional reporting or record-keeping by entities in rural areas, and no professional services will be needed for people living in rural areas to comply with the proposed rule. Furthermore, this rule making is not expected to have any adverse impacts on any public or private interests in rural areas of New York State. For these reasons, the department has concluded that this rulemaking does not require a Rural Area Flexibility Analysis.

***Revised Job Impact Statement***

The purpose of this rule making is to revise existing fisher trapping seasons in northern New York and establish a new six-day trapping season in select Wildlife Management Units in central and western New York. In addition, this rule making is needed to update and clarify general trapping regulations for furbearers. The New York State Department of Environmental Conservation (DEC or department) has historically made regular revisions to its trapping regulations. Based on DEC's experience in promulgating those revisions and the familiarity of regional department staff with the specific areas of the state impacted by this proposed rulemaking, the department has determined that this rule making will not have a substantial adverse impact on jobs and employment opportunities. Few, if any, persons actually use trapping as a means of employment, but a modest increase in trapping participation in some select Wildlife Management Units in central and western New York may benefit local businesses and businesses that sell trapping supplies and equipment.

For these reasons, the department anticipates that this rulemaking will have no impact on jobs and employment opportunities. Therefore, the department has concluded that a job impact statement is not required.

***Assessment of Public Comment***

The Department received almost 90 comments on the proposed amendment to fisher seasons and general trapping regulations. A summary of comments and Department responses follows.

Comment: There should not be a trapping season for fishers in central/western New York (C/WNY).

Response:

Some people do not approve of trapping; however, New York's Environmental Conservation Law (ECL) authorizes trapping as a legitimate use of our wildlife resources. Consequently, the proposed regulations provide for this use, while ensuring it is done sustainably.

The Department conducted intense trail camera surveys in C/WNY over the last three winters to estimate fisher occupancy and density, including surveys in Wildlife Management Units (WMUs) currently open to fisher trapping, and based on these data, is confident fisher populations in select areas of C/WNY can sustain a limited harvest.

Comment: The proposed changes are not science-based.

Response:

The proposed regulations are based on analyses of available data including harvest totals and sex ratios, trapping effort, and both mail and field survey results. The draft Plan incorporates numerous references to scientific literature from peer-reviewed professional journals on fisher management and furbearer management.

Although we received a fair number of comments on the draft Plan and proposed regulations, none contained any new scientific information that would cause us to re-evaluate the conclusions and proposals presented in the plan.

Comment: Take-per-unit-effort (TPUE) is not a useful metric for monitoring fisher populations.

Response:

Many comments indicated that changes in annual harvests are likely due to a number of factors including weather, pelt prices, gas prices, and trapper interest, all resulting in decreased effort. The Department agrees these factors can reduce effort and therefore, harvest. However, TPUE accounts for these sources of variation by normalizing harvest by effort expended. TPUE is the product of the number of traps set and the number of nights these traps are set (expressed as the number of fisher harvested per 100 trap-nights). Normalizing harvest data by effort facilitates year-to-year comparisons and addresses changes in effort and resulting harvest. TPUE does not account for changes in trapping vulnerability that occur in response to food availability, but this can be considered when interpreting TPUE trends. The scientific literature has several references that demonstrate the utility of using TPUE to monitor furbearer populations.

Comment: More research is needed before decreasing the season length in the Adirondacks.

Response:

Several commenters felt that additional research was necessary to document fisher population declines in Adirondack WMUs. We do not believe more research would change the outcome of our proposals. All indicators (TPUE and harvest rates) point to a decreasing fisher population. We believe this warrants the proposed season reduction to achieve a 20% harvest rate to stabilize the population.

Comment: Fisher harvest in the Adirondacks is declining due to public land access losses and lack of habitat management.

Response:

Some comments stated that access to land in the Adirondacks and/or lack of habitat management within the Adirondack Park (Park) are drivers of decreased fisher populations. The Department recognizes that access to some lands within the Park have become more restrictive; however, it is unlikely these changes have been significant enough over the previous decade to cause the population declines identified. In addition, if restricted access has resulted in decreased trapping effort and harvest, that is accounted for by using estimates of TPUE as described above.

Over the last decade it is unlikely that a lack of habitat management could be a source of population decline for fisher, since habitats in the Adirondacks have changed little during that time. Finally, the State Constitution prohibits the Department from conducting habitat management on State lands within the Park, so management must be based with that constraint in mind.

Comment: Trapping season dates should be set for when fur is "prime."

Response:

Many trappers suggested a later season start date in eastern New York to improve the quality of fur on harvested fisher. While later dates would lead to an improvement in pelt quality, there are other factors to consider. First, fishers harvested in late October are routinely sold at reasonable prices, so the difference in pelt quality from a modest delay in season dates is small. In addition, incidental capture of fisher by trappers targeting other species using body-grip traps prior to the later opening date is problematic. Body-grip traps are lethal traps and non-target catches cannot be released. In addition, the 2010-11 Trapper Mail Survey showed that

a majority of trappers (57%) prefer a concurrent opening season date of October 25th for all land species. Later seasons also are more likely to experience access limitations due to weather and road closures. For these reasons the start date for the existing season in Southeastern New York and proposed new units in C/WNY is October 25th.

In response to the input received for Northern New York (NNY), the Department has amended the proposed regulations as described below:

1. Establish a 30-day season, from November 1 to November 30, in Adirondack WMUs. This will reduce the season length sufficiently to achieve the desired reduction in fisher harvests and also shift season dates later in response to the desires expressed during the public comment period.

2. Modify existing regulations prohibiting the use of baited/lured body-grip traps on land after December 10th in the northern zone to prohibit the use of baited/lured body-grip traps on land in the northern zone whenever the fisher and/or marten seasons are closed. With a proposed start date of November 1 in some Adirondack WMUs, this change will require trappers to use live-restraint type traps from October 25 to October 31 when targeting other land species and allow incidentally captured fisher/marten to be released unharmed.

Comment: There should be no bag limit for the proposed fisher trapping season in C/WNY.

Response:

Many comments were opposed to the proposed limit of one fisher per trapper in select WMUs in C/WNY. The Department understands the challenges of using bag limits to control trapper harvest. Trapping is a passive activity and the possibility of a trapper unintentionally exceeding a one-fisher bag limit exists any time more than a single trap is set; however, bag limits are used successfully in other northeastern states. In response to the opposition to the proposed bag limit, the Department calculated various harvest scenarios and determined that a shorter season length with no bag limit would result in an annual estimated take that is sustainable. Therefore, we have amended the proposed regulation to a season length of six days with no bag limit for select WMUs in C/WNY.

Comment: There should be a longer fisher trapping season in C/WNY.

Response:

Some comments took exception to the short, nine-day proposed season in C/WNY. Based on our decision to eliminate the bag limit of one fisher per trapper in C/WNY, we had to further reduce the proposed length of the season to six days. This change will allow trappers to target fisher without concerns over exceeding the bag limit but also allow the Department to keep harvest levels within projected sustainable limits. A longer season may be considered in the future if data collected over the next several years supports such a change.

Comment: All trapping seasons should end on the same date.

Response:

Several comments called for all fisher seasons to end on the same date (rather than start on the same date) so that it would be easier for trappers to understand and easier for Department staff to handle pelt sealing demands. The Department cannot say conclusively whether it is easier for trappers to understand uniform start or uniform end dates but it is logical to assume that either could be equally easy to comprehend.

Concerns about pelt sealing are unfounded. Staff need to be prepared to seal pelts from the first day of the season until 10 days after the close of the season. Aligning seasons to end on the same date would not change the nature of this responsibility. Finally, there are seasons for many species with variable end dates and we are unaware of any issues resulting from this practice.

Comment: Restricting the fisher trapping season in the Adirondacks will negatively affect marten trapping opportunity.

Response:

Trapping methods for fisher and marten are very similar and therefore, regulations designed to protect one species must also be applied to the other. Were marten seasons to remain unchanged, there is the strong possibility that marten trappers could incidentally take fisher after fisher season closed. We recognize that the proposed changes will result in the loss of marten trapping opportunity, but to avoid the incidental take of fisher, seasons for the two species must be aligned.

Comment: Do not use a “special permit” system for fisher trapping.

Response:

The proposed amendment for fisher trapping specified the requirement for a “special permit” that is obtained from the Department free of charge. The special permit system is a mechanism that has been used successfully for furbearer species to obtain estimates of participation and effort that cannot be obtained from pelt-sealing alone. As stated above, estimates of TPUE are a more accurate representation of abundance than raw harvest totals. The Department envisions that use of a special permit system is temporary as we seek to better understand fisher populations over the next 3-5 years.

Comment: Start fisher trapping seasons later to reduce trapping pressure on fishers or to minimize conflicts between trappers and others (e.g., hunters).

Response:

While it is true that currently most fisher are trapped during the first few weeks of the season, it is unknown if starting fisher seasons on a later date would result in an overall reduction in fisher trapping pressure. It is possible that trapping pressure would remain the same or increase with a later start date to the season.

Starting the season on a later date would also not guarantee a reduction in potential conflicts between trappers and others (e.g., hunters). New York has multiple hunting seasons for various species that span from September to March. In addition, later season dates could overlap with snowmobiling “season”, which typically begins after the close of deer season, opening up the possibility for previously unknown conflicts.

Comment: Trapping harvest favoring female fishers is ‘‘normal’’ and sustainable, contrary to what is stated in the draft Fisher Management Plan.

Response:

Peer-reviewed published research found that adult female fishers had lower mortality rates and were less vulnerable to trapping than adult males, indicating that sex ratios which favor males or approach 1:1 female:male (F:M) reflect a sustainable harvest. Although Fur Harvesters Auction (FHA) data presented to the department indicated a F:M ratio similar to that presented in the draft plan, there are important differences. First, sex ratio data from New York contain both spatial and temporal components, enabling us to calculate ratios and their variability over time within discrete areas with the same trapping regulations (e.g., northern vs. southeastern NY). Furthermore, the department evaluated additional harvest data (e.g., TPUE, harvest density, success rate) to corroborate sex ratio data. FHA data were pooled across a large geographic area that varied greatly in F:M ratios and trapping regulations, precluding an understanding of how differences in regulations across jurisdictions influence these ratios, and prohibiting a comparison with other harvest data. Lastly, even if FHA data were an accurate reflection of the fisher sex ratio, it’s important to note that other eastern and mid-western states are observing similar declines in fisher harvests, which suggests that ratios exceeding 1:1 indicate increasing harvest intensity and potentially overharvest.

Comment: The phrases “leg hold” traps and traps with “teeth in the jaws” reflect poorly upon trappers.

Response:

Regulatory language regarding “leg hold” traps and the prohibition against using traps with “teeth in the jaws” mirror the language used in ECL § 11-1101. We recognize that “foot-hold” trap is a more accurate reflection of this device and that traps with “teeth in the jaws” have been prohibited in New York State for decades; however, the Department uses these phrases to remain consistent with statute. Changing this language would require a law change.

# New York State Gaming Commission

## NOTICE OF ADOPTION

**Use of Cellular Telephones and Electronic Communication Devices in the Paddock**

**I.D. No.** SGC-07-16-00001-A

**Filing No.** 435

**Filing Date:** 2016-04-26

**Effective Date:** 2016-05-11

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

***Action taken:*** Amendment of section 4104.14 of Title 9 NYCRR.

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

***Subject:*** Use of cellular telephones and electronic communication devices in the paddock.

***Purpose:*** To allow cellular telephones and other communication devices in designated areas of a harness race track paddock.

***Text or summary was published*** in the February 17, 2016 issue of the Register, I.D. No. SGC-07-16-00001-P.

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

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

***Initial Review of Rule***

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

***Assessment of Public Comment***

The agency received no public comment.

## NOTICE OF ADOPTION

### Thoroughbred Pick-Four, Pick-Five and Pick-Six Wagers

**I.D. No.** SGC-07-16-00011-A

**Filing No.** 436

**Filing Date:** 2016-04-26

**Effective Date:** 2016-07-22

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

***Action taken:*** Amendment of sections 4011.23 and 4011.26; renumbering of section 4011.24 to 4011.23; and addition of section 4011.25 to Title 9 NYCRR.

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

***Subject:*** Thoroughbred pick-four, pick-five and pick-six wagers.

***Purpose:*** To standardize and improve the pick-four, pick-five and pick-six wagers in thoroughbred racing.

***Text or summary was published*** in the February 17, 2016 issue of the Register, I.D. No. SGC-07-16-00011-P.

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

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

***Initial Review of Rule***

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

***Assessment of Public Comment***

The Gaming Commission received a public comment from the New York Racing Association, Inc. supporting the adoption of the rules and requested that the changes be effective on July 22, 2016, which is the start of the Saratoga meet, in order to allow for appropriate testing of the totalisator system to prepare for the rules changes.

As the result of the request, the Commission adopted the rules to become effective on July 22, 2016.

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

### Surveillance Standards for a Licensed Gaming Facility

**I.D. No.** SGC-19-16-00013-P

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

***Proposed Action:*** Addition of Part 5314 to Title 9 NYCRR.

***Statutory authority:*** Racing, Pari-Mutuel Wagering and Breeding Law, sections 104(19), 1307(1), (2)(k) and 1331

***Subject:*** Surveillance standards for a licensed gaming facility.

***Purpose:*** To govern a gaming facility licensee's system of procedures and standards for surveillance.

***Substance of proposed rule (Full text is posted at the following State website:www.gaming.ny.gov):*** The addition of Part 5314 of Subtitle T of Title 9 NYCRR will allow the New York State Gaming Commission ("Commission") to prescribe rules that require a gaming facility licensee to establish and implement a surveillance plan of operation for its gaming facility. These rules also establish standards for a gaming facility's surveillance department including location and equipment and the monitoring of certain areas and activities, surveillance department employee training and restrictions, and the retention of records.

Section 5314.1 sets forth the requirements for a gaming facility licensee's submission of a surveillance plan of operation. Sections 5314.2 through 5314.4 guide a gaming facility licensee on, among other things, surveillance department staffing and equipment. Section 5314.5 and 5314.6 set forth the areas and activities within the gaming facility that are required to be monitored and recorded by the surveillance department. Section 5314.7 establishes the retention periods for audio, visual and other recorded activities.

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

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

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

***Regulatory Impact Statement***

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

Racing Law section 1307(2)(k) authorizes the Commission to prescribe for system gaming operations the procedures, forms and methods of management controls including minimum security and surveillance standards. Prior to receiving a gaming facility license, an applicant shall submit to the Commission pursuant to Racing Law section 1334, its internal procedures relating to, among other things, gaming facility surveillance.

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

3. NEEDS AND BENEFITS: The proposed rules implement and help gaming facilities understand the above listed statutory directives regarding the security and surveillance of licensed gaming facilities. The rules provide specificity with respect to the above listed statutory directives to assure transparent, credible and secure gaming operations. The rules represent best practices in gaming facility surveillance standards and are the result of input from stakeholders and other gambling jurisdiction best practices and regulation. Best practices addressed in the proposed rules include the submission and approval of a surveillance plan of operation and any amendments, surveillance department independence and employee restrictions, surveillance room access, required equipment, surveillance locations and activities, and record retention.

4. COSTS:

(a) Costs to the regulated parties for the implementation of and continuing compliance with these rules: One of the three gaming facility licensees has indicated that the anticipated costs of implementing and complying with the proposed rules will be approximately $4 to $5 million.

(b) Costs to the regulating agency, the State, and local governments for the implementation of and continued administration of the rule: The Commission currently reviews surveillance plans in video lottery. Based on that experience the Commission anticipates that the costs associated with the proposed rules would be negligible. These rules will not impose any additional costs on local governments.

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

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

6. PAPERWORK: These rules impose paperwork burdens on gaming facility licensees to establish, submit and maintain a surveillance plan of operation that includes a listing of surveillance department equipment and employee staffing. Examples of paperwork burdens on the gaming facility licensees include the drafting and maintenance of surveillance logs, retention of surveillance records, and drafting of notices to the Commission regarding amendments or requests.

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

8. ALTERNATIVES: The Commission consulted stakeholders and reviewed other gambling jurisdiction best practices and regulation. Alternatives were discussed and considered with stakeholders and compared to other jurisdictions regulations. These included the appropriate equipment for the surveillance department, the appropriate time period

to submit a surveillance plan, the appropriate notification process for amendments to a surveillance plan and the appropriate access the Commission has to the surveillance department log book entries and incident and observation reports. The Commission is also required to promulgate these rules pursuant to Racing Law sections 1307(2)(k).

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

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

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

These rules will not have any adverse impact on small businesses, local governments, jobs or rural areas. These rules set forth the requirement that a gaming facility licensee submit a surveillance plan to the Gaming Commission for approval in advance of commencing operations. These rules also establish standards for establishing a surveillance department, employee restrictions, required surveillance and recording and retention of surveillance records. These rules apply only to the licensed gaming facilities.

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

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

These rules will have no adverse impact on job opportunities.

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

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

### Conduct and Operation of a Gaming Facility

**I.D. No.** SGC-19-16-00014-P

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

***Proposed Action:*** Addition of Part 5313 to Title 9 NYCRR.

***Statutory authority:*** Racing, Pari-Mutuel Wagering and Breeding Law, sections 104(19), 1307(1), (2)(i), (k), 1331, 1332, 1333, 1334 and 1341(2)

***Subject:*** Conduct and operation of a gaming facility.

***Purpose:*** To govern a gaming facility licensee's system of procedures for the conduct and operation of gaming.

***Substance of proposed rule (Full text is posted at the following State website:www.gaming.ny.gov):*** The addition of Part 5313 of Subtitle T of Title 9 NYCRR will allow the New York State Gaming Commission ("Commission") to prescribe requirements for the conduct and operation of gaming including a gaming facility licensee's system of internal procedures and administrative and accounting controls and the criteria for awarding a gaming facility licensee an operation certificate to commence gaming operations.

Section 5313.1 sets forth the requirements for the internal control system a gaming facility licensee submits to the Commission for approval. Section 5313.2 establishes the minimum age a patron must be to participate in gaming activities and the penalties associated with a gaming facility licensee's violation of such requirements. Section 5313.3 sets forth the procedure for the alteration or change of gaming facility hours of operation. Section 5313.4 cites to the federal statutory requirements for facility access to a public accommodation. Section 5313.5 sets forth the requirements for access to restricted areas of a gaming facility and an access badge and credential system a gaming facility licensee must adopt. Section 5313.6 provides that a gaming facility licensee retain realty, construction, maintenance and business records for Commission review. Section 5313.7 sets forth the requirement that a gaming facility licensee submit an emergency action plan to the Commission. Section 5313.8 establishes criteria for awarding a gaming facility licensee an operation certificate to commence gaming operations. Section 5313.9 sets forth restrictions on the possession of firearms within a gaming facility. Section 5313.10 sets forth requirements for the retention, storage and destruction of books, records and documents pertaining to the operation of the gaming facility licensee. Section 5313.11 sets forth control and maintenance requirements for sensitive keys. Section 5313.12 and 5313.13 set forth requirements for the installation of facial and license plate recognition equipment. Section 5313.14 sets forth limitations on certain financial access.

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

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

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

***Regulatory Impact Statement***

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

Racing Law section 1307(2)(f) requires the Commission to prescribe the manner and method of the collection of taxes, fees, interest and penalties.

Racing Law section 1307(2)(i) prescribes that the Commission regulate the grounds and procedures for the revocation or suspension of an operation certificate.

Racing Law section 1307(2)(k) prescribes that the Commission regulate for gaming operations the procedures, forms and methods of management controls, including, employee and supervisory organization and responsibility and minimum security and surveillance standards.

Racing Law section 1331 provides that no gaming facility may open and no gaming activity may be conducted prior to a determination by the Commission that a gaming facility licensee has satisfied the requirements of Racing Law Article 13 and Subchapter B of the Commission's regulations and the issuance by the Commission of an operation certificate.

Racing Law section 1332 sets forth the minimum age for gaming participation.

Racing Law section 1333 sets forth requirements with respect to a gaming facility's hours of operation.

Racing Law section 1334 sets forth the requirements for a gaming facility licensee's internal control system including procedures relating to, among other things, gaming facility security and surveillance, administrative and accounting controls, the recordation of cash, checks and revenue, the shutdown of operations in the event of a state of emergency.

Racing Law section 1338 prescribes that the Commission regulate the access and use of certain financial systems and instruments at the gaming facility.

Racing Law section 1341(2) requires that a gaming facility licensee maintain a record of each unwritten or written agreement regarding realty, construction, maintenance or business.

2. LEGISLATIVE OBJECTIVES: These provisions enable the Commission to carry out the Upstate New York Gaming Economic Development Act of 2013 as embodied in Chapter 174 of the Laws of 2013 including to maintain the public confidence and trust in the credibility and integrity of legalized gaming activities in order to support the continued growth of the gaming industry that will contribute to economic development and job development in the state.

3. NEEDS AND BENEFITS: The proposed rules implement and help gaming facilities understand the above listed statutory directives regarding the operation and internal controls of licensed gaming facilities. The rules provide specificity with respect to the above listed statutory directives to assure transparent and accountable gaming operations. The rules represent best practices for guiding and promoting consistency in the overall operation of licensed gaming facilities and are the result of input from stakeholders and other gambling jurisdiction regulations. Specifically, best practices addressed in the proposed rules include (i) requiring each gaming facility licensee to establish a system of internal controls in regard to accounting, surveillance, emergency shutdowns and facility administration; (ii) establishing penalties when a gaming facility licensee violates minimum age rules; (iii) requiring each gaming facility licensee to comply with Title III of the American with Disabilities Act of 1990; and (iv) requiring each gaming facility licensee to meet specific benchmarks in order to obtain an operation certificate.

4. COSTS:

(a) Costs to the regulated parties for the implementation of and continuing compliance with these rules: One of the three gaming facility licensees has indicated that the anticipated costs of implementing and complying with the proposed regulations will be approximately $2 to $3 million.

(b) Costs to the regulating agency, the State, and local governments for the implementation of and continued administration of the rule: Based on the Commission's experience in regulating the conduct and operation of video lottery facilities, it anticipates that the costs associated with the proposed rules would be negligible. These rules will impose no additional costs on local governments.

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

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

6. PAPERWORK: These rules impose paperwork burdens on gaming facility licensees to establish, submit and maintain a system of internal controls concerning their administrative and accounting procedures. Examples of paperwork burdens on the gaming facility licensees include the drafting and maintenance of a summary of a gaming facility's system of administrative and accounting procedures; the drafting of an annual report detailing the gaming facility's Americans with Disabilities Act policies and practices; the drafting and maintenance of access badge records; the drafting and maintenance of an emergency action plan; and the drafting of notices to the commission regarding amendments or requests with respect to specific operations and internal controls.

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

8. ALTERNATIVES: The Commission consulted stakeholders and reviewed other gambling jurisdiction best practices and regulations. Alternatives were discussed and considered with stakeholders and compared to other jurisdiction regulations. These included the appropriate level of internal and external attestation and verification of a gaming facility's system of internal controls; the appropriate penalties for a gaming facility found to be in violation of rules concerning age for gaming participation; the appropriate amendment and notification process for changes to a gaming facility's operation certificate; and the best practices concerning facial and license plate recognition. The Commission is also required to promulgate these rules pursuant to Racing Law section 1307(2)(f), (i) and (k). Therefore, no alternatives were considered.

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

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

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

These rules will not have any adverse impact on small businesses, local governments, jobs or rural areas. These rules set forth the requirement that a gaming facility licensee submit its system of administrative and accounting procedures for the conduct and operation of gaming to the Commission in advance of the issuance of an operation certificate. These rules also establish requirements for hours of operation, minimum age participation and access, an emergency action plan, and procedures for key control, facial recognition and license plate recognition. These rules apply only to the licensed gaming facilities.

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

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

These rules will have no adverse impact on job opportunities.

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

# Department of Health

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

**Transgender Related Care and Services**

**I.D. No.** HLT-19-16-00008-P

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

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

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

***Subject:*** Transgender Related Care and Services.

***Purpose:*** To revise and clarify the criteria for Medicaid coverage of transgender related care and services.

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

(l) Gender dysphoria treatment.

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

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

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

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

(ii) has received hormone therapy appropriate to the individual's gender goals, which shall be for a minimum of 12 months in the case of an individual seeking genital surgery, unless such therapy is medically contraindicated or the individual is otherwise unable to take hormones;

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

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

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

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

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

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

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

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

*(5) Payment will not be made for any surgery, services, or procedures that are performed solely for the purpose of improving an individual's appearance (cosmetic procedures). The following surgery, services, and procedures will be presumed to be cosmetic and will not be covered, unless justification of medical necessity is provided and prior approval is received:*

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

[(a)] *(i)* abdominoplasty, blepharoplasty, neck tightening, or removal of redundant skin;

[(b)] *(ii)* breast augmentation*, unless the individual has completed a minimum of 24 months of hormone therapy during which time breast growth has been negligible, or hormone therapy is medically contraindicated or the individual is otherwise unable to take hormones*;

[(c)] *(iii)* breast, brow, face, or forehead lifts;

[(d)] *(iv)* calf, cheek, chin, nose, or pectoral implants;

[(e)] *(v)* collagen injections;

[(f)] *(vi)* drugs to promote hair growth or loss;

[(g)] *(vii)* electrolysis, unless required for vaginoplasty *or phalloplasty*;

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

[(i)] *(ix)* hair transplantation;

[(j)] *(x)* lip reduction;

[(k)] *(xi)* liposuction;

[(l)] *(xii)* thyroid chondroplasty; and

[(m)] *(xiii)* voice therapy, voice lessons, or voice modification surgery.

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

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

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

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

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

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

***Regulatory Impact Statement***

Statutory Authority:

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

Legislative Objective:

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

Needs and Benefits:

The proposed amendments would revise the Department's existing regulations providing for Medicaid coverage of treatments to address gender dysphoria, to clarify the policy with respect to coverage for presumptively cosmetic surgery, services, and procedures.

The existing regulation provides that Medicaid will not pay for surgery, services, or procedures performed in connection with GRS that are purely cosmetic, and defines "cosmetic surgery, services, and procedures" as anything solely directed at improving an individual's appearance. However, the existing regulation may not be clear that an ostensibly cosmetic procedure listed in the regulation may be covered if it is established that it is medically necessary in a particular case and not solely directed at improving appearance. Therefore, consistent with the Department's published written guidance interpreting the regulation, the proposed amendments would add language clarifying that the listed surgery, services or procedures are presumed to be cosmetic, i.e., performed solely for the purpose of improving appearance, and will not be covered unless justification of medical necessity is provided and prior approval is granted. The proposed amendments would renumber paragraphs (5) and (6) of § 505.2(l) as paragraphs (6) and (7), and place the list of presumptively cosmetic procedures and the clarifying language into a new paragraph (5).

Similarly, the newly numbered § 505.2(l)(5) would be amended to reflect and refine interpretative guidance issued by the Department with respect to the coverage of breast augmentation and the coverage of electrolysis. The proposed amendments would provide that: breast augmentation will be covered, without the need for prior approval, if an individual has completed a minimum of 24 months of hormone therapy during which time breast growth has been negligible, or hormone therapy is medically contraindicated or the individual is otherwise unable to take hormones; and that necessary electrolysis will be covered, without the need for prior approval, as part of the Medicaid payment for both vaginoplasty and phalloplasty.

Costs:

Costs to Regulated Parties:

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

Costs to State Government:

The proposed amendments would not change the Department's current policy with respect to the availability of Medicaid coverage for ostensibly cosmetic procedures in connection with GRS, but would simply clarify regulatory language to more clearly state that policy. There will be no additional costs to the Medicaid program as a result of making these clarifications.

Costs to Local Governments:

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

Costs to the Department of Health:

There will be no additional costs to the Department.

Local Government Mandates:

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

Paperwork:

The proposed amendments would not increase the paperwork requirements for a medical provider to document the need for hormone therapy or GRS.

Duplication:

There are no duplicative or conflicting rules identified.

Alternatives:

Advocates for individuals with gender dysphoria and a federal court have both interpreted the existing regulatory language, as regards the availability of Medicaid coverage for ostensibly cosmetic procedures in connection with GRS, inconsistently with the Department's intent. Therefore the Department concluded that there is no alternative to clarifying the regulatory language.

Federal Standards:

The proposed regulations do not exceed any minimum federal standards.

Compliance Schedule:

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

***Regulatory Flexibility Analysis***

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

***Rural Area Flexibility Analysis***

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

***Job Impact Statement***

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

# Higher Education Services Corporation

## EMERGENCY RULE MAKING

### New York State Achievement and Investment in Merit Scholarship (NY-AIMS)

**I.D. No.** ESC-19-16-00004-E

**Filing No.** 422

**Filing Date:** 2016-04-21

**Effective Date:** 2016-04-21

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

***Action taken:*** Addition of section 2201.16 to Title 8 NYCRR.

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

***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 2201.16 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 2015 term, which generally starts in August. Emergency adoption is necessary to avoid an adverse impact on the processing of awards to eligible scholarship applicants. The statute provides New York high school graduates who excel academically with merit-based scholarships to support their cost of attendance at any college or university located in New York State. Five thousand awards, of $500 each, will be granted annually in 2015-16

and 2016-17. Decisions on applications for this Program are made prior to the beginning of the term. Therefore, it is critical that the terms of this program as provided in the regulation be effective immediately so that students can make informed choices and in order for HESC to process scholarship applications in a timely manner. 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 Achievement and Investment in Merit Scholarship (NY-AIMS).

***Purpose:*** To implement The New York State Achievement and Investment in Merit Scholarship (NY-AIMS).

***Text of emergency rule:*** New section 2201.16 is added to Title 8 of the New York Code, Rules and Regulations to read as follows:

*Section 2201.16 The New York State Achievement and Investment in Merit Scholarship (NY-AIMS).*

*(a) Definitions. As used in section 669-g of the Education Law and this section, the following terms shall have the following meanings:*

*(1) "Good academic standing" shall have the same meaning as set forth in section 665(6) of the education law.*

*(2) "Grade point average" shall mean the student's numeric grade calculated on the standard 4.0 scale.*

*(3) "Program" shall mean The New York State Achievement and Investment in Merit Scholarship codified in section 669-g of the education law.*

*(4) "Unmet need" for the purpose of determining priority shall mean the cost of attendance, as determined for federal Title IV student financial aid purposes, less all federal, State, and institutional higher education aid and the expected family contribution based on the federal formula.*

*(b) Eligibility. An applicant must:*

*(1) have graduated from a New York State high school in the 2014-15 academic year or thereafter; and*

*(2) enroll in an approved undergraduate program of study in a public or private not-for-profit degree granting post-secondary institution located in New York State beginning in the two thousand fifteen-sixteen academic year or thereafter; and*

*(3) have achieved at least two of the following during high school:*

*(i) Graduated with a grade point average of 3.3 or above;*

*(ii) Graduated with a "with honors" distinction on a New York State regents diploma or receive a score of 3 or higher on two or more advanced placement examinations; or*

*(iii) Graduated within the top fifteen percent of their high school class, provided that actual class rank may be taken into consideration; and*

*(4) satisfy all other requirements pursuant to section 669-g of the education law; and*

*(5) satisfy all general eligibility requirements provided in section 661 of the education law including, but not limited to, full-time attendance, good academic standing, residency and citizenship.*

*(c) Distribution and priorities. In each year, new awards made shall be proportionate to the total new applications received from eligible students enrolled in undergraduate study at public and private not-for-profit degree granting institutions. Distribution of awards shall be made in accordance with the provisions contained in section 669-g(3)(a) of the education law within each sector. In the event that there are more applicants who have the same priority than there are remaining scholarships or available funding, awards shall be made in descending order based on unmet need established at the time of application. In the event of a tie, distribution shall be made by means of a lottery or other form of random selection.*

*(d) Administration.*

*(1) Applicants for an award shall apply for program eligibility at such times, on forms and in a manner prescribed by the corporation. The corporation may require applicants to provide additional documentation evidencing eligibility.*

*(2) Recipients of an award shall:*

*(i) request payment annually at such times, on forms and in a manner specified by the corporation;*

*(ii) receive such awards for not more than four academic years of undergraduate study, or five academic years if the program of study normally requires five years as defined by the commissioner pursuant to Article 13 of the education law; and*

*(iii) provide any information necessary for the corporation to determine compliance with the program's requirements.*

*(e) Awards.*

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

*(2) Disbursements shall be made annually to institutions on behalf of recipients.*

*(3) Awards may be used to offset the recipient's total cost of attendance determined for federal Title IV student financial aid purposes or may be used in addition to such cost of attendance.*

***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 July 19, 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 Achievement and Investment in Merit Scholarship (NY-AIMS), hereinafter referred to as "Program", is codified within Article 14 of the Education Law. In particular, Part Z of Chapter 56 of the Laws of 2015 created the Program by adding a new section 669-g to the Education Law. Subdivision 6 of section 669-g 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-g to create The New York State Achievement and Investment in Merit Scholarship (NY-AIMS). The objective of this Program is to grant merit-based scholarship awards to New York State high school graduates who achieve academic excellence.

Needs and benefits:

The cost to attain a postsecondary degree has increased significantly over the years; alongside this growth, the financing of that degree has become increasingly challenging. According to a June 9, 2014 Presidential Memorandum issued by President Obama, over the past three decades, the average tuition at a public four-year college has more than tripled, while a typical family's income has increased only modestly. All federal student financial aid and a majority of state student financial aid programs are conditioned on economic need. Despite stagnant growth in household incomes, there continues to be far fewer academically-based financial aid programs, which are awarded to students regardless of assets or income. This has resulted in more limited financial aid options for those who are ineligible for need-based aid. Concurrently, greater numbers of students are relying on loans to pay for college. Today, 71 percent of those earning a bachelor's degree graduate with student loan debt averaging $29,400. Many of these students feel burdened by their college loan debt, especially as they seek to start a family, buy a home, launch a business, or save for retirement.

This Program cushions the disparate growth in the cost of a postsecondary education by providing New York State high school graduates who excel academically with merit-based scholarships to support their cost of attendance at any college or university located in the State for up to four years of undergraduate study (or five years if enrolled in a five-year program). Five thousand awards, of $500 each, will be granted annually in 2015-16 and 2016-17.

Costs:

a. It is anticipated that there will be no new 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 $2.5 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 eligibility and payment together with supporting documentation.

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 used in the regulation as well as the administration of the Program. Given the statutory language as set forth in section 669-g 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 definitions/methodology concerning unmet need, expected family contribution, and cost of attendance.

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 2201.16 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 economic impacts inasmuch as it implements a statutory student financial aid program that provides merit-based scholarships to students who pursue their undergraduate degree at any college or university located in New York State. Providing students with direct financial assistance will encourage them to attend college in New York State, 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 2201.16 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 merit-based scholarships to students who pursue their undergraduate degree at any college or university located in New York State. Providing students with direct financial assistance will encourage them to attend college in New York State, which benefits 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 2201.16 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 economic impacts inasmuch as it implements a statutory student financial aid program that provides merit-based scholarships to students who pursue their undergraduate degree at any college or university located in New York State. Providing students with direct financial assistance will encourage them to attend college in New York State and possibly seek employment opportunities in the State as well, which will benefit the State.

## EMERGENCY RULE MAKING

### New York State Get on Your Feet Loan Forgiveness Program

**I.D. No.** ESC-19-16-00005-E
**Filing No.** 423
**Filing Date:** 2016-04-21
**Effective Date:** 2016-04-21

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

***Action taken:*** Addition of section 2201.15 to Title 8 NYCRR.

***Statutory authority:*** Education Law, sections 653, 655 and 679-g

***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 2201.15 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 who receive their undergraduate degree from a college or university located in New York State in December 2014 and thereafter. Emergency adoption is necessary to avoid an adverse impact on the processing of awards to eligible applicants. The statute provides for student loan relief to such college graduates who continue to live in New York State upon graduation, earn less than $50,000 per year, participate in either the federal Pay as You Earn (PAYE) or Income Based Repayment (IBR) program, which cap a federal student loan borrower's payments at 10 percent of discretionary income, and apply for this program within two years after graduating from college. Eligible applicants will have up to twenty-four payments made on their behalf towards their federal income-based repayment plan commitment. For those students who graduated in December 2014, their first student loan payment will become due upon the expiration of their grace period in June 2015. Therefore, it is critical that the terms of this program as provided in the regulation be effective immediately in order for HESC to process applications so that timely payments can be made on behalf of program recipients. 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 Get on Your Feet Loan Forgiveness Program.

***Purpose:*** To implement the New York State Get on Your Feet Loan Forgiveness Program.

***Text of emergency rule:*** New section 2201.15 is added to Title 8 of the New York Code, Rules and Regulations to read as follows:

*Section 2201.15 New York State Get on Your Feet Loan Forgiveness Program.*

*(a) Definitions. As used in section 679-g of the education law and this section, the following terms shall have the following meanings:*

*(1) "Adjusted gross income" shall mean the income used by the U.S. Department of Education to qualify the applicant for the federal income-driven repayment plan.*

*(2) "Award" shall mean a New York State Get on Your Feet Loan Forgiveness Program award pursuant to section 679-g of the education law.*

*(3) "Deferment" shall have the same meaning applicable to the William D. Ford Federal Direct Loan Program as set forth in 34 CFR Part 685.*

*(4) "Delinquent" shall mean the failure to pay a required scheduled payment on a federal student loan within thirty days of such payment's due date.*

*(5) "Forbearance" shall have the same meaning applicable to the William D. Ford Federal Direct Loan Program as set forth in 34 CFR Part 685.*

*(6) "Income" shall mean the total adjusted gross income of the applicant and the applicant's spouse, if applicable.*

*(7) "Program" shall mean the New York State Get on Your Feet Loan Forgiveness Program.*

*(8) "Undergraduate degree" shall mean an associate or baccalaureate degree.*

*(b) Eligibility. An applicant must satisfy the following requirements:*

*(1) have graduated from a high school located in the State or attended an approved State program for a State high school equivalency diploma and received such diploma. An applicant who received a high school diploma, or its equivalent, from another state is ineligible for a Program award;*

*(2) have graduated and obtained an undergraduate degree from a college or university located in the State in or after the two thousand fourteen-fifteen academic year;*

*(3) apply for this program within two years of obtaining such undergraduate degree;*

*(4) not have earned a degree higher than an undergraduate degree at the time of application;*

*(5) be a participant in a federal income-driven repayment plan whose payment amount is generally ten percent of discretionary income;*

*(6) have income of less than fifty thousand dollars;*

*(7) comply with subdivisions three and five of section 661 of the education law;*

*(8) work in the State, if employed. A member of the military who is on active duty and for whom New York is his or her legal state of residence shall be deemed to be employed in NYS;*

*(9) not be delinquent on a federal student loan or in default on a student loan made under any statutory New York State or federal education loan program or repayment of any New York State award; and*

*(10) be in compliance with the terms of any service condition imposed by a New York State award.*

*(c) Administration.*

*(1) An applicant for an award shall apply for program eligibility at such times, on forms and in a manner prescribed by the corporation. The corporation may require applicants to provide additional documentation evidencing eligibility.*

*(2) A recipient of an award shall:*

*(i) request payment at such times, on such forms and in a manner as prescribed by the corporation;*

*(ii) confirm he or she has adjusted gross income of less than fifty thousand dollars, is a resident of New York State, is working in New York State, if employed, and any other information necessary for the corporation to determine eligibility at such times prescribed by the corporation. Said submissions shall be on forms or in a manner prescribed by the corporation;*

*(iii) notify the corporation of any change in his or her eligibility status including, but not limited to, a change in address, employment, or income, and provide the corporation with current information;*

*(iv) not receive more than twenty four payments under this program; and*

*(v) provide any other information or documentation necessary for the corporation to determine compliance with the program's requirements.*

*(d) Amounts and duration.*

*(1) The amount of the award shall be equal to one hundred percent of the recipient's established monthly federal income-driven repayment plan payment whose payment amount is generally ten percent of discretionary income and whose payment is based on income rather than loan debt.*

*(2) In the event the established monthly federal income-driven repayment plan payment is zero or the applicant is otherwise not obligated to make a payment, the applicant shall not qualify for a Program award.*

*(3) Disbursements shall be made to the entity that collects payments on the federal student loan or loans on behalf of the recipient on a monthly basis.*

*(4) A maximum of twenty-four payments may be awarded, provided the recipient continues to satisfy the eligibility requirements set forth in section 679-g of the education law and the requirements set forth in this section.*

*(e) Disqualification. A recipient shall be disqualified from receiving further award payments under this program if he or she fails to satisfy any of the eligibility requirements, no longer qualifies for an award, or fails to respond to any request for information by the corporation.*

*(f) Renewed eligibility. A recipient who has been disqualified pursuant to subdivision (e) may reapply for this program and receive an award if he or she satisfies all of the eligibility requirements set forth in section 679-g of the education law and the requirements set forth in this section.*

*(g) Repayment. A recipient who is not a resident of New York State at the time a payment is made under this program shall be required to repay such payment or payments to the corporation. In addition, at the corporation's discretion, a recipient may be required to repay to the corporation any payment made under this program that, at the time payment was made, should have been disqualified pursuant to subdivision (e). If a recipient is required to repay any payment or payments to the corporation, the following provisions shall apply:*

*(1) Interest shall begin to accrue on the day such payment was made on behalf of the recipient. In the event the recipient notifies the corporation of a change in residence within 30 days of such change, interest shall begin to accrue on the day such recipient was no longer a New York State resident.*

*(2) The interest rate shall be fixed and equal to the rate established in section 18 of the New York State Finance Law.*

*(3) Repayment must be made within five years.*

*(4) Where a recipient has demonstrated extreme hardship as a result of a disability, labor market conditions, or other such circumstances, the corporation may, in its discretion, waive or defer payment, extend the repayment period, or take such other appropriate action.*

***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 July 19, 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 Get on Your Feet Loan Forgiveness Program ("Program") is codified within Article 14 of the Education Law. In particular, Part C of Chapter 56 of the Laws of 2015 created the Program by adding a new section 679-g to the Education Law. Subdivision 4 of section 679-g 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 679-g to create the "New York State Get on Your Feet Loan Forgiveness Program" (Program). The objective of this Program is to ease the burden of federal student loan debt for recent New York State college graduates.

Needs and benefits:

More than any other time in history, a college degree provides greater opportunities for graduates than is available to those without a postsecondary degree. However, financing that degree has also become more challenging. According to a June 9, 2014 Presidential Memorandum issued by President Obama, over the past three decades, the average tuition at a public four-year college has more than tripled, while a typical family's income has increased only modestly. More students than ever are relying on loans to pay for college. Today, 71 percent of those earning a bachelor's degree graduate with debt, which averages $29,400. Many of these students feel burdened by debt, especially as they seek to start a family, buy a home, launch a business, or save for retirement. To ensure that student debt is manageable, the federal government enacted income-driven repayment plans, such as the Pay as You Earn (PAYE) plan, which caps a federal student loan borrower's payments at 10 percent of income.

Although New York's public colleges and universities offer among the lowest tuition in the nation, currently the average New York student graduates from college with a four-year degree saddled with more than $25,000 in student loans. Mounting student debt makes it difficult for recent graduates to deal with everyday costs of living, which often increases the amount of credit card and other debt they must take on in order to survive. To help mitigate the disparate growth in the cost of financing a postsecondary education, this Program offers financial aid relief to recent college graduates by providing up to twenty-four payments towards an eligible applicant's federal income-based student loan repayment plan commitment.

Students who receive their undergraduate degree from a college or university located in New York State in December 2014 and thereafter, who continue to live in New York State upon graduation, earn less than $50,000 per year, participate in either the federal Pay as You Earn (PAYE) or applicable federal Income Based Repayment (IBR) program, and apply for this Program within two years after graduating from college are eligible for this Program.

Costs:

a. It is anticipated that there will be no new 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 $5.2 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 eligibility and payment together with supporting documentation.

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 the U.S. Department of Education with regard to this Program. Several alternatives were considered in the drafting of this regulation. For example, several alternatives were considered in defining terms used in the regulation as well as the administration of the Program. Given the statutory language as set forth in section 679-g 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. Since this Program is intended to supplement federal repayment programs, efforts were made to align the Program with the federal programs.

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 2201.15 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 economic impacts inasmuch as it implements a statutory student financial aid program that eases the burden of federal student loan debt for recent New York State college graduates who continue to live in the State. Providing students with direct financial assistance will encourage students to attend college in New York State and remain in the State following graduation, 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 2201.15 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 eases the burden of federal student loan debt for recent New York State college graduates who continue to live in the State. Providing students with direct financial assistance will encourage students to attend college in New York State and remain in the State following graduation, which benefits 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 2201.15 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 economic impacts inasmuch as it implements a statutory student financial aid program that eases the burden of federal student loan debt for recent New York State college graduates who continue to live in the State. Providing students with direct financial assistance will encourage students to attend college in New York State and remain in the State following graduation, which benefits the State as well.

# Long Island Power Authority

## PROPOSED RULE MAKING HEARING(S) SCHEDULED

**Customer Requests for Rehearings of LIPA's Decisions on Appeals and Shared Meter Determinations**

**I.D. No.** LPA-19-16-00015-P

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

***Proposed Action:*** LIPA is considering a proposal to modify its Tariff to transfer certain responsibilities related to the handling of customer requests for rehearings of LIPA's decisions on appeals and shared meter determinations to the Long Island Office of the DPS.

***Statutory authority:*** Public Authorities Law, section 1020-f(z) and (ff); Public Service Law, section 3-b(3)(e)

***Subject:*** Customer requests for rehearings of LIPA's decisions on appeals and shared meter determinations.

***Purpose:*** To transfer certain responsibilities regarding handling of customer petitions to DPS Long Island.

***Public hearing(s) will be held at:*** 10:00 a.m., July 5, 2016 at H. Lee Dennison Bldg., 100 Veterans Memorial Hwy., Hauppauge, NY; and 2:00 p.m., July 5, 2016 at 333 Earle Ovington Blvd., 4th Fl., Uniondale, 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.

***Substance of proposed rule:*** The Long Island Power Authority ("LIPA") proposes to modify its Tariff for Electric Service ("Tariff") in order to transfer certain responsibilities related to the handling of customer complaints to the Long Island Office of the Department of Public Service ("DPS") consistent with the LIPA Reform Act and the processes followed by the Department of Public Service with respect to handling of customer complaints at investor owned utilities.

***Text of proposed rule and any required statements and analyses may be obtained from:*** Justin Bell, Long Island Power Authority, 333 Earle Ovington Blvd., Suite 403, Uniondale, NY 11553, (516) 719-9886, email: jbell@lipower.org

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

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

***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.

# Office of Parks, Recreation and Historic Preservation

## NOTICE OF ADOPTION

**Replaces Outdated Regional Hunting Regulations with a Statewide Regulation Establishing a Framework for Regional Hunting Permits**

**I.D. No.** PKR-04-16-00001-A
**Filing No.** 426
**Filing Date:** 2016-04-22
**Effective Date:** 2016-05-11

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

***Action taken:*** Repeal of sections 397.4, 398.4, 398.5, 399.2, 400.4, 415.3, 416.2 and 417.2; and amendment of sections 372.7, 375.1, 401.2 and 402.2 of Title 9 NYCRR.

***Statutory authority:*** Parks, Recreation and Historic Preservation Law, sections 3.02, 3.09(5) and (8)

***Subject:*** Replaces outdated regional hunting regulations with a statewide regulation establishing a framework for regional hunting permits.

***Purpose:*** Better enable regions to manage hunting through permit conditions rather than regional regulations.

***Text or summary was published*** in the January 27, 2016 issue of the Register, I.D. No. PKR-04-16-00001-P.

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

***Text of rule and any required statements and analyses may be obtained from:*** Shari Calnero, Associate Counsel, Office of Parks, Recreation and Historic Preservation, Albany NY 12238 (For USPS mailing), 625 Broadway, Albany, NY 12207 (for physical delivery), (518) 486-2921, email: rule.making@parks.ny.gov

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

***Assessment of Public Comment***
The agency received one comment with the suggestion Part 372.7(r), which governs trapping, should list possible permit conditions and reference other trapping regulations that may apply. The agency rejects this suggestion because it has determined the Commissioner has discretion to allow trapping only in very narrow circumstances, thus warranting a case-by-case approach to permit conditions.

# Public Service Commission

## NOTICE OF ADOPTION

**Request for Clarification or Waiver**

**I.D. No.** PSC-25-13-00011-A
**Filing Date:** 2016-04-22
**Effective Date:** 2016-04-22

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

***Action taken:*** On 4/20/16, the PSC adopted an order denying Verizon New York Inc.'s (Verizon) request for clarification or waiver of requirements relating to the disclosure of local exchange services customer payment information to credit reporting agencies.

***Statutory authority:*** Public Service Law, section 91

***Subject:*** Request for clarification or waiver.

***Purpose:*** To deny Verizon's request for clarification or waiver.

***Substance of final rule:*** The Commission, on April 20, 2016, adopted an order denying Verizon New York Inc.'s request for clarification or waiver of the Commission's requirements relating to the disclosure of local exchange services customer payment information to credit reporting agencies, subject to the terms and conditions set forth in the order.

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

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

***Assessment of Public Comment***
An assessment of public comment is not submitted with this notice because the rule is within the definition contained in section 102(2)(a)(ii) of the State Administrative Procedure Act.
(13-C-0154SA1)

## NOTICE OF ADOPTION

**CCA Programs**

**I.D. No.** PSC-52-14-00026-A
**Filing Date:** 2016-04-21
**Effective Date:** 2016-04-21

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

***Action taken:*** On 4/20/16, the PSC adopted an order authorizing municipalities to undertake Community Choice Aggregation (CCA) programs.

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

***Subject:*** CCA programs.

***Purpose:*** To authorize municipalities to undertake Community Choice Aggregation (CCA) programs.

***Substance of final rule:*** The Commission, on April 20, 2016, adopted an order authorizing municipalities (villages, towns and cities), specifically the lowest level of municipal government with general authority in any area, to undertake Community Choice Aggregation programs, subject to the terms and conditions set forth in the order.

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

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

***Assessment of Public Comment***
An assessment of public comment is not submitted with this notice because the rule is within the definition contained in section 102(2)(a)(ii) of the State Administrative Procedure Act.
(14-M-0224SA1)

## NOTICE OF ADOPTION

**Joint Proposal to Increase Annual Electric Revenues**

**I.D. No.** PSC-35-15-00008-A
**Filing Date:** 2016-04-21
**Effective Date:** 2016-04-21

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

***Action taken:*** On 4/20/16, the PSC adopted an order approving a joint proposal executed by Staff and Massena Electric Department to increase annual electric revenues by $857,227 or 6.2%, contained in P.S.C. No. 2—Electricity.

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

***Subject:*** Joint proposal to increase annual electric revenues.

***Purpose:*** To approve a joint proposal to increase annual electric revenues.

***Substance of final rule:*** The Commission, on April 20, 2016, adopted an order approving a joint proposal executed by Staff of the Department of Public Service and Massena Electric Department to increase annual electric revenues by $857,227 or 6.2%, contained in P.S.C. No. 2—Electricity, subject to the terms and conditions set forth in the order.

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

***Text of rule may be obtained from:*** John Pitucci, Public Service Commis-

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

***Assessment of Public Comment***

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

(15-E-0307SA1)

## NOTICE OF ADOPTION

**Joint Proposal**

**I.D. No.** PSC-39-15-00011-A

**Filing Date:** 2016-04-20

**Effective Date:** 2016-04-20

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

***Action taken:*** On 4/20/16, the PSC adopted a joint proposal by multiple parties to resolve prudence and forensic accounting investigations commenced in November 2009.

***Statutory authority:*** Public Service Law, sections 2, 5, 65, 66, 79, 80, 107 and 113

***Subject:*** Joint proposal.

***Purpose:*** To adopt a joint proposal to resolve prudence and forensic accounting investigations commenced in November 2009.

***Substance of final rule:*** The Commission, on April 20, 2016, adopted a joint proposal by Consolidated Edison Company of New York, Inc. (Con Edison), Staff of the New York State Department of Public Service, New York Energy Consumers Council, Inc. and the Utility Intervention Unit, Division of Consumer Protection, New York State Department of State to resolve prudence and forensic accounting investigations commenced in November 2009 after Con Edison employees were arrested and indicted for illegal bribes and kickbacks in connection with capital, operations and maintenance work performed by outside contractors during 2000-2009, subject to the terms and conditions set forth in the order.

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

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

***Assessment of Public Comment***

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

(09-M-0114SA2)

## NOTICE OF ADOPTION

**DSIP Guidance**

**I.D. No.** PSC-44-15-00025-A

**Filing Date:** 2016-04-20

**Effective Date:** 2016-04-20

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

***Action taken:*** On 4/20/16, the PSC adopted an order establishing a Distributed System Implementation Plan (DSIP) Guidance and directed utilities to file their Initial and Supplemental DSIP filings.

***Statutory authority:*** Public Service Law, sections 4(1), 5(1), 65(1), (2), (3), 66(1), (2), (3), (4), (5), (6), (8), (9) and (12)

***Subject:*** DSIP Guidance.

***Purpose:*** To establish a DSIP Guidance.

***Substance of final rule:*** The Commission, on April 20, 2016, adopted an order establishing a Distributed System Implementation Plan (DSIP) Guidance and directed Central Hudson Gas & Electric Corporation, Consolidated Edison Company of New York, Inc., New York State Electric & Gas Corporation, Niagara Mohawk Power Corporation d/b/a National Grid, Orange and Rockland Utilities, Inc. and Rochester Gas and Electric Corporation to file their Initial Implementation Plans by June 30, 2016 and a joint Supplemental DSIP Plan by November 1, 2016, subject to the terms and conditions set forth in the order.

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

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

***Assessment of Public Comment***

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

(14-M-0101SA14)

## NOTICE OF ADOPTION

**Petition for Waiver**

**I.D. No.** PSC-51-15-00013-A

**Filing Date:** 2016-04-22

**Effective Date:** 2016-04-22

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

***Action taken:*** On 4/20/16, the PSC adopted an order denying Lost Lake Resort's (Lost Lake) petition for a waiver of underground requirements for the entire subdivision.

***Statutory authority:*** Public Service Law, sections 31(4), 51, 65(1) and 66(1)

***Subject:*** Petition for waiver.

***Purpose:*** To deny Lost Lake's petition for a waiver of underground requirements for the entire subdivision.

***Substance of final rule:*** The Commission, on April 20, 2016, adopted an order denying Lost Lake Resort's petition for a waiver of underground requirements for new electric distribution lines to be constructed in residential subdivisions, subject to the terms and conditions set forth in the order.

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

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

***Assessment of Public Comment***

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

(15-E-0310SA1)

## NOTICE OF ADOPTION

**Establishment of a Lightened Ratemaking Regulation Regime and Proposed Financing**

**I.D. No.** PSC-02-16-00008-A

**Filing Date:** 2016-04-21

**Effective Date:** 2016-04-21

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

***Action taken:*** On 4/20/16, the PSC adopted an order approving New York Transco LLC's (NY Transco) petition to establish a lightened ratemaking regulation regime and proposed financing.

***Statutory authority:*** Public Service Law, sections 2(12), (13), 5(1)(b), 5-b, 18-a, 64-69, 69-a, 70, 71, 72, 72-a, 75, 76, 105-114, 114-a, 115, 117, 118, 119-a, 119-b and 119-c

***Subject:*** Establishment of a lightened ratemaking regulation regime and proposed financing.

***Purpose:*** To approve NY Transco's petition establishing a lightened ratemaking regulation regime and proposed financing.

***Substance of final rule:*** The Commission, on April 20, 2016, adopted an order approving New York Transco LLC's (NY Transco) petition to establish a lightened ratemaking regulation regime applicable to NY Transco and enter into financing arrangements up to a maximum amount of $129 million, subject to the terms and conditions set forth in the order.

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

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

***Assessment of Public Comment***

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

(15-E-0743SA1)

## NOTICE OF ADOPTION

**Amendments to SC Nos. 1 and 2**

**I.D. No.** PSC-02-16-00009-A

**Filing Date:** 2016-04-25

**Effective Date:** 2016-04-25

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

***Action taken:*** On 4/20/16, the PSC adopted an order approving Salamanca Board of Public Utilities' (Salamanca) amendments to Service Classification (SC) Nos. 1 and 2, establishing solar and wind net metering services for residential and non-residential customers.

***Statutory authority:*** Public Service Law, sections 4(1), 5(1), 65(1), 66(1), (4), (5), (12), 66-j and 66-l

***Subject:*** Amendments to SC Nos. 1 and 2.

***Purpose:*** To approve Salamanca's amendments to SC Nos. 1 and 2.

***Substance of final rule:*** The Commission, on April 20, 2016, adopted an order approving Salamanca Board of Public Utilities' amendments to Service Classification Nos. 1 and 2, contained in P.S.C. No. 1 – Electricity, to establish solar and wind generation net metering services for residential and non-residential customers, subject to the terms and conditions set forth in the order.

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

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

***Assessment of Public Comment***

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

(15-E-0753SA1)

## NOTICE OF ADOPTION

**Waiver of Grant Limits for NYSEG's TFA and NGII Programs**

**I.D. No.** PSC-02-16-00012-A

**Filing Date:** 2016-04-21

**Effective Date:** 2016-04-21

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

***Action taken:*** On 4/20/16, the PSC adopted an order approving New York State Electric and Gas Corporation's (NYSEG) waiver of the grant limits of its Targeted Financial Assistance (TFA) and Natural Gas Infrastructure Investment (NGII) Programs.

***Statutory authority:*** Public Service Law, sections 5(1)(b), 65(1), (2), (3), 66(1), (3), (5), (10), (12) and (12-b)

***Subject:*** Waiver of grant limits for NYSEG's TFA and NGII Programs.

***Purpose:*** To approve NYSEG's waiver of grant limits for its TFA and NGII Programs.

***Substance of final rule:*** The Commission, on April 20, 2016, adopted an order approving New York State Electric and Gas Corporation's waiver of the grant limits of its Targeted Financial Assistance and Natural Gas Infrastructure Investment Programs to provide assistance to the Prospective Customer, to construct a new manufacturing facility, subject to the terms and conditions set forth in the order.

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

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

***Assessment of Public Comment***

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

(15-M-0708SA1)

## NOTICE OF ADOPTION

**Petition to Modify Remote Net Metering Process**

**I.D. No.** PSC-04-16-00009-A

**Filing Date:** 2016-04-20

**Effective Date:** 2016-04-20

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

***Action taken:*** On 4/20/16, the PSC adopted an order approving Hudson Solar's petition to modify Central Hudson Gas and Electric Corporation's (Central Hudson) Remote Net Metering Qualification Requirements and Application Process for Farms.

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

***Subject:*** Petition to modify Remote Net Metering Process.

***Purpose:*** To approve Hudson Solar's petition to modify Central Hudson's Remote Net Metering Process.

***Substance of final rule:*** The Commission, on April 20, 2016, adopted an order approving Hudson Valley Clean Energy, Inc., d/b/a Hudson Solar's petition to modify Central Hudson Gas and Electric Corporation's (Central Hudson) Remote Net Metering Qualification Requirements and Application Process for Farms and directed Central Hudson to implement remote net metering for Werba Farms LLC, as a host account, and William Werba, as a satellite account, subject to the terms and conditions set forth in the order.

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

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

***Assessment of Public Comment***

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

(15-E-0757SA1)

## NOTICE OF ADOPTION

**Transfer and Lease of the Property Related to the TOTS Projects to NY Transco**

**I.D. No.** PSC-05-16-00004-A

**Filing Date:** 2016-04-21

**Effective Date:** 2016-04-21

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

***Action taken:*** On 4/20/16, the PSC adopted an order approving Con Edison and O&R's petition to transfer and lease the property related to the Transmission Owner Transmission Solutions (TOTS) projects to New York Transco LLC (NY Transco).

***Statutory authority:*** Public Service Law, section 70

***Subject:*** Transfer and lease of the property related to the TOTS projects to NY Transco.

***Purpose:*** To approve Con Edison and O&R's petition to transfer and lease the property related to the TOTS projects to NY Transco.

***Substance of final rule:*** The Commission, on April 20, 2016, the PSC adopted an order approving Consolidated Edison Company of New York, Inc. and Orange and Rockland Utilities, Inc.'s petition to transfer and lease the property related to the Transmission Owner Transmission Solutions projects to New York Transco LLC, subject to the terms and conditions set forth in the order.

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

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

***Assessment of Public Comment***

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

(16-E-0013SA1)

## NOTICE OF ADOPTION

### Transfer and Lease of the Property Related to the TOTS Projects to NY Transco

**I.D. No.** PSC-05-16-00005-A

**Filing Date:** 2016-04-21

**Effective Date:** 2016-04-21

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

***Action taken:*** On 4/20/16, the PSC adopted an order approving New York State Electric and Gas Corporation's (NYSEG) petition to transfer and lease the property related to the Transmission Owner Transmission Solutions (TOTS) projects to New York Transco LLC (NY Transco).

***Statutory authority:*** Public Service Law, section 70

***Subject:*** Transfer and lease of the property related to the TOTS projects to NY Transco.

***Purpose:*** To approve NYSEG's petition to transfer and lease the property related to the TOTS projects to NY Transco.

***Substance of final rule:*** The Commission, on April 20, 2016, adopted an order approving New York State Electric and Gas Corporation's petition to transfer and lease the property related to the Transmission Owner Transmission Solutions projects to New York Transco LLC, subject to the terms and conditions set forth in the order.

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

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

***Assessment of Public Comment***

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

(16-E-0012SA1)

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

### Rider T — Commercial Demand Response Programs

**I.D. No.** PSC-19-16-00009-P

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

***Proposed Action:*** The Commission is considering a proposal filed by Consolidated Edison Company of New York, Inc. to make revisions to Rider T — Commercial Demand Response Programs in its electric tariff schedule, P.S.C. No. 10.

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

***Subject:*** Rider T — Commercial Demand Response Programs.

***Purpose:*** To consider revisions to Rider T regarding participating in the Commercial System Relief Program.

***Substance of proposed rule:*** The Public Service Commission is considering a proposal filed by Consolidated Edison Company of New York, Inc. (Con Edison or the Company) to revise Rider T — Commercial Demand Response Programs in its electric schedule, P.S.C. No. 10. Con Edison proposes to revoke the eligibility of customers in the three electric networks (Richmond Hill, Crown Heights, and Ridgewood) in the Brooklyn/Queens Demand Management (BQDM) Program area to participate in the Company's Commercial System Relief Program (CSRP) during the 2017 and 2018 summer capability periods. The Company plans to test an auction approach in lieu of the CSRP in the BQDM Program area during 2017 and 2018, and will determine if a similar auction mechanism is appropriate for the Company's other commercial demand response programs. The proposed amendments have an effective date of July 18, 2016. The Commission may adopt, reject, or modify, in whole or in part, the relief proposed and may resolve related matters.

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

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

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

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

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

(16-E-0236SP1)

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

### Technical Amendments of State Regulations

**I.D. No.** PSC-19-16-00010-P

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

***Proposed Action:*** This is a consensus rule making to amend Parts 255, 258, 259 and 262 of Title 16 NYCRR.

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

***Subject:*** Technical Amendments of State regulations.

***Purpose:*** To align State regulations with their corollary Federal regulations.

***Substance of proposed rule:*** This rule is being proposed to bring sections of Title 16 NYCRR related to pipeline safety into conformance with the minimum Federal regulations related to pipeline safety. Additional minor clarifications and technical edits are being made. The proposed changes to Title 16 NYCRR Part 10, Referenced Material, would bring incorporated-by-reference materials up-to-date with editions of industry consensus standards incorporated by reference in the Federal Regulations contained in Title 49, Code of Federal Regulations, Parts 192, Transportation of Natural Gas (49 CFR Part 192), 193, Liquefied Natural Gas (49 CFR Part 193), and 195, Transportation of Hazardous Liquids by Pipeline (49CFR Part 195). The proposed changes to Title 16NYCRR Parts 255, Transmission and Distribution of Gas (Part 255), 258, Transportation of Liquid Petroleum (Part 258), and 259, Liquefied Natural Gas (Part 259), are intended to bring those parts into conformance with recent amendments to 49 CFR Part 192, 49 CFR Part 195, and 49 CFR Part 193, respectively. A comprehensive comparison of Parts 255 and 258 against the Federal regulations found that some sections are less stringent that the minimum Federal safety standard. Some of the proposed changes are intended to correct this in order to bring Title 16 NYCRR regulations into conformance with Federal regulations. Two minor clarifications are being made involving the alphabetical reorganization of the definition section (§ 255.3 and § 258.3) and relocating the conversion of service rule from § 255.559 to § 255.14 to better align Part 255 with the number scheme of 49 CFR Part 192. Updating and streamlining filings to "Department" are being added within Parts 258 and 259 in recognition of the current Department of Public Service Staff organization and to be consistent with a similar change to Part 255. Clarification was needed to specify that while a three-year retention period is the standard, when inspection or other compliance cycles are longer than three years, the retention period for all relevant documents must coincide with those cycles. Finally, technical corrections are being made to Parts 258 and 262 to correct a regulatory link to sections that have been relocated.

***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.state.ny.us/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.

***Consensus Rule Making Determination***

This rule is being proposed as a consensus rule because, in accordance with State Administrative Procedure Act § 102(11)(b) and (c), it implements or conforms to non-discretionary provisions and makes technical changes or is otherwise non-controversial. The proposed changes to Title 16 NYCRR Part 10, Referenced Material, would bring incorporated-by-reference materials up-to-date with editions of industry consensus standards incorporated by reference in the Federal Regulations contained in Title 49, Code of Federal Regulations, Parts 192, Transportation of Natural Gas (49 CFR Part 192), 193, Liquefied Natural Gas (49 CFR Part 193), and 195, Transportation of Hazardous Liquids by Pipeline (49CFR Part 195). The proposed changes to Title 16NYCRR Parts 255, Transmission and Distribution of Gas (Part 255), 258, Transportation of Liquid Petroleum (Part 258), and 259, Liquefied Natural Gas (Part 259), are intended to bring those parts into conformance with recent amendments to 49 CFR Part 192, 49 CFR Part 195, and 49 CFR Part 193, respectively. A comprehensive comparison of the provisions in Parts 255 and 258 against the Federal regulations found that some sections are less stringent that the minimum Federal safety standards. Some of the proposed changes are intended to correct this in order to bring Title 16 NYCRR regulations into conformance with Federal regulations. Additionally, minor clarifications and technical edits are being made. Two such clarifications involve the alphabetical reorganization of the definition section (§ 255.3 and § 258.3) and relocating the conversion of service rule from § 255.559 to § 255.14 to better align Part 255 with the number scheme of 49 CFR Part 192. Updating and streamlining filings to "Department" are being added within Parts 258 and 259 in recognition of the current Department of Public Service Staff organization and to be consistent with similar changes to Part 255. Clarification was needed to specify that while a three-year retention period is the standard requirement, when inspection or other compliance cycles are longer than three years, the retention period for all relevant documents must coincide with those cycles. Finally, technical corrections are being made to Parts 258 and 262 to correct a regulatory link to sections that have been relocated. The proposed consensus rulemaking would conform the Public Service Commission's regulations to the federal regulations with which operators of gas distribution pipelines, small LPG systems, Liquefied Natural Gas plant and Hazardous Liquid pipeline must currently comply. Staff has discussed these proposed revisions with various stakeholders. Based on communications with stakeholders, no person is likely to object to the adoption of the proposed rule as written. In accordance with the provisions of the State Administrative Procedure Act (SAPA) § 202(1)(b)2(i), this therefore, should be considered a consensus rulemaking.

***Job Impact Statement***

The Department of Public Service (DPS) projects that there will be no adverse impact on jobs or employment opportunities in the State of New York (State) as a result of this proposed rule change. This proposed rule change will bring Part 10 incorporated by reference materials up to date with standards incorporated by reference in the Federal Regulations contained in Title 49, Code of Federal Regulations, Parts 192, Transportation of Natural Gas (49 CFR Part 192), 193, Liquefied Natural Gas (49 CFR Part 193), and 195, Transportation of Hazardous Liquids by Pipeline (49CFR Part 195). The proposed changes to Title 16 NYCRR Parts 255, Transmission and Distribution of Gas (Part 255), 258, Transportation of Liquid Petroleum (Part 258), and 259, Liquefied Natural Gas (Part 259), are intended to bring those parts into conformance with recent amendments to 49 CFR Part 192, 49 CFR Part 195, and 49 CFR Part 193, respectively. Additionally, minor clarification and technical edits to Parts 255, 258, 259 and 262 are being proposed. Nothing in this proposed rule change will create any adverse impacts on jobs or employment opportunities in the State. No further steps were needed to ascertain these facts and none were taken. As apparent from the nature and purpose of this proposed rule change, a full Job Impact Statement is not required and therefore one has not been prepared.

(15-G-0573SP1)

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

**Public Street Lighting - LED Options**

**I.D. No.** PSC-19-16-00011-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 proposal filed by Orange and Rockland Utilities, Inc. to update Service Classification No. 4 to incorporate additional LED options in its electric tariff schedule, P.S.C. No. 3.

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

***Subject:*** Public Street Lighting - LED Options.

***Purpose:*** To consider the addition of LED options to O&R's SC No. 4 — Public Street Lighting.

***Substance of proposed rule:*** The Public Service Commission is considering a proposal filed by Orange and Rockland Utilities, Inc. (O&R or the Company) to update Service Classification (SC) No. 4 – Public Street Lighting – Company Owned to incorporate additional Light Emitting Diode (LED) options in its electric schedule, P.S.C. No. 3. O&R's filing is being made in compliance with the Commission's Order Adopting Terms of Joint Proposal and Establishing Electric and Gas Rate Plans, (Rate Order) issued October 16, 2015 in Case 14-E-0493. The Rate Order directed O&R to extend to municipalities additional LED street lighting options; to re-examine the costs of LED streets lights in its tariff schedule and include any necessary price adjustments; and to examine the feasibility and cost implications of increasing the Company's currently no-cost system-wide street light replacement threshold from 2% to 25% per year. As a result of its analyses, O&R proposes the addition of six additional Street Lighting Luminaire LED fixture options and for the periods after October 31, 2017, the Company will continue to replace 2% of luminaires as on a system-wide basis as requested by municipalities using the methodology adopted in the current Rate Order. The proposed amendments have an effective date of August 1, 2016. The Commission may adopt, reject, or modify, in whole or in part, the relief proposed and may resolve related matters.

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

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

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

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

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

(16-E-0226SP1)

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

**Proposed Corporate Reorganization and Transfer of Ownership Interests between Members in Cricket Valley Energy Center, LLC**

**I.D. No.** PSC-19-16-00012-P

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

***Proposed Action:*** The Commission is considering a Petition proposing a corporate reorganization and transfer of ownership interests between members in the Cricket Valley Energy Center, LLC.

***Statutory authority:*** Public Service Law, sections 2(12), (13), 5(1)(b), 5-b, 64, 65, 66 and 70

***Subject:*** Proposed corporate reorganization and transfer of ownership interests between members in Cricket Valley Energy Center, LLC.

***Purpose:*** To consider corporate reorganization and transfer of ownership interests between members in Cricket Valley Energy Center, LLC.

***Substance of proposed rule:*** The New York State Public Service Commission ("Commission") is considering a Verified Joint Petition filed by Cricket Valley Energy Center, LLC ("CVEC"), AP Cricket Valley Holdings I Inc. ("APCVHI"), AP Cricket Valley Holdings II Inc. ("APCVHII"), MC CVEC Project Holdings I, LLC ("MCCVEC"), and Cricket Valley Energy Holdings, LLC ("CVEH"; collectively, the "Petitioners") under Section 70 of the Public Service Law for the authority to transfer CVEC ownership interests between members of CVEC. CVEC is developing an approximately 1,000 MW electric generating facility in the Town of Dover, New York. The Petitioners explain that the ownership transfer(s) only would be triggered if APCVHI, APCVHII, or MCCVEC fail to make a required capital contribution for CVEC. The Petitioners also propose an intra-corporate restructuring that would transfer to CVEH, a new holding company, the direct ownership interests in CVEC that currently are held by APCVHI, APCVHII, and MCCVEC. 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-0201SP1)

# Office of Temporary and Disability Assistance

## NOTICE OF EMERGENCY ADOPTION AND REVISED RULE MAKING NO HEARING(S) SCHEDULED

**Emergency Shelters for the Homeless**

**I.D. No.** TDA-06-16-00016-ERP
**Filing No.** 433
**Filing Date:** 2016-04-25
**Effective Date:** 2016-04-25

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

***Action Taken:*** Amendment of section 352.37 of Title 18 NYCRR.

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

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

***Specific reasons underlying the finding of necessity:*** The Office of Temporary and Disability Assistance (OTDA) finds that immediate adoption of the rule is necessary for the preservation of the public health, public safety, and general welfare and, specifically, to assure that residents of emergency shelters are not subject to unhealthy or imminently dangerous conditions. The regulatory amendments establish protections for residents of emergency shelters by clarifying OTDA's authority, pursuant to the Social Services Law and State regulations, to take immediate emergency measures to address emergency shelters determined to be dangerous, hazardous, or imminently detrimental to the health, safety, and general welfare of residents. Recent inspections and visits conducted at a significant number of emergency shelters by officials from OTDA have confirmed that dangerous, hazardous, or unhealthy conditions have existed at some of these placements for sustained periods of time. Failing to expand OTDA's oversight in this area would endanger the health, safety and welfare of such residents. The rule helps ensure that emergency shelters are maintained in safer, healthy conditions, and that the welfare of residents is better protected than under current requirements. In the absence of this new rule, inspections have revealed that some operators have permitted their emergency shelters to deteriorate to a point where dangerous, hazardous, or unhealthy conditions exist. Under these circumstances, OTDA asserts that proposing this rule only as a "regular rule making" as provided by the State Administrative Procedure Act (SAPA) should not be required because to do so would be detrimental to the health and general welfare of the residents of these emergency shelters while permitting public funds to be expended to maintain conditions that are dangerous, hazardous, and unhealthy. Recent investigations have confirmed such conditions and have underscored the imperative of acting quickly to assure that residents of these placements are safe and protected from dangerous, hazardous, or unhealthy conditions. Without this emergency regulation, some emergency shelters will simply maintain the status quo, thereby endangering individuals, families and children.

***Subject:*** Emergency shelters for the homeless.

***Purpose:*** Emergency measures concerning shelters for the homeless.

***Text of emergency/revised rule:*** Section 352.37 of Title 18 NYCRR is amended to read as follows:

352.37 Emergency measures concerning shelters for the homeless.

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

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

[(b)] *(c)* Nothing *in this section* shall be construed as limiting the office from taking additional enforcement action *authorized under the Social Services Law or any State regulation*[, including, but not limited to: limitation, suspension, or revocation of the facility's operating certificate; investigation and directing modifications to the operating certificate; appointment of a receiver; imposition of daily fines; legal actions against the social services district; withholding reimbursement of payments made under this Part; and withholding of reimbursement payments pursuant to statute and Parts 485 and 900 of this Title].

[(c)] *(d)* The office is authorized to conduct unannounced inspections at any hour, without prior knowledge by or notification to [either] the *emergency* shelter, *the* operator, or the social services district. Interference with an inspection, refusal to allow admission, delay in allowing admission, or refusal to provide complete access to the facility will be deemed to be a violation*,* and [a basis to direct the immediate suspension of the shelter contract and operating agreement and/or immediate cessation of the social services district's reimbursement and operating authority] *the office may take immediate enforcement action authorized under the Social Services Law or any State regulation*. State and local comptrollers, in inspecting, auditing, or reviewing *with respect to* emergency shelters [are authorized, as agents of the office, to take all actions set forth in this section] *shall inform the office of any proposed violations of law, regulation, or code and shall provide recommendations as to any enforcement action*.

***This notice is intended*** to serve as both a notice of emergency adoption and a notice of revised rule making. The notice of proposed rule making was published in the *State Register* on February 10, 2016, I.D. No. TDA-06-16-00016-EP. The emergency rule will expire June 23, 2016.

***Emergency rule compared with proposed rule:*** Substantial revisions were made in section 352.37(a), (b), (c) and (d).

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

***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:

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

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

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

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

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

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

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

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

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

2. Legislative Objectives:

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

3. Needs and Benefits:

In response to numerous problematic reports concerning the health and safety of public assistance recipients residing in New York City's emergency shelters, OTDA has taken action to inspect these placements and to establish remedial protocols for SSDs so that these health and safety issues can be addressed immediately. The regulatory amendments provide clarification by defining "emergency shelter" to mean "any facility with overnight sleeping accommodations, the primary purpose of which is to provide temporary shelter to recipients of temporary housing assistance." The regulatory amendments provide OTDA the authority when it has knowledge, or has been advised by an appropriate source, that there exists a violation of law, regulation, or code with respect to an emergency shelter which is dangerous, hazardous, or imminently detrimental to life or health, or otherwise renders the building not fit for human habitation, to take immediate emergency measures. Such emergency measures include, but are not limited to, one or more of the following: (1) issuing an order directing the facility to take immediate measures to rectify any deficiencies, violations, or conditions, requiring additional security, or directing the transfer of its residents to other temporary emergency housing; or (2) temporarily suspending the facility's operating certificate or directing closure of the facility.

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

Pursuant to public comments received, the regulatory amendments have also been revised to clarify that any order issued by OTDA temporarily suspending a facility's operating certificate or directing closure of a facility pursuant to 18 NYCRR § 352.37(a)(2) shall be subject to the notice and expedited hearing process set forth in 18 NYCRR § 493.8.

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

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

The regulatory amendments will allow OTDA full authority to take immediate emergency action against facilities and SSDs that are not providing emergency shelters that comport with prescribed standards.

4. Costs:

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

The regulatory amendments will have a minimal impact on emergency shelters that are currently in compliance with existing health and safety standards. The regulatory amendments are merely attempting to correct violations under existing health and safety standards. Therefore, the cost

to local governments will depend on their abilities to comply with these standards.

5. Local Government Mandates:

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

6. Paperwork:

No additional paperwork is anticipated.

7. Duplication:

The regulatory amendments would not duplicate, overlap, or conflict with any existing State or federal regulations.

8. Alternatives:

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

9. Federal Standards:

The regulatory amendments would not conflict with federal statutes, regulations or policies.

10. Compliance Schedule:

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

***Revised Regulatory Flexibility Analysis***

1. Effect of rule:

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

2. Compliance requirement:

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

3. Professional services:

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

4. Compliance costs:

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

5. Economic and technological feasibility:

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

6. Minimizing adverse impact:

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

7. Small business and local government participation:

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

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

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

***Revised Rural Area Flexibility Analysis***

The Office of Temporary and Disability Assistance has determined that the changes made to the last published rule do not necessitate revision of the previously published RAFA for the regulatory amendments. The changes will not impose a substantial adverse impact or any reporting, recordkeeping or other compliance requirements on public or private entities in rural areas.

***Revised Job Impact Statement***

The Office of Temporary and Disability Assistance has determined that the changes made to the last published rule do not necessitate revision to the previously published JIS for the regulatory amendments. There continues to be no adverse impact on jobs and employment opportunities in either the public or private sectors in New York State as a result of the regulatory amendments.

***Assessment of Public Comment***

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

One comment requested that the emergency regulation provide for procedural protections consistent with the particular provision(s) of the Social Services Law (SSL) from which OTDA derives its authority to take any particular action. OTDA has revised the emergency regulatory text to provide that any order issued by OTDA temporarily suspending a facility's operating certificate or directing closure of a facility shall be subject to the expedited hearing process set forth in 18 NYCRR § 493.8.

One comment requested that the emergency regulation clarify that OTDA may impose emergency measures related to only those facilities or providers found to have failed to comply with applicable requirements. OTDA agrees with this comment, and has modified the emergency regulatory text to clarify that emergency measures can be taken against offending facilities or operators.

One comment requested that the emergency regulation clarify that State and local Comptrollers are only empowered to take investigation actions. OTDA has added clarifying language to the emergency regulation.

One comment requested that the emergency regulation clarify that any enforcement action would be taken in accordance with OTDA's existing authority under the SSL. OTDA has added language to the emergency regulation clarifying that enforcement action would be taken in accordance with OTDA's existing authority under the SSL or any State regulation.

One comment requested that OTDA revise the emergency regulation to remove the provision conferring authority upon OTDA to direct a social services district (SSD) to terminate its contract with an operator. OTDA agrees with the comment and has removed the provision.

One comment requested that OTDA revise the emergency regulation such that the language of the rule describing the conditions that trigger its application should "more closely hew" to the statutory language of the particular provision(s) of the SSL from which OTDA derives its authority to take each enforcement action. OTDA is not adopting this comment because OTDA derives its authority to promulgate the emergency regulation from multiple State statutes and regulations.

One comment requested OTDA to expand the New York City Human Resources Administrations Family Eviction Prevention Supplement (FEPS) eligibility to include domestic violence survivors and increase the FEPS subsidy amount to the HUD Fair Market Rent amount. This comment is beyond the scope of this Assessment of Public Comments, insofar as it does not specifically pertain to the emergency regulation. It is not the purpose of the emergency regulation to reconsider or otherwise amend the provisions regarding FEPS policy in New York State; rather, the purpose of the emergency regulation is to establish protections for residents of emergency shelters by clarifying OTDA's statutory authority to take immediate emergency measures to address emergency shelters determined to be dangerous, hazardous, or imminently detrimental to the health, safety, and general welfare of emergency shelter residents. Consequently, comments proposing policy changes which fall outside the scope of the emergency regulation are not appropriately addressed in this Assessment of Public Comments.

One comment requested that OTDA develop a system of joint inspection with any SSD that operates or oversees any emergency shelter, with respect to inspection of such SSD's emergency shelters. This comment is beyond the scope of this Assessment of Public Comments, insofar as it does not specifically pertain to the emergency regulation. Consequently, comments falling outside the scope of the emergency regulation are not appropriately addressed in this Assessment of Public Comments.

## NOTICE OF ADOPTION

### Information Appropriate for Victims of Sexual Assault

**I.D. No.** TDA-20-15-00001-A

**Filing No.** 425

**Filing Date:** 2016-04-22

**Effective Date:** 2016-05-11

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

***Action taken:*** Addition of section 351.2(m) to Title 18 NYCRR.

***Statutory authority:*** Social Services Law, sections 17(a)-(b), (i), 20(2)-(3)(d), 34(3)(f) and 131(20); L. 2009, ch. 427

***Subject:*** Information appropriate for victims of sexual assault.

***Purpose:*** To require social services districts to make all applicants for and recipients of public assistance aware of their option to receive information appropriate for victims of sexual assault consistent with chapter 427 of the Laws of 2009.

***Text or summary was published*** in the May 20, 2015 issue of the Register, I.D. No. TDA-20-15-00001-P.

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

***Text of rule and any required statements and analyses may be obtained from:*** Richard P. Rhodes, Jr., New York State Office of Temporary and Disability Assistance, 40 North Pearl Street, 16-C, Albany, NY 12243-0001, (518) 486-7503, email: richard.rhodesjr@otda.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 Office of Temporary and Disability Assistance (OTDA) received two comments relative to the regulatory amendments. These comments have been reviewed and duly considered in the Assessment of Public Comments.

One comment suggested that OTDA provide information for victims of sexual assault directly to social services districts (SSDs) for incorporation into application packets provided to all public assistance (PA) applicants/recipients. OTDA is not adopting this comment. Implementation of this comment would not be practical, insofar as the information to be provided by each SSD is unique to that particular SSD. OTDA's Administrative Directive 10 ADM-03 – "Providing Temporary Assistance Applicants and Recipients with Information Regarding Sexual Assault" (10 ADM-03) – informed SSDs that they must ensure that every applicant and recipient of PA is made aware of their option to receive information regarding services for victims of sexual assault. If a PA applicant/recipient requests such information, the SSD must provide information on all local programs that provide services to victims of sexual assault. This information must include, but is not limited to: addresses and phone numbers of local hospitals offering sexual assault forensic examiner services certified by the Department of Health; addresses and telephone numbers of local rape crisis centers; addresses and telephone numbers of local advocacy, counseling, and hotline services appropriate for victims of sexual assault; and telephone numbers of the New York State Hotline for Sexual Assault and Domestic Violence (1-800-942-6906 or 1-800-818-0656 [TTY]). Because three of the four required items of information are SSD-specific, and subject to periodic revisions and updating, they would not be conducive to distribution in an all-inclusive manner throughout all of the State's SSDs. Instead, OTDA believes that the individual SSDs are best suited to provide this information most efficiently and effectively to victims of sexual assault within their specific populations.

One comment suggested adding "domestic violence shelters and services" to the list of information required to be distributed to victims of sexual assault under new § 351.2(m). OTDA is not adopting this comment. New § 351.2(m)(3) enumerates "other advocacy, counseling, and hotline services appropriate for victims of sexual assault" which encompasses domestic violence shelters and services. Furthermore, 10 ADM-03 requires SSDs to provide victims of sexual assault with the addresses and telephone numbers of local advocacy, counseling, and hotline services appropriate for victims of sexual assault, as well as the telephone numbers of the New York State Hotline for Sexual Assault and Domestic Violence. Additionally, PA applicants/recipients are already screened for domestic violence (DV), are given information about DV, and are given the opportunity to speak with a DV liaison as required by 18 NYCRR § 351.2(l)(4).

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

### Supplemental Nutrition Assistance Program (SNAP)

**I.D. No.** TDA-19-16-00007-P

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

***Proposed Action:*** Amendment of section 387.9(a)(7)(ii)(*a*)-(*b*)(*2*)-(*3*); and addition of section 387.9(a)(7)(ii)(*c*) to Title 18 NYCRR.

***Statutory authority:*** 7 United States Code, ch. 51 (generally) and sections 2011 and 2013; 7 Code of Federal Regulations, section 273.2(d); Social Services Law, sections 17(a)-(b) and (i), 20(2)-(3)(d), 34(3)(f) and 95; L. 2012, ch. 41

***Subject:*** Supplemental Nutrition Assistance Program (SNAP).

***Purpose:*** Update State regulations concerning household cooperation with SNAP quality control reviews to reflect federal changes.

***Text of proposed rule:*** Clauses (a)-(b) of subparagraph (ii) of paragraph (7) of subdivision (a) of § 387.9 of Title 18 NYCRR are amended to read as follows:

(ii) A household receiving [food stamps] *SNAP benefits* or reapplying for [food stamps] *SNAP* must cooperate with any quality control review of its current or previous [food stamp] *SNAP* eligibility. A household refusing to cooperate in any quality control review must be determined ineligible to receive [food stamps] *SNAP benefits*.

(a) A household whose eligibility has been terminated for refusal to cooperate with a quality control review may reapply for [food stamps] *SNAP benefits*. [Such] *The* household must not be determined eligible until it cooperates in the quality control review, except as set forth in clause (b) of this subparagraph.

(b) A household cannot be denied [food stamps] *SNAP benefits* for its refusal to cooperate in a quality control review if:

(1) the household was terminated for refusing to cooperate with a quality control review during the completed quality control review period; and

(2) the household reapplied for [food stamps] *SNAP benefits* more than [95] *125* days after the end of the annual review period, if it was terminated for refusal to cooperate with a State quality control review, or more than [seven] *nine* months after the end of the annual review period, if it was terminated for refusal to cooperate with a [Federal] *federal* quality control review; and

(3) the household provides verification of its eligibility for [food stamps] *SNAP* in accordance with section [387.8(c)] *387.8(b)* of this Part.

New clause (c) is added to subparagraph (ii) of paragraph (7) of subdivision (a) of § 387.9 of Title 18 NYCRR to read as follows:

*(c) In the event that one or more household members no longer reside with a household terminated for refusal to cooperate, the penalty for refusal to cooperate will attach to the household of the person(s) refusing to cooperate.*

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

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

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

***Regulatory Impact Statement***

1. Statutory authority:

The Supplemental Nutrition Assistance Program (SNAP) is authorized by Chapter 51 of Title 7 of the United States Code (U.S.C.). Pursuant to 7 U.S.C. § 2011, the SNAP promotes the general welfare and safeguards the health and well-being of the nation's population by raising levels of nutrition among low-income households.

Pursuant to 7 U.S.C. § 2013, the United States Secretary of Agriculture is authorized to administer the federal SNAP under which, at the request of the State agency, eligible households within the State will be provided an opportunity to obtain SNAP benefits.

Pursuant to 7 Code of Federal Regulations (C.F.R.) § 273.2(d)(1), "[t]o determine eligibility [for SNAP benefits], the application form must be completed and signed, the household or its authorized representative must be interviewed, and certain information on the application must be verified." Pursuant to 7 C.F.R. § 273.2(d)(2), "the household shall be determined ineligible [for SNAP benefits] if it refuses to cooperate in any subsequent review of its eligibility as part of a quality control review."

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 "exercise such other powers and perform such other duties as may be imposed by law."

SSL § 20(3)(d) authorizes OTDA to promulgate regulations to carry out its powers and duties.

SSL § 95 authorizes OTDA to administer the SNAP, formerly named the "Food Stamp Program," in New York State and to perform such functions as may be appropriate, permitted, or required by or pursuant to federal law.

Chapter 41 of the Laws of 2012 changed the name of the Food Stamp Program in New York State to the SNAP.

2. Legislative objectives:

It was the intent of the Legislature in enacting SSL § 95 that OTDA establish rules, regulations and policies so that adequate provision is made

for those persons unable to provide for themselves, while at the same time complying with federal statutes and regulations governing the SNAP.

3. Needs and benefits:

The proposed regulatory amendments are necessary to bring the State regulations concerning household cooperation with quality control reviews into compliance with federal statutes and regulations.

Chapter 41 of the Laws of 2012 changed the name of the Food Stamp Program to the SNAP. This proposal would update references in the amended regulations from the Food Stamp Program to the SNAP.

4. Costs:

The proposed regulatory amendments would have no fiscal impact. The social services districts (SSDs) are already required to comply with federal statutes and regulations governing SNAP.

5. Local government mandates:

The proposed regulatory amendments would not impose any additional programs, services, duties or responsibilities upon the SSDs.

6. Paperwork:

There would be no additional forms required to support the proposed regulatory amendments.

7. Duplication:

The proposed regulatory amendments would not conflict with any existing State statutes or federal statutes or regulations. The proposal would bring State regulations into compliance with federal requirements set forth in 7 C.F.R. § 273.2(d)(2).

8. Alternatives:

An alternative to the proposed regulatory amendments would be to retain the existing State regulations. However, the proposed regulatory amendments are necessary to bring the existing State regulations into compliance with federal requirements and current State practices.

9. Federal standards:

The proposed regulatory amendments would be consistent with the federal standards for the SNAP.

10. Compliance schedule:

OTDA and the SSDs would be in compliance with the proposed regulatory amendments on the effective date of the proposed regulatory amendments.

***Regulatory Flexibility Analysis***

A RFASB is not required because the proposed regulatory amendments would neither have an adverse impact upon, nor impose reporting, recordkeeping, or other compliance requirements upon small businesses or local governments. As it was evident from the proposed regulatory amendments that they would not have an adverse impact upon or impose reporting, recordkeeping, or other compliance requirements upon small businesses or local governments, no further measures were needed to ascertain those facts and, consequently, none were taken.

***Rural Area Flexibility Analysis***

A RAFA is not required because the proposed regulatory amendments would neither have an adverse impact upon, nor impose reporting, recordkeeping, or other compliance requirements upon public or private entities in rural areas. As it was evident from the proposed regulatory amendments that they would not have an adverse impact upon or impose reporting, recordkeeping, or other compliance requirements upon public or private entities in rural areas, no further measures were needed to ascertain those facts and, consequently, none were taken.

***Job Impact Statement***

A JIS is not required for the proposed regulatory amendments. It is apparent from the nature and the purpose of the proposed regulatory amendments that they would not have a substantial adverse impact on jobs and employment opportunities in the social services districts (SSDs) or in the State. The proposed regulatory amendments would not substantively affect the jobs of the employees of the SSDs or the State. The proposed regulatory amendments would update State regulations concerning household cooperation with quality control reviews to reflect changes in federal requirements.

Thus, the proposed regulatory amendments would not adversely impact upon jobs and employment opportunities in New York State.