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

NOTICE OF ADOPTION

Firewood (all Hardwood Species), Nursery Stock, Logs, Green Lumber, Stumps, Roots, Branches and Debris of Half an Inch or More

I.D. No. AAM-34-16-00003-A
Filing No. 1013
Filing Date: 2016-11-01
Effective Date: 2016-11-16

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

Action taken: Repeal of sections 139.2(b) and 139.3(b)(1); addition of new sections 139.2(b) and 139.3(b)(1) to Title 1 NYCRR.

Statutory authority: Agriculture and Markets Law, sections 16, 164 and 167

Subject: Firewood (all hardwood species), nursery stock, logs, green lumber, stumps, roots, branches and debris of half an inch or more.

Purpose: To modify the ALB quarantine to prevent the further spread of the beetle and to modify the list of regulated articles.

Text or summary was published in the August 24, 2016 issue of the Register, I.D. No. AAM-34-16-00003-P.

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

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

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 agency received no public comment.

Department of Audit and Control

PROPOSED RULE MAKING
NO HEARING(S) SCHEDULED

Contract Award Protest Procedure for Contract Awards Subject to the Comptroller's Approval

I.D. No. AAC-46-16-00019-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 24 to Title 2 NYCRR.

Statutory authority: Finance Law, sections 8 and 112; Public Authorities Law, section 2879-a

Subject: Contract Award Protest Procedure for Contract Awards Subject to the Comptroller's Approval.

Purpose: Sets forth the procedure to be used when an interested party challenges certain contract awards by a public contracting entity.

Text of proposed rule: *Part 24*

Contract Award Protest Procedure for Contract Awards Subject to the Comptroller's Approval

Section 24.1 Purpose and Applicability.

The purpose of this Part is to set forth the procedure to be used when an interested party challenges a contract award by a public contracting entity that is subject to the approval of the Comptroller. This Part shall apply to all contract awards where the Comptroller's approval is required, or provided for, by law, resolution or otherwise, including, but not limited to, contracts made by or for the State pursuant to section one hundred twelve of the State Finance Law, section twenty eight seventy nine a of the Public Authorities Law, or any other special law.

Section 24.2 Definitions.

(a) "Appeal" means a written challenge by an interested party of a protest determination rendered by a public contracting entity, regarding a contract award that is subject to the approval of the Comptroller.

(b) "Bidder" means an individual, entity or other offeror submitting a response to a solicitation by a public contracting entity.

(c) "Bureau of Contracts" means the business unit within the Office of the State Comptroller that is responsible for reviewing and approving contracts subject to the Comptroller's approval.

(d) "Contract award" means a written determination from a public contracting entity to a bidder indicating that the public contracting entity has selected a particular bidder under the procurement process.

(e) "Interested party" means a participant in the procurement process, and those who can establish that their participation in the procurement process was foreclosed by the actions of the public contracting entity and have suffered harm as a result of the manner in which the procurement was conducted.

(f) "Protest" means a written challenge by an interested party of a contract award that is subject to the approval of the Comptroller.

(g) "Protesting party" means an interested party who has filed a protest or an appeal with the Bureau of Contracts.

(h) "Public contracting entity" means: any State agency, department, board, commission, office or institution; the State University of New York; the City University of New York; or any public authority, public benefit corporation, or other public or quasi-public entity which is awarding, or has awarded a contract subject to the Comptroller's approval.

(i) "Solicitation" means a document issued by a public contracting entity, requesting a response to a procurement need, including an Invitation for Bids, a Request for Proposals, or another written method of seeking a bid or a proposal for a specified purpose.

(j) "Successful bidder" means the bidder whose bid or proposal has been selected for contract award by a public contracting entity; or, in the case of a contract entered into on a noncompetitive basis, an individual or entity that has executed a contract that is subject to the Comptroller's approval.

Section 24.3 Proper Filing of Initial Protests.

(a) Proper filing of an initial protest depends on whether the public contracting entity has its own bid protest procedure and has provided bidders with proper notice of such. Where the public contracting entity has a written protest procedure and has provided notice of such procedure in the solicitation, a protest shall be filed initially with the public contracting entity. However, an interested party may file an initial protest with the Bureau of Contracts in accordance with section 24.4 of this Part, after the public contracting entity has made a contract award, if:

1. the public contracting entity has not provided notice of its protest procedure in the solicitation; or

2. the facts that would give rise to a protest are not known to, and could not reasonably have been known to, an interested party prior to the date by which a protest was required to be filed with the public contracting entity.

Section 24.4 Initial Protests Filed with the Bureau of Contracts.

(a) An initial protest to the Bureau of Contracts must be in writing and must contain specifically enumerated factual and/or legal allegations, setting forth the basis on which the protesting party challenges the contract award by the public contracting entity.

(b) Time to file a protest.

1. An interested party must file an initial protest with the Bureau of Contracts within ten business days of receiving notice of the contract award which it seeks to challenge or, if a debriefing has been requested by the interested party, within five business days of the debriefing, whichever is later.

2. If the interested party is not provided notice of the contract award, the interested party may file a protest with the Bureau of Contracts at any time after the contract award and prior to the Comptroller's final action on the contract.

3. In the case of a protest related to a procurement that resulted in contract awards to multiple successful bidders, the interested party must file such protest with the Bureau of Contracts prior to the Comptroller's final action on any contract award related to that procurement.

(c) Service and delivery.

1. The protesting party must simultaneously deliver a copy of the protest to the public contracting entity and the successful bidder, and shall provide evidence of such delivery, either by showing that an electronic copy has been provided, or by attaching to the protest an affirmation in writing as to such delivery. If the protesting party does not know the identity of the successful bidder, the protesting party shall so state in its protest and the public contracting entity shall provide the successful bidder with a copy of the protest.

2. In the case of a protest related to a procurement that resulted in contract awards to multiple successful bidders, the Bureau of Contracts shall determine whether any of the successful bidders would be affected by the outcome of the protest and, thus, whether any of the successful bidders should be provided with a copy of the protest and an opportunity to respond.

(d) Answers to the protest.

1. The public contracting entity may file an answer to the protest with the Bureau of Contracts simultaneously with the delivery of the contract to the Bureau of Contracts for its review, or within seven business days of the filing of the protest, whichever is later. The public contracting entity's answer should address all factual and legal allegations contained in the protest. A copy of the public contracting entity's answer shall be simultaneously delivered to the protesting party and the successful bidder, and the public contracting entity shall provide evidence of such delivery, either by showing that an electronic copy has been provided, or by attaching to the answer an affirmation in writing as to such delivery.

2. If there are multiple successful bidders, the public contracting entity shall deliver a copy of its answer to the successful bidders at the direction of the Bureau of Contracts.

3. The successful bidder may file an answer to the protest with the Bureau of Contracts no later than the date that the public contracting entity is required to file its answer. If the successful bidder chooses to file an answer, it must simultaneously deliver a copy of such answer to the public contracting entity and the protesting party, and provide evidence of such delivery, either by showing that an electronic copy has been provided, or by attaching to the answer an affirmation in writing as to such delivery.

(e) Protesting Party's Reply.

1. The protesting party may, but is not required to, file a reply to the answer of the public contracting entity and the successful bidder. Such reply shall be filed with the Bureau of Contracts no later than three business days after the date that the public contracting entity's answer is filed.

2. A copy of such reply shall be simultaneously delivered to the public contracting entity and the successful bidder and the protesting party shall provide evidence of such delivery, either by showing that an electronic copy has been provided, or by attaching to the reply an affirmation in writing as to such delivery.

3. If there are multiple successful bidders, the protesting party shall deliver a copy of its reply to the successful bidders at the direction of the Bureau of Contracts.

(f) The protesting party's reply, if submitted, shall constitute the final submission permitted as of right under this section. The Bureau of Contracts is not required to consider any additional filings or any materials submitted beyond those filings specifically set forth in this section in rendering its determination of the protest.

(g) Upon its own initiative, or upon request of any participant in the protest process, the Bureau of Contracts may in its sole discretion act on an expedited basis, in which case the Bureau of Contracts will advise all participants in writing of filing deadlines.

(h) The Bureau of Contracts may summarily deny a protest that fails to contain specifically enumerated factual or legal allegations that set forth the basis on which the protesting party challenges the contract award, or where the protest raises only issues of law that have previously been decided by the courts or by the Bureau of Contracts.

(i) The Bureau of Contracts may, in its sole discretion and for good cause shown, waive any deadline set forth in this section.

(j) Where appropriate, the Bureau of Contracts may require the public contracting entity, the protesting party, the successful bidder, or any other interested party, to address additional issues identified by the Bureau of Contracts and submit further information regarding the procurement.

(k) Nothing herein shall preclude the Bureau of Contracts from obtaining information relevant to the procurement from any outside source, as it deems appropriate. Reliance on outside source information, if any, will be identified by the Bureau of Contracts in its written determination.

(l) The Bureau of Contracts shall issue a written determination, contemporaneously with its final action on the contract, addressing the issues raised by the protest. The determination shall make findings of fact and conclusions of law. The Bureau of Contracts shall provide a copy of the determination to all participants in the protest and the successful bidder. The determination shall be made part of the procurement record.

Section 24.5 Appeal of Public Contracting Entity's Protest Determination.

(a) Time to file an appeal.

1. An interested party may file an appeal of a public contracting entity's protest determination with the Bureau of Contracts within ten business days of receiving the public contracting entity's protest determination.

2. In its appeal, the interested party shall set forth the basis on which it challenges the public contracting entity's protest determination. The interested party shall also include, as an exhibit to its appeal, a copy of the initial bid protest submitted to the public contracting entity and the determination of such bid protest issued by the public contracting entity.

(b) Service and delivery.

1. The protesting party must simultaneously deliver a copy of the appeal to the public contracting entity and the successful bidder, and shall provide evidence of such delivery, either by showing that an electronic copy has been provided, or by attaching to the appeal an affirmation in writing as to such delivery.

2. Where the public contracting entity upholds the protest and the initial successful bidder files the appeal, a copy of the appeal shall be served on the original protesting party.

3. In the case of an appeal related to a procurement that resulted in contract awards to multiple successful bidders, the Bureau of Contracts shall determine, in its sole discretion, whether any or all of the successful bidders should be provided with a copy of the appeal and an opportunity to respond.

(c) Answers to the appeal.

1. The public contracting entity may file an answer to the appeal with the Bureau of Contracts simultaneously with the delivery of the contract to the Bureau of Contracts for its review, or within seven business days of

the filing of the appeal, whichever is later. A copy of the public contracting entity's answer shall be simultaneously delivered to the protesting party and the successful bidder, and the public contracting entity must provide evidence of such delivery, either by showing that an electronic copy has been provided, or by attaching to the answer an affirmation in writing as to such delivery.

2. If there are multiple successful bidders, the public contracting entity shall deliver a copy of its answer to the successful bidders at the direction of the Bureau of Contracts.

3. The successful bidder (or, where the public contracting entity upholds the agency level protest, the original protesting party) may file an answer to the appeal with the Bureau of Contracts no later than the date that the public contracting entity is required to file its answer. If the successful bidder chooses to file an answer, it must simultaneously deliver a copy of such answer to the public contracting entity and the protesting party, and it must provide evidence of such delivery, either by showing that an electronic copy has been provided, or by attaching to the answer an affirmation in writing as to such delivery.

(d) The answers to the appeal, if submitted, shall constitute the final submission permitted as of right under this section. The Bureau of Contracts is not required to consider any additional filings or any materials submitted beyond those filings specifically set forth in this section in rendering its determination of the appeal.

(e) The Bureau of Contracts may, in its sole discretion and for good cause shown, waive any deadline set forth in this section.

(f) Where appropriate, the Bureau of Contracts may require the public contracting entity, the protesting party, the successful bidder, or any other interested party, to address additional issues identified by the Bureau of Contracts and submit further information regarding the procurement.

(g) Nothing herein shall preclude the Bureau of Contracts from obtaining information relevant to the procurement from any outside source, as it deems appropriate. Reliance on outside source information, if any, will be identified by Bureau of Contracts in its written determination.

(h) The Bureau of Contracts shall issue a written determination, contemporaneously with its final action on the contract, addressing the issues raised by the appeal. The Bureau of Contracts shall provide a copy of the determination to all interested parties. The determination shall be made part of the procurement record.

Section 24.6 Notice and Filing.

For purposes of this Part, any required "notice" or "filing" shall be in writing and shall be deemed effective upon actual receipt by the intended recipient.

Text of proposed rule and any required statements and analyses may be obtained from: Jamie Elacqua, Office the State Comptroller, 110 State Street, Albany, NY 12236, (518) 473-4146, email: jelacqua@osc.state.ny.us

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: This rule is authorized under sections 8 and 112 of the State Finance Law and section 2879-a of the Public Authorities Law. Section 8(14) authorizes the Comptroller to make rules and regulations as he may deem necessary in the performance of the duties imposed upon him by law. Section 112 requires that before any contract made for or by any State agency, department, board, officer, commission, or institution, except the office of general services, shall be executed or become effective, whenever such contract exceeds fifty thousand dollars in amount and before any contract made for or by the office of general services shall be executed or become effective, whenever such contract exceeds eighty-five thousand dollars in amount, it shall first be approved by the comptroller and filed in his or her office, with the exception of contracts established as a centralized contract through the office of general services. Additionally, section 112 provides that a contract or other instrument wherein the State or any of its officers, agencies, boards or commissions agrees to give a consideration other than the payment of money, when the value or reasonably estimated value of such consideration exceeds ten thousand dollars, shall not become a valid enforceable contract unless such contract or other instrument shall first be approved by the comptroller and filed in his office. Furthermore, section 2879-a of the Public Authorities Law provides the Comptroller with the discretion to determine that certain public authority contracts are subject to the Comptroller's prior approval. Accordingly, it is proper for the Comptroller to promulgate rules that set forth administrative uniform procedures to be adhered to by an interested party when it seeks to formally challenge a contract award that is subject to the Comptroller's approval.

2. Legislative Objectives: The proposed rule formalizes in regulatory form the Comptroller's protest process for State contracts and public authority contracts subject to his prior review and approval. The proposed rule allows interested parties to raise concerns about contract awards made by public contracting entities where such contracts are subject to the Comptroller's approval. The Comptroller's independent review of bid protests, in conjunction with his review of contracts, helps ensure fairness in State contracting and appropriate spending of State tax dollars.

3. Needs and Benefits: The objective of the New York State procurement process is to facilitate each agency's or public authority's mission while protecting the interests of the State and its taxpayers and promoting fairness in the contracting community. Accordingly, it is imperative that interested parties in a procurement process receive the opportunity to raise their concerns with respect to a contract award prior to the Comptroller's final action on the contract.

In July 2008, the Comptroller established a "Contract Award Protest Procedure for Contract Awards Subject to the Comptroller's Approval," setting forth guidelines for an interested party wishing to protest the award of a contract made by a public contracting entity or appeal a protest determination initially issued by the public contracting agency. The protest procedure is widely recognized among public contracting entities and the State vendor community and has been used by interested parties since its issuance. Since 2008, the Comptroller has issued one hundred thirteen determinations in accordance with the Comptroller's guidelines for filing protests. The proposed rule simply establishes the Comptroller's current protest procedures as an administrative regulation.

4. Costs: There are no new costs to regulated parties for the implementation of this rule. The substance of this rule has been a recognized procedure by all regulated parties since the guidelines were issued, and all regulated parties already follow the procedure and incur any related costs. Furthermore, there are no direct compliance costs placed upon interested parties seeking to protest a contract award or appeal a public contracting entity's protest determination, and any indirect costs are incurred at the choice of the interested party to commence a protest. While there may be administrative costs associated with the preparation and submission of filings by public contracting entities and successful bidders, these costs are not new with the transition from guidelines to a formal rule. Moreover, we believe any such costs are offset by the benefit of ensuring fairness and transparency in the State procurement process.

5. Local Government Mandates: Not applicable.

6. Paperwork: No new paperwork will be required.

7. Duplication: None.

8. Alternatives: No significant alternatives were considered.

9. Federal Standards: This rule does not exceed any Federal standard.

10. Compliance Schedule: It is estimated that regulated parties will be able to achieve compliance immediately. The proposed rule does not materially vary from the previously established guidelines entitled Procedure for Contract Awards Subject to the Comptroller's Approval.

Regulatory Flexibility Analysis

1. Effect of rule: The proposed rule allows interested parties to raise concerns about contract awards made by public contracting entities subject to the Comptroller's approval and formalizes the Comptroller's existing process to review such concerns. Any small business or local government that is an interested party in a procurement conducted by a public contracting entity where the resulting contract is subject to the Comptroller's approval may use the procedure set forth in the rule. Thus, potentially all small businesses and local governments may be affected by the rule.

2. Compliance requirements: To avail itself of the review process described in the rule, a small business or local government is required to comply with the filing requirements for initial protests and appeals of public contracting entities' protest determinations. These requirements relate to where and when to file the protest or appeal.

3. Professional services: There are no professional services that a small business or local government will likely need to comply with the rule.

4. Compliance costs: There are no initial capital costs or annual costs for small businesses or local governments to comply with these rules.

5. Economic and technological feasibility: Since there are no compliance costs imposed upon small businesses or local governments there is no need to conduct an assessment of the economic feasibility of compliance with such rule. Small businesses or local governments may file protests or appeals with the Comptroller's Bureau of Contracts by mail or email. Thus, no technical barriers exist that would prevent small businesses or local governments from filing protests or appeals in compliance with the requirements of the rule.

6. Minimizing adverse impact: No adverse impact is anticipated for small businesses or local governments. This conclusion was reached because the rule essentially formalizes the contract protest procedure currently available to small businesses and local governments. Such procedure is designed to assist interested parties seeking to challenge a contract award that is subject to the Comptroller's approval. Accordingly, none of the approaches for minimizing adverse economic impact suggested in SAPA section 202-b(1) were considered.

7. Small business and local government participation: In order to ensure

small businesses and local governments have an opportunity to participate in the rule making process, the text of the proposed rule will be posted on the Comptroller's website.

Rural Area Flexibility Analysis

1. Types of and numbers of rural areas: This rule will apply to all interested parties located in rural areas that participate in a procurement with a public contracting party where the resulting contract is subject to Comptroller approval.

2. Reporting, recordkeeping and other compliance requirements; and professional services: To avail itself of the review process described in the rule, an interested party in a rural area is required to comply with the filing requirements for initial protests and appeals of public contracting entities' protest determinations. These requirements relate to where and when to file the protest or appeal. There are no professional services likely to be needed in a rural area to comply with the rule.

3. Costs: There are no initial capital costs or annual costs for either public or private entities in rural areas to comply with these rules.

4. Minimizing adverse impact: This rule will not adversely impact rural areas.

5. Rural area participation: In order to ensure rural areas have an opportunity to participate in the rule making process the text of the proposed rule will be posted on the Comptroller's website.

Office of Children and Family Services

NOTICE OF ADOPTION

Requirements Regarding the Cooperation of Local School Districts with Investigations of Suspected Child Abuse and Maltreatment

I.D. No. CFS-23-16-00004-A

Filing No. 1015

Filing Date: 2016-11-01

Effective Date: 2016-11-16

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

Action taken: Amendment of section 432.3 of Title 18 NYCRR.

Statutory authority: Social Services Law, sections 20(3)(d), 34(3)(f), 421(3), 423(6) and 425(1)

Subject: Requirements regarding the cooperation of local school districts with investigations of suspected child abuse and maltreatment.

Purpose: To clarify requirements for cooperation of local school districts with investigations of suspected child abuse and maltreatment.

Text or summary was published in the June 8, 2016 issue of the Register, I.D. No. CFS-23-16-00004-EP.

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

Revised rule making(s) were previously published in the State Register on September 28, 2016.

Text of rule and any required statements and analyses may be obtained from: Public Information Office, Office of Children and Family Services, 52 Washington Street, Rensselaer, New York 12144, (518) 473-7793, email: info@ocfs.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 agency received no public comment.

Department of Civil Service

PROPOSED RULE MAKING
NO HEARING(S) SCHEDULED

Jurisdictional Classification

I.D. No. CVS-46-16-00001-P

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

Proposed Action: Amendment of Appendix 1 of Title 4 NYCRR.

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

Subject: Jurisdictional Classification.

Purpose: To classify a position in the exempt class.

Text of proposed rule: Amend Appendix 1 of the Rules for the Classified Service, listing positions in the exempt class, in the Department of Civil Service, by increasing the number of positions of Deputy Commissioner from 2 to 3.

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

Data, views or arguments may be submitted to: Ilene Lees, Counsel, NYS Department of Civil Service, Empire State Plaza, Agency Building 1, Albany, NY 12239, (518) 473-2624, email: ilene.lees@cs.ny.gov

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

Regulatory Impact Statement
A regulatory impact statement is not submitted with this notice because this rule is subject to a consolidated regulatory impact statement that was previously printed under a notice of proposed rule making, I.D. No. CVS-02-16-00003-P, Issue of January 13, 2016.

Regulatory Flexibility Analysis
A regulatory flexibility analysis is not submitted with this notice because this rule is subject to a consolidated regulatory flexibility analysis that was previously printed under a notice of proposed rule making, I.D. No. CVS-02-16-00003-P, Issue of January 13, 2016.

Rural Area Flexibility Analysis
A rural area flexibility analysis is not submitted with this notice because this rule is subject to a consolidated rural area flexibility analysis that was previously printed under a notice of proposed rule making, I.D. No. CVS-02-16-00003-P, Issue of January 13, 2016.

Job Impact Statement
A job impact statement is not submitted with this notice because this rule is subject to a consolidated job impact statement that was previously printed under a notice of proposed rule making, I.D. No. CVS-02-16-00003-P, Issue of January 13, 2016.

PROPOSED RULE MAKING
NO HEARING(S) SCHEDULED

Jurisdictional Classification

I.D. No. CVS-46-16-00002-P

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

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

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

Subject: Jurisdictional Classification.

Purpose: To classify positions in the non-competitive class.

Text of proposed rule: Amend Appendix 2 of the Rules for the Classified Service, listing positions in the non-competitive class, in the Department of Economic Development, by adding thereto the positions of Multimedia Production Representative 1 (2), Multimedia Production Representative 2 (2) and Multimedia Production Representative 3 (1).

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

Data, views or arguments may be submitted to: Ilene Lees, Counsel, NYS Department of Civil Service, Empire State Plaza, Agency Building 1, Albany, NY 12239, (518) 473-2624, email: ilene.lees@cs.ny.gov

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

Regulatory Impact Statement

A regulatory impact statement is not submitted with this notice because this rule is subject to a consolidated regulatory impact statement that was previously printed under a notice of proposed rule making, I.D. No. CVS-02-16-00003-P, Issue of January 13, 2016.

Regulatory Flexibility Analysis

A regulatory flexibility analysis is not submitted with this notice because this rule is subject to a consolidated regulatory flexibility analysis that was previously printed under a notice of proposed rule making, I.D. No. CVS-02-16-00003-P, Issue of January 13, 2016.

Rural Area Flexibility Analysis

A rural area flexibility analysis is not submitted with this notice because this rule is subject to a consolidated rural area flexibility analysis that was previously printed under a notice of proposed rule making, I.D. No. CVS-02-16-00003-P, Issue of January 13, 2016.

Job Impact Statement

A job impact statement is not submitted with this notice because this rule is subject to a consolidated job impact statement that was previously printed under a notice of proposed rule making, I.D. No. CVS-02-16-00003-P, Issue of January 13, 2016.

PROPOSED RULE MAKING
NO HEARING(S) SCHEDULED

Jurisdictional Classification

I.D. No. CVS-46-16-00003-P

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

Proposed Action: Amendment of Appendix 1 of Title 4 NYCRR.

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

Subject: Jurisdictional Classification.

Purpose: To classify positions in the exempt class.

Text of proposed rule: Amend Appendix 1 of the Rules for the Classified Service, listing positions in the exempt class, in the Department of Family Assistance under the subheading "Office of Temporary and Disability Assistance," by increasing the number of positions of Deputy Commissioner from 5 to 6 and by adding thereto the position of Assistant Deputy Commissioner.

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

Data, views or arguments may be submitted to: Ilene Lees, Counsel, NYS Department of Civil Service, Empire State Plaza, Agency Building 1, Albany, NY 12239, (518) 473-2624, email: ilene.lees@cs.ny.gov

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

Regulatory Impact Statement

A regulatory impact statement is not submitted with this notice because this rule is subject to a consolidated regulatory impact statement that was previously printed under a notice of proposed rule making, I.D. No. CVS-02-16-00003-P, Issue of January 13, 2016.

Regulatory Flexibility Analysis

A regulatory flexibility analysis is not submitted with this notice because this rule is subject to a consolidated regulatory flexibility analysis that was previously printed under a notice of proposed rule making, I.D. No. CVS-02-16-00003-P, Issue of January 13, 2016.

Rural Area Flexibility Analysis

A rural area flexibility analysis is not submitted with this notice because this rule is subject to a consolidated rural area flexibility analysis that was previously printed under a notice of proposed rule making, I.D. No. CVS-02-16-00003-P, Issue of January 13, 2016.

Job Impact Statement

A job impact statement is not submitted with this notice because this rule is subject to a consolidated job impact statement that was previously printed under a notice of proposed rule making, I.D. No. CVS-02-16-00003-P, Issue of January 13, 2016.

PROPOSED RULE MAKING
NO HEARING(S) SCHEDULED

Jurisdictional Classification

I.D. No. CVS-46-16-00004-P

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

Proposed Action: Amendment of Appendix 1 of Title 4 NYCRR.

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

Subject: Jurisdictional Classification.

Purpose: To delete a position from and classify a position in the exempt class.

Text of proposed rule: Amend Appendix 1 of the Rules for the Classified Service, listing positions in the exempt class, in the Executive Department under the subheading "Office of Information Technology Services," by deleting therefrom the position of Associate Commissioner and by increasing the number of positions of Special Assistant from 22 to 23.

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

Data, views or arguments may be submitted to: Ilene Lees, Counsel, NYS Department of Civil Service, Empire State Plaza, Agency Building 1, Albany, NY 12239, (518) 473-2624, email: ilene.lees@cs.ny.gov

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

Regulatory Impact Statement

A regulatory impact statement is not submitted with this notice because this rule is subject to a consolidated regulatory impact statement that was previously printed under a notice of proposed rule making, I.D. No. CVS-02-16-00003-P, Issue of January 13, 2016.

Regulatory Flexibility Analysis

A regulatory flexibility analysis is not submitted with this notice because this rule is subject to a consolidated regulatory flexibility analysis that was previously printed under a notice of proposed rule making, I.D. No. CVS-02-16-00003-P, Issue of January 13, 2016.

Rural Area Flexibility Analysis

A rural area flexibility analysis is not submitted with this notice because this rule is subject to a consolidated rural area flexibility analysis that was previously printed under a notice of proposed rule making, I.D. No. CVS-02-16-00003-P, Issue of January 13, 2016.

Job Impact Statement

A job impact statement is not submitted with this notice because this rule is subject to a consolidated job impact statement that was previously printed under a notice of proposed rule making, I.D. No. CVS-02-16-00003-P, Issue of January 13, 2016.

Education Department

REVISED RULE MAKING
NO HEARING(S) SCHEDULED

Teacher Certification in Career and Technical Education

I.D. No. EDU-26-16-00016-RP

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

Proposed Action: Amendment of section 80-3.5 of Title 8 NYCRR.

Statutory authority: Education Law, sections 207(not subdivided), 305(1), (2), 3001(2), 3004(1), 3006(1) and 3009

Subject: Teacher certification in career and technical education.

Purpose: Establishes a new pathway for Transitional A certificate.

Text of revised rule: 1. The emergency taken at the July 2016 Regents meeting to add new paragraphs (5), (6) and (7) to section 80-3.5 of the Regulations of the Commissioner of Education, is rescinded, effective September 13, 2016.

2. Paragraph (2) of subdivision (b) of section 80-3.5 of the Regulations of the Commissioner of Education shall be amended, effective September 13, 2016, to read as follows:

(2) The candidate shall meet the requirements for the transitional A certificate by successfully completing the requirements in paragraph (1) [or (2)] *through (7)* of this subdivision.

3. New paragraphs (5), (6), and (7) are added to subdivision (b) of section 80-3.5 of the Regulations of the Commissioner of Education, effective September 13, 2016, to read as follows:

(5) Option G: The requirements of this paragraph are applicable to candidates who seek an initial certificate and who hold an industry acceptable credential in a career and technical education subject and have at least two years of acceptable work experience in the certificate area to be taught or in a closely related subject area acceptable to the department. The candidate shall meet the requirements in each of the following subparagraphs:

(i) Education. The candidate shall complete at least two clock hours of course work or training regarding the identification and reporting suspected child abuse or maltreatment, in accordance with requirements of section 3004 of the Education Law. In addition, the candidate shall complete at least two clock hours of coursework or training in school violence prevention and intervention, as required by section 3004 of the Education Law, which is provided by a provider, approved or deemed approved by the department pursuant to Subpart 57-2 of this Title. A candidate who applies for the certificate shall also complete at least six clock hours, of which at least three hours must be conducted through face-to-face instruction, of coursework or training in harassment, bullying and discrimination prevention and intervention, as required by section 14 of the Education Law.

(ii) Examination. The candidate shall submit evidence of having achieved a satisfactory level of performance on the New York State Teacher Certification Examination content specialty test(s) in the area of the certificate.

(iii) Industry Related Credential or Industry Accepted Examination. The candidate shall either:

(a) hold an industry related credential in the certificate area taught or in a closely related subject area acceptable to the department; or

(b) receive a passing score on an industry accepted career and technical examination that demonstrates mastery in the career and technical education subject for which a certificate is sought or a closely related area as approved by the department through a request for qualifications process.

(iv) Experience. The candidate shall have at least two years of satisfactory work experience in the career and technical education subject for which a certificate is sought or a closely related subject area, as determined by the Commissioner;

(v) Employment and support commitment. The candidate shall submit evidence of having a commitment for three years of employment as a teacher in grades 7 through 12 in a public or nonpublic school or BOCES, which shall include a mentored experience for the first year that will consist of daily supervision by an experienced teacher during the first 20 days of teaching, except that such mentoring shall not be required if the candidate has two years of satisfactory employment as a teacher of students in grades 7 through 12 in a public or nonpublic school or BOCES.

(6) Option H: The requirements of this paragraph are applicable to candidates who seek an initial certificate and who are enrolled in an approved career and technical education program registered pursuant to section 52.21 of this Title, or its equivalent in the certificate area to be taught or in a closely related subject area acceptable to the department; and have either at least one year of satisfactory experience in the career and technical area to be taught or in a closely related area or receive a passing score on an industry accepted career and technical examination that demonstrates mastery in the career and technical education subject for which a certificate is sought or a closely related area as approved by the department through a request for qualifications process. The candidate shall meet the requirements in each of the following subparagraphs:

(i) Education.

(a) The candidate shall complete at least two clock hours of course work or training regarding the identification and reporting suspected child abuse or maltreatment, in accordance with requirements of section 3004 of the Education Law. In addition, the candidate shall complete at least two clock hours of coursework or training in school violence prevention and intervention, as required by section 3004 of the Education Law, which is provided by a provider, approved or deemed approved by the department pursuant to Subpart 57-2 of this Title. A candidate shall also complete at least six clock hours, of which at least three hours must be conducted through face-to-face instruction, of coursework or training in harassment, bullying and discrimination prevention and intervention, as required by section 14 of the Education Law; and

(b) the candidate shall be enrolled in an approved career and technical education program registered pursuant to section 52.21 of this Title.

(ii) Examination. The candidate shall submit evidence of having achieved a satisfactory level of performance on the New York State Teacher Certification Examination content specialty test(s) in the area of the certificate.

(iii) Experience and/or Examination. The candidate shall either:

(a) have at least one year of satisfactory work experience in the career and technical education subject for which a certificate is sought or a closely related area, as determined by the Commissioner; or

(b) receive a passing score on an industry accepted career and technical examination that demonstrates mastery in the career and technical education subject for which a certificate is sought or a closely related area as approved by the department through a request for qualifications process.

(iv) Employment and support commitment. The candidate shall submit evidence of having a commitment for three years of employment as a teacher in grades 7 through 12 in a public or nonpublic school or BOCES, which shall include a mentored experience for the first year that will consist of daily supervision by an experienced teacher during the first 20 days of teaching, except that such mentoring shall not be required if the candidate has two years of satisfactory employment as a teacher of students in grades 7 through 12 in a public or nonpublic school or BOCES.

(7) Option I: The requirements of this paragraph are applicable to candidates who seek an initial certificate and who are currently certified as a teacher in grades 7-12 in any subject area acceptable to the department, and who either: hold an industry related credential the career and technical education subject to be taught or in a closely related subject area acceptable to the department or have two years of satisfactory experience in the certificate area sought or a closely related subject area, as determined by the Commissioner. The candidate shall meet the requirements in each of the following subparagraphs:

(i) Education. The candidate shall complete at least two clock hours of course work or training regarding the identification and reporting suspected child abuse or maltreatment, in accordance with requirements of section 3004 of the Education Law. In addition, the candidate shall complete at least two clock hours of coursework or training in school violence prevention and intervention, as required by section 3004 of the Education Law, which is provided by a provider, approved or deemed approved by the department pursuant to Subpart 57-2 of this Title. A candidate who applies for the certificate on or after December 31, 2013, shall also complete at least six clock hours, of which at least three hours must be conducted through face-to-face instruction, of coursework or training in harassment, bullying and discrimination prevention and intervention, as required by section 14 of the Education Law.

(ii) Examination. The candidate shall submit evidence of having achieved a satisfactory level of performance on the New York State Teacher Certification Examination content specialty test(s) in the area of the certificate.

(iii) Certification. The candidate shall hold certification as a teacher in grades 7-12 in any certification area pursuant to Part 80 of this Title, that is acceptable to the department.

(iv) Experience or Industry Related Credential. The candidate shall either:

(a) hold an industry related credential in the certificate area sought or in a related area, as determined by the Department; or

(b) have at least two years of documented and satisfactory work experience in the career and technical education subject for which a certificate is sought, or a related area, as determined by the Commissioner.

(v) Employment and support commitment. The candidate shall submit evidence of having a commitment for three years of employment as a teacher in grades 7 through 12 in a public or nonpublic school or BOCES, which shall include a mentored experience for the first year that will consist of daily supervision by an experienced teacher during the first 20 days of teaching, except that such mentoring shall not be required if the candidate has two years of satisfactory employment as a teacher of students in grades 7 through 12 in a public or nonpublic school or BOCES.

Revised rule compared with proposed rule: Substantial revisions were made in section 80-3.5(b)(5), (6) and (7).

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

Data, views or arguments may be submitted to: Peg Rivers, State Education Department, 89 Washington Avenue, Albany, NY 12234, (518) 408-1189, email: regcomments@nysed.gov

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

Revised Regulatory Impact Statement

1. STATUTORY AUTHORITY:

Education Law 207(not subdivided) grants general rule-making authority to the Regents to carry into effect State educational laws and policies.

Education Law 305(1) authorizes the Commissioner to enforce laws relating to the State educational system and execute Regents educational policies.

Education Law 3001(2) establishes the qualifications of teachers in the State and requires that such teachers possess a teaching certificate issued by the Department.

Education Law 3004(1) authorizes the Commissioner to promulgate regulations, subject to approval by the Board of Regents, regulations governing the certification and examination requirements for teachers employed in public schools.

Education Law 3006(1) authorizes the Commissioner to issue temporary certificates to teachers.

Education Law 3009 prohibits school district monies from being used to pay the salary of an unqualified teacher.

2. LEGISLATIVE OBJECTIVES:

The proposed rule establishes three new certification pathway options for candidates to obtain a Transitional A certificate who do not meet the current requirements but who possess industry experience, credentials, or are in the process of completing certification in a CTE field to address concerns raised by school districts and Board of Cooperative Educational Services (BOCES) that have expressed difficulty in filling CTE positions.

3. NEEDS AND BENEFITS: Currently, a Transitional A certificate in a specific career and technical subject is issued to permit the employment of an individual in a specific career and technical education title who does not meet the requirements for an initial certificate, but who possesses the requisite occupational experience. This certificate is valid for three years, and the candidate would complete the additional requirements for an initial certificate during the three years.

The three options available for a Transitional A certificate at this time are:

• Option A. Candidates who possess an associate's degree (or its equivalent) in the career and technical field in which the certificate is sought, and who have at least two years of documented and satisfactory work experience in the career and technical education subject for which a certificate is sought;

• Option B. Candidates who possess a high school diploma or its equivalent (but who do not possess an associate's degree or its equivalent in the certificate area), and who have at least four years of documented and satisfactory work experience in the career and technical education subject for which a certificate is sought; and

• Option C. Candidates who possess an associate's degree (or its equivalent) in the career and technical field in which the certificate is sought, and who have at least two years of documented and satisfactory teaching experience at the postsecondary level (excluding experience as a teaching assistant) in the career and technical education subject for which a certificate is sought.

All three Transitional A pathways described above also require:

(1) Coursework training in identification of and reporting of child abuse or maltreatment, school violence prevention and intervention, and harassment, bullying and discrimination prevention and intervention;

(2) Evidence of having achieved a satisfactory level of performance on the New York State Teacher Certification Exam Content Specialty Test in the area of the certificate, and

(3) An employment and support commitment—the candidate must submit evidence of having a commitment for three years of employment as a teacher in a public or nonpublic school or BOCES, which includes a mentored experience for the first year consisting of daily supervision by an experienced teacher during the first 20 days. However, the mentoring is not required if the candidate has two years of satisfactory employment as a teacher of students in grades 7-12 in a public or nonpublic school or BOCES.

In addition, at the May 2016 Board of Regents meeting, the Board adopted by Emergency action a new pathway option for those issued a full license to teach in licensed private career schools and who have two years of teaching experience under such license, to qualify for a Transitional A certificate. If adopted at the September 2016 Board of Regents meeting, this will allow those candidates to teach CTE during the 2016-2017 school year.

Proposed Amendment:

To provide additional certification pathways in CTE fields to address the immediate shortages in the field, the Department recommends establishing new pathway options G, H, and I for Transitional A certificates for candidates who meet one of the three requirements listed below:

• Option G. Have a minimum of two years of work experience in the CTE subject area of the certificate sought and hold an industry-related credential, where available, or pass an industry accepted examination as approved by the Department and have an employment and support commitment

• Option H. Are enrolled in an approved CTE teacher preparation program and have either a minimum of one year of related work experience and/or take and pass an industry accepted examination and have an employment and support commitment

• Option I. Are currently certified 7-12 grade teachers in any subject area with two years of documented work experience or who hold industry-recognized credentials, where available, in the related CTE area and have an employment and support commitment

The proposed amendment provides additional opportunities and flexibility for individuals with specific technical and career experience to obtain a Transitional A teaching certificate in their area of expertise, or a related area, thus allowing them to teach CTE subjects at the secondary school level. This will help to increase the supply of qualified, certified teachers in the career and technical education field in order to satisfy the increasing demand for those teachers.

4. COSTS:

a. Costs to State government: The amendment does not impose any costs on State government, including the State Education Department.

b. Costs to local government: The amendment does not impose any costs on local government, including school districts and BOCES.

c. Costs to private regulated parties: The amendment does not impose any costs on private regulated parties.

(d) Costs to regulating agency for implementation and continued administration: See above.

5. LOCAL GOVERNMENT MANDATES:

The proposed amendment does not impose any additional program, service, duty or responsibility upon any local government.

6. PAPERWORK:

Any candidate interested in pursuing this certification pathway must submit evidence of having a commitment for three years of employment as a teacher in a public or nonpublic school or BOCES, which includes a mentored experience for the first year consisting of daily supervision by an experienced teacher during the first 20 days.

7. DUPLICATION:

The rule does not duplicate existing State or Federal requirements.

8. ALTERNATIVES:

No alternatives were considered.

9. FEDERAL STANDARDS:

There are no applicable Federal standards concerning registration and CTLE requirements for certificate holders.

10. COMPLIANCE SCHEDULE:

It is anticipated that schools districts and BOCES will be able to comply by the stated effective date.

Revised Regulatory Flexibility Analysis

(a) Small businesses:

The purpose of the proposed amendment is to address concerns raised by school districts and Board of Cooperative Educational Services (BOCES), and particularly the New York City school district, wherein they have expressed difficulty filling Career and Technical Education (CTE) positions at the secondary level. The proposed amendment will create three new pathway options for candidates to obtain a Transitional A certificate who do not meet the current requirements but who possess industry experience, credentials, or are in the process of completing certification in a CTE field.

The amendment does not impose any new recordkeeping or other compliance requirements, and will not have an adverse economic impact, on small business. Because it is evident from the nature of the rule that it does not affect small businesses, no further steps were needed to ascertain that fact and one were taken. Accordingly, a regulatory flexibility analysis for small businesses is not required and one has not been prepared.

(b) Local governments:

1. EFFECT OF RULE:

If adopted by the Board of Regents at the September 2016 Board of Regents meeting, commencing with the 2016-2017 school year, the proposed amendment creates three new pathway options to address immediate shortage areas for candidates who meet one of the following three requirements:

To provide additional certification pathways in CTE fields to address the immediate shortages in the field, the Department recommends establishing new pathway options G, H, and I for Transitional A certificates for candidates who meet one of the three options for a Transitional A certificate listed below:

• Option G. Have a minimum of two years of work experience in the CTE subject area of the certificate sought and hold an industry-related credential, where available, or pass an industry accepted examination as approved by the Department and have an employment and support commitment

• Option H. Are enrolled in an approved CTE teacher preparation

program and have either a minimum of one year of related work experience and/or take and pass an industry accepted examination and have an employment and support commitment

• Option I. Are currently certified 7-12 grade teachers in any subject area with two years of documented work experience or who hold industry-recognized credentials, where available, in the related CTE area and have an employment and support commitment

2. COMPLIANCE REQUIREMENTS:

Over the past several years, the Board of Regents has discussed the expansion of career and technical education (CTE) programs in school districts and BOCES generally and of integrated credit allowance which will in turn create a greater demand for teachers certified in CTE titles. At its November 2013 meeting, the Board of Regents was presented with recommendations that would support existing and anticipated demand for teachers certified in CTE titles.

Currently, a Transitional A certificate in a specific CTE subject is issued to permit the employment of an individual in a specific CTE education title who does not meet the requirements for an initial certificate, but who possesses the requisite occupational experience. This certificate is valid for three years, and the candidate would complete the additional requirements for an initial certificate during the three years.

The three options available for a Transitional A certificate prior to the May 2016 Board of Regents meeting were:

• Option A. Candidates who possess an associate's degree (or its equivalent) in the career and technical field in which the certificate is sought, and who have at least two years of documented and satisfactory work experience in the career and technical education subject for which a certificate is sought;

• Option B. Candidates who possess a high school diploma or its equivalent (but who do not possess an associate's degree or its equivalent in the certificate area), and who have at least four years of documented and satisfactory work experience in the career and technical education subject for which a certificate is sought; and

• Option C. Candidates who possess an associate's degree (or its equivalent) in the career and technical field in which the certificate is sought, and who have at least two years of documented and satisfactory teaching experience at the postsecondary level (excluding experience as a teaching assistant) in the career and technical education subject for which a certificate is sought.

All three Transitional A pathways described above also require:

(1) Coursework training in identification of and reporting of child abuse or maltreatment, school violence prevention and intervention, and harassment, bullying and discrimination prevention and intervention;

(2) Evidence of having achieved a satisfactory level of performance on the New York State Teacher Certification Examination Content Specialty Test in the area of the certificate; and

(3) An employment and support commitment. The candidate must submit evidence of having a commitment for three years of employment as a teacher in a public or nonpublic school or BOCES, which includes a mentored experience for the first year consisting of daily supervision by an experienced teacher during the first 20 days. However, the mentoring is not required if the candidate has two years of satisfactory employment as a teacher of students in grades 7-12 in a public or nonpublic school or BOCES.

Establishment of Additional Pathways

At its May 2016 Board of Regents meeting, the Board adopted by emergency action a proposed amendment to provide an additional opportunity for teachers to obtain a Transitional A certificate through a Pathway D Option. It is anticipated that this will be permanently adopted by the Board at its September 2016 meeting. Candidates may be eligible for a Transitional A certificate if they hold a full private career school teacher license issued by the Department's Bureau of Proprietary School Supervision (BPSS) and have taught under that license for two years in a New York State licensed private career school and meet certain other requirements.

Currently, pursuant to Section 126.6 of the Commissioner's Regulations, there are three license levels (permit, provisional and full license) for teachers licensed by BPSS. To apply for a permit, provisional or full license, candidates must complete an application and provide BPSS with all necessary documentation required for the level and license area(s) in which the candidate wishes to be licensed in. Currently, the requirements for a full Private Career School Teacher License by BPSS are (for most CTE subject areas):

(1) To qualify for a full license, candidates must have completed a total of 90-clock hours in Professional Education, including methods of teaching or a total of 9 semester credits of college course work in Professional Education.

Full licenses are valid for 4 years and are renewable.

During the three years that a candidate has a Transitional A certificate, he/she may apply for and complete all requirements for an Initial Certificate. These requirements include completion of college coursework, receiving a passing score on the NYSTCE exams, and completion of a 40 day student teaching placement in the certificate area sought.

Proposed Amendment

To provide additional certification pathways in CTE fields to address the immediate shortages in the field, the Department recommends establishing new pathway options G, H, and I for Transitional A certificates for candidates who meet one of the three requirements listed below:

• Option G. Have a minimum of two years of work experience in the CTE subject area of the certificate sought and hold an industry-related credential, where available, or pass an industry accepted examination as approved by the Department and have an employment and support commitment

• Option H. Are enrolled in an approved CTE teacher preparation program and have either a minimum of one year of related work experience and/or take and pass an industry accepted examination and have an employment and support commitment

• Option I. Are currently certified 7-12 grade teachers in any subject area with two years of documented work experience or who hold industry-recognized credentials, where available, in the related CTE area and have an employment and support commitment

The proposed amendment provides additional opportunities and flexibility for individuals with specific technical and career experience to obtain a Transitional A teaching certificate in their area of expertise, or a related area, thus allowing them to teach CTE subjects at the secondary school level. This will help to increase the supply of qualified, certified teachers in the career and technical education field in order to satisfy the increasing demand for those teachers.

3. PROFESSIONAL SERVICES:

The proposed rule does not impose any additional professional services requirements on local governments.

4. COMPLIANCE COSTS:

There are no additional compliance costs on local governments.

5. ECONOMIC AND TECHNOLOGICAL FEASIBILITY:

The rule does not impose any additional technological requirements on districts or BOCES.

6. MINIMIZING ADVERSE IMPACT:

The rule seeks to address the issue school districts and BOCES have expressed relating to difficulties finding certified teachers to serve as CTE teachers at the secondary level. The proposed amendment seeks to provide flexibility to these school districts by providing additional certification pathways for teachers in CTE in grades 7-12.

7. LOCAL GOVERNMENT PARTICIPATION:

Comments on the proposed rule were solicited from school districts through the offices of the district superintendents of each supervisory district in the State, and from the chief school officers of the five big city school districts.

Revised Rural Area Flexibility Analysis

1. TYPES AND ESTIMATED NUMBER OF RURAL AREAS:

If adopted by the Board of Regents at the September 2016 Board of Regents meeting, commencing with the 2016-2017 school year, the proposed amendment creates three new pathway options for candidates to obtain a Transitional A certificate who do not meet the current requirements but who possess industry experience, credentials, or are in the process of completing certification in a CTE field. This would allow those who qualify to teach CTE subjects at the secondary level.

This amendment applies to all districts and BOCES in New York, including those in the 44 rural counties with fewer than 200,000 inhabitants and the 71 towns and urban counties with a population density of 150 square miles or less.

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

Over the past several years, the Board of Regents has discussed the expansion of career and technical education (CTE) programs in school districts and BOCES generally and of integrated credit allowance which will in turn create a greater demand for teachers certified in CTE titles. At its November 2013 meeting, the Board of Regents was presented with recommendations that would support existing and anticipated demand for teachers certified in CTE titles.

Currently, a Transitional A certificate in a specific CTE subject is issued to permit the employment of an individual in a specific CTE education title who does not meet the requirements for an initial certificate, but who possesses the requisite occupational experience. This certificate is valid for three years, and the candidate would complete the additional requirements for an initial certificate during the three years.

The three options available for a Transitional A certificate prior to the May 2016 Board of Regents meeting were:

• Option A. Candidates who possess an associate's degree (or its equivalent) in the career and technical field in which the certificate is sought, and who have at least two years of documented and satisfactory work experience in the career and technical education subject for which a certificate is sought;

• Option B. Candidates who possess a high school diploma or its equivalent (but who do not possess an associate's degree or its equivalent in the certificate area), and who have at least four years of documented and satisfactory work experience in the career and technical education subject for which a certificate is sought; and

• Option C. Candidates who possess an associate's degree (or its equivalent) in the career and technical field in which the certificate is sought, and who have at least two years of documented and satisfactory teaching experience at the postsecondary level (excluding experience as a teaching assistant) in the career and technical education subject for which a certificate is sought.

All three Transitional A pathways described above also require:

(1) Coursework training in identification of and reporting of child abuse or maltreatment, school violence prevention and intervention, and harassment, bullying and discrimination prevention and intervention;

(2) Evidence of having achieved a satisfactory level of performance on the New York State Teacher Certification Examination Content Specialty Test in the area of the certificate; and

(3) An employment and support commitment. The candidate must submit evidence of having a commitment for three years of employment as a teacher in a public or nonpublic school or BOCES, which includes a mentored experience for the first year consisting of daily supervision by an experienced teacher during the first 20 days. However, the mentoring is not required if the candidate has two years of satisfactory employment as a teacher of students in grades 7-12 in a public or nonpublic school or BOCES.

Establishment of Additional Pathways

At its May 2016 Board of Regents meeting, the Board adopted by emergency action a proposed amendment to provide an additional opportunity for teachers to obtain a Transitional A certificate through a Pathway D Option. It is anticipated that this will be permanently adopted by the Board at its September 2016 meeting. Candidates may be eligible for a Transitional A certificate if they hold a full private career school teacher license issued by the Department's Bureau of Proprietary School Supervision (BPSS) and have taught under that license for two years in a New York State licensed private career school and meet certain other requirements.

Currently, pursuant to Section 126.6 of the Commissioner's Regulations, there are three license levels (permit, provisional and full license) for teachers licensed by BPSS. To apply for a permit, provisional or full license, candidates must complete an application and provide BPSS with all necessary documentation required for the level and license area(s) in which the candidate wishes to be licensed in. Currently, the requirements for a full Private Career School Teacher License by BPSS are (for most CTE subject areas):

(1) To qualify for a full license, candidates must have completed a total of 90-clock hours in Professional Education, including methods of teaching or a total of 9 semester credits of college course work in Professional Education.

Full licenses are valid for 4 years and are renewable.

During the three years that a candidate has a Transitional A certificate, he/she may apply for and complete all requirements for an Initial Certificate. These requirements include completion of college coursework, receiving a passing score on the NYSTCE exams, and completion of a 40 day student teaching placement in the certificate area sought.

Proposed Amendment

To provide additional certification pathways in CTE fields to address the immediate shortages in the field, the Department recommends establishing new pathway options G, H, and I for Transitional A certificates for candidates who meet one of the three requirements listed below:

• Option G. Have a minimum of two years of work experience in the CTE subject area of the certificate sought and hold an industry-related credential, where available, or pass an industry accepted examination as approved by the Department and have an employment and support commitment

• Option H. Are enrolled in an approved CTE teacher preparation program and have either a minimum of one year of related work experience and/or take and pass an industry accepted examination and have an employment and support commitment

• Option I. Are currently certified 7-12 grade teachers in any subject area with two years of documented work experience or who hold industry-recognized credentials, where available, in the related CTE area and have an employment and support commitment

The proposed amendment provides additional opportunities and flexibility for individuals with specific technical and career experience to obtain a Transitional A teaching certificate in their area of expertise, or a related area, thus allowing them to teach CTE subjects at the secondary school level. This will help to increase the supply of qualified, certified teachers in the career and technical education field in order to satisfy the increasing demand for those teachers.

3. COSTS:

The proposed amendment does not impose any costs on candidates for the Transitional A certificate, school districts or BOCES across the State, including those located in rural areas of the State.

4. MINIMIZING ADVERSE IMPACT:

The rule seeks to provide additional flexibility to school districts by addressing the issue raised by school districts who were having difficulty finding CTE teachers to fill positions at the secondary level, as this concern was raised by the field.

5. RURAL AREA PARTICIPATION:

Copies of the rule have been provided to Rural Advisory Committee for review and comment.

Revised Job Impact Statement

The purpose of proposed amendment is to address concerns raised by school districts and Board of Cooperative Educational Services (BOCES) that have expressed difficulty in filling Career and Technical Education (CTE) positions at the secondary level. The proposed amendment will create three new pathway options for candidates to obtain a Transitional A certificate who do not meet the current requirements but who possess industry experience, credentials, or are in the process of completing certification in a CTE field.

Because the proposed amendment seeks to address an issue raised by the field in employing CTE teachers at the secondary level, it is evident from the nature of the proposed rule that it will have no impact on the number of jobs or employment opportunities in New York State, and no further steps were needed to ascertain that fact and none were taken. Accordingly, a job impact statement is not required and one has not been prepared.

Assessment of Public Comment

Since publication of a Notice of Proposed Rule Making in the State Register on June 29, 2016, the State Education Department (SED) received the following comment:

1. COMMENT:

One commenter raised the concern that the proposed pathways for CTE certification are a "patchwork approach" and that a broader discussion of CTE certification, including a more comprehensive and system-wide approach to CTE teacher certification is required moving forward. The commenter suggested that NYSED convene a work group to look at a more comprehensive approach to CTE certification and to re-convene the CTE Content Advisory Panel to discuss future changes to advance the CTE certification pathways. However, the commenter also expressed appreciation that the Department is recognizing the value of work experience and industry-credentials within the proposed amendment.

The commenter also expressed concern over the requirement that the amendment requires an employment and support commitment on the part of the candidate, and that districts and BOCES do not have the ability to connect with candidates as the need for a CTE teacher arises.

DEPARTMENT RESPONSE:

SED agrees that a more comprehensive approach to the CTE teacher certification pathways is needed, and is currently in the process of working with the field to further revise the regulations relating to CTE teacher certification. However, the proposed amendment seeks to address the immediate concerns raised by the field relating to shortages in CTE teachers by providing an additional pathway to obtain a Transitional A teaching certificate.

In response to the request to convene a work group to look at a more comprehensive approach to CTE certification, the Department will take this under advisement, and will work to address this concern in the most appropriate way given the understaffing of the Department.

With respect to the concerns relating to the need for employment and support commitment, this is required for all candidates seeking a Transitional A certificate and therefore the Department does not believe a revision to the regulations is needed. Moreover, the purpose behind the employment and support commitment is to ensure that the teacher has the needed supports and mentoring when he/she enters the classroom.

Department of Environmental Conservation

NOTICE OF ADOPTION

Distributed Generation (DG) Sources That Feed the Distribution Grid or Produce Electricity for Use at Host Facilities or Both

I.D. No. ENV-51-15-00004-A

Filing No. 1016

Filing Date: 2016-11-01

Effective Date: 30 days after filing

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

Action taken: Amendment of Part 200 and Subpart 227-2; addition of Part 222 to Title 6 NYCRR.

Statutory authority: Environmental Conservation Law, sections 1-0101, 3-0301, 19-0103, 19-0105, 19-0301, 19-0303, 19-0305, 19-0311, 71-2103 and 71-2105

Subject: Distributed generation (DG) sources that feed the distribution grid or produce electricity for use at host facilities or both.

Purpose: Establish emission limits for distributed generation sources.

Substance of final rule: The Department of Environmental Conservation (Department) proposes to adopt 6 NYCRR Part 222, 'Distributed Generation Sources' and revise Part 200, 'General Provisions' and Subpart 227-2, 'Reasonably Available Control Technology (RACT) for Oxides of Nitrogen (NO_x)' to conform to new Part 222. A distributed generation (DG) source is defined in Section 222.2(b)(2) as a stationary reciprocating or rotary internal combustion engine that feeds into the distribution grid or produces electricity for use at the host facility or both.

Applicability

Part 222 will apply to owners and operators of distributed generation (DG) sources where the potential NO_x emissions are below the major source threshold set forth in paragraph 201-2.1(b)(21) of Part 201 and that have maximum mechanical output ratings of 200 horsepower (hp) or greater in the New York City metropolitan area or 400 hp or greater elsewhere in the state.

Emergency generators owned and operated by municipalities or municipal agencies may be used when the usual supply of power is available if doing so would prevent a violation of the Clean Water Act or Article 17 of the New York State Environmental Conservation Law through April 30, 2021. Thereafter, such sources will be subject to the emission standards set forth in Section 222.4 of Part 222.

Definitions and General Provisions

Definitions specific to Part 222 are presented in Part 222. Besides the definition of DG sources presented above, the other key term defined in Section 222.2 is 'economic dispatch source': "(a) distributed generation source used to reduce energy costs or ensure a reliable electricity supply for a facility. A distributed generation source that is not an emergency power generating stationary internal combustion engine as defined in section 200.1 is considered to be an economic dispatch source" (see paragraph 222.2(b)(3)).

A requirement that owners or operators of economic sources subject to Part 222 notify the Department in writing no later than January 2, 2017 regarding whether the sources will continue to be operated as economic dispatch sources or operated as emergency generators is incorporated into Section 222.3. If a source owner or operator fails to notify the Department as required in paragraph 222.3(a)(1), the Department will assume that such sources remain classified as economic dispatch sources.

Control Requirements (Section 222.4)

Economic dispatch sources must meet the following NO_x standards effective on May 1, 2017:

1. combined cycle combustion turbines firing natural gas: 25 parts per million on a dry volume basis corrected to 15 percent oxygen;

2. combined cycle combustion turbines firing oil: 42 parts per million on a dry volume basis corrected to 15 percent oxygen;

3. simple cycle combustion turbines firing natural gas: 50 parts per million on a dry volume basis corrected to 15 percent oxygen;

4. simple cycle combustion turbines firing oil: 100 parts per million on a dry volume basis corrected to 15 percent oxygen;

5. reciprocating engines firing natural gas: 1.5 grams per brake horsepower-hour.

6. reciprocating engines firing distillate oil (solely or in combination with other fuels): 2.3 grams per brake horsepower-hour.

Diesel-fired economic dispatch sources will be subject to a particulate matter limit of 0.30 grams per brake horsepower-hour effective May 1, 2017. An alternative compliance option is to equip affected sources with pollution control devices designed to remove 85 percent or more of the particulate matter from the exhaust stream.

Alternative Compliance Options

There are five alternative compliance options for owners or operators of economic dispatch sources which cannot meet the proposed NO_x emission limits set forth in Part 222. First, an owner or operator could apply for a variance for a source-specific NO_x limit. The owner or operator must provide sufficient documentation or other proof to convince the Department that it is economically or technically infeasible for the source to comply with the appropriate NO_x limit.

Second, an owner or operator may permanently shut down a DG source by May 1, 2018. The intent to shut down a source must be recorded as part of an enforceable permit modification prior to May 1, 2017.

Third, an owner or operator of a diesel-fired economic dispatch source may convert the source to fire natural gas by May 1, 2018. The intent to shut down a source must be recorded as part of an enforceable permit modification prior to May 1, 2017.

The fourth option is available to facilities with renewable generation systems (RGS).[1] An effective emission rate, calculated using Equation 1 (below), may be compared to the applicable NO_x emission limit to demonstrate compliance with the emission limit. This option may only be used in cases where the NO_x standard is in units of grams per brake horsepower-hour. This approach allows a facility to take credit for electricity generated by the RGS.

Equation 1. $E = 0.338*N/(D+R)$

where:

E = effective emission rate (grams per brake horsepower-hour);

N = NO_x emissions (pounds);

D = electricity generated by the DG source (megawatt-hours); and

R = electricity generated by the RGS (megawatt-hours).

The fifth option (subdivision 222.5(b)) is available only to DG sources enrolled during calendar years 2014 or 2015 in demand response programs established to maintain the reliability of the electric grid. Eligible sources would be granted an extra year (until May 1, 2018) to comply with the emission standards set forth in Section 222.4 provided:

1. the source owner or operator complies with the notification requirement of subdivision 222.3(a) of Part 222;

2. the source owner or operator provides evidence that the source was enrolled during calendar year 2014 or 2015 in a demand response program established to maintain the reliability of the electric grid; and

3. the source owner or operator does not pledge an amount of generation during calendar year 2017 greater than that pledged during 2014 or 2015.

The Department may extend the compliance date for sources subject to subdivision 222.5(b) of Part 222 until May 1, 2019 based, at least in part, on a determination by the New York State Department of Public Service that an extension is needed to preserve reliability of the electric grid in the particular zone or subzone in which an affected source is located.

Emissions Testing

Sources subject to emission limits must be tested by April 30, 2017 and must undergo additional emissions testing once every 10 years. Emergency generators are exempt from this provision since this class of sources will not be subject to any emission limits.

Changes to Part 200 and Subpart 227-2

The definition of a 'stationary internal combustion engine' under current 6 NYCRR Subpart 227-2.2(b)(11) will be removed and added to Section 200.1 since the term will now be applicable to multiple regulations.

[1] A renewable generation system is defined in Section 222.2 as a photovoltaic or wind power electricity generating system.

Final rule as compared with last published rule: Nonsubstantial changes were made in sections 222.1(c), 222.3(a)(1), 222.4(a), 222.5(b), (d), (e), (f)(2) and 222.6(a).

Text of rule and any required statements and analyses may be obtained from: John D. Barnes, P.E., New York State Department of Environmental Conservation, 625 Broadway, Albany, NY 12233-3251, (518) 402-8396, email: air.regs@dec.ny.gov

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

Summary of Revised Regulatory Impact Statement

Distributed generation (DG) sources are engines used by a site to supply electricity outside that which is supplied by the electrical grid. This

on-site generation of electricity by DG sources is used by a wide-range of facilities either in non-emergency situations that reduce demand on the electric grid and preserve the overall reliability of the grid, or in emergency situations when the usual supply of power from central station power plants becomes unavailable. Currently, the exact number of DG sources in New York is unknown, but the Northeast States for Coordinated Air Use Management (NESCAUM) estimated that there may be over 15,000 diesel generators in the state,[1] which provide electricity in times of high demand or during emergency events.

Therefore, the Department of Environmental Conservation (Department) is proposing to adopt 6 NYCRR Part 222, 'Distributed Generation Sources' and make conforming revisions to Part 200, 'General Provisions' and Subpart 227-2, 'Reasonably Available Control Technology (RACT) for Oxides of Nitrogen (NO_x)' to establish emission standards, monitoring requirements and record keeping requirements for certain DG sources in New York State. The proposed rule will apply to DG sources not currently regulated under Subpart 227-2 or a federal New Source Performance Standard (NSPS), as long as the federal standards are less than or equal to the Part 222 emission limits.

The statutory authority to promulgate Part 222 and the revise 6 NYCRR Part 200 and Subpart 227-2 is found in the New York Environmental Conservation Law (ECL), Sections 1-0101, 3-0301, 19-0103, 19-0105, 19-0301, 19-0303, 19-0305, 19-0311, 71-2103 and 71-2105.

As required by the New York State Administrative Procedures Act (SAPA), a Regulatory Impact Statement (RIS) is being submitted with this rulemaking package and sets forth, among other things, the Department's reasoning for this rulemaking, costs for complying with the rule, and a summary of considered alternatives to this rulemaking. A summary of the RIS is presented below.

I. NEEDS AND BENEFITS

The Department is proposing to adopt Part 222 to reduce NO_x emissions from DG sources, thereby helping New York attain the federal 2008 and 2015 ozone National Ambient Air Quality Standard (NAAQS) and protect human health and welfare. In particular, the proposed rule is a critical component in the state's ability to meet the federal 2008 and 2015 ozone NAAQS in the New York City metropolitan area (NYMA), which is currently designated as non-attainment for ozone. The increased utilization of certain DG sources, especially uncontrolled diesel-fired generators, has made it increasingly difficult for the state to comply with the 2008 and 2015 ozone NAAQS. This proposed rule will address attainment of the 2008 and 2015 ozone NAAQS as well as the public health impacts of NO_x and PM, pollutants emitted by DG sources. In addition, NYMA is currently meeting the PM2.5 NAAQS, but only by a small margin. The PM controls in the proposed rule will help ensure that NYMA continues to meet the standard.

For purposes of determining which DG sources are subject to the emission limits under proposed Part 222, the Department divided DG sources into two primary regulatory classifications: emergency power generating stationary reciprocating internal combustion engines ("emergency generators") and economic dispatch sources. Emergency generators, defined in 6 NYCRR 200.1(cq), are not subject to the proposed emission limits. Economic dispatch sources are subject to the proposed emissions limits.

Economic dispatch sources are defined in proposed Part 222 as DG sources used to reduce energy costs or ensure reliable electricity for a facility. Any DG source that is not exclusively an emergency generator, is considered to be an economic dispatch source for purposes of the rule, including CHP systems and DG sources enrolled in demand response programs. Generally, economic dispatch sources are used in two ways: peak load generation; and base load generation. Peak load generation is used during times when the cost of electricity supplied by utilities is high. Alternatively, base load generation systems are designed to provide all or a portion of the electricity demand for a facility throughout the year.

DG sources enrolled in demand response programs are typically uncontrolled emergency generators that operate when called upon by a sponsoring organization to reduce demand on the electric grid, thus preserving the reliability of the grid. These sources are typically used on high electric demand days, which generally correspond to days with high ground-level ozone concentrations. Demand response programs are sponsored by the New York Independent System Operator (NYISO), Long Island Power Authority (LIPA), New York Power Authority (NYPA) and Consolidated Edison Company of New York (Con Edison). According to a NYISO filing, DG resources comprised approximately 13 percent of the total capacity enrolled in the NYISO programs in May 2011.[2] The remainder of demand response resources consisted of curtailment and load shifting resources. Facilities enrolled in demand response programs receive revenue from the program sponsors for guaranteeing load reductions (kW) or for electricity generated and/or curtailed (kWh).

The total capacity of the DG sources enrolled in the NYISO demand response programs in the New York City metropolitan area was 134.7 MW in May 2011. The average duration of a demand response event is approximately six (6) hours. Assuming all of these DG sources operate during a typical event, these sources would emit approximately 13 tons of NO_x per event. This estimate does not include emissions from generation sources enrolled in demand response programs sponsored by Con Edison, NYPA or LIPA. The NO_x emissions estimate for DG sources enrolled in NYISO's demand response programs would be reduced to 2.7 tons per day if the sources were required to meet the proposed NO_x emission standard. Since demand response programs are typically activated on high ozone days, a 10 ton per day reduction in emissions from these sources is a step towards attaining the 2008 and 2015 ozone NAAQS.

Further, the New York City Energy Policy Task Force estimated that the total capacity of emergency generators in New York City was 1,320 MW.[3] Potentially, all of these emergency generators could be enrolled in demand response programs.[4] If this estimate is accurate and all such sources are used as demand response sources, the estimated daily NO_x emissions would be more than 127 tons. It would be very difficult to develop a regulatory strategy to bring the NYMA into attainment with the 2008 and 2015 ozone NAAQS if all emergency generators in New York City were allowed to participate in demand response programs without requiring pollution controls.

DG sources have short stacks, which means the exhaust plumes are not dispersed as effectively as plumes from central station power plants. Therefore, emissions from DG sources can have a greater impact on populations living and working in the vicinity of the sources. DG sources emit NO_x, a precursor to ground-level ozone, which can irritate lung tissues and cause symptoms such as coughing, wheezing and difficulty breathing.[5] Additionally, chronic exposure to ground-level ozone may cause permanent lung damage.[6] DG sources also emit PM which has been linked to adverse health impacts including aggravated asthma, decreased lung function, irregular heartbeat and heart attacks.[7]

DG sources should be subject to emission standards to reduce public health impacts since these sources displace the electricity traditionally generated by central station power plants which are subject to strict emission limits. The reliance on demand response programs is a disincentive for building new central station power plants since the electricity generated during demand response events is necessary to maintain the integrity of the grid.

Therefore, the NO_x and PM emission limits established for DG sources in this proposed rule will help reduce public health impacts, especially for individuals living and working near them, and the reduction in ground-level ozone from the proposed NO_x limits will help the state attain the federal 2008 and 2015 ozone NAAQS.

II. COMPLIANCE REQUIREMENTS

On the effective date of this rule, Part 222 will apply to DG sources that meet the following applicability thresholds:

1. Mechanical output rating of 200 horsepower (hp) or greater for DG sources located in the NYMA; and

2. Mechanical output rating of 400 hp or greater for sources located outside of the NYMA.

Emergency generators owned by municipalities or municipal agencies may by operated in cases where the usual supply of electricity is still available if such operation would prevent a violation of the Clean Water Act or Article 17 of the ECL through April 30, 2021. This would allow such generators to run in order to prevent direct sewage discharges to waterways in the state, while giving municipalities time to control emissions from their emergency generators. Beginning May 1, 2021, such sources would be required to meet the standards set forth in Section 222.4 of Part 222 or be replaced with engines meeting standards adopted by the United States Environmental Protection Agency.

On May 1, 2017, the following NO_x emission limits will apply to economic dispatch sources subject to Part 222:

-- natural gas-fired simple cycle combustion turbines: 50 parts per million by volume on a dry basis (ppmvd) corrected to 15 percent O_2;

-- oil-fired simple cycle combustion turbines: 100 ppmvd corrected to 15 percent O_2;

-- natural gas-fired combined cycle combustion turbines: 25 ppmvd corrected to 15 percent O_2;

-- oil-fired combined cycle combustion turbines: 42 ppmvd corrected to 15 percent O_2;

-- natural gas-fired engines: 1.5 grams per brake horsepower-hour (g/bhp-h);

-- diesel-fired engines: 2.3 g/bhp-h

Also on May 1, 2017, diesel-fired economic dispatch sources must meet a PM emission limit of 0.30 g/bhp-h, or be equipped with a pollution control device designed to remove 85 percent or more of PM from the exhaust stream. Part 222 compliance requirements are further described in the RIS.

III. COSTS

Selective catalytic reduction (SCR) systems can reduce the NO_x emissions from lean-burn natural gas fired-engines and diesel-fired engines by

up to 90 percent.[8] The capital cost (installed) of SCR control systems range from $188,000 (1200 hp engine) to $304,000 (2000 hp engine).

The Department evaluated the costs for operating SCR systems under a wide range of scenarios over a 10-year period. Control costs of $5,000 per ton of NO_x reduced are considered reasonable under Subpart 227-2. For pre-NSPS engines, the cost per ton of NO_x reduced would be less than $5,000 for sources operating 1,500 hours per year or more. For post-NSPS engines, the $5,000 per ton threshold would be met when operating 3,000 hours per year or more. Therefore, in the opinion of the Department, the costs to operate SCR systems are reasonable.

Non-selective catalytic reduction (NSCR) systems can reduce the NO_x emissions from rich-burn natural gas fired-engines engines by up to 98 percent.[9] The capital cost (installed) of NSCR control systems range from $53,000 (1200 hp engine) to $83,000 (2000 hp engine). The cost per ton of NO_x reduced is less than $5,000 when operating more than 200 hours per year.

'Compliance Testing'

The emission testing costs are estimated to be $8,000 ($NO_x$ only) to $15,000 ($NO_x$ and PM) per source.[10] Emission testing must be performed once every ten years. Emission testing for PM is not required for engines equipped with pollution control devices verified by the California Air Resources Board (CARB) as meeting the Level 3 or Level 3 Plus Classification per the California Code of Regulations, Title 13, Sections 2700-2711.

'Alternative Compliance Options'

There are five alternative compliance options for owners or operators of economic dispatch sources set forth in Section 222.5 of Part 222. These options include source-specific emission rates in cases where it is economically or technically infeasible to meet the NO_x standard; additional time to permanently shut down a DG source; converting a diesel-fired economic dispatch source to fire natural gas; and a credit for using a renewable generation system (photovoltaic or wind generation systems). A one-year extension of the compliance date for sources enrolled in demand response programs established to maintain reliability of the electric grid is included in the rule. This provision is limited to DG sources enrolled in demand response programs in 2014 or 2015.

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[1] "Stationary Diesel Engines in the Northeast: An Initial Assessment of the Regional Population, Control Technology Options and Air Quality Policy Issues", NESCAUM, June 2003, pg. 26.

[2] "Semi-Annual Compliance Report of Demand Response Programs", New York Independent System Operator, June 1, 2011.

[3] "New York City Energy Policy: An Electricity Resource Roadmap", New York City Energy Policy Task Force, January 2004, page 32.

[4] At which point such sources would no longer be considered emergency generators.

[5] "Health Effects", EPA (www.epa.gov/airquality/ozonepollution/health.html)

[6] Ibid.

[7] United States Environmental Protection Agency, www.epa.gov/pm/health.html

[8] "NO_x Control for Stationary Gas Engines", Wilson Chu (Johnson-Matthey), Advances in Air Pollution Control Technology, MARAMA Workshop, May 19, 2011.

[9] "NO_x Control for Stationary Gas Engines", Wilson Chu (Johnson-Matthey), Advances in Air Pollution Control Technology, MARAMA Workshop, May 19, 2011.

[10] Stack testing costs are based upon an informal Department survey of several stack testing companies.

Revised Regulatory Flexibility Analysis

The Department of Environmental Conservation (Department) proposes to adopt 6 NYCRR Part 222, 'Distributed Generation Sources' and revise Part 200, 'General Provisions' and Subpart 227-2, 'Reasonably Available Control Technology (RACT) for Oxides of Nitrogen (NO_x)' to conform to new Part 222. A distributed generation (DG) source is any stationary internal combustion engine used to produce electricity exclusively for use at the host facility. The purpose of this rulemaking is to establish emission limits, recordkeeping and testing requirements for DG sources.

EFFECT OF THE RULE

Distributed generation can be used to meet all or part of the electricity demand of any facility for short periods of time (e.g., emergency generator use during a blackout) or year-round. The type of DG application depends upon the needs of the facility (e.g., the need for a constant, reliable electricity supply) and economic considerations. Distributed generation is used in a wide range of commercial and industrial facilities including, but not limited to, hospitals, financial institutions, colleges, shopping centers, farms, apartment complexes and office buildings. It is estimated that as many as 26,000 sites in New York could potentially use combined heat and power (CHP) systems.[1,2] Although not all of those sites would use CHP systems, this estimate provides insight as to the number of sites where DG applications might be used. Small businesses and local governments with DG sources other than emergency generators would be subject to emission standards and emissions testing requirements set forth in Part 222.

Energy services companies (ESCOs) would also be affected by Part 222. ESCOs enroll facilities into demand response (DR) programs sponsored by the New York Independent System Operator and some transmission operators. ESCOs' DR portfolios contain curtailment, load shifting, energy efficiency and DG resources. Most DG resources in these portfolios are uncontrolled, diesel-fired engines that would be subject to NO_x and PM emission standards set forth in Section 222.4 of the rule. These standards would take effect on May 1, 2017. Post-combustion pollution control systems would likely be required for most engines that commenced operation prior to the effective date of Part 222 in order to meet the emission standards. There is a possibility that owners of generators enrolled in DR programs may not make the necessary investments to meet the emission standards and would be dropped from ESCOs' DR portfolios resulting in a reduction in income for both the ESCO and the source owner.[3] DG resources comprised 13 percent of the resources enrolled in the NYISO's Emergency Demand Response Program and Special Case Resources Program (combined) as of May 2011.[4] Therefore, it is expected that the provisions of Part 222 would minimally impact ESCOs.

COMPLIANCE REQUIREMENTS

On the effective date of this rule, Part 222 would apply to DG sources that meet the following thresholds:

1. mechanical output rating of 200 horsepower (hp) or greater for sources located in the New York City metropolitan area; and

2. mechanical output rating of 400 hp or greater for sources located outside of the New York City metropolitan area.

Emergency generators owned by municipalities or municipal agencies may by operated in cases where the usual supply of electricity is still available if such operation would prevent a violation of the Clean Water Act or Article 17 of the ECL through April 30, 2021. The purpose of this provision is to allow such generators to run in order to prevent direct sewage discharges to waterways in the state. Beginning May 1, 2021, such sources would be required to meet the standards set forth in Section 222.4 of Part 222 or be replaced with engines meeting standards adopted by the United States Environmental Protection Agency.

Also on the effective date of this rule, the maintenance and testing of emergency power generating stationary internal combustion engines would be prohibited during the hours of 1:00 pm and 8:00 pm during the period of May 1 through September 30 of each year.

By January 2, 2017, owners or operators of DG sources required to operate under permits or registration certificates must notify the Department whether the sources would be operated as emergency generators or economic dispatch sources. In cases where such notification is not provided by the compliance date, the DG source would be considered an economic dispatch source for regulatory purposes.

On May 1, 2017, the following NO_x emission limits would apply to economic dispatch sources subject to Part 222:

- natural gas-fired simple cycle combustion turbines: 50 parts per million on a dry volume basis (ppmvd) corrected to 15 percent O_2
- oil-fired simple cycle combustion turbines: 100 ppmvd corrected to 15 percent O_2
- natural gas-fired combined cycle combustion turbines: 25 ppmvd corrected to 15 percent O_2
- oil-fired combined cycle combustion turbines: 42 ppmvd corrected to 15 percent O_2
- natural gas engines: 1.5 grams per brake horsepower-hour (g/bhp-h)
- diesel-fired engines: 2.3 g/bhp-h

Also on May 1, 2017, diesel-fired DG sources must be in compliance with one of the following requirements regarding particulate emissions:

a. must be equipped with a pollution control device designed to remove 85 percent or more of the PM in the exhaust stream; or

b. must be in compliance with a particulate emission limit of 0.30 g/bhp-h.

By April 30, 2017, owners and operators of DG sources subject to an emission limit(s) must conduct an initial emissions test to demonstrate compliance with the emission limits set forth in Part 222. Additional testing must be conducted at a frequency of once every 10 years. Also, the rule requires owners and operators of DG sources to notify DEC 60 days prior to testing and to submit a copy of the test report to DEC within 60 days following the test. Records of the emission tests must be maintained and made available to the DEC.

Emission testing for PM is not required for engines equipped with pollution control devices verified by the California Air Resources Board (CARB) as meeting the Level 3 or Level 3 Plus classification per the California Code of Regulations, Title 13, Sections 2700-2711.

Within one year of the effective date of the rule or within 12 months of commencing operation of a DG source subject to the rule, whichever is later, the owner and operator of the source must conduct an initial tune-up of the source. Additionally, the DG source must be tuned-up at least once every 12 months. Records of annual tune-ups must be maintained at the facility for a period of five years.

PROFESSIONAL SERVICES

The services of an engineering consultant may be required in order to complete a permit. A stack testing company would be required to conduct the emissions testing required in 222.6. The services of a certified technician may be required to conduct the annual tune-up required in Section 222.4.

COMPLIANCE COSTS

The costs for post-combustion control systems are presented in the following sections for 1200 hp and 2000 hp engines. As a point of comparison, replacement costs for new 1200 hp or 2000 hp engines that meet the NSPS requirements range from $525,000 to $1,000,000.[5,6]

Selective Catalytic Reduction (SCR) Systems

Selective catalytic reduction (SCR) systems can reduce the NO_x emissions from lean-burn natural gas fired-engines and diesel-fired engines by up to 90 percent.[7] The capital cost (installed) of SCR control systems are presented in Table 1.

Table 1: Capital Costs for SCR Systems

Cost Component	1200 hp Engine	2000 hp Engine
SCR System[8]	$103,000	$171,700
Installation	$61,800	$103,000
Taxes	$8,300	$13,800
Testing[9]	$15,000	$15,000
Total Cost	$188,100	$303,500

Operational costs vary depending upon several factors. The primary driver is the reagent (urea) cost. The other operational factors DEC considered in developing cost estimates for SCR systems were insurance, maintenance and labor costs.

The Department evaluated the costs for operating SCR systems under a wide range of scenarios over a 10-year period. Control costs of $5,000 per ton of NO_x reduced are considered reasonable under Subpart 227-2. For pre-NSPS engines, the cost per ton of NO_x reduced would be less than $5,000 for sources operating 1,500 hours per year or more. For post-NSPS engines, the $5,000 per ton threshold would be met when operating 3,000 hours per year or more. Therefore, in the opinion of the Department, the costs to operate SCR systems are reasonable.

Non-Selective Catalytic Reduction (NSCR) Systems

Non-selective catalytic reduction (NSCR) systems can reduce the NO_x emissions from rich-burn natural gas fired-engines engines by up to 98 percent.[10] The capital cost (installed) of NSCR control systems are presented in Table 2.

Table 2: Capital Costs for NSCR Systems

Cost Component	1200 hp Engine	2000 hp Engine
SCR System	$26,700	$44,400
Installation	$16,000	$26,700
Taxes	$2,100	$3,500
Testing[11]	$8,000	$8,000
Total Cost	$52,800	$82,600

NSCR catalysts need to be replaced every five years.[12] Replacement catalysts are estimated to cost 7 percent of the original NSCR system cost. In DEC cost analyses, the cost of installing the replacement catalyst was assumed to be 60 percent of the cost of the new catalyst. Annual costs for operating NSCR include insurance, maintenance and labor. The cost per ton of NO_x reduced is less than $5,000 when operating more than 200 hours per year.

'Particulate Matter (PM) Emissions'

Particulate control equipment (e.g. - particulate traps or oxidation catalysts) may be required in order for some sources to comply with the particulate emission standard. The costs for particulate control equipment are approximately $55 per KW installed ($49,200 - $82,000 for the engine sizes discussed in this section).[13]

'Compliance Testing'

The emission testing costs are estimated to be $8,000 ($NO_x$ only) to $15,000 ($NO_x$ and PM) per source.[14] Emission testing for PM is not required for engines equipped with pollution control devices verified by the California Air Resources Board as meeting the Level 3 or Level 3 Plus Classification per Chapter 14, Title 13 of the California Code of Regulations.

MINIMIZING ADVERSE IMPACT

There were several instances where the Department incorporated measures into Part 222 to minimize the impact of the rule on small businesses or local governments. Summaries of these measures are presented below.

There are five alternative compliance options for owners or operators of economic dispatch sources set forth in Section 222.5 of Part 222. These options include source-specific emission rates in cases where it is economically or technically infeasible to meet the NO_x standard; additional time to permanently shut down a DG source; converting a diesel-fired economic dispatch source to fire natural gas; and a credit for using a renewable generation system (photovoltaic or wind generation systems). Further, a one-year extension of the compliance date for sources enrolled in demand response programs established to maintain reliability of the electric grid is included in the rule. This provision is limited to DG sources enrolled in demand response programs in 2014 or 2015.

The Department considered establishing caps on the number of sources enrolled in demand response programs to reduce emissions from this source category. The capacity of such units, measured in units of megawatts, would have been used as a basis for the caps. This alternative was rejected because the implementation of the capping provisions would put the Department in the position of determining which demand response sources could be enrolled in a demand response program by approving or denying permit applications. This could put the Department in the position of regulating demand response programs which is not within the Department's legal authority.

New biogas-fired sources would be exempt from Part 222. Farms with animal waste digesters and municipalities with waste water treatment plants would only need to comply with 40 CFR 60 Subpart JJJJ when installing and operating new DG sources fired with biogas.

SMALL BUSINESS AND LOCAL GOVERNMENT PARTICIPATION

The proposed rulemaking is the result of a stakeholder process initiated by the Department in 2001. Stakeholder Meetings were held on November 13, 2001, December 12, 2002, April 8, 2003, May 17, 2004, June 29, 2006 and June 25, 2013. Drafts of Part 222 were circulated electronically to stakeholders in May 2004, January 2005, June 2006 and May 2013. More than 175 stakeholders have been involved in the process of developing Part 222 and anyone who requested to be added to the list of stakeholders was added. The meeting of April 8, 2003 was advertised in the Department's Environmental Notice Bulletin.

Many of the participants in the stakeholder process represented small businesses and local governments. These groups include law firms, consultants, trade organizations, manufacturers, and governmental agencies that work with small businesses and local governments.

ECONOMIC AND TECHNOLOGICAL FEASIBILITY

The pollution control technologies that would be required in order for a small business or local government to comply with the emission standards incorporated into Part 222 are readily available and are proven technologies. Three-way catalyst systems for rich-burn engines and selective catalytic reduction systems are used today in a wide-range of applications.

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[1] CHP is a subset of distributed generation sources in which energy is recovered from exhaust gases to provide heat or hot water.

[2] "NYSERDA's CHP Program: Moving the Market Forward", Dana Levy and Brian Platt. Presentation at the NYSDPS CHP Technical Conference, May 13, 2013.

[3] Demand response payments are not the primary source of income for DR source owners or operators.

[4] "Semi-Annual Compliance Report on Demand Response Programs", NYISO, June 1, 2011.

[5] E-mail from Joe Suchecki (Truck & Engine Manufacturers Association) to John Barnes (DEC) dated November 8, 2013.

[6] Replacement costs as well as the costs for pollution control systems could be higher than the costs presented in this section in cases where there are space limitations or building or fire code requirements that must be met.

[7] "NO_x Control for Stationary Gas Engines", Wilson Chu (Johnson-Matthey), Advances in Air Pollution Control Technology, MARAMA Workshop, May 19, 2011.

[8] Sources: CARB 2010. Regulatory Analysis for Revisions to Stationary Diesel Engine Air Toxic Control Measure. Appendix B. Analysis of

Technical Feasibility and Costs of After-treatment Controls on New Emergency Diesel Engines; and (2) Producer Price Index, U.S. Department of Labor, Bureau of Labor Statistics.

[9] Testing costs include NO_x and PM tests (diesel engines). For natural gas-fired engines, the estimated cost is $8,000 for NO_x tests only.

[10] "NO_x Control for Stationary Gas Engines", Wilson Chu (Johnson-Matthey), Advances in Air Pollution Control Technology, MARAMA Workshop, May 19, 2011.

[11] Emissions tests for NO_x only since the PM standard does not apply to natural gas engines.

[12] E-mail from Wilson Chu (Johnson Matthey) to John Barnes (DEC) dated January 24, 2008.

[13] Sources: CARB 2010. Regulatory Analysis for Revisions to Stationary Diesel Engine Air Toxic Control Measure. Appendix B. Analysis of Technical Feasibility and Costs of After-treatment Controls on Emergency Diesel Engines; and (2) Producer Price Index, U.S. Department of Labor, Bureau of Labor Statistics.

[14] Stack testing costs are based upon an informal Department survey of several stack testing companies.

Revised Rural Area Flexibility Analysis

The Department of Environmental Conservation (Department) proposes to 1) adopt 6 NYCRR Part 222, 'Distributed Generation Sources', and 2) revise Part 200, 'General Provisions' and Subpart 227-2, 'Reasonably Available Control Technology (RACT) for Oxides of Nitrogen (NO_x)' to conform to the new Part 222. A distributed generation (DG) source is any stationary internal combustion engine used to produce electricity for use at the host facility. The purpose of this rulemaking is to establish emission limits, recordkeeping and testing requirements for DG sources that are not subject to Subpart 227-2.

TYPES AND ESTIMATED NUMBERS OF RURAL AREAS AFFECTED

Part 222 and the revisions to Part 200 will apply to facilities statewide. The primary impact of the rule will be in urban areas, especially in the New York City metropolitan area, although the rules will also apply to facilities in rural areas. The types of rural facilities that could be subject to the rules include hospitals, universities, wastewater treatment plants and farms.

COMPLIANCE REQUIREMENTS

On the effective date of this rule, Part 222 will apply to DG sources that meet the following thresholds:

1. mechanical output rating of 200 horsepower (hp) or greater for sources located in the New York City metropolitan area; and

2. mechanical output rating of 400 hp or greater for sources located outside of the New York City metropolitan area.

Emergency generators owned by municipalities or municipal agencies may by operated in cases where the usual supply of electricity is still available if such operation would prevent a violation of the Clean Water Act or Article 17 of the Environmental Conservation Law (ECL) through April 30, 2021. The purpose of this provision is to allow such generators to run in order to prevent direct sewage discharges to waterways in the state. Beginning May 1, 2021, such sources would be required to meet the standards set forth in Section 222.4 of Part 222 or be replaced with engines meeting standards adopted by the United States Environmental Protection Agency.

Also on the effective date of this rule, the maintenance and testing of emergency power generating stationary internal combustion engines will be prohibited during the hours of 1:00 pm and 8:00 pm during the period of May 1 through September 30 of each year.

By January 2, 2017, owners or operators of DG sources that are required to operate under permits or registration certificates must notify the Department whether the sources will be operated as emergency generators or economic dispatch sources. In cases where such notification is not provided by the compliance date, the DG source will be considered an economic dispatch source for regulatory purposes.

On May 1, 2017, the following NO_x emission limits will apply to economic dispatch sources subject to Part 222:

- natural gas-fired simple cycle combustion turbines: 50 parts per million on a dry volume basis (ppmvd) corrected to 15 percent oxygen (O_2)
- oil-fired simple cycle combustion turbines: 100 ppmvd corrected to 15 percent O_2
- natural gas-fired combined cycle combustion turbines: 25 ppmvd corrected to 15 percent O_2
- oil-fired combined cycle combustion turbines: 42 ppmvd corrected to 15 percent O_2
- natural gas engines: 1.5 grams per brake horsepower-hour (g/bhp-h)
- diesel-fired engines: 2.3 g/bhp-h

Also, on May 1, 2017, diesel-fired DG sources must be in compliance with one of the following requirements regarding particulate emissions:

a. must be equipped with a pollution control device designed to remove 85 percent or more of the PM in the exhaust stream; or

b. must be in compliance with a particulate emission limit of 0.30 g/bhp-h.

By April 30, 2017, owners and operators of DG sources subject to an emission limit(s) must conduct an initial emissions test to demonstrate compliance with the emission limits set forth in Part 222. Additional testing must be conducted at a frequency of once every 10 years. Also, the rule requires owners and operators of DG sources to notify the Department 60 days prior to testing and submit a copy of the test report to the Department within 60 days following the test. Records of the emission tests must be maintained, and made available to the Department.

Emission testing for PM is not required for engines equipped with pollution control devices verified by the California Air Resources Board (CARB) as meeting the Level 3 or Level 3 Plus classification per the California Code of Regulations, Title 13, Sections 2700-2711.

Within one year of the effective date of the rule or within 12 months of commencing operation of a DG source subject to the rule, whichever is later, the owner and operator of the source must conduct an initial tune-up of the source. Additionally, the DG source must be tuned-up at least once every 12 months. Records of annual tune-ups must be maintained at the facility for a period of five years.

'Professional Services'

The services of an engineering consultant may be required in order to complete a permit application. A stack testing company will be required to conduct the emissions testing required in 222.6. The services of a certified technician may be required to conduct the annual tune-up required in Section 222.4.

COSTS

Post-combustion control systems may be required in order to meet the emission limits set forth in Part 222. Selective catalytic reduction (SCR) systems may be required in order for diesel-fired engines and lean-burn natural gas-fired engines to meet the appropriate NO_x emission limit. In addition, diesel-fired engines may need to be equipped with filtering systems in order to meet the PM standard. Non-selective catalytic reduction (NSCR) systems may be required in order for rich-burn natural gas-fired engines to meet the NO_x emission limit. The costs for post-combustion control systems are presented in the following sections for 1200 hp and 2000 hp engines. As a point of comparison, replacement costs for new 1200 hp or 2000 hp engines that meet the NSPS requirements range from $525,000 to $1,000,000.[1,2]

Selective catalytic reduction systems can reduce the NO_x emissions from lean-burn natural gas fired-engines and diesel-fired engines by up to 90 percent. [3] The capital cost (installed) of SCR control systems are presented in Table 1.

Table 1: Capital Costs for SCR Systems

Cost Component	1200 hp Engine	2000 hp Engine
SCR System[4]	$103,000	$171,700
Installation	$61,800	$103,000
Taxes	$8,300	$13,800
Testing[5]	$15,000	$15,000
Total Cost	$188,100	$303,500

Operational costs vary depending upon several factors. The primary driver is the reagent (urea) cost. The other operational factors the Department considered in developing cost estimates for SCR systems were insurance, maintenance and labor costs.

The Department evaluated the costs for operating SCR systems under a wide range of scenarios over a 10-year period. Control costs of $5,000 per ton of NO_x reduced are considered reasonable under Subpart 227-2. For pre-NSPS engines, the cost per ton of NO_x reduced would be less than $5,000 for sources operating 1,500 hours per year or more. For post-NSPS engines, the $5,000 per ton threshold would be met when operating 3,000 hours per year or more. Therefore, in the opinion of the Department, the costs to operate SCR systems are reasonable.

Non-Selective Catalytic Reduction (NSCR) Systems

Non-selective catalytic reduction (NSCR) systems can reduce the NO_x emissions from rich-burn natural gas fired-engines engines by up to 98 percent.[6] The capital cost (installed) of NSCR control systems are presented in Table 2.

Table 2: Capital Costs for NSCR Systems

Cost Component	1200 hp Engine	2000 hp Engine

SCR System	$26,700	$44,400
Installation	$16,000	$26,700
Taxes	$2,100	$3,500
Testing[7]	$8,000	$8,000
Total Cost	$52,800	$82,600

NSCR catalysts need to be replaced every five years.[8] Replacement catalysts are estimated to cost 7 percent of the original NSCR system cost. In the cost analyses conducted by the Department, the cost of installing the replacement catalyst was assumed to be 60 percent of the cost of the new catalyst. Annual costs for operating NSCR include insurance, maintenance and labor. The cost per ton of NO_x reduced is less than $5,000 when operating more than 200 hours per year.

'Particulate Matter (PM) Emissions'

Particulate control equipment (e.g. - particulate traps or oxidation catalysts) may be required in order for some sources to comply with the particulate emission standard. The costs for particulate control equipment are approximately $55 per KW installed ($49,200 - $82,000 for the engine sizes discussed in this section).[9]

'Compliance Testing'

The emission testing costs are estimated to be $8,000 ($NO_x$ only) to $15,000 ($NO_x$ and PM) per source.[10] Emission testing for PM is not required for engines equipped with pollution control devices verified by the California Air Resources Board as meeting the Level 3 or Level 3 Plus Classification per the California Code of Regulations, Title 13, Sections 2700 through 2711.

MINIMIZING ADVERSE IMPACT

The Department considered the practical impacts of the proposed rule on rural facilities, such as small farms. As of April 2010, there were an estimated 151 farms in 31 states[11] (including New York) generating electricity via biogas-fired DG sources.

Livestock farms use animal waste digesters as a means of odor control. One of the by-products of these systems is biogas (fuel gas containing methane and other compounds) that can be used to fire DG sources. Biogas contains impurities which erode engine gaskets and other components which reduces the useful life of an engine. Biogas-fired engines need to be replaced more often than engines fired with fossil fuels. These impurities can also damage post-combustion control systems which in turn can lead to damage to the DG source. Existing biogas-fired DG sources will not be subject to Part 222. New biogas-fired sources are subject to 40 CFR 60 Subpart JJJJ.

RURAL AREA PARTICIPATION

The proposed rulemaking is the result of a stakeholder process initiated by the Department in 2001. Stakeholder Meetings were held on November 13, 2001, December 12, 2002, April 8, 2003, May 17, 2004, June 29, 2006 and June 25, 2013. In addition, drafts of Part 222 were circulated electronically to stakeholders in May 2004, January 2005, June 2006 and May 2013. More than 175 stakeholders have been involved in the process of developing Part 222 and anyone who requested to be added to the list of stakeholders was added. The meeting of April 8, 2003 was advertised in the Department's Environmental Notice Bulletin.

The participants in the stakeholder process represented a wide range of interests. These groups include law firms, consultants and trade organizations, manufacturers, and government agencies. In addition, Department staff met with individual or small groups of stakeholders (such as the New York Farm Bureau) on several occasions.

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[1] E-mail from Joe Suchecki (Truck & Engine Manufacturers Association) to John Barnes (DEC) dated November 8, 2013.

[2] Replacement costs as well as the costs for pollution control systems could be higher than the costs presented in this section in cases where there are space limitations or building or fire code requirements that must be met.

[3] "NO_x Control for Stationary Gas Engines", Wilson Chu (Johnson-Matthey), Advances in Air Pollution Control Technology, MARAMA Workshop, May 19, 2011.

[4] Sources: CARB 2010. Regulatory Analysis for Revisions to Stationary Diesel Engine Air Toxic Control Measure. Appendix B. Analysis of Technical Feasibility and Costs of After-treatment Controls on New Emergency Diesel Engines; and (2) Producer Price Index, U.S. Department of Labor, Bureau of Labor Statistics.

[5] Testing costs include NO_x and PM tests (diesel engines). For natural gas-fired engines, the estimated cost is $8,000 for NO_x tests only.

[6] "NO_x Control for Stationary Gas Engines", Wilson Chu (Johnson-Matthey), Advances in Air Pollution Control Technology, MARAMA Workshop, May 19, 2011.

[7] Emissions tests for NO_x only since the PM standard does not apply to natural gas engines.

[8] E-mail from Wilson Chu (Johnson Matthey) to John Barnes (DEC) dated January 24, 2008.

[9] Sources: CARB 2010. Regulatory Analysis for Revisions to Stationary Diesel Engine Air Toxic Control Measure. Appendix B. Analysis of Technical Feasibility and Costs of After-treatment Controls on New Emergency Diesel Engines; and (2) Producer Price Index, U.S. Department of Labor, Bureau of Labor Statistics.

[10] Stack testing costs are based upon an informal Department survey of several stack testing companies.

[11] http://bradpennsgeo.com/wp-content/uploads/2012/07/BRADPENN__ANAEROBIC__DIGESTION__-PAPER__SEPT__10.pdf

Revised Job Impact Statement

Distributed generation (DG) sources are engines used by a host site to supply electricity outside that which is supplied by the electric grid and used either in non-emergency situations to reduce demand on the electric grid and preserving the overall reliability of the grid, or when the usual supply of power becomes unavailable. There may be more than 15,000 DG sources in the state, many of which are not currently regulated. DG sources produce air pollution, including nitrogen oxides (NO_x), a precursor to ground-level ozone, and particulate matter (PM) – both of which have been linked to adverse public health impacts. The increasing use of uncontrolled DG sources, if left unchecked, will exacerbate public health impacts and make it very difficult for New York to meet its obligations under the Clean Air Act (CAA) to attain the 2008 8-hour ozone National Ambient Air Quality Standard (NAAQS).

Therefore, the Department of Environmental Conservation (Department) is proposing to adopt a new regulation, 6 NYCRR Part 222, 'Distributed Generation Sources', and make conforming revisions to Part 200, 'General Provisions' and Subpart 227-2, 'Reasonably Available Control Technology (RACT) for Oxides of Nitrogen (NO_x)' to establish emission standards, monitoring requirements and record keeping requirements for certain DG sources in New York State. The proposed rule will apply generally to DG sources which are not currently regulated under Subpart 227-2 or a federal New Source Performance Standard (NSPS), as long as the federal standards are less than or equal to the Part 222 emission limits.

I. NATURE OF IMPACT

Part 222 may impact jobs and employment opportunities at a wide range of businesses in New York State. Discussion of the potential impacts are presented in the following subsections.

A. Facilities with Existing DG Sources

Northeast States for Coordinated Air Use Management (NESCAUM) released a study in 2003 indicating there may be as many as 15,000 diesel generators in New York State.[1] Most of these sources are believed to be emergency generators which are currently exempt from permitting requirements. Though owners and operators of emergency generators will be subject to annual tune-up and record keeping requirements under the proposed rule, the Department presumes that these activities are already being conducted as part of the facility's standard business practices. Therefore, the Department does not anticipate any additional compliance costs or negative impacts on jobs or employment opportunities in cases where a facility exclusively uses DG sources as emergency generators.

DG sources not used exclusively for emergencies will be subject to the proposed NO_x emission limits. Diesel-fired sources will be required to comply with either a PM emission limit or a pollution control device standard. Owners or operators of DG sources that meet the proposed emission limits without post-combustion controls will have minimal compliance costs. For example, stack testing is estimated at $15,000 per source at a frequency of once every 10 years. In such cases, the proposed rule should have no negative impacts on jobs or employment opportunities.

However, in cases where DG sources are required to use pollution control systems to meet the proposed emission limits, the rule may negatively impact jobs or employment opportunities depending upon the compliance strategy utilized. In some cases, the capital and operational costs for pollution control systems may impact jobs or employment opportunities directly. Owners or operators of existing DG sources that do not meet the emission standards may choose to replace existing DG sources with new DG sources. In cases where the owners or operators of existing DG sources are planning to replace units near or past their useful life, regardless of proposed Part 222, the negative impacts to jobs or employment opportunities would be minimal. Replacement of units not near the end of their useful life could constitute a previously unplanned cost that may have an impact on jobs and employment opportunities. Exist-

ing DG sources that cannot meet the emission standards, but could be used as emergency generators, are expected to have minimal impacts on jobs and employment opportunities.

B. Impacts to Energy Services Companies

Energy services companies (ESCOs) enroll facilities into demand response (DR) programs sponsored by the New York Independent System Operator (NYISO) and transmission operators. ESCOs' demand response portfolios include curtailment, load shifting, energy efficiency and DG resources. Most DG resources in these portfolios are uncontrolled, diesel-fired engines that will be subject to the NO_x and PM emission standards proposed in Part 222. These standards will take effect on May 1, 2017. The Department anticipates that owners and operators of DR sources that cannot, or choose not to, meet the emission standards would be dropped from ESCOs' DR portfolios, resulting in a reduction in income for both the ESCO and the source owner or operator.[2] DG resources comprised 13 percent of the resources enrolled in the NYISO's Emergency Demand Response Program and Special Case Resources Program (combined) as of May 2011.[3] Therefore, it is expected that the provisions of Part 222 will minimally impact employment opportunities with ESCOs.

C. Impacts to Professional Services Companies and Vendors of Pollution Control Systems

DG sources that commenced operation prior to the effective date of Part 222 may need to be equipped with pollution control systems in order to meet the emission standards set forth in the rule. Stack testing will be required to demonstrate compliance with Part 222 emission standards. Therefore, employment opportunities with consultants and vendors specializing in design and installation of pollution control equipment and stack testing are expected to increase as a result of the adoption of Part 222.

D. Impacts to the NYSDEC

There will be an additional work load for the Department to implement Part 222, including preparing new and modified air permits, reviewing stack test reports and creating compliance reports in the Air Facility System database. It is estimated that it will take one staff-year to initiate the program to implement Part 222 and five staff-years annually to implement Part 222. The Department does not anticipate hiring additional staff to implement Part 222.

II. CATEGORIES AND NUMBERS OF JOBS OR EMPLOYMENT OPPORTUNITIES AFFECTED

Distributed generation can be used at a wide range of facilities including, but not limited to, hospitals, financial institutions, colleges, shopping centers, farms, apartment complexes and office buildings. It is estimated that as many as 26,000 sites in New York could potentially use a combined heat and power (CHP) application.[4] Although not all of those sites will use CHP applications, this estimate provides insight as to the number of sites where DG applications might be used.

The adoption of Part 222 may lead to increased employment opportunities with professional services companies that provide environmental monitoring and compliance services (such as stack testing) as well as for vendors who sell and install pollution control systems.

III. REGIONS OF ADVERSE IMPACT

It is anticipated that most of the facilities subject to the proposed rule will be located in the New York City metropolitan area where the cost of electricity is higher than the rest of the state. Facilities located in upstate areas, such as shopping centers, colleges and hospitals, may also be affected by the proposed rule.

IV. MINIMIZING ADVERSE IMPACT

There are three alternate compliance options in proposed Part 222 available to facilities with existing DG sources which are subject to emission standards. Affected facilities will have greater flexibility to control their compliance costs than would occur if only one compliance option was included in the rule.

NO_x emission limits for new DG sources were considered but are not included in the proposed rule. Emission limits stricter than those set forth in the EPA's New Source Performance Standard (NSPS)[5] rules which would have been specific to New York and would have been a deterrent to investing in DG applications, especially in cases where post-combustion controls would be required to meet DEC's standards but not EPA's standards. Therefore, by not adopting stricter standards than those set forth in the NSPS rules, Part 222 will not adversely impact employment opportunities at facilities investing in new DG applications.

Livestock farms use animal waste digesters as a means of odor control. One of the by-products of these systems is biogas (fuel gas containing methane and other compounds) that can be used to fire DG sources. As of April 2010, there were an estimated 151 farms in 31 states[6] (including New York) generating electricity via biogas-fired DG sources. Biogas contains impurities which erode engine gaskets and other components which reduce the useful life of an engine. Since biogas-fired engines need to be replaced more often than engines fired with fossil fuels, the Department has determined that these engines do not need to be subject to Part 222. Replacement biogas-fired engines will be subject to 40 CFR 60 Subpart JJJJ.

V. SELF-EMPLOYMENT OPPORTUNITIES

The adoption of Part 222 is not expected to result in negative impacts to self-employment opportunities.

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[1] "Stationary Diesel Engines in the Northeast: An Initial Assessment of the Regional Population, Control Technology Options and Air Quality Policy Issues", NESCAUM, June 2003, pg. 26.

[2] Demand response revenue is not the primary source of income for DR source owners or operators.

[3] "Semi-Annual Compliance Report on Demand Response Programs", NYISO, June 1, 2011.

[4] "NYSERDA's CHP Program: Moving the Market Forward", Dana Levy and Brian Platt. Presentation at the NYSDPS CHP Technical Conference, May 13, 2013.

[5] The NSPS rules applicable to DG sources are: 40 CFR 60 Subparts IIII, JJJJ, and KKKK.

[6] http://bradpennsgeo.com/wp-content/uploads/2012/07/BRADPENN__ANAEROBIC__DIGESTION__-PAPER__SEPT__10.pdf

Initial Review of Rule

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

Assessment of Public Comment

A total of 225 distinct comments were submitted by 66 commenters in response to the Department's proposed rule for regulating distributed generation sources (Part 222). The purpose of this summary is to highlight key issues raised by the commenters and the Department's response to those issues. This document is divided into four sections. Comments regarding regulation of distributed generation (DG) sources operating in demand response (DR) programs are addressed in Section 1. Comments regarding the cost-effectiveness of installing and operating post-combustion pollution control systems, especially for economic dispatch sources operating in demand response programs, are addressed in Section 2. Comments regarding the rule's impacts on the reliability of the electric grid are addressed in Section 3. Finally, comments regarding costs to ratepayers are addressed in Section 4.

Section 1: Distributed Generation Sources Operating in Demand Response Programs

Several commenters referred to DG sources participating in DR programs as 'emergency generators'. The definition for 'emergency power generating stationary internal combustion engine' (see 6 NYCRR 200.1(cq)) or, colloquially, 'emergency generators', has existed prior to the proposal of Part 222 and is strictly defined as:

> "(cq) Emergency power generating stationary internal combustion engine.
>
> A stationary internal combustion engine that operates as a mechanical or electrical power source only when the usual supply of power is unavailable, and operates for no more than 500 hours per year. The 500 hours of annual operation for the engine include operation during emergency situations, routine maintenance, and routine exercising (for example, test firing the engine for one hour a week to ensure reliability). A stationary internal combustion engine used for peak shaving generation is not an emergency power generating stationary internal combustion engine."

This definition was first adopted in the early 1990s as required under the 1990 Clean Air Act Amendments and the then new Reasonably Available Control Technology (RACT) for Oxides of Nitrogen (NO_x) emission standards (Subpart 227-2). When Subpart 227-2 was amended in 2010, this definition was moved into Part 200 and an additional point of clarification regarding emergency generators was added to 6 NYCRR 201-3.2(c)(6), "Permits and Registrations", which specifically states that "stationary internal combustion engines used for peak shaving and/or demand response programs are not exempt" from permitting requirements. The Department has not changed either provision with this rulemaking, nor has it proposed that emission standards apply to emergency generators. Since the usual supply of power is still available when a demand response event is called, DG sources operating during DR events fall outside the definition of an emergency generator and are therefore subject to the emission limits set forth in Section 222.4 or an alternative compliance option under Section 222.5 of Part 222.

Several commenters questioned why the Department was not treating DG sources participating in DR programs as the Environmental Protection Agency (EPA) did in the New Source Performance Standards for engines and the National Emission Standards for Hazardous Air Pollutants (see 40 CFR 60 Subparts IIII or JJJJ and 40 CFR 63 Subpart ZZZZ). While the EPA attempted to grant 100 hours of unregulated run-time for DG sources participating in DR programs, the U.S. Court of Appeals for the District of Columbia vacated these sections, paragraphs 40 CFR 60.4211(f)(2)(ii)-(iii), 60.4243(d)(2)(ii)-(iii) and 63.6640(f)(2)(ii)-(iii), as arbitrary and capricious. On April 15, 2016, the EPA issued guidance regarding the vacatur of paragraphs 40 CFR 60.4211(f)(2)(ii)-(iii), 60.4243(d)(2)(ii)-(iii) and 63.6640(f)(2)(ii)-(iii).[1] EPA elected not to appeal the May 1, 2015 decision by the U.S. Court of Appeals for the District of Columbia Circuit in the case of Delaware v. EPA. As a result, emergency generators, as defined by the EPA, may not participate in demand response programs or operate when there are voltage fluctuations.

Part 222 defines the framework under which DG sources may be operated in New York State. The Department has developed this rule to reduce emissions of ozone precursors by currently unregulated sources and so the Department can better monitor the use of these sources to develop emissions inventories and State Implementation Plans, especially with respect to the ozone National Ambient Air Quality Standards (NAAQS). In order to do this, the Department needs to know which sources are operating as economic dispatch sources. There are three options by which sources can comply with the rule: 1) sources may be operated as emergency generators as set forth in paragraph 200.1(cq); 2) sources may comply with the emission limits set forth in Section 222.4 of Part 222; or 3) sources may opt for one of the alternative compliance options set forth in Section 222.5.

Section 2: Cost-Effectiveness of Installing and Operating Pollution Control Systems

Several commenters challenged the Department's position regarding the cost-effectiveness of installing and operating pollution control systems in order to comply with the emission limits set forth in Section 222.4 of Part 222. For NO_x control, the Department estimated costs to be less than $5,000 per ton of NO_x reduced for sources operating as little as 1500 hours per year. Many commenters developed their own estimates for cost-effectiveness, measured in dollars per ton of pollutant reduced, based upon historical operating data – primarily for DG sources operating in demand response programs. Their estimates ranged between $15,000 and $285,000 per ton of NO_x reduced.

Several factors are considered when evaluating the cost effectiveness of emission standards. These factors include:

1. Emission reductions (tons) during a period of time; and

2. Capital and operation and maintenance costs for pollution control systems amortized over that period of time.

The quantity of emission reductions during the analysis period depends on the initial pollutant levels in the exhaust, the anticipated level of control and the number of hours a source (e.g., engine) operates each year. Newer engines generally have lower initial pollutant levels in the stream exiting the combustion chamber than older engines. The capital and operation and maintenance costs were amortized over a 10-year period at a discount rate of seven percent. The number of hours of operation is assumed to be 8,760 hours per year unless constrained by a legally enforceable regulatory or permit requirement. Historical operation data are not legally enforceable constraints. In the case of economic dispatch sources there is no annual limit on the hours of operation included in the definition of that term (Section 222.2(b)(3)):

(3) 'Economic dispatch source'. A distributed generation source used to reduce energy costs or ensure a reliable electricity supply for a facility. A distributed generation source that is not an emergency power generating stationary internal combustion engine as defined in section 200.1 is considered to be an economic dispatch source.

Therefore, minus any legally enforceable operational constraints, the cost effectiveness calculation is based on the assumption that a source operates all year (8,760 hours). Shorter time periods may be considered on a source-specific basis and must be incorporated in a facility's air permit. Permit limitations are typically requested by the permittee. The mechanism by which this could be accomplished is when a permittee requests a variance per subdivision 222.5(a) of Part 222.

In the Regulatory Impact Statement (RIS), the Department estimated the number of operating hours at which the cost effectiveness calculation reached a benchmark of $5,000/ton of NO_x reduced to account for sources operating outside of demand response events. This benchmark was deemed a reasonable cost in the development of Subpart 227-2 which, in part, addresses engines and turbines at facilities subject to a Title V permit due to their potential to emit oxides of nitrogen. Facilities subject to time of use pricing from their electricity provider may opt to generate their own electricity during periods when utility-supplied electricity costs are high. Facilities with economic dispatch sources that meet the emission limits in Section 222.4 of Part 222 would have more operational flexibility than those that operate under a variance (subdivision 222.5(f) of Part 222) or for that matter, use DG sources solely as emergency generators. Therefore, the NYSDEC assumed that economic dispatch sources enrolled in demand response programs will also operate at times when electricity costs are high.

Section 3: Part 222's Impact on the Reliability on New York's Electric Grid

Several commenters stated that Part 222 would have adverse impacts on the reliability of the electric grid. Furthermore, it was stated that a reliable electric grid is essential for public health and safety and protection of the environment.

In developing Part 222, the Department has systematically evaluated how regulating DG sources will impact source owners, DR programs, utilities, energy services companies, and other governmental agencies such as the Public Service Commission. The Department conducted an in-depth cost analysis of the application of this rule which is presented in the RIS. The Department reached out to the New York Independent System Operator, which is responsible for maintaining the reliability of the bulk transmission grid, and Con Edison, which is responsible for maintaining the distribution grid in New York City, to better understand the potential impacts the rule could have on reliability of the electric grid. The Department has taken great care to create a regulatory regime that will control emissions from economic dispatch sources; provide the Department with data crucial for tabulating the most accurate emissions inventory and making meaningful measures to bring the NYMA into attainment with the 2008 and 2015 ozone NAAQS as required by the Clean Air Act while maintaining the reliability of the electric grid.

Section 4: Part 222's Impact on Electricity Rate Payers

Seventeen commenters stated that economic dispatch sources enrolled in DR programs lower electricity costs for all customers. Specifically, sixteen commenters stated that participation in the New York Independent System Operator's Special Case Resources Program saves ratepayers between $125 and $150 million annually.

The commenters did not offer an explanation regarding how the projected savings to ratepayers were calculated. The commenters' estimates of savings to ratepayers is a large sum of money. However, compared to utility electricity revenues, these benefits represent a small fraction of the electricity payments made by ratepayers.

In 2014, Con Edison reported total revenues from their electric service of $10,920 million.[2] Assuming the $150 million benefit to ratepayers cited by commenters is correct and limited to the Con Edison service territory, then the net impact on electricity bills would be approximately 1.37 percent. By comparison, taxes on electrical bills for Con Edison customers range from 4.5 percent for residential customers to 8.875 percent for most commercial customers.

Not all of the commenters above are located in the Con Edison service territory. When the electricity revenues from other utilities are considered, the benefit provided to ratepayers by DG sources enrolled in demand response programs is likely less than 1.2 percent.[3]

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[1] Memorandum from Peter Tsirigotis, Director, Sector Policies and Programs Division, Office of Air Quality Planning and Standards, April 15, 2016.

[2] 2014 Annual Report to DPS (see: http://www3.dps.ny.gov/W/PSCWeb.nsf/0/A97C16D00017FB1F852578E0005454E8?Open Document)

[3] In 2014, Rochester Gas & Electric reported revenues from their electricity service of $546 million (2014 Annual Report to DPS). In 2014, New York State Electric & Gas reported revenues from their electricity service of $1,135 million (2014 Annual Report to DPS). Data obtained from: http://www3.dps.ny.gov/W/PSCWeb.nsf/0/A97C16D00017FB1F852578E0005454E8?OpenDocument

Department of Financial Services

EMERGENCY RULE MAKING

Registration and Financial Responsibility Requirements for Mortgage Loan Servicers

I.D. No. DFS-46-16-00005-E
Filing No. 990
Filing Date: 2016-10-28
Effective Date: 2016-10-31

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

Action taken: Addition of Part 418 and Supervisory Procedures MB 109 and MB 110 to Title 3 NYCRR.

Statutory authority: Banking Law, art. 12-D

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

Specific reasons underlying the finding of necessity: Chapter 472 of the Laws of 2008, which requires mortgage loan servicers to be registered with the Superintendent of Financial Services (formerly the Superintendent of Banks), went into effect on July 1, 2009. These regulations implement the registration requirement and inform servicers of the details of the registration process so as to permit applicants to prepare, submit and review applications for registrations on a timely basis.

Excluding persons servicing loans made under the Power New York Act from the mortgage loan servicer rules is necessary to facilitate the immediate implementation of such loan program so that the anticipated energy efficiency benefits can be realized without delay.

Subject: Registration and Financial Responsibility Requirements for Mortgage Loan Servicers.

Purpose: The rule implements provisions of the Subprime Lending Reform Law (Ch. 472, Laws of 2008) amending Article 12-D of the Banking Law to require that persons or entities which service mortgage loans on residential real property on or after July 1, 2009 be registered with the Superintendent of Financial Services (formerly the Superintendent of Banks). Part 418 sets forth application, exemption and approval procedures for registration as a mortgage loan servicer (MLS) and financial responsibility requirements for applicants, registrants and exempted persons. Supervisory Procedure MB 109 sets forth the details of the application procedure. Supervisory Procedure MB 110 sets forth the procedure for approval of a change of control of a registered MLS.

Substance of emergency rule: Section 418.1 summarizes the scope and application of Part 418. It notes that Sections 418.2 to 418.11 implement the requirement in Article 12-D of the Banking Law that certain mortgage loan servicers ("servicers") be registered with the Superintendent of Financial Services (formerly the Superintendent of Banks), while Sections 418.12 and 418. 13 set forth financial responsibility requirements that are applicable to both registered and exempt servicers. [Section 418.14 sets forth the transitional rules.]

Section 418.2 implements the provisions in Section 590(2)(b-1) of the Banking Law requiring registration of servicers and exempting mortgage bankers, mortgage brokers, and most banking and insurance companies, as well as their employees. Servicing loans made pursuant to the Power New York Act of 2011 is excluded. The Superintendent is authorized to approve other exemptions.

Section 418.3 contains a number of definitions of terms that are used in Part 418, including "Mortgage Loan", "Mortgage Loan Servicer", "Third Party Servicer" and "Exempted Person".

Section 418.4 describes the requirements for applying for registration as a servicer.

Section 418.5 describes the requirements for a servicer applying to open a branch office.

Section 418.6 covers the fees for application for registration as a servicer, including processing fees for applications and fingerprint processing fees.

Section 418.7 sets forth the findings that the Superintendent must make to register a servicer and the procedures to be followed upon approval of an application for registration. It also sets forth the grounds upon which the Superintendent may refuse to register an applicant and the procedure for giving notice of a denial.

Section 418.8 defines what constitutes a "change of control" of a servicer, sets forth the requirements for prior approval of a change of control, the application procedure for such approval and the standards for approval. The section also requires servicers to notify the Superintendent of changes in their directors or executive officers.

Section 418.9 sets forth the grounds for revocation of a servicer registration and authorizes the Superintendent, for good cause or where there is substantial risk of public harm, to suspend a registration for 30 days without a hearing. The section also provides for suspension of a servicer registration without notice or hearing upon non-payment of the required assessment. The Superintendent can also suspend a registration when a servicer fails to file a required report, when its surety bond is cancelled, or when it is the subject of a bankruptcy filing. If the registrant cures the deficiencies its registration can be reinstated. The section further provides that in all other cases, suspension or revocation of a registration requires notice and a hearing.

The section also covers the right of a registrant to surrender its registration, as well as the effect of revocation, termination, suspension or surrender of a registration on the obligations of the registrant. It provides that registrations will remain in effect until surrendered, revoked, terminated or suspended.

Section 418.10 describes the power of the Superintendent to impose fines and penalties on registered servicers.

Section 418.11 sets forth the requirement that applicants demonstrate five years of servicing experience as well as suitable character and fitness.

Section 418.12 covers the financial responsibility and other requirements that apply to applicants for servicer registration, registered servicers and exempted persons (other than insured depository institutions to which Section 418.13 applies. The financial responsibility requirements include a required net worth (as defined in the section) of at least $250,000 plus 1/4% of total loans serviced or, for a Third Party Servicer, 1/4 of 1% of New York loans serviced; (2) a corporate surety bond of at least $250,000 and (3) a Fidelity and E&O bond in an amount that is based on the volume of New York mortgage loans serviced, with a minimum of $300,000.

The Superintendent is empowered to waive, reduce or modify the financial responsibility requirements for certain servicers who service an aggregate amount of loans not exceeding $4,000,000.

Section 418.13 exempts from the otherwise applicable net worth and surety bond requirements, but not the Fidelity and E&O bond requirements, entities that are subject to the capital requirements applicable to insured depositary institutions and that are considered at least adequately capitalized.

Section 418.14 provides a transitional period for registration of mortgage loan servicers. A servicer doing business in this state on June 30, 2009 which files an application for MLS registration by July 31, 2009 will be deemed in compliance with the registration requirement until notified that its application has been denied. A person who is required to register as a servicer solely because of the changes in the provisions of the rule regarding use of third party servicers which became effective on August 23, 2011 and who files an application for registration within 30 days thereafter will not be required to register until six months from the effective date of the amendment or until the application is denied, whichever is earlier.

Section 109.1 defines a number of terms that are used in the Supervisory Procedure.

Section 109.2 contains a general description of the process for registering as a mortgage loan servicer ("servicer") and contains information about where the necessary forms and instructions may be found.

Section 109.3 lists the documents to be included in an application for servicer registration, including the required fees. It also sets forth the execution and attestation requirements for applications. The section makes clear that the Superintendent of Financial Services (formerly the Superintendent of Banks) can require additional information or an in person conference, and that the applicant can submit additional pertinent information.

Section 109.4 describes the information and documents required to be submitted as part of an application for registration as a servicer. This includes various items of information about the applicant and its regulatory history, if any, information demonstrating compliance with the applicable financial responsibility and experience requirements, information about the organizational structure of the applicant, and other documents, such as fingerprint cards and background reports.

Section 110.1 defines a number of terms that are used in the Supervisory Procedure.

Section 110.2 contains a general description of the process for applying for approval of a change of control of a mortgage loan servicer ("servicer") and contains information about where the necessary forms and instructions may be found.

Section 110.3 lists the documents to be included in an application for approval of a change of control of a servicer, including the required fees. It sets forth the time within which the Superintendent of Financial Ser-

vices (formerly the Superintendent of Banks) must approve or disapprove an application. It also sets forth the execution and attestation requirements for applications. The section makes clear that the Superintendent can require additional information or an in person conference, and that the applicant can submit additional pertinent information. Last, the section lists the types of changes in a servicer's operations resulting from a change of control which should be notified to the Department of Financial Services (formerly the Banking Department).

Section 110.4 describes the information and documents required to be submitted as part of an application for approval of a change of control of servicer. This includes various items of information about the applicant and its regulatory history, if any, information demonstrating continuing compliance with the applicable financial responsibility and experience requirements, information about the organizational structure of the applicant, a description of the acquisition and other documents regarding the applicant, such as fingerprint cards and background reports.

This notice is intended to serve only as an emergency adoption, to be valid for 90 days or less. This rule expires January 25, 2017.

Text of rule and any required statements and analyses may be obtained from: Hadas A. Jacobi, New York State Department of Financial Services, One State Street, New York, NY 10004-1417, (212) 480-5890, email: hadas.jacobi@dfs.ny.gov

Regulatory Impact Statement

1. Statutory Authority.

Article 12-D of the Banking Law, as amended by the Legislature in the Subprime Lending Reform Law (Ch. 472, Laws of 2008, hereinafter, the "Subprime Law"), creates a framework for the regulation of mortgage loan servicers. Mortgage loan servicers (MLS) are individuals or entities which engage in the business of servicing mortgage loans for residential real property located in New York. That legislation also authorizes the adoption of regulations implementing its provisions. (See, e.g., Banking Law Sections 590(2)(b-1) and 595-b).

Subsection (1) of Section 590 of the Banking Law was amended by the Subprime Law to add the definitions of "mortgage loan servicer" and "servicing mortgage loans". (Section 590(1)(h) and Section 590(1)(i)).

A new paragraph (b-1) was added to Subdivision (2) of Section 590 of the Banking Law. This new paragraph prohibits a person or entity from engaging in the business of servicing mortgage loans without first being registered with the Superintendent of Financial Services (formerly the Superintendent of Banks). The registration requirements do not apply to an "exempt organization," licensed mortgage banker or registered mortgage broker.

This new paragraph also authorizes the Superintendent to refuse to register an MLS on the same grounds as he or she may refuse to register a mortgage broker under Banking Law Section 592-a(2).

Subsection (3) of Section 590 was amended by the Subprime Law to clarify the power of the banking board to promulgate rules and regulations and to extend the rulemaking authority regarding regulations for the protection of consumers and regulations to define improper or fraudulent business practices to cover mortgage loan servicers, as well as mortgage bankers, mortgage brokers and exempt organizations. (Note that under Section 89 of Part A of Chapter 62 of the Laws of 2011, the functions and powers of the banking board have been transferred to the Superintendent).

New Paragraph (d) was added to Subsection (5) of Section 590 by the Subprime Law and requires mortgage loan servicers to engage in the servicing business in conformity with the Banking Law, such rules and regulations as may be prescribed by the Superintendent, and all applicable federal laws, rules and regulations.

New Subsection (1) of Section 595-b was added by the Subprime Law and requires the Superintendent to promulgate regulations and policies governing the grounds to impose a fine or penalty with respect to the activities of a mortgage loan servicer. Also, the Subprime Law amends the penalty provision of Subdivision (1) of Section 598 to apply to mortgage loan servicers as well as to other entities.

New Subdivision (2) of Section 595-b was added by the Subprime Law and authorizes the Superintendent to prescribe regulations relating to disclosure to borrowers of interest rate resets, requirements for providing payoff statements, and governing the timing of crediting of payments made by the borrower.

Section 596 was amended by the Subprime Law to extend the Superintendent's examination authority over licensees and registrants to cover mortgage loan servicers. The provisions of Banking Law Section 36(10) making examination reports confidential are also extended to cover mortgage loan servicers.

Similarly, the books and records requirements in Section 597 covering licensees, registrants and exempt organizations were amended by the Subprime Law to cover servicers and a provision was added authorizing the Superintendent to require that servicers file annual reports or other regular or special reports.

The power of the Superintendent to require regulated entities to appear and explain apparent violations of law and regulations was extended by the Subprime Law to cover mortgage loan servicers (Subdivision (1) of Section 39), as was the power to order the discontinuance of unauthorized or unsafe practices (Subdivision (2) of Section 39) and to order that accounts be kept in a prescribed manner (Subdivision (5) of Section 39).

Finally, mortgage loan servicers were added to the list of entities subject to the Superintendent's power to impose monetary penalties for violations of a law, regulation or order. (Paragraph (a) of Subdivision (1) of Section 44).

The fee amounts for MLS registration applications and for MLS branch applications are established in accordance with Banking Law Section 18-a.

2. Legislative Objectives.

The Subprime Law is intended to address various problems related to residential mortgage loans in this State. The Subprime Law reflects the view of the Legislature that consumers would be better protected by the supervision of mortgage loan servicing. Even though mortgage loan servicers perform a central function in the mortgage industry, there had previously been no general regulation of servicers by the state or the Federal government.

The Subprime Law requires that entities be registered with the Superintendent in order to engage in the business of servicing mortgage loans in this state. The law further requires mortgage loan servicers to engage in the business of servicing mortgage loans in conformity with the rules and regulations promulgated by the Superintendent.

The mortgage servicing statute has two main components: (i) the first component addresses the registration requirement for persons engaged in the business of servicing mortgage loans; and (ii) the second authorizes the Superintendent to promulgate appropriate rules and regulations for the regulation of servicers in this state.

The regulations implement the first component of the mortgage servicing statute – the registration of mortgage servicers. In doing so, the rule utilizes the authority provided to the Superintendent to set standards for the registration of such entities. For example, the rule requires that a potential loan servicer would have to provide, under Sections 418.11 to 418.13 of the proposed regulations, evidence of their character and fitness to engage in the servicing business and demonstrate to the Superintendent their financial responsibility. The rule also utilizes the authority provided by the Legislature to revoke, suspend or otherwise terminate a registration or to fine or penalize a registered mortgage loan servicer.

Consistent with this requirement, the rule authorizes the Superintendent to refuse to register an applicant if he/she shall find that the applicant lacks the requisite character and fitness, or any person who is a director, officer, partner, agent, employee, substantial stockholder of the applicant has been convicted of certain felonies. These are the same standards as are applicable to mortgage bankers and mortgage brokers in New York. (See Section 418.7).

Further, in carrying out the Legislature's mandate to regulate the mortgage servicing business, Section 418.8 sets out certain application requirements for prior approval of a change in control of a registered mortgage loan servicer and notification requirements for changes in the entity's executive officers and directors. Collectively, these various provisions implement the intent of the Legislature to register and supervise mortgage loan servicers.

The Department has separately adopted emergency regulations dealing with business conduct and consumer protection requirements for MLSs. (3 NYCRR Part 419).

3. Needs and Benefits.

The Subprime Law adopted a multifaceted approach to the lack of supervision of the mortgage loan industry. It affected a variety of areas in the residential mortgage loan industry, including: i. loan originations; ii. loan foreclosures; and iii. the conduct of business by residential mortgage loans servicers.

Previously, the Department of Financial Services (formerly the Banking Department) regulated the brokering and making of mortgage loans, but not the servicing of these mortgage loans. Servicing is vital part of the residential mortgage loan industry; it involves the collection of mortgage payments from borrowers and remittance of the same to owners of mortgage loans; to governmental agencies for taxes; and to insurance companies for insurance premiums. Mortgage servicers also may act as agents for owners of mortgages in negotiations relating to modifications. As "middlemen," moreover, servicers also play an important role when a property is foreclosed upon. For example, the servicer may typically act on behalf of the owner of the loan in the foreclosure proceeding.

Further, unlike in the case of a mortgage broker or a mortgage lender, borrowers cannot "shop around" for loan servicers, and generally have no input in deciding what company services their loans. The absence of the ability to select a servicer obviously raises concerns over the character and viability of these entities given the central part of they play in the mortgage industry. There also is evidence that some servicers may have provided

poor customer service. Specific examples of these activities include: pyramiding late fees; misapplying escrow payments; imposing illegal prepayment penalties; not providing timely and clear information to borrowers; and erroneously force-placing insurance when borrowers already have insurance.

While minimum standards for the business conduct of servicers is the subject of another emergency regulation which has been promulgated by the Department. (3 NYCRR Part 419) Section 418.2 makes it clear that persons exempted by from the registration requirement must notify the Department that they are servicing mortgage loans and must otherwise comply with the regulations.

As noted above, these regulations relate to the first component of the mortgage servicing statute – the registration of mortgage loan servicers. It is intended to ensure that only those persons and entities with adequate financial support and sound character and general fitness will be permitted to register as mortgage loan servicers.

Further, consumers in this state will also benefit under these regulations because in the event there is an allegation that a mortgage servicer is involved in wrongdoing and the Superintendent finds that there is good cause, or that there is a substantial risk of public harm, he or she can suspend such mortgage servicer for 30 days without a hearing. And in other cases, he or she can suspend or revoke such mortgage servicer's registration after notice and a hearing. Also, the requirement that servicers meet minimum financial standards and have performance and other bonds will act to ensure that consumers are protected.

As noted above, the MLS regulations are divided into two parts. The Department had separately adopted emergency regulations dealing with business conduct and consumer protection requirements for MLSs. (3 NYCRR Part 419).

All Exempt Organizations, mortgage bankers and mortgage brokers that perform mortgage loan servicing with respect to New York mortgages must notify the Superintendent that they do so, and will be required to comply with the conduct of business and consumer protection rules applicable to MLSs.

Under Section 418.2, a person servicing loans made under the Power New York Act of 2011 will not thereby be considered to be engaging in the business of servicing mortgage loans. Consequently, a person would not be subject to the rules applicable to MLSs by reason of servicing such loans.

4. Costs.

The mortgage business will experience some increased costs as a result of the fees associated with MLS registration. The amount of the application fee for MLS registration and for an MLS branch application is $3,000.

The amount of the fingerprint fee is set by the State Division of Criminal Justice Services and the processing fees of the National Mortgage Licensing System are set by that body. MLSs will also incur administrative costs associated with preparing applications for registration.

The ability by the Department to regulate mortgage loan servicers is expected to reduce costs associated with responding to consumers' complaints, decrease unnecessary expenses borne by mortgagors, and, through the timely response to consumers' inquiries, should assist in decreasing the number of foreclosures in this state.

The regulations will not result in any fiscal implications to the State. The Department is funded by the regulated financial services industry. Fees charged to the industry will be adjusted periodically to cover Department expenses incurred in carrying out this regulatory responsibility.

5. Local Government Mandates.

None.

6. Paperwork.

An application process has been established for potential mortgage loan servicers to apply for registration electronically through the National Mortgage Licensing System and Registry (NMLSR) - a national system, which currently facilitates the application process for mortgage brokers, bankers and loan originators. Therefore, the application process is virtually paperless; however, a limited number of documents, including fingerprints where necessary, would have to be submitted to the Department in paper form.

The specific procedures that are to be followed in order to apply for registration as a mortgage loan servicer are detailed in Supervisory Procedure MB 109.

7. Duplication.

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

An exemption was created under Section 418.13, from the otherwise applicable net worth and surety bond requirements, for entities that are subject to the capital requirements applicable to insured depository institutions and are considered adequately capitalized.

8. Alternatives.

The purpose of the regulation is to carry out the statutory mandate to register mortgage loan servicers while at the same time avoiding overly complex and restrictive rules that would have imposed unnecessary burdens on the industry. The Department is not aware of any alternative that is available to the instant regulations. The Department also has been cognizant of the possible burdens of this regulation, and it has accordingly concluded that an exemption from the registration requirement for persons or entities that are involved in a de minimis amount of servicing would address the intent of the statute without imposing undue burdens those persons or entities.

The procedure for suspending servicers that violate certain financial responsibility or customer protection requirements, which provides a 90-day period for corrective action, during which there can be an investigation and hearing on the existence of other violations, provides flexibility to the process of enforcing compliance with the statutory requirements.

9. Federal Standards.

Currently, mortgage loan servicers are not required to be registered by any federal agencies. However, although not a registration process, in order for any mortgage loan servicer to service loans on behalf of certain federal instrumentalities such servicers have to demonstrate that they have specific amounts of net worth and have in place Fidelity and E&O bonds.

These regulations exceed those minimum standards, in that, a mortgage loan servicer will now have to demonstrate character and general fitness in order to be registered as a mortgage loan servicer. In light of the important role of a servicer – collecting consumers' money and acting as agents for mortgagees in foreclosure transactions – the Department believes that it is imperative that servicers be required to meet this heightened standard.

10. Compliance Schedule.

The emergency regulations will become effective on September 17, 2012. Similar emergency regulations have been in effect since July 1, 2009.

The Department expects to approve or deny applications within 90 days of the Department's receipt (through NMLSR) of a completed application.

A transitional period is provided for mortgage loan servicers which were doing business in this state on June 30, 2009 and which filed an application for registration by July 31, 2009. Such servicers will be deemed in compliance with the registration requirement until notified by the Superintendent that their application has been denied.

Additionally, the version of Part 418 adopted on an emergency basis effective August 5, 2011 requires holders of mortgage servicing rights to register as mortgage loans servicers even where they have sub-contracted servicing responsibilities to a third-party servicer. Such servicers were given until October 15, 2011 to file an application for registration.

Regulatory Flexibility Analysis

1. Effect of the Rule:

The emergency rule will not have any impact on local governments. It is estimated that there are approximately 120 mortgage loan servicers in the state which are not mortgage bankers, mortgage brokers or exempt organizations, and which are therefore required to register under the Subprime Lending Reform Law (Ch. 472, Laws of 2008) (the "Subprime Law") Of these, it is estimated that a very few of the remaining entities will be deemed to be small businesses.

2. Compliance Requirements:

The provisions of the Subprime Law relating to mortgage loan servicers has two main components: it requires the registration by the Department of Financial Services (formerly the Banking Department) of servicers who are not mortgage bankers, mortgage brokers or exempt organizations (the "MLS Registration Regulations") , and it authorizes the Department to promulgate rules and regulations that are necessary and appropriate for the protection of consumers, to define improper or fraudulent business practices, or otherwise appropriate for the effective administration of the provisions of the Subprime Law relating to mortgage loan servicers (the "MLS Business Conduct Regulations").

The provisions of the Subprime Law requiring registration of mortgage loan servicers which are not mortgage bankers, mortgage brokers or exempt organizations became effective on July 1, 2009. The emergency MLS Registration Regulations here adopted implement that statutory requirement by providing a procedure whereby MLSs can apply to be registered and standards and procedures for the Department to approve or deny such applications. The emergency regulations also set forth financial responsibility standards applicable to applicants for MLS registration, registered MLSs and servicers which are exempted from the registration requirement.

Additionally, the regulations set forth standards and procedures for Department action on applications for approval of change of control of an MLS. Finally, the emergency regulations set forth standards and procedures for, suspension, revocation, expiration, termination and surrender of MLS registrations, as well as for the imposition of fines and penalties on MLSs.

3. Professional Services:

None.

4. Compliance Costs:

Applicants for mortgage loan servicer registration will incur administrative costs associated with preparing applications for registration. Applicants, registered MLSs and mortgage loan servicers exempted from the registration requirement may incur costs in complying with the financial responsibility regulations. Registration fees of $3000, plus fees for fingerprint processing and participation in the National Mortgage Licensing System and Registry (NMLS) will be required of non-exempt servicers.

5. Economic and Technological Feasibility:

The emergency rule-making should impose no adverse economic or technological burden on mortgage loan servicers who are small businesses. The NMLS is now available. This technology will benefit registrants by saving time and paperwork in submitting applications, and will assist the Department by enabling immediate tracking, monitoring and searching of registration information; thereby protecting consumers.

6. Minimizing Adverse Impacts:

The regulations minimize the costs and burdens of the registration process by utilizing the internet-based NMLS, developed by the Conference of State Bank Supervisors and the American Association of Residential Mortgage Regulators. This system uses an on-line application form for servicer registration. A common form will be accepted by New York and the other participating states.

As noted above, most servicers are not small businesses. As regards servicers that are small businesses and not otherwise exempted, the regulations give the Superintendent of Financial Services (formerly the Superintendent of Banks) the authority to reduce, waive or modify the financial responsibility requirements for entities that do a de minimis amount of servicing.

7. Small Business and Local Government Participation:

Industry representatives have participated in outreach programs regarding regulation of servicers. The Department also maintains continuous contact with large segments of the servicing industry though its regulation of mortgage bankers and brokers. The Department likewise maintains close contact with a variety of consumer groups through its community outreach programs and foreclosure mitigation programs. In response to comments received regarding earlier versions of this regulation, the Department has modified the financial responsibility requirements. The revised requirements should generally be less burdensome for mortgage loan servicers, particularly smaller servicers and those located in rural areas.

Rural Area Flexibility Analysis

Types and Estimated Numbers:

Approximately 70 mortgage loan servicers have been registered by the Department of Financial Services or have applied for registration. Very few of these entities operate in rural areas of New York State and of those, most are individuals that do a de minimus business. As discussed below, the Superintendent can modify the requirements of the regulation in such cases.

Compliance Requirements:

Mortgage loan servicers in rural areas which are not mortgage bankers, mortgage brokers or exempt organizations must be registered with the Superintendent to engage in the business of mortgage loan servicing. An application process will be established requiring a MLS to apply for registration electronically and to submit additional background information and fingerprints to the Mortgage Banking unit of the Department.

MLSs are required to meet certain financial responsibility requirements based on their level of business. The regulations authorize the Superintendent of Financial Services (formerly the Superintendent of Banks) to reduce or waive the otherwise applicable financial responsibility requirements in the case of MLSs which service not more than $4,000,000 in aggregate mortgage loans in New York and which do not collect tax or insurance payments. The Superintendent is also authorized to reduce or waive the financial responsibility requirements in other cases for good cause. The Department believes that this will ameliorate any burden which those requirements might otherwise impose on entities operating in rural areas.

Costs:

The mortgage business will experience some increased costs as a result of the fees associated with MLS registration. The application fee for MLS registration will be $3,000. The amount of the fingerprint fee is set by the State Division of Criminal Justice Services and the processing fees of the National Mortgage Licensing System and Registry ("NMLSR") are set by that body. Applicants for mortgage loan servicer registration will also incur administrative costs associated with preparing applications for registration.

Applicants, registered MLSs and mortgage loan servicers exempted from the registration requirement may incur costs in complying with the financial responsibility regulations.

Minimizing Adverse Impacts:

The regulations minimize the costs and burdens of the registration process by utilizing the internet-based NMLSR, developed by the Conference of State Bank Supervisors and the American Association of Residential Mortgage Regulators. This system uses an on-line application form for servicer registration. A common form will be accepted by New York and the other participating states.

Of the servicers which operate in rural areas, it is believed that most are mortgage bankers, mortgage brokers or exempt organizations.

Additionally, in the case of servicers that operate in rural areas and are not otherwise exempted, the Superintendent has the authority to reduce, waive or modify the financial responsibility requirements for individuals that do a de minimis amount of servicing.

Rural Area Participation:

Industry representatives have participated in outreach programs regarding regulation of servicers. The Department also maintains continuous contact with large segments of the servicing industry though its regulation of mortgage bankers and brokers. The Department likewise maintains close contact with a variety of consumer groups through its community outreach programs and foreclosure mitigation programs. In response to comments received regarding earlier versions of this regulation, the Department has modified the financial responsibility requirements. The revised requirements should generally be less burdensome for mortgage loan servicers, particularly smaller servicers and those located in rural areas.

Job Impact Statement

Article 12-D of the Banking Law, as amended by the Subprime Lending Reform Law (Ch. 472, Laws of 2008), requires persons and entities which engage in the business of servicing mortgage loans to be registered with the Superintendent of Financial Services (formerly the Superintendent of Banks). This emergency regulation sets forth the application, exemption and approval procedures for registration as a Mortgage Loan servicer (MLS), as well as financial responsibility requirements for applicants, registrants and exempted persons. The regulation also establishes requirements with respect to changes of officers, directors and/or control of MLSs and provisions with respect to suspension, revocation, termination, expiration and surrender of MLS registrations.

The requirement to comply with the emergency regulations is not expected to have a significant adverse effect on jobs or employment activities within the mortgage loan servicing industry. Many of the larger entities engaged in the mortgage loan servicing business are already subject to oversight by the Department of Financial Services (formerly the Banking Department) and exempt from the new registration requirement. Additionally, the regulations give the Superintendent the authority to reduce, waive or modify the financial responsibility requirements for entities that do a de minimis amount of servicing.

The registration process itself should not have an adverse effect on employment. The regulations require the use of the internet-based National Mortgage Licensing System and Registry, developed by the Conference of State Bank Supervisors and the American Association of Residential Mortgage Regulators. This system uses a common on-line application for servicer registration in New York and other participating states. It is believed that any remaining adverse impact would be due primarily to the nature and purpose of the statutory registration requirement rather than the provisions of the emergency regulations.

EMERGENCY RULE MAKING

Title Insurance Agents, Affiliated Relationships, and Title Insurance Business

I.D. No. DFS-46-16-00006-E

Filing No. 991

Filing Date: 2016-10-28

Effective Date: 2016-10-28

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

Action taken: Amendment of Parts 20 (Regulation 9, 18 and 29), 29 (Regulation 87), 30 (Regulation 194) and 34 (Regulation 125); and addition of new Part 35 (Regulation 206) to Title 11 NYCRR.

Statutory authority: Financial Services Law, sections 202 and 302; and Insurance Law, sections 107(a)(54), 301, 2101(k), 2109, 2112, 2113, 2119, 2120, 2122, 2128, 2129, 2132, 2139, 2314 and 6409

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

Specific reasons underlying the finding of necessity: Long-sought and critically needed legislation to license title insurance agents was enacted as part of Chapter 57 of the New York Laws of 2014, which was signed

into law by the governor on March 31, 2014. Chapter 57 took effect on September 27, 2014.

A number of existing regulations that apply to insurance producers generally are amended to make them applicable to title insurance agents. Specifically, Part 20 addresses temporary licenses (Insurance Regulation 9), addresses appointment of insurance agents (Insurance Regulation 18), and regulates premium accounts and fiduciary responsibilities of insurance agents and insurance brokers (Insurance Regulation 29), and are amended to include references to title insurance agents. Part 29 (Insurance Regulation 87) addresses special prohibitions regarding sharing compensation with other licensees with respect to certain governmental entities and is amended to address a limited exception for title insurance business insuring State of New York Mortgage Agency and certain other circumstances. Part 30 (Insurance Regulation 194) addresses insurance producer compensation transparency and is amended to reflect specific requirements in new Insurance Law section 2113 for title insurance agents. Part 34 (Insurance Regulation 125) governs insurance agents and brokers that maintain multiple offices and is amended to clarify the applicability of the regulation to title insurance agents. In addition, a new Part 35 (Insurance Regulation 206) is added that address unique circumstances regarding title insurance agents.

It is critical for the protection of the public that appropriate rules and regulations are in place on and after the effective date of Chapter 57 to apply to newly-licensed title insurance agents and the title insurance business generated. Although the Department has diligently developed regulations to implement Chapter 57, due to the short time frame, it is necessary to promulgate the rules on an emergency basis for the furtherance of the general welfare.

Subject: Title insurance agents, affiliated relationships, and title insurance business.

Purpose: To implement requirements of chapter 57 of Laws of 2014 re: title insurance agents and placement of title insurance business.

Substance of emergency rule: The following sections are amended:

Section 20.1, which specifies forms for temporary licenses, is amended to make technical changes and to add references to title insurance agents.

Section 20.2, which specifies forms of notice for termination of agents, is amended to make technical changes and to add references to title insurance agents.

Section 20.3, which governs fiduciary responsibility of insurance agents and brokers, including maintenance of premium accounts, is amended to make technical changes and to add references to title insurance agents.

Section 20.4, which governs insurance agent and broker recordkeeping requirements for fiduciary accounts, is amended to make technical changes and to add references to title insurance agents.

Section 29.5, which implements Insurance Law section 2128, governing placement of insurance business by licensees with governmental entities, is amended to make technical changes and to conform to amendments to section 2128, with respect to title insurance agents.

Section 29.6 is amended to remove language regarding return of disclosure statements.

Section 30.3, which governs notices by insurance producers regarding the amount and extent of their compensation, is amended by adding a new subdivision that modifies the requirements of the section with respect to title insurance agents, in order to conform to new Insurance Law section 2113(b).

Section 34.2, which governs satellite offices for insurance producers, is amended by adding a new subdivision that exempts from certain provisions of that section a title insurance agent that is a licensed attorney transacting title insurance business from the agent's law office.

A new Part 35 is added governing the activities of title insurance agents and the placement of title insurance business. The new sections are:

Section 35.1 contains definitions for new Part 35.

Section 35.2 specifies forms for title insurance agent licensing applications.

Section 35.3 specifies change of contact information required to be filed with the Department.

Section 35.4 addresses affiliated business relationships.

Section 35.5 addresses referrals by affiliated persons and the required disclosures in such circumstances.

Section 35.6 addresses minimum disclosure requirements for title insurance corporations and title insurance agents with respect to fees charged by such corporation or agent, including discretionary or ancillary fees.

Section 35.7 provides certain other minimum disclosure requirements.

Section 35.8 governs the use of title closers by title insurance agents and title insurance corporations.

Section 35.9 establishes record retention requirements for title insurance agents.

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 January 25, 2017.

Text of rule and any required statements and analyses may be obtained from: Paul Zuckerman, New York State Department of Financial Services, One State Street, New York, NY 10004, (212) 480-5286, email: paul.zuckerman@dfs.ny.gov

Consolidated Regulatory Impact Statement

1. Statutory authority: The Superintendent's authority to promulgate these amendments and the new Part derives from sections 202 and 302 of the Financial Services Law ("FSL") and sections 107(a)(54), 301, 2101(k), 2109, 2112, 2113, 2119, 2120, 2122, 2128, 2129, 2132, 2139, 2314, and 6409 of the Insurance Law.

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

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

Insurance Law section 107(a)(54) defines title insurance agent.

Insurance Law section 2101(k) defines insurance producer to include title insurance agent.

Insurance Law section 2109 addresses temporary licenses for title insurance agents and other insurance producers.

Insurance Law section 2112 addresses appointments by insurers of insurance agents and title insurance agents.

Insurance Law section 2113 requires that title insurance agents and persons affiliated with such title insurance agents provide certain disclosures to applicants for insurance when referring such applicants to persons with which they are affiliated. Section 2113 also requires the Superintendent to promulgate regulations to enforce the affiliated person disclosure requirements and to consider any relevant disclosures required by the federal real estate settlement procedures act of 1974 ("RESPA"), as amended.

Insurance Law section 2119 permits title insurance agents to charge fees for certain ancillary services not encompassed within the rate of premium provided its pursuant to a written memorandum.

Insurance Law section 2120 addresses the fiduciary responsibility of title insurance agents and other producers.

Insurance Law section 2122 addresses advertising by title insurance agents and other insurance producers.

Insurance Law section 2128 prohibits fee sharing with respect to business placed with governmental entities.

Insurance Law section 2132 governs continuing education for title insurance agents and other insurance producers.

Insurance Law section 2139 is the licensing section for title insurance agents.

Insurance Law section 2314 prohibits title insurance corporations and title insurance agents from deviating from filed rates.

Insurance Law section 2324 prohibits rebating, improper inducements and other discriminatory behavior with respect to most kinds of insurance, including title insurance.

Insurance Law section 6409 contains specific prohibitions against rebating, improper inducements and other discriminatory behavior with respect to title insurance.

2. Legislative objectives: Long-sought and critically needed legislation to license title insurance agents was enacted as part of Chapter 57 of the New York Laws of 2014, which was signed into law by the governor on March 31, 2014 and took effect on September 27, 2014. By way of background, title insurance agents in New York: (a) handle millions of dollars of borrowers' and sellers' funds, (b) record documents, and (c) pay off mortgages. Yet for years, title insurance agents have conducted business in New York without licensing or other regulatory oversight, standards or guidelines. Because, as a matter of practice in New York, the title insurance agents control the bulk of the title insurance business, including bringing in customers, conducting the searches and other title work, the title insurance corporations often have little choice but to deal with title insurance agents who they may otherwise consider questionable or unscrupulous. Without licensing or regulatory oversight, an unscrupulous title insurance agent who was fired by one title insurer could simply take the business to another title insurer, who is usually more than willing to appoint that title insurance agent.

This lack of State regulation over title insurance agents made for an alarming weakness in New York law, and specifically New York law addressing title insurance rebating and inducement. For example, lack of regulatory oversight and licensing created a gaping loophole, which led to serious breaches of fiduciary duties and exploitation by unscrupulous actors to commit fraud in the mortgage origination and financing process.

Over the years, this gap in New York law and lack of regulatory oversight allowed these actors to freely engage in theft, abuse, charging of excessive fees, and illegal rebates and inducements to the detriment of consumers, with little fear of prosecution. These abuses cost consumers of the State millions of dollars and at least one New York title insurer became insolvent because of the activities of its title insurance agents.

3. Needs and benefits: Now that New York law requires title insurance agents to be licensed, a number of existing regulations governing insurance producers need to be amended in order include title insurance agents or to address unique circumstances involving them, including affiliated persons' arrangements and required consumer disclosures. Specifically, Insurance Regulation 9 addresses temporary licenses; Insurance Regulation 18 addresses appointment of insurance agents; and Insurance Regulation 29 regulates premium accounts and fiduciary responsibilities of insurance agents and insurance brokers; and each is amended to include references to title insurance agents. Insurance Regulation 87 addresses special prohibitions regarding sharing compensation with other licensees with respect to certain governmental entities and is amended to address a limited exception for title insurance business insuring State of New York Mortgage Agency and certain other circumstances. Insurance Regulation 194 addresses insurance producer compensation transparency and is amended to reflect specific requirements in new Insurance Law section 2113 for title insurance agents. Insurance Regulation 125 governs insurance agents and brokers that maintain multiple offices and is amended to clarify the applicability of the regulation to title insurance agents. Regulation 125 also is amended to address unique circumstances involving title insurance agents who are also licensed attorneys.

New Insurance Regulation 206 addresses a number of miscellaneous issues involving title insurance agents. Some of these changes simply add provisions that are similar to those that apply to other insurance producers; for example, it prescribes the form of applications and requires licensees to notify the Department of any change of business or residence address. Other provisions of Regulation 206 set forth the new disclosure requirements; require title insurance agents to comply with a rate service organization's annual statistical data call; and address the obligation of title insurance agents and title insurance corporations with respect to title closers. Of particular significance are provisions of the regulations that codify Department opinions regarding affiliated business relations with respect to the applicability of Insurance Law section 6409, which prohibits rebates, inducements and certain other discriminatory behaviors.

4. Costs: Regulated parties impacted by these rules are title insurance agents, which heretofore were not licensed by the Department, and title insurance corporations. They may need to provide new disclosures in accordance with the regulation if they are not already making such disclosures but they already have an obligation to make changes to notices pursuant to the legislation. There are also new reporting requirements to the Department but these are the same that apply with respect to other licensees. In any event, although the cost impact will likely vary among the agents and insurers affected by this regulation, the costs of these new disclosures and reporting requirements should not be significant.

Although the Department already was handling complaints and investigating matters regarding title insurance, because licensing title insurance agents is a new responsibility for the Department, anticipated costs to the Department are at this time uncertain. Existing personnel and line titles will handle any new licensing applications or enforcements issues initially.

These rules impose no compliance costs on any state or local governments.

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

6. Paperwork: The amendments and new rules now apply certain requirements that are applicable to other insurance producers to title insurance agents as well. For example, title insurance agents are made subject to the same reporting requirements as other insurance producers when changing addresses, maintaining records, and submitting applications, and title insurers are required to file certificates of appointment of their title insurance agents with the Department. In addition, to reflect the specific notice requirements of Insurance Law section 2113, the disclosure requirements to insureds under Insurance Regulation 194 are modified for title insurance agents to reflect the statutory requirements. The new law also contains certain new disclosure requirements and the new rules implement those changes, and require certain other disclosures to applicants for insurance, such as a notice advising insureds or applicants for insurance about the different kinds of title policies available to them.

7. Duplication: The amendments do not duplicate any existing laws or regulations.

8. Alternatives: Prior to proposing the consolidated rules in July, 2014, the Department circulated drafts of the proposed rules to a number of interested parties and, as a result, the Department made a number of changes to the initial proposed new Regulation 206, particularly with respect to affiliated business relationships, and title insurance corporation or title insurance agent responsibility for title insurance closers. The Department initially submitted the regulation as a proposed rulemaking that was published in the State Register on July 23, 2014. Because of the critical need to have regulations in effect on and after the September 27, 2014 effective date of Chapter 57, the Department promulgated emergency regulations effective on that date. In response to comments received during the public comment period, the Department made additional changes that were incorporated into the emergency rules, in order to clarify or eliminate unnecessary requirements. Because the proposed regulation has expired, the Department anticipates submitting a new, revised proposal in 2016 that will incorporate additional public comments that the Department has received regarding the initial proposal. To prevent disruption and confusion in the industry until the rules are finalized, however, the emergency regulation is continued unchanged from the versions in effect since September 27, 2014.

9. Federal standards: RESPA, and regulations thereunder, contain certain requirements and disclosures that apply to residential real estate settlement transactions. These requirements are minimum requirements and do not preempt state laws that provide greater consumer protection. The amendments and new rules are not inconsistent with RESPA and, consistent with New York law, provide greater consumer protection to the public.

10. Compliance schedule: Chapter 57 of the New York Laws of 2014 took effect on September 27, 2014. In order to facilitate the orderly implementation of the new law, the Superintendent was authorized to promulgate regulations in advance of the effective date, but to make such regulations effective on that date. The emergency rules have continued unchanged since September 27, 2014.

Consolidated Regulatory Flexibility Analysis

1. Effect of the rule: These rules affect title insurance corporations authorized to do business in New York State, title insurance agents and persons affiliated with such corporations and agents.

No title insurance corporation subject to the amendment falls within the definition of "small business" as defined in State Administrative Procedure Act section 102(8), because no such insurance corporation is both independently owned and has less than one hundred employees.

It is estimated that there are about 1,800 title insurance agents doing business in New York currently. Since they are not currently licensed by the Department of Financial Services ("Department"), it is not known how many of them are small businesses, but it is believed that a significant number of them may be small businesses.

Persons affiliated with title insurance agents or title insurance corporations would not, by definition, be independently owned and would thus not be small businesses.

The rule does not impose any impact, including any adverse impact, or reporting, recordkeeping, or other compliance requirements on any local governments.

2. Compliance requirements: The proposed rules conform and implement requirements regarding title insurance agents and placement of title insurance business with Chapter 57 of the Laws of 2014, which made title insurance agents subject to licensing in New York for the first time. A number of the rules will make title insurance agents subject to the same requirements that apply to other insurance producers. There are also disclosure requirements unique to title insurance.

3. Professional services: This amendment does not require any person to use any professional services.

4. Compliance costs: Title insurance agents will need to provide new disclosures in accordance with the regulation if they are not already making such disclosures but they already have an obligation to make changes to notices pursuant to the legislation. There are also new reporting requirements to the Department but these are the same that apply with respect to other licensees. In any event, the costs of these new disclosures and reporting requirements should not be significant. The proposed rules now subject title insurance agents to requirements regarding the maintenance of fiduciary accounts that already apply to other insurance producers. The cost impact on title insurance agents will likely vary from agent to agent but should not be significant.

5. Economic and technological feasibility: Small businesses that may be affected by this amendment should not incur any economic or technological impact as a result of this amendment.

6. Minimizing adverse impact: This rule should have no adverse impact on small businesses.

7. Small business participation: The Department initially submitted the regulation as a proposed rulemaking on July 23, 2014. Prior to submission, interested parties, including an organization representing title insurance agents, were given an opportunity to comment on a draft version of these rules, in addition to their opportunity to review and comment on the proposed rulemaking when it was published. The proposed regulation has

now expired and the Department anticipates submitting a new, revised proposal in 2016 that will incorporate additional public comments that the Department has received regarding the initial proposal. However, to prevent disruption and confusion in the industry until the rules are finalized, the emergency regulation is continued unchanged from the versions in effect since September 27, 2014.

Consolidated Rural Area Flexibility Analysis

The Department of Financial Services ("Department") finds that this rule does not impose any additional burden on persons located in rural areas, and will not have an adverse impact on rural areas. This rule applies uniformly to regulated parties that do business in both rural and non-rural areas of New York State.

Rural area participation: The Department initially submitted the regulation as a proposed rulemaking on July 23, 2014. Prior to submission, interested parties, including those located in rural areas, were given an opportunity to review and comment on a draft version of these rules, in addition to their opportunity to review and comment on the proposed rulemaking when it was published. The proposed regulation has now expired and the Department anticipates submitting a new, revised proposal in 2016 that will incorporate additional public comments that the Department has received regarding the initial proposal. However, to prevent disruption and confusion in the industry until the rules are finalized, the emergency regulation is continued unchanged from the versions in effect since September 27, 2014.

Consolidated Job Impact Statement

The Department of Financial Services finds that these rules should have no negative impact on jobs and employment opportunities. The rules conform to and implement the requirements of, with respect to title insurance agents and the placement of title insurance business, Chapter 57 of the Laws of 2014, which make title insurance agents subject to licensing in New York for the first time and, by establishing a regulated marketplace, may lead to increased employment opportunity.

NOTICE OF ADOPTION

Minimum Standards for Form, Content and Sale of Health Insurance, Including Standards of Full and Fair Disclosure

I.D. No. DFS-36-16-00001-A
Filing No. 1012
Filing Date: 2016-11-01
Effective Date: 2016-11-16

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

Action taken: Amendment of Part 52 (Regulation 62) of Title 11 NYCRR.

Statutory authority: Financial Services Law, sections 202 and 302; Insurance Law, sections 301, 3201, 3217, 3221 and 4237

Subject: Minimum Standards for Form, Content and Sale of Health Insurance, Including Standards of Full and Fair Disclosure.

Purpose: To allow blanket accident insurance policy issued in accordance with GBL section 1015.11 to be excess to any plan.

Text or summary was published in the September 7, 2016 issue of the Register, I.D. No. DFS-36-16-00001-EP.

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

Text of rule and any required statements and analyses may be obtained from: Tobias Len, NYS Department of Financial Services, One Commerce Plaza, Albany, NY 12257, (518) 486-7815, email: tobias.len@dfs.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 agency received no public comment.

New York State Gaming Commission

NOTICE OF ADOPTION

Accounting Standards for a Licensed Gaming Facility

I.D. No. SGC-37-16-00016-A
Filing No. 1017
Filing Date: 2016-11-01
Effective Date: 2016-11-16

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

Action taken: Addition of Part 5315 to Title 9 NYCRR.

Statutory authority: Racing, Pari-Mutuel Wagering and Breeding Law, sections 104(19), 1307(1), (2)(f), (m) through (o), 1334, 1351, 1353 and 1354

Subject: Accounting standards for a licensed gaming facility.

Purpose: To govern a gaming facility licensee's procedures in regard to accounting and record keeping.

Substance of final rule: The addition of Part 5315 of Subtitle T of Title 9 NYCRR will allow the New York State Gaming Commission ("Commission") to prescribe rules for gaming facility accounting controls. These rules establish standards for, among other things, the calculation of gross gaming revenue, internal and financial statement audits and the implementation of an anti-money laundering program.

Sections 5315.2(a)(1) through (a)(3) the word must was changed to shall, consistent with style used elsewhere in Commission rules. Section 5315.10(g) a typographical error was corrected.

Final rule as compared with last published rule: Nonsubstantial changes were made in sections 5315.2(a)(1), (2), (3) and 5315.10(g).

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

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

The Commission made changes to typographical errors contained in sections 5315.2(a)(1), 5315.2(a)(2), 5315.2(a)(3) and 5315.10(g). The changes were non-substantive and do not necessitate a revision to the previously published RIS. The RFA, RAFA and JIS statements were not required for this rule.

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 comments from one entity, Fox Rothschild LLP on behalf of Montreign Operating Company LLC, in regard to this proposed rulemaking. The Commission has considered each of the comments received and decided no changes were necessary at the time. In particular:

1. Proposed Rule 5315.10(g). The commentator requested the time frame for the filing of SEC filings with the Commission be within five business days rather than at the time of filing with the SEC. The Commission disagrees and declines to accept this comment.

2. Proposed Rule 5315.11(b)(6). The commentator requested the subsidiary accounting records relating to drop and win for each gaming device and table game and records be accumulated each gaming day rather than each shift. The Commission believes proposed rule 5315.11(b)(6) allows the information to be accumulated by another accounting period preapproved in writing by the commission.

NOTICE OF ADOPTION

Electronic Gaming Devices and Equipment

I.D. No. SGC-37-16-00017-A
Filing No. 1020
Filing Date: 2016-11-01
Effective Date: 2016-11-16

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

Action taken: Addition of Part 5321 to Title 9 NYCRR.

Statutory authority: Racing, Pari-Mutuel Wagering and Breeding Law, sections 104(19), 1307(1), (2)(g), 1335(2), (8)(c) and (d)

Subject: Electronic Gaming Devices and Equipment.

Purpose: To set forth the practices and procedures for the conduct and operation of electronic gaming devices and equipment.

Substance of final rule: The addition of Part 5321 of Subtitle T of Title 9 NYCRR will allow the New York State Gaming Commission ("Commission") to prescribe the requirements for the use and operation of electronic gaming devices and equipment.

Section 5321.12(a) was corrected to address an incorrect cross-reference. In addition, phrasing in this section was changed improve clarity.

Final rule as compared with last published rule: Nonsubstantial changes were made in section 5321.12(a).

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

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

The Commission corrected an incorrect cross reference in 5321.12(a). In addition, changes were made to improve the rule's clarity. These are a non-substantive changes and do not necessitate a revision to the previously published RIS. The RFA, RAFA and JIS statements were not required for this rule.

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 one comment from one entity, Scientific Games, in regard to this proposed rulemaking. The Commission has considered the comment received, which pointed out an incorrect reference in proposed Rule 5321.12. The Commission made the appropriate change to correct the error, which is a non-substantive change that does not require a revised proposal.

Scientific Games also submitted two general comments about electronic fund transfers/wagering accounts and standards for hybrid electronic table games. For electronic fund transfers/wagering accounts, Scientific Games recommended the standards either allow wagering accounts linked to anonymous players or allow the Commission to approve alternative methods for funding games. The Commission believes proposed Rule 5321.17, which governs the granting of waivers, allows the Commission or casino vendor enterprises to deviate from established technical standards in certain circumstances, allows the Commission or casino vendor enterprises to deviate from established technical standards. For standards for hybrid electronic table games, the Commission believes proposed Rules 5317.41 and 5319.60 regulating electronic table games and systems are also applicable to hybrid electronic table games. No changes are necessary at this time.

NOTICE OF ADOPTION

Slot Tournaments and Progressive Gaming Devices

I.D. No. SGC-37-16-00018-A
Filing No. 1022
Filing Date: 2016-11-01
Effective Date: 2016-11-16

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

Action taken: Addition of Part 5320 to Title 9 NYCRR.

Statutory authority: Racing, Pari-Mutuel Wagering and Breeding Law, sections 104(19), 1307(1), 1335(2) and (8)(c)

Subject: Slot Tournaments and Progressive Gaming Devices.

Purpose: To prescribe the technical standards for the certification of slot tournaments and progressive gaming devices.

Substance of final rule: The addition of Part 5320 of Subtitle T of Title 9 NYCRR will allow the New York State Gaming Commission ("Commission") to prescribe the technical standards for the certification of slot tournaments and progressive gaming devices.

Section 5320.1(a) corrected the reference to multiple gaming devices and clarified the language used.

Final rule as compared with last published rule: Nonsubstantive changes were made in section 5320.1(a).

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

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

The Commission made changes to definition in rule 5320.1(a) to correct the reference to multiple gaming devices and clarify the language used. This is a non-substantive change and does not necessitate a revision to the previously published RIS. The RFA, RAFA and JIS statements were not required for this rule.

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 one comment from one entity, Scientific Games, in regard to this proposed rulemaking. The Commission has considered the comments received and decided no changes were necessary at this time. In particular:

1. Part 5320. The commentator suggested breaking the part into two separate parts. The Commission does not believe such a change is necessary. The commenter asked if the Commission will allow system-based progressives such that progressive controllers are not needed or used. If so, the commentator asked for a review of this proposed Part to ensure that the rules do not unintentionally prohibit system-based progressives. The Commission believes proposed Rule 5321.17, which governs the granting of waivers, allows the Commission or casino vendor enterprises to deviate from established technical standards in certain circumstances. The commentator asked for a review of the proposed Part but suggested no change to the rule language and no such change is necessary.

2. Proposed Rule 5320.1(c). The commentator suggested rewording this definition. The Commission disagrees because the suggestion is stylistic and does not improve the proposed rule and declines to accept this comment.

NOTICE OF ADOPTION

Table Game Rules

I.D. No. SGC-37-16-00019-A
Filing No. 1023
Filing Date: 2016-11-01
Effective Date: 2016-11-16

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

Action taken: Addition of Part 5324 to Title 9 NYCRR.

Statutory authority: Racing, Pari-Mutuel Wagering and Breeding Law, sections 104(19), 1307(1), (2)(g) and 1335(5)

Subject: Table game rules.

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

Substance of final rule: The Commission corrected one spelling error in 5324.1(a)(25) and fixed a spacing error in 5324.1(a)(84). The definition in 5324.1(a)(99) was expanded to apply to games of baccarat, mini-baccarat midi-baccarat to add clarity to the rule definition. This change does not alter how the games are played.

In 5324.2(j)(7), 5324.4(g)(3), 5324.10(a)(2)(iii)(b) and 5324.42(r)(4), the Commission changed the word "must" to "shall," consistent with style used elsewhere in the Rules.

In 5324.4(g)(1)(ii), the Commission corrected the spelling of "wheel."

In 5324.10(i)(2) through 5324.10(i)(7), the Commission renumbered the paragraphs.

In 5324.11(f)(1), 5324.11(g)(1), 5324.11(i)(1), 5324.11(k)(1), 5324.11(l)(1) and 5324.11(m)(1), the Commission deleted references to "continuous shuffler" because referenced wagers do not require the use of a continuous shuffling device. This is a non-substantive change that does not require a revised proposal.

The Commission remembered 5324.7 as 5324.13 and 5324.8 as 5324.14.

In 5324.20(b)(1)(iv)(a)(3), The Commission changed the word "one" to "four" because this was a typographical error.

In 5324.21(b)(1)(iv), the Commission added the word "and" because this was a typographical error.

The Commission re-numbered subdivisions 5324.32(e) and 5324.32(f).

In 5324.35(e)(8)(ii) and 5324.39(b)(3), the Commission corrected the spelling of "subdivision."

In 5324.37(g)(2), the Commission added the word "bet" because this was a typographical error.

In 5324.40(b)(2)(iii), the Commission changed "ace" to "king," "king" to "queen," "queen" to "jack," deleted a comma, added "and," changed "jack" to "10," added a semi-colon and deleted a comma. In 5324.40(b)(2)(vi), the Commission added a semi-colon and deleted a comma. These were typographical errors.

In section 5324.41, the Commission added the words "fortune pai gow poker" where appropriate as this is the full name of the bonus wager recognized by the public. This change does not alter how the games are played and is a non-substantive change that does not require a revised proposal.

In 5324.42(h)(4)(ii), the Commission corrected the spelling of "determined."

In 5324.51(b)(7), the Commission corrected the spelling of "bet."

In 5324.52(a)(5)(i), the Commission corrected the spelling of "all" and deleted quotation marks.

In 5324.52(g), the Commission changed "upon" to "prior to the" because this was a typographical error.

Final rule as compared with last published rule: Nonsubstantive changes were made in sections 5324.1(a)(25), (84), (99), 5324.2(j)(7), 5324.4(g)(1)(ii), (3), 5324.10(a)(2)(iii)(b), (i)(2), (3), (4), (5), (6), (7), 5324.11(f)(1), (g)(1), (i)(1), (k)(1), (l)(1), (m)(1), 5324.13, 5324.14, 5324.20(b)(1)(iv)(a)(3), 5324.21(b)(1)(iv), 5324.32(e), (f), 5324.35(e)(8)(ii), 5324.37(g)(2), 5324.39(b)(3), 5324.40(b)(2)(iii), (vi), 5324.41(a)(2)(iii), (iii)(a), (c), (d), (vi), (3), (3)(i), (c)(6), (d)(5), (6), (l)(1), (2), (3), (4), (4)(i)(a), (b), (ii), (ii)(a), (b), (c), (iii), (iii)(b), (c), (m), (m)(1), 5324.42(h)(4)(ii), (r)(4), 5324.51(b)(7), 5324.52(a)(5)(i) and (g).

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

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

The Commission made only non-substantive changes. These changes do not necessitate a revision to the previously published RIS statement. RFA, RAFA and JIS statements were not required.

The Commission corrected one spelling error in 5324.1(a)(25) and fixed a spacing error in 5324.1(a)(84). The definition in 5324.1(a)(99) was expanded to apply to games of baccarat, mini-baccarat midi-baccarat to add clarity to the rule definition. This change does not alter how the games are played.

In 5324.2(j)(7), 5324.4(g)(3), 5324.10(a)(2)(iii)(b) and 5324.42(r)(4), the Commission changed the word "must" to "shall," consistent with style used elsewhere in the Rules.

In 5324.4(g)(1)(ii), the Commission corrected the spelling of "wheel."

In 5324.10(i)(2) through 5324.10(i)(7), the Commission renumbered the paragraphs.

In 5324.11(f)(1), 5324.11(g)(1), 5324.11(i)(1), 5324.11(k)(1), 5324.11(l)(1) and 5324.11(m)(1), the Commission deleted references to "continuous shuffler" because referenced wagers do not require the use of a continuous shuffling device. This is a non-substantive change that does not require a revised proposal.

The Commission remembered 5324.7 as 5324.13 and 5324.8 as 5324.14.

In 5324.20(b)(1)(iv)(a)(3), The Commission changed the word "one" to "four" because this was a typographical error.

In 5324.21(b)(1)(iv), the Commission added the word "and" because this was a typographical error.

The Commission re-numbered subdivisions 5324.32(e) and 5324.32(f).

In 5324.35(e)(8)(ii) and 5324.39(b)(3), the Commission corrected the spelling of "subdivision."

In 5324.37(g)(2), the Commission added the word "bet" because this was a typographical error.

In 5324.40(b)(2)(iii), the Commission changed "ace" to "king," "king" to "queen," "queen" to "jack," deleted a comma, added "and," changed "jack" to "10," added a semi-colon and deleted a comma. In 5324.40(b)(2)(vi), the Commission added a semi-colon and deleted a comma. These were typographical errors.

In section 5324.41, the Commission added the words "fortune pai gow poker" where appropriate as this is the full name of the bonus wager recognized by the public. This change does not alter how the games are played and is a non-substantive change that does not require a revised proposal.

In 5324.42(h)(4)(ii), the Commission corrected the spelling of "determined."

In 5324.51(b)(7), the Commission corrected the spelling of "bet."

In 5324.52(a)(5)(i), the Commission corrected the spelling of "all" and deleted quotation marks.

In 5324.52(g), the Commission changed "upon" to "prior to the" because this was a typographical error.

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 comments from two parties, Brian Snopkowski and Scientific Games, in regard to this proposed rulemaking. The Commission has considered each of the comments received and made appropriate changes. In particular:

1. Proposed Rule 5324.1(a)(70). A commentator suggested the definition of push be expanded to include "unless specified otherwise in the game rules of play." The Commission disagrees and declines to accept this comment.

2. Proposed Rule 5324.1(a)(99). A commentator suggested the tie wager is applicable to games of baccarat, mini-baccarat and midi-baccarat. The Commission agrees and changed the definition contained in proposed Rule 5324.1(a)(99) to reflect accurately that the proposed rules do otherwise allow for such wager in those three games. This is a non-substantive change that adds clarity to the rule definition, but does not change how the games are played.

3. Proposed Rule 5324.2(q). A commentator suggested that a verbal wager accompanied by cash should be allowed only in the game of craps. A commentator also asked for clarification on what constitutes a verbal wager and dealing procedures. The Commission believes each gaming facility licensee has discretion to make such determinations.

4. Proposed Rule 5324.4(b)(2). A commentator disagreed that a checker or check racker may help the dealer pay winning wagers. The Commission disagrees. The Commission believes the rules accurately reflect that the check racker passes full stacks to the dealer in preparation for payouts.

5. Proposed Rule 5324.10(d). A commentator suggested the facilities should have the option to deal the card for a double-down either face up or face down. The Commission disagrees and believes that the face down option provides consistency among the gaming facilities.

6. Proposed Rule 5324.10(i). A commentator noticed a typographical error. The Commission accepted the comment and corrected the error. This is a non-substantive change that does not require a revised proposal.

7. Proposed Rule 5324.11(b)(1). A commentator suggested adding the language "other variations as specified in the game rules of play." The Commission disagrees and declines to accept this comment. The Commission notes that new features or wagers may be submitted pursuant to Rule 5323.18.

8. Proposed Rule 5324.11(f)(1), 5324.11(g)(1), 5324.11(i)(1), 5324.11(k)(1), 5324.11(l)(1) and 5324.11(m)(1). A commentator objected to the language of "or continuous shuffler." The Commission agrees because the referenced wagers do not require the use of a continuous shuffler device. This is a non-substantive change that does not require a revised proposal.

9. Proposed Rule 5324.11(h). A commentator asserted that this section is incomplete. The Commission disagrees and believes that the proposed rule as written is complete and does not require any changes.

10. Proposed Rule 5324.12(a). A commentator suggested the language be changed to "When the use of a continuous shuffler has been authorized by the commission, the gaming facility may use a different number of decks upon written approval by the commission." The Commission disagrees because all continuous shuffler devices require authorization by the Commission pursuant to Rule 5322.19(d).

11. Proposed Rule 5324.12(c)(5). A commentator suggested the addition of "double down rescue" to Spanish blackjack. The Commission declines to do so and notes that each gaming facility licensee may submit additional wagers and game features for Commission approval pursuant to Rule 5323.18.

12. Proposed Rule 5324.12(d). A commentator asked for clarification on applicability of optional wagers to Spanish blackjack. The Commission believes proposed rule 5324.12(d) sufficiently specifies which optional wagers apply to Spanish blackjack.

13. Proposed Rule 5324.20(b)(1)(iv)(a)(3). A commentator suggested the word "one" should be changed to "four." The Commission agrees that this was a typographical error, accepted the comment and corrected the error. This is a non-substantive change that does not require a revised proposal.

14. Proposed Rule 5324.20(i)(2) and 5324.20(i)(3). A commentator suggested the discard procedures following a misdealt card should be consistent with no regard to whether the card is disclosed. The Commission disagrees and notes that each gaming facility licensee may submit deviations from approved misdeal procedures for Commission approval, pursuant to Rule 5323.18.

15. Proposed Rule 5324.20. A commentator noted there is no pay table for the dragon bonus side wager. The Commission will consider adding a pay table for such wager at a later time.

16. Proposed Rule 5324.21(b)(1)(iv). The commentator noted this subparagraph is incomplete. The Commission will consider revising this Rule at a later time.

17. Proposed Rule 5324.33. A commentator noticed a typographical error. The Commission accepted the comment and corrected the typographical error. This is a non-substantive change that does not require a revised proposal.

18. Proposed Rule 5324.33(d)(1) through 5324.33(d)(3). A commentator objected to the procedures prescribed for four-card poker. The Commission disagrees and believes that the procedures provide consistency among the gaming facilities.

19. Proposed Rule 5324.37. A commentator suggested "bet wager" must be twice the ante wager amount. The Commission will consider revising this Rule at a later time.

20. Proposed Rule 5324.37(g)(2). A commentator suggested changing the language from "pay each winning wager" to "pay each winning bet wager." The Commission agrees that this was a typographical error, accepted the comment and corrected the error. This is a non-substantive change that does not require a revised proposal.

21. Proposed Rule 5324.40. A commentator suggested changing Asia poker to fortune Asia poker. The Commission disagrees and declines to accept this comment. The Commission believes Asia poker could be offered under various names, so long as the rules adhere to proposed Rule 5324.40.

22. Proposed Rule 5324.40(b)(2)(iii). A commentator pointed out an obvious typographical error in the rankings of royal flush and straight flush. The Commission accepted the comment and corrected the typographical error. This is a non-substantive change that does not require a revised proposal.

23. Proposed Rule 5324.41. A commentator asked for clarification on whether non-branded and/or generic versions of proprietary side wagers are allowed. The Commission believes any side wagers can be offered under various names, so long as the rules adhere to this proposed Part. A commentator recommended changing the bonus wager detailed in Rules 5324.41(a)(2)(vi), 5324.41(a)(3)(i), 5324.41(c)(6), 5324.41(d)(6), 5324.41(g), 5324.41(l), 5324.41(m) and possibly 5324.41(n) to "Fortune Pai Gow Poker bonus wager." The Commission reviewed proposed Rule 5324.41 and inserted "fortune pai gow poker" where appropriate. A commentator asked for clarification on what mechanism is in place to distinguish between an approved bonus wager and an unapproved bonus wager. The Commission believes Rule 5323.18 sufficiently addresses the approval process of bonus wagers. A commentator noted sections within proposed Rule 5324.41 in which the seven-card bonus wager and bonus wager potentially both reference the same table game side wager known as fortune pai gow poker. The Commission believes proposed Rule 5324.41(l)(1) provides a distinction between the two bonus wagers.

24. Proposed Rule 5324.41(l)(4)(iii). A commentator asked for clarification detailing the eligibility to receive an envy bonus. The Commission believes proposed Rule 5324.41(l)(4)(iii) sufficiently specifies the eligibility to receive an envy bonus.

25. Proposed Rule 5324.52(b)(5). A commentator suggested adding the sentence "Place bets to win for the numbers 4, 5, 9 and 10 shall be made in increments of five and place bets to win for the numbers 6 and 8 shall be made in increments of six." The Commission will consider adding this sentence at a later time.

26. Proposed Rule 5324.52(b)(6). A commentator suggested adding the sentence "Place bets to lose for the numbers 4 and 10 shall be made in increments of 11, place bets to lose for the numbers 5 and 9 shall be made in increments of eight and place bets to lose for the numbers 6 and 8 shall be made in increments of 5." The Commission will consider adding this sentence at a later time.

27. Proposed Rule 5324.52(b)(19). A commentator suggested adding the sentence "A horn bet shall be placed in increments of four." The Commission will consider adding this sentence at a later time.

28. Proposed Rule 5324.52(e)(4)(v). A commentator stated this subparagraph should be deleted. The Commission will consider revising this subparagraph at a later time.

29. Proposed Rule 5324.52(g). A commentator pointed out a typographical error in this subdivision. The Commission accepted the comment and corrected the typographical error. This is a non-substantive change that does not require a revised proposal.

30. Proposed Rule 5324.52(i)(2) and 5324.52(k). A commentator suggested moving proposed Rule 5324.52(i)(2) to proposed Rule 5324.52(k) because the commentator believes proposed Rule 5324.52(i)(2) concerns irregularities. The Commission disagrees because proposed Rule 5324.52(i)(2) is not an irregularity. A commentator also stated the language in proposed Rule 5324.52(i)(2) is confusing. The Commission will consider revising proposed Rule 5324.52(i)(2) at a later time.

31. A commentator recommended the removal of Rule 5322.19(d). The Commission disagrees because the comment does not suggest revising proposed Part 5324 and declines to revise Part 5322 at this time.

NOTICE OF ADOPTION

Monitoring, Control Systems and Validation

I.D. No. SGC-37-16-00020-A
Filing No. 1021
Filing Date: 2016-11-01
Effective Date: 2016-11-16

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

Action taken: Addition of Part 5317 to Title 9 NYCRR.

Statutory authority: Racing, Pari-Mutuel Wagering and Breeding Law, sections 104(19), 1307(1) and 1335(8)

Subject: Monitoring, control systems and validation.

Purpose: To prescribe the technical standards for the certification of online monitoring and control and validation systems.

Substance of final rule: The Commission deleted section 5317.3 because the language is merely prefatory and did not need to be included in the Commission's rules at all. As a result, remaining sections needed to be renumbered. In section 5317.38(e), a comma was added. These are nonsubstantive changes.

Final rule as compared with last published rule: Nonsubstantive changes were made in sections 5317.3 and 5317.38(e).

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

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

The Commission deleted section 5317.3 because the language is merely prefatory and did not need to be included in the Commission's rules at all. As a result, remaining sections needed to be re-numbered. In section 5317.38(e), a comma was added. These are non-substantive changes. These changes do not necessitate a revision to the previously published RIS statement. RFA, RAFA and JIS statements were not required.

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 one comment from one entity, Scientific Games, in regard to this proposed rulemaking. The Commission has considered the comment received and decided no changes were necessary at this time. In particular, the commentator recommended a secure encryption method of at least 64 bits instead of the 128 bits in proposed rule 5317.39(e). The Commission believes it is industry standard to use at least 128 bits and declines to accept this comment.

Scientific Games submitted a general comment regarding Proposed Rule 5317.3 (No limitation of technology) and its applicability to Proposed Parts 5319, 5320, 5321 and 5324. The Commission deleted this proposed Rule because the rule's content was merely prefatory. Other sections in this Part were renumbered accordingly. This is a non-substantive change that does not require a revised proposal.

NOTICE OF ADOPTION

To Set Forth the Standards for the Gaming Devices

I.D. No. SGC-37-16-00021-A
Filing No. 1018
Filing Date: 2016-11-01
Effective Date: 2016-11-16

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

Action taken: Addition of Part 5319 to Title 9 NYCRR.

Statutory authority: Racing, Pari-Mutuel Wagering and Breeding Law, sections 104(19), 1307(1) and 1335(8)

Subject: To set forth the standards for the gaming devices.

Purpose: To prescribe the technical standards for the certification of gaming devices.

Substance of final rule: Section 5319.7(a) fixed verb tense.
Section 5319.8(a) added a space.
Sections 5319.21(d)(2) and 5319.51(b) deleted reference to residual credits which are not referenced elsewhere. Residual credits are synonymous with fractional credits. For consistency, the Commission chose to use "fractional credits" over "residual credits."
Section 5319.51(g)(1)(ii) added a hyphen.
Section 5319.51(h) added a hyphen.

Final rule as compared with last published rule: Nonsubstantive changes were made in sections 5319.7(a), 5319.8(a), 5319.21(d)(2), 5319.51(b), (g)(1)(ii) and (h).

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

Revised Regulatory Impact Statement, Regulatory Flexibility Analysis, Rural Area Flexibility Analysis and Job Impact Statement
The Commission made the following non-substantive changes:
Section 5319.7(a) fixed verb tense.
Section 5319.8(a) added a space.
Sections 5319.21(d)(2) and 5319.51(b) deleted reference to residual credits which are not referenced elsewhere. Residual credits are synonymous with fractional credits. For consistency, the Commission chose to use "fractional credits" over "residual credits."
Section 5319.51(g)(1)(ii) added a hyphen.
Section 5319.51(h) added a hyphen.
These changes do not necessitate a revision to the previously published RIS statement. RFA, RAFA and JIS statements were not required.

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 comments from one entity, Scientific Games, in regard to this proposed rulemaking. The Commission has considered each of the comments received and made changes, where appropriate, as indicated below. In particular:
1. Proposed Rules 5319.21(2) and 5319.51(b). The commentator noted editing errors in references to residual credits (a synonym of fractional credits). The Commission accepted the comments and corrected the errors. These are non-substantive changes that do not require a revised proposal.
2. Proposed Rule 5319.28(k). The commentator recommended a secure encryption method at least 64 bits instead of the 128 bits proposed. The Commission believes it is industry standard to use at least 128 bits and declines to accept this comment.
The commenter also asked for confirmation of an interpretation of proposed rule 5319.59(a), but suggested no change to the rule language and no such change is necessary.

NOTICE OF ADOPTION

To Set Forth the Practice and Procedures for the Cage and Count Standards

I.D. No. SGC-37-16-00022-A
Filing No. 1019
Filing Date: 2016-11-01
Effective Date: 2016-11-16

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

Action taken: Addition of Part 5316 to Title 9 NYCRR.

Statutory authority: Racing, Pari-Mutuel Wagering and Breeding Law, sections 104(19), 1307(1), (2)(m), 1335(3) and (8)

Subject: To set forth the practice and procedures for the cage and count standards.

Purpose: To regulate the procedures for the cage and count standards.

Substance of final rule: The word "must" is changed to "shall" in several places, consistent with style used elsewhere in the Rules. These are non-substantive changes.

Final rule as compared with last published rule: Nonsubstantial changes were made in sections 5316.5(h)(1)(iii)(h)(3), (6)(i), 5316.9(a), 5316.10(a), 5316.15, 5136.16(a), (b) and 5316.20(b)(4).

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

Revised Regulatory Impact Statement, Revised Regulatory Flexibility Analysis, Revised Rural Area Flexibility Analysis and Revised Job Impact Statement
The Commission changed the word "must" is changed to "shall" in several places, consistent with style used elsewhere in the Rules. These are non-substantive changes. These changes do not necessitate a revision to the previously published RIS statement. RFA, RAFA and JIS statements were not required.

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 comments from one entity, Fox Rothschild LLP on behalf of Montreign Operating Company LLC, in regard to this proposed rulemaking. The Commission has considered each of the comments received and decided no changes were necessary at the time. In particular:
1. Proposed Rule 5316.6(c)(3). The commentator does not believe bulletproof glass and a man-trap are necessary. The Commission disagrees and declines to accept this comment.
2. Proposed Rule 5316.6(c)(4). The commentator does not believe color cameras are necessary and notes color cameras are not required under surveillance regulations in Part 5314. The Commission disagrees and believes it is industry standard to use color cameras at secured delivery stations. The Commission also believes section 5314.4 only sets minimum requirements for surveillance equipment and section 5314.1(c) requires a gaming facility's surveillance plan of operation to be consistent with all of Subchapter B, not just Part 5314.

Department of Motor Vehicles

PROPOSED RULE MAKING
NO HEARING(S) SCHEDULED

Hearings for Persons Who Persistently Evade the Payment of Tolls

I.D. No. MTV-46-16-00020-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 127.14 of Title 15 NYCRR.

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

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

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

Text of proposed rule: Subdivisions (a) and (b) of section 127.14 are amended and a new subdivision (f) is added to read as follows:

(a) This section applies to hearings related to the failure to pay tolls, fees, or other charges or the failure to have such tolls, fees or other charges dismissed or transferred in response to [five (5)] *three (3)* or more notices of violation or other process issued within [an eighteen (18) month] *a five (5) year* period charging the registrant of a motor vehicle with a violation of toll collection regulations*, or to the failure of the registrant of a com-*

mercial motor vehicle to pay tolls, fees or other charges in the amount of $200 or more, where all such tolls, fees or other charges are accumulated within a five year period.

(b) Upon receipt from a tolling authority, in such form and manner as the Commissioner shall prescribe, that*: (i)* the registrant of a motor vehicle has failed to pay tolls, fees, or other charges or failed to have such tolls, fees or other charges dismissed or transferred in response to [five (5)] *three (3)* or more notices of violation or other process issued within [an eighteen (18) month] *a five (5) year* period, arising out of violations resulting from toll transactions not occurring on the same day, *or (ii) that the registrant of a commercial motor vehicle has failed to pay tolls, fees or other charges in the amount of $200 or more, where all such tolls, fees or other charges are accumulated within a five year period,* the Commissioner shall issue a proposed suspension of such person's registration. Such person shall be advised of the right to request a hearing before an administrative law judge, prior to such proposed suspension taking effect.

(f) For the purposes of this section, the term commercial motor vehicle shall mean a motor vehicle registered pursuant to Vehicle and Traffic Law sections 401(7)(A), 401(7)(B), 401(7)(F), 401(8) and 405.

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

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

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

Regulatory Impact Statement

1. Statutory authority: Vehicle and Traffic Law (VTL) section 215(a) provides that the Commissioner of Motor Vehicles may enact rules and regulations that regulate and control the exercise of the powers of the Department of Motor Vehicles (DMV). VTL section 510(3)(d) authorizes the Commissioner to permissively suspend the registration of a person for habitual or persistent violations of the VTL, or of any lawful ordinance, rule or regulation made by local authorities in relation to traffic.

2. Legislative objectives: The Legislature enacted VTL section 510(3)(d) to authorize the Commissioner of Motor Vehicles to suspend or revoke the license or registration of persons who commit persistent violations of the VTL, or of any lawful ordinance, rule or regulation made by local authorities in relation to traffic. "Local authorities," as defined in VTL section 122, includes the New York State Thruway Authority and every bridge authority and bridge and tunnel authority as well as every "similar body or person having authority to enact laws or regulations relating to traffic under the constitution and laws of this state." Under this authority, the Commissioner is authorized to take action against persons who consistently flaunt the regulations of public authorities related to the payment of tolls. The proposed rule accords with this legislative objective by authorizing the Commissioner to suspend a person's registration, after an opportunity to be heard, if such person persistently fails to pay tolls, fees or other charges assessed by a public authority.

3. Needs and benefits: The proposed rule is necessary to deter the non-payment of tolls by providing a meaningful mechanism to take action against individuals who persistently evade the payment of tolls and associated fees. On January 20, 2016, the DMV adopted amendments to Part 127 of the Commissioner's Regulation to provide that if a motor vehicle registrant fails to pay tolls, fees, or other charges in response to five or more notices of violation or other process issued within an eighteen month period, arising out of toll transactions not occurring on the same day, such registrant's motor vehicle registration would be suspended. This proposed rule would provide that such suspension would take effect if the registrant failed to pay tolls, fees or other charges in relation to three or more notices of violation or other process issued within a five year period. In addition, the proposed regulation would provide for such a suspension if the registrant operates a commercial-type vehicle and accumulates $200 in tolls, fees and other charges within such five year period. Prior to the suspension taking effect, the registrant may request a hearing before a DMV administrative law judge. If the registrant requests a hearing, the suspension will be held in abeyance until the conclusion of the hearing. Failure to respond to the notice of suspension/hearing will be deemed a waiver of the hearing and the suspension will take effect as prescribed in the notice. The suspension will remain in effect until the tolling authority notifies the DMV that the registrant has paid the outstanding tolls, fees or other charges. It is important to note that before the DMV becomes involved in this process, the tolling authorities will have sent the toll violators one or two notices for each toll violation advising them of the amount owed, how to pay, and how to dispute the alleged violation. If the violator fails to pay the tolls, fees or other charges or have such tolls, fees or charges dismissed or transferred in response to the multiple notices, the tolling authority will refer him/her to the DMV.

The "tolling authorities" include the New York State Thruway Authority (NYSTA), the Port Authority of New York and New Jersey (PANYNJ), the New York State Bridge Authority (NYSBA) and the Triborough Bridge and Tunnel Authority (TBTA), which have jurisdiction over 17 bridges, 4 tunnels and the Thruway system across the State. Over 820 million trips were taken through the authorities' tolling sites in 2014. In 2014 alone, NYSTA had 202,832 instances of non-payment of tolls in response to violation notices, while the PANYNJ had 638,104 such instances and TBTA had 483,016 such instances, for a total of 1,292,613. The TBTA reports that, in relation to the Henry Hudson Bridge alone, since 2011, vehicles bearing 52,697 license plates have committed 805,150 toll violations, based on three or more offenses committed within the five year period, for which they owe $4,155.658 in tolls and $36,891,634 in other fees. The Thruway Authority reports that since 2011, vehicles bearing 35,022 different license plates have committed 412,354 violations based on three or more offenses committed within the five year period, resulting in $3,127,777 tolls and $10,307,800 fees due. The Port Authority reports that since 2011, vehicles bearing 34,213 different license plates have committed 447,807 violations based on three or more offenses committed with the five year period, resulting in $6,656,779 tolls and $22,385,250 fees due. Since toll revenue is used to maintain and improve the infrastructure of these frequently used highways, tunnels, and bridges and, in TBTA's case, to provide support for the capital projects and operations of the Metropolitan Transportation Authority's mass transit system, the toll evaders pass the burden of maintaining the infrastructure and supporting transit mass to law abiding citizens who pay the tolls.

The rule adopted in January represented a first step in pursuing individuals who persistently fail to pay tolls. This proposed rule will more aggressively target violators who evade tolls, by expanding the scope of those deemed persistent violators.

4. Costs: a. To regulated parties:

This proposal does not impose new costs on registrants who fail to pay tolls. Such registrants will be required to pay the tolls and fees required by the authorities in order to prevent the suspension of their registrations or in order for their registrations to be reinstated.

b. Cost to the State, the agency and local governments:

This proposed rule will impose no costs on local governments.

The DMV will use existing resources to hold administrative hearings. TBTA, NYSTA and PANYNJ will incur costs associated with programming changes and additional personnel needs. Specific costs are yet to be determined.

c. Source:

DMV's Safety Hearing Bureau, TBTA, NYSTA and PANYNJ.

5. Local government mandates: The proposed rule will not impact local governments.

6. Paperwork: The proposed rule will require DMV to revise its notice that advises registrants that their registrations will be suspended for failure to pay tolls unless such registrants request an administrative hearing.

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

8. Alternatives: The tolling authorities previously submitted legislative proposals to address the issue of non-payment, but such proposals were not enacted by the Legislature. The proposed rule represents a sound proposal to aggressively take action against those who fail to pay tolls on our highways, bridges and tunnels. A no action alternative was not considered.

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

10. Compliance schedule: Implementation of this regulation would occur upon its adoption.

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

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

This proposed rulemaking would permit the Department of Motor Vehicles to suspend the registrations of registrants who have failed to pay tolls, fees or other charges, after an opportunity to be heard. Due to its narrow focus, this rule will not impose an adverse economic impact or reporting, record keeping, or other compliance requirements on small businesses in rural or urban areas or on employment opportunities. No local government activities are involved.

Public Service Commission

PROPOSED RULE MAKING
NO HEARING(S) SCHEDULED

Consideration of the NYISO's AC Transmission Public Policy Transmission Need (PPTN) Viability and Sufficiency Assessment

I.D. No. PSC-46-16-00008-P

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

Proposed Action: The Commission is considering whether the New York Independent System Operator, Inc. (NYISO) should proceed to evaluate the proposed solutions it submitted on October 28, 2016 to the identified Public Policy Transmission Need/Public Policy Requirements.

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

Subject: Consideration of the NYISO's AC Transmission Public Policy Transmission Need (PPTN) Viability and Sufficiency Assessment.

Purpose: To consider whether NYISO should proceed to further evaluate solutions to a AC Transmission PPTN.

Substance of proposed rule: The Public Service Commission (Commission) is considering whether the New York Independent System Operator, Inc. (NYISO) should proceed to evaluate the proposed solutions the NYISO submitted on October 28, 2016, as part of an AC Transmission Public Policy Transmission Need (PPTN) Viability and Sufficiency Assessment (Assessment). The PPTN Assessment addresses the proposed solutions the NYISO received upon soliciting responses to the PPTN for AC Transmission upgrades that was initially identified by the Commission in an order issued in this proceeding on December 17, 2015. In accordance with its Policy Statement issued in Case 14-E-0068 on August 15, 2014, the Commission seeks comments on whether the proposed solutions identified in the PPTN Assessment should continue to be analyzed by the NYISO, or whether there is no longer a Public Policy Requirement/PPTN driving the need for a potential transmission solution that warrants further evaluation by the NYISO. The Commission is also considering the AC Transmission PPTN Cost Allocation Methodology Analysis submitted by the NYISO. The Commission may determine that the PPTN continues to exist, or that such a PPTN no longer exists, or that a modified PPTN exists, including, but not limited to, whether a non-transmission solution should be pursued, and may address other related matters, including, but not limited to, cost allocation and cost containment.

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.

(12-T-0502SP6)

PROPOSED RULE MAKING
NO HEARING(S) SCHEDULED

Waiver of the Ten-Member Minimum for CDG Projects in Appropriate Circumstances

I.D. No. PSC-46-16-00009-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 request filed by New York City, Solar One, GRID Alternatives, NRDC, AEA, and EDF to waive the ten-member minimum for Community Distribution Generation (CDG) projects located on properties with multiple residential units.

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

Subject: Waiver of the ten-member minimum for CDG projects in appropriate circumstances.

Purpose: Consideration of appropriate treatment of small CDG projects on multi-resident properties.

Substance of proposed rule: The Public Service Commission is considering a request filed by the City of New York, Solar One, GRID Alternatives, the Natural Resources Defense Council, the Association for Energy Affordability, and the Environmental Defense Fund on September 1, 2016 to waive the ten-member minimum for Community Distribution Generation projects located on properties with multiple residential units. 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, (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, (518) 474-6530, email: secretary@dps.ny.gov

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

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

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

(15-E-0082SP4)

PROPOSED RULE MAKING
NO HEARING(S) SCHEDULED

Proposed Modifications to the Phase III Storm Hardening Order

I.D. No. PSC-46-16-00010-P

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

Proposed Action: The Public Service Commission is considering the petition of Consolidated Edison Company of New York, Inc. (Con Edison) to modify the Phase III Storm Hardening Order, issued January 25, 2016.

Statutory authority: Public Service Law, sections 65 and 66

Subject: Proposed modifications to the Phase III Storm Hardening Order.

Purpose: To consider modifications to the Phase III Storm Hardening Order.

Substance of proposed rule: The Public Service Commission (Commission) is considering a petition filed on October 25, 2016 by Consolidated Edison Company of New York, Inc. (Con Edison or the Company) requesting that the Commission modify the requirement contained in its Order Adopting Storm Hardening and Resiliency Collaborative Phase Three Report Subject to Modifications (Order), issued on January 25, 2016 in Cases 13-E-0030, 13-G-0031 and 13-S-0032, to no longer require that Con Edison convert its dual-fuel back-up generators at the four facilities enumerated in the Order from liquid fuel to natural gas, in exchange for Con Edison's proposal to provide 48-hour fuel supplies at the East 13th Street, 36th Street and the Seaport stations. 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.

(13-E-0030SP13)

PROPOSED RULE MAKING
NO HEARING(S) SCHEDULED

Excess Generation Credits Held by CDG Project Sponsors at the End of an Annual Billing Period

I.D. No. PSC-46-16-00011-P

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

Proposed Action: The Commission is considering a petition filed by the SolarCity Corporation for clarification or a declaratory ruling regarding payment for excess generation credits held by Community Distribution Generation (CDG) project sponsors.

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

Subject: Excess generation credits held by CDG project sponsors at the end of an annual billing period.

Purpose: Consideration of appropriate treatment of excess generation credits.

Substance of proposed rule: The Public Service Commission is considering a petition filed by the SolarCity Corporation on October 21, 2016 for clarification or a declaratory ruling regarding payment for excess generation credits held by Community Distributed Generation project sponsors at the end of an annual billing period. 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, (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, (518) 474-6530, email: secretary@dps.ny.gov

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

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

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

(15-E-0082SP5)

PROPOSED RULE MAKING
NO HEARING(S) SCHEDULED

Implementation Program Rules for the Renewable Energy Standard (RES) and Zero-Emission Credit (ZEC) Requirement

I.D. No. PSC-46-16-00012-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 an Implementation Proposal filed on October 31, 2016, which proposes certain processes and details for the Clean Energy Standard.

Statutory authority: Public Service Law, sections 4(1), 5(1), (2) and 66(2); Energy Law, section 6-104(5)(b)

Subject: Implementation program rules for the Renewable Energy Standard (RES) and Zero-Emission Credit (ZEC) requirement.

Purpose: To promote and maintain renewable and zero-emission electric energy resources.

Substance of proposed rule: The Commission is considering the Clean Energy Standard (CES) Phase One Implementation Plan (Plan) proposal filed by the New York State Research and Development Authority (NYSERDA) and Department of Public Service Staff (Staff), which provides certain details in regard to the Renewable Energy Standard (RES) and the Zero-Emission Credit (ZEC) requirement. In order to begin the implementation of the requirements of the August 1, 2016 CES Order for its launch in 2017, NYSERDA and Staff propose processes and details regarding RES resource eligibility, project certification, long-term procurement of Renewable Energy Credits (RECs); load-serving entities (LSEs) demonstration of compliance and other reporting requirements. Under the proposed Plan, NYSERDA will be responsible for implementing many aspects of the CES and will develop and maintain a web interface that will provide information concerning RES resource developers; LSEs, and other market participants. The Plan addresses Tier 1 eligibility including definitions and criteria of vintage generating facilities (VGF); upgrades to existing facilities; return to service criteria; and repowering of facilities. The Plan also provides eligibility rules and the criteria for obtaining a Tier 2 Maintenance Resource contract. With respect to long-term procurements of RECs, NYSERDA and Staff recommend specific criteria and weighting to be used in the 2017 solicitation of Tier 1 RECs as follows: Bid Price: 70 percent (70%), Economic Benefits: 10 percent (10%), Project Viability: 10 percent (10%) and Operational Flexibility and Peak Coincidence: 10 percent (10%). Compliance for the ZEC requirement and the RES program by each LSE will be tracked through New York Generation Attribute Tracking System (NYGATS). LSEs will be required to register an account in NYGATS in order to transact RECs and ZECs. LSEs that elect to make an Alternative Compliance Payment (ACP) to satisfy all or part of their RES and ZEC obligations will be required to report those transactions as an attachment to the NYGATS Compliance Report. The Plan requires an LSE to make annual CES compliance filings for every compliance period in which it served load that resulted in a RES and ZEC compliance obligation. The RES compliance period is January 1 through December 31; the ZEC compliance period is April 1 through March 31. Using NYGATS data, the Plan proposes that NYSERDA produce and make available to the public annual CES compliance reports on the progress of meeting the RES annual targets; a RES procurement performance report that summarizes the results and status of each Tier 1 REC solicitation; and a periodic RES program evaluation report that will assess the program's impact and successes to date. The Commission may adopt, reject, or modify, in whole or in part, the relief proposed and may resolve related matters.

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

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

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

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

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

(15-E-0302SP25)

PROPOSED RULE MAKING
NO HEARING(S) SCHEDULED

Notice of Intent to Submeter Electricity

I.D. No. PSC-46-16-00013-P

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

Proposed Action: The Public Service Commission is considering the Notice of Intent, filed by Hudson Cornell Tech LLC, to submeter electricity at 1 East Loop Road, New York, New York.

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

Subject: Notice of Intent to submeter electricity.

Purpose: To consider the Notice of Intent of Hudson Cornell Tech LLC, to submeter electricity at 1 East Loop Road, New York, New York.

Substance of proposed rule: The Commission is considering the Notice of Intent, filed by Hudson Cornell Tech LLC on September 29, 2016, to submeter electricity at 1 East Loop Road, New York, New York, located in the service territory of Consolidated Edison Company of New York, Inc. The Commission may adopt, reject or modify, in whole or in part, the relief proposed and may resolve related matters.

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

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

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

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

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

(16-E-0553SP1)

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Notice of Intent to Submeter Electricity

I.D. No. PSC-46-16-00014-P

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

Proposed Action: The Public Service Commission is considering the Notice of Intent, filed by 846 6th Avenue Venture, LLC, to submeter electricity at 50 West 30th Street, New York, New York.

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

Subject: Notice of Intent to submeter electricity.

Purpose: To consider the Notice of Intent of 846 6th Avenue Venture, to submeter electricity at 50 West 30th Street, New York, New York.

Substance of proposed rule: The Commission is considering the Notice of Intent, filed by 846 6th Avenue Venture, LLC, on October 5, 2016, to submeter electricity at 50 West 30th Street, New York, New York, located in the service territory of Consolidated Edison Company of New York, Inc. The Commission may adopt, reject or modify, in whole or in part, the relief proposed and may resolve related matters.

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

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

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

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

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

(16-E-0563SP1)

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Eligibility of Street Lighting and Area Lighting Accounts for Remote Net Metering

I.D. No. PSC-46-16-00015-P

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

Proposed Action: The Commission is considering a petition filed by Sunlight Beacon and BQ Energy seeking a declaratory ruling that street lighting and area lighting accounts are eligible satellite accounts for remote net metering.

Statutory authority: Public Service Law, sections 5(2), 66-j and 66-l

Subject: Eligibility of street lighting and area lighting accounts for remote net metering.

Purpose: Consideration of eligibility for remote net metering.

Substance of proposed rule: The Public Service Commission is considering a petition filed by Sunlight Beacon LLC and BQ Energy, LLC on October 18, 2016 seeking a declaratory ruling that street lighting and area lighting accounts are eligible satellite accounts for remote net metering. 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, (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, (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-0604SP1)

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Tariff Revisions Regarding Central Hudson's LED Lighting Options Under Its Service Classifications, SC No. 5 and SC No. 8

I.D. No. PSC-46-16-00016-P

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

Proposed Action: The Commission is considering a proposal filed by Central Hudson Gas & Electric Corporation (Central Hudson) to modify its LED lighting options in its area lighting and street lighting service classifications in P.S.C. No. 15 — Electricity.

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

Subject: Tariff revisions regarding Central Hudson's LED lighting options under its service classifications, SC No. 5 and SC No. 8.

Purpose: To consider revisions to Central Hudson's LED lighting options in area lighting and street lighting service classifications.

Substance of proposed rule: The Public Service Commission is considering a proposal filed by Central Hudson Gas & Electric Corporation (Central Hudson) to update its electric tariff schedule, P.S.C. No. 15, regarding Light Emitting Diode (LED) provisions. Central Hudson proposes to revise certain provisions under Rate A (Company owned and maintained) of Service Classification (SC) No. 8 – Public Street and Highway Lighting to reflect the transition from LED fixtures with a correlated color temperature (CCT) configuration of 4000 Kelvin (K) to 3000 K, address barriers to mass replacement of non-LED with LED fixtures and establish a default standard. Central Hudson also proposes to extend LED options to SC No. 5 – Area Lighting Service. The proposed amendments have an effective date of February 1, 2017. 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-0616SP1)

PROPOSED RULE MAKING
NO HEARING(S) SCHEDULED

Tariff Revisions Regarding Central Hudson's Traffic Signal Service Classification, SC No. 9

I.D. No. PSC-46-16-00017-P

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

Proposed Action: The Commission is considering a proposal filed by Central Hudson Gas & Electric Corporation (Central Hudson) to modify its traffic signal service classification for the conversion of non-metered signals to LED technology in P.S.C. No. 15—Electricity.

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

Subject: Tariff revisions regarding Central Hudson's traffic signal service classification, SC No. 9.

Purpose: To consider revisions to Central Hudson's traffic signal service classification.

Substance of proposed rule: The Public Service Commission is considering a proposal filed by Central Hudson Gas & Electric Corporation (Central Hudson) to revise Service Classification (SC) No. 9 – Traffic Signal Service contained in its electric tariff schedule, P.S.C. No. 15 – Electricity. Central Hudson proposes to add a Light Emitting Diode (LED) option to SC No. 9 to provide for the conversion of existing non-metered signals to LED technology. The proposed amendments have an effective date of February 1, 2017. 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-0617SP1)

PROPOSED RULE MAKING
NO HEARING(S) SCHEDULED

Con Edison's Proposed Pilot Shared Solar Program for Low-Income Customers

I.D. No. PSC-46-16-00018-P

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

Proposed Action: The Commission is considering a petition filed by Consolidated Edison Company of New York, Inc. (Con Edison) for approval of a pilot shared solar program for low-income customers.

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

Subject: Con Edison's proposed pilot shared solar program for low-income customers.

Purpose: Consideration of the authorization and appropriate design of a utility-owned low-income shared solar program.

Substance of proposed rule: The Public Service Commission is considering a petition filed by Consolidated Edison of New York, Inc. on October 31, 2016 requesting approval of a pilot program for providing shared solar to low-income customers. The petition includes a proposed program design and structure. 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, (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, (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-0622SP1)

Department of State

PROPOSED RULE MAKING
HEARING(S) SCHEDULED

Sugarhouse Alternative Activity Provisions

I.D. No. DOS-46-16-00007-P

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

Proposed Action: Amendment of Part 1219; and addition of Part 1228 to Title 19 NYCRR.

Statutory authority: Executive Law, section 377

Subject: Sugarhouse Alternative Activity Provisions.

Purpose: To allow sugarhouses to conduct alternative activities that will support the maple product industry.

Public hearing(s) will be held at: 10:00 a.m., Jan. 3, 2017 at Department of State, 99 Washington Ave., Room 505, Albany, NY.

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

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

Substance of proposed rule (Full text is not posted on a State website): This rule making will amend the Uniform Fire Prevention and Building Code (the Uniform Code) by amending Part 1219 and adding a new Part 1228 to Title 19 of the official Compilation of Codes, Rules and Regulations of the State of New York (NYCRR). The new Part 1228 will allow alternative activities to be conducted in sugarhouses. Prior commencing an alternative activity, the building owner must obtain a permit from the Authority Having Jurisdiction (AHJ). Before a permit is issued, the sugarhouse must satisfy certain health and safety requirements specified in Part 1228.

Qualification

To qualify for a permit under this Part:

1. The building must be used, in whole or in part, for the collection, storage, or processing of maple sap into maple syrup and/or maple sugar;

2. The alternative activity, which must not normally be conducted in a sugarhouse, must support the maple product industry (e.g. product sampling, pancake breakfasts, educational tours/activities, and the marketing/sale of merchandise;

3. The sugarhouse and alternative activity must comply with all applicable requirements of this Part.

Duration of permit

The duration of a permit shall not exceed 60 days, consecutive or otherwise, within a 12 month period. No alternative activity shall be conducted after daylight hours unless an approved lighting source is provided.

Application for permit

The building owner shall provide any such information that the AHJ may reasonably request for determining compliance with this Part and shall include:

1. The location of the sugarhouse;
2. A description of each alternative activity;
3. The proposed occupant load;
4. The dates of each alternative activity; and

A fire safety plan and public safety plan shall be submitted with the application for a permit when required by this Part.

Inspection

The CEO shall inspect the sugarhouse prior to issuing a permit. All adverse health and safety conditions identified that would jeopardize the wellbeing of the occupants or the general public if an alternative activity were permitted shall be remedied prior to a permit being issued. The CEO may require an evaluation of the building by a design professional. The CEO shall conduct periodic inspections throughout the duration of a permit.

Repairs and alterations shall be made in accordance with Sections 502 through 505 of the 2015 IEBC. Additions shall comply with this Part and Section 507 of the 2015 IEBC.

Inspections shall include but shall not be limited to: the means of egress, separation of combustibles from ignition sources, housekeeping, storage, the presence of dangerous or hazardous materials and conditions, structural evaluation when conditions warrant, evaluation of the existing and proposed floor loads, exposed portions of mechanical, electrical, and plumbing systems, portions of the sugarhouse that must be secured from entry during the alternative activity, sanitary conditions, and the required fire service features.

Fire safety plan and public safety plan

A fire safety plan shall be submitted when the proposed occupant load is 50 or more people or when otherwise required by this Part. The fire safety plan shall be in accordance with Section 404.2.2 of the 2015 IFC and shall also include:

1. The premises identification pursuant to subdivision (b) of section 1228.12 of this Part;

2. A site and floor plan indicating the seating capacity and arrangement, and the location and type of all heating systems; and

3. The location of the approved emergency telephone.

A copy of the fire safety and public safety plans shall be provided to the fire watch personnel (when required) and shall be posted in a conspicuous place for reference by the occupants.

Content and posting of a permit

Each permit shall be posted in a conspicuous location and shall specify:

1. The name, address, and relevant contact information of the owner/permit holder;

2. The premises identification;

3. Each alternative activity;

4. Occupant load;

5. Whether or not fire safety or public safety plans are in place;

6. Fire watch requirements;

7. The dates of each alternative activity; and

8. Time limitations placed on each alternative activity.

Fire and safety precautions

The following fire and safety precautions shall be obeyed during the duration of a permit:

1. Open-flame decorative devices, smoking, fireworks, pyrotechnic displays, and sparkling devices are prohibited;

2. Flammable solids, butane, or other similar devices that do not pose an ignition hazard shall be permitted for producing maple products or cooking;

3. Outdoor cooking that produces sparks/grease vapors shall not be performed within 20' of the sugarhouse;

4. Open burning shall not be performed within 50' of the sugarhouse;

5. Display or storage of highly combustible materials in main exit access aisles, corridors, or within 5' of required entrances to exits and exterior exit doors is prohibited;

6. The storage of hay, straw, seed cotton or similar agricultural products in the sugarhouse is prohibited during an alternative activity. Firewood used in the production of maple syrup/sugar shall not be considered an agricultural product. The storage of such agricultural products adjacent to the sugarhouse is prohibited unless a clear horizontal distance equal to the height of a pile is maintained between such storage and the sugarhouse. Storage shall be limited to stacks of 100 tons each. Stacks shall be separated by a minimum of 20 feet of clear space except when approved by the code enforcement official;

7. Decorative materials stored or displayed in a sugarhouse during an alternative activity shall comply with Sections 806 and 807 of the 2015 IFC;

8. Rooms or areas not associated with an alternative activity or are otherwise deemed a hazard by the CEO shall be secured from entry by the public or otherwise marked with a sign indicating "KEEP OUT"; and

9. Alternative activities are prohibited in temporary greenhouses.

1228.12 Fire service features

The following fire service features shall be provided:

1. Approved access shall be provided, such as in the form of a fire apparatus access road. Where fire apparatus access roads are not provided, a public safety plan for gatherings may be provided if deemed necessary by the CEO;

2. When the sugarhouse has an address, it shall be identified in accordance with Section 505 of the 2015 IFC, otherwise it shall be identified by signs or other means visible from the public way and detailed directions provided to the AHJ;

3. An approved water supply for fire protection shall be provided in accordance with Section 507 of the 2015 IFC except when fire watch personnel and a fire safety plan have been provided;

4. Carbon monoxide alarms, excluding combination alarms;

5. Smoke alarms;

6. Portable fire extinguishers; and

7. An approved emergency telephone with the sugarhouse's premises identification and the telephone number of the fire department shall be posted adjacent to the telephone.

Equipment

The following equipment requirements shall be observed:

1. Equipment and appliances required by this Part shall be listed/labeled for the application which it is intended;

2. Cooking appliances shall be installed and used as per the manufacturer's instructions, the appliance's listing and labeling terms, and any other applicable provision of the Uniform Code;

3. Portable fire extinguishers shall be in accordance with Sections 904.12.5 through 904.12.5.5 of the 2015 IFC;

4. A type I hood shall be required in accordance with Section 609.2 of the 2015 IFC;

5. Portable cooking appliances that produce grease vapors are prohibited, however electric table top appliances shall be allowed when approved by the CEO;

6. The use of portable, unvented fuel-fired heating equipment is prohibited. Portable, electric space heaters shall comply with Section 605.10.1 through 605.10.4 of the 2015 IFC;

7. The storage, handling, installation, and use of liquefied petroleum gas (LP-gas) and LP-gas equipment/appliances shall comply with the applicable provisions of Chapter 61 of the 2015 IFC. Portable LP-gas containers shall comply with Section 6103.2.1.1 of the 2015 IFC and shall only be allowed in buildings under the following situations: portable LP-gas containers used for demonstrations and public exhibitions in accordance with Section 6103.2.1.5 of the 2015 IFC; portable LP-gas containers that supply approved self-contained torch assemblies or similar appliances in accordance with Section 6103.2.1.6 of the 2015 IFC; approved/listed LP-gas commercial food service appliances used for food-preparation in accordance with the Section 6103.2.1.7 of the 2015 IFC; and LP-gas cooking devices having an LP-gas container that does not exceed a water capacity of 2.5 pounds; and

8. Portable generators shall be separated from the sugarhouse, agricultural products, and combustible material by a minimum of 10'.

Means of egress

The means of egress shall be maintained in accordance with Section 1031 of the 2015 IFC and shall conform to the following:

1. Maximum travel distance to an exit discharge shall not exceed 75';

2. Garage type doors, sliding doors, and similar alternatives to side-hinged swinging doors shall be permitted, provided that they remain fully open;

3. Egress doors shall be operable from the egress side without the use of a key or special knowledge/effort;

4. The occupant load shall be posted in a conspicuous place and shall not exceed the lesser of: the capacity of the means of egress calculated in accordance with Sections 1005.1 and 1006.3.1 of the 2015 IFC; or 150 persons calculated in accordance with Section 1004.1 of the 2015 IFC;

5. The CEO may require a reduction in the occupant load when a registered design professional determines that the proposed floor loading cannot be sustained by the existing structural members;

6. Admittance of any person beyond the approved capacity shall be prohibited. The CEO, upon finding overcrowding conditions, obstructions in the means of egress, or any other condition that constitutes a hazard, may stop an event until such condition is corrected;

7. Exits and exit access doors shall be marked by an approved exit sign complying with the 2015 IFC;

8. Illumination shall be provided in the means of egress except when the sugarhouse is not authorized to conduct alternative activities beyond daylight hours;

9. Components of the required means of egress shall be unobstructed at all times;

10. The minimum width of aisles and aisle accessways serving portions of the exit access in the means of egress system shall comply with the applicable provisions of the 2015 IFC;

11. The length of travel along the aisle accessway serving non-fixed tables shall comply with Section 1029.12.1.2 of the 2015 IFC;

12. Handrails shall comply with the applicable provisions of the 2015 IFC;

13. An interior exit stairway or ramp that continues below its level of exit discharge shall be arranged and marked to make the direction of egress

to a public way readily identifiable. Stairways that continue one-half story beyond their levels of exit discharge need not be provided with barriers where the exit discharge is obvious; and

14. The exit discharge from the sugarhouse shall comply with section 1028 of the 2015 IFC.

Toilet facilities

Toilet facilities in accordance with Sections 403.1 and 403.1.1 of the 2015 IPC shall be provided. Portable restrooms that include water closets with lavatories (or hand sanitizers in lieu of lavatories) shall be allowed; at least one shall be accessible. Travel distance to toilet facilities shall not exceed 500' and shall be located on an accessible route. Toilet facilities may be located in adjacent buildings that are under the same control as the sugarhouse. The egress door for toilet rooms serving multiple occupants shall not be lockable from inside the toilet room. Onsite sewage treatment systems serving a sugarhouse shall have the capacity to serve the alternative activity or portable restrooms provided.

Accessibility

Sugarhouses shall be accessible to individuals partaking in an alternative activity unless providing accessibility is technically infeasible. When accessibility is technically infeasible, it shall be provided to the maximum extent that is feasible and shall accommodate the widest range of disabilities practicable. The amount and type of accessibility provided shall be a function of alterations, repairs, and additions proposed or otherwise required by this Part. This section specifies certain requirements for ramps and thresholds. Work required by this subdivision shall comply with Chapter 11 of the 2015 IBC.

Text of proposed rule and any required statements and analyses may be obtained from: Gerard Hathaway, Department of State, 99 Washington Ave., Albany, NY 12231-0001, (518) 486-6990, email: Gerard.Hathaway@dos.ny.gov

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

Public comment will be received until: January 17, 2017.

Summary of Regulatory Impact Statement

1. STATUTORY AUTHORITY.

This rulemaking will amend the Uniform Fire Prevention and Building Code ("Uniform Code") by amending 19 NYCRR Part 1219 and adding a new Part 1228 to Title 19 NYCRR and will allow "alternative activities" to be conducted in sugarhouses. Within the context of this rule, "sugarhouses" means buildings used in whole or in part, for the collection, storage, or processing of maple sap into maple syrup and/or maple sugar. Alternative activities allowed by this rule shall be of the type that supports the maple product industry, such as such as product sampling, pancake breakfasts, educational tours and activities, and the marketing and sale of merchandise. Such alternative activities may be conducted for a limited period of time without requiring the sugarhouse to comply with all of the requirements of the Uniform Code which would otherwise be applicable to such activities. Prior to commencing an alternative activity, the sugarhouse must comply with certain health and safety requirements specified in this Part.

This rule is authorized by Executive Law § 377, which directs that the Uniform Code shall provide standards and requirements consonant with accepted standards of engineering and fire prevention practices, and that the State Fire Prevention and Building Code Council ("Code Council") may from time to time amend particular provisions of the Uniform Code to meet the purposes of Article 18 of the Executive Law.

2. LEGISLATIVE OBJECTIVES.

Article 18 of the Executive Law provides that the purpose of the Uniform Code is to provide a basic minimum level of protection to all people of the State from the hazards of fire and inadequate building construction. This rule will effectuate the objectives stated in Article 18 by permitting more flexible use of buildings, while still insuring public health and safety.

3. NEEDS AND BENEFITS.

The proposed rule is intended to address New York State's growing[1] maple syrup industry. Many producers of maple syrup are small "mom and pop" style agricultural operations which focus not only on the production of maple syrup, but specifically target the sale of syrup directly to consumers. Marketing and sale sometimes occurs in sugarhouses where these products are produced. In addition to mercantile functions, many operations offer product sampling, pancake breakfasts, educational tours, and other activities that promotes the sale of maple products.[2] Despite their popularity, these alternative activities may be in conflict with certain aspects of the Uniform Code.

According to the Code, agricultural buildings are generally exempt from the requirements of the building code, which are intended to ensure occupant safety. One caveat to this exemption is that agricultural buildings shall not be used by the public. Because alternative activities have been occurring in sugarhouses state-wide, it generally assumed that they are either occurring without Authorities Having Jurisdiction (AHJ) being aware of their operation or by a "blind eye" on the part of the AHJ. Still yet, other potential operations may be prevented from hosting activities by AHJs correctly enforcing the Code.

Part 1228 will formally endorse these small scale public functions by allowing sugarhouses that meet the requirements of this Part the benefit of hosting alternative activities. The public will also benefit from this rule by ensuring that sugarhouses are sanitary, safe, and adequate for the proposed activity. Said activities will be allowed to occur for limited periods of time only if certain health and safety requirements are met. The public interest in sugarhouses has long since established the need for this rule. The new Part is needed to ensure that the minimum standards essential to health and safety are present in these buildings.

Because many sugarhouses were not constructed according to a code, there is no way of knowing whether or not the minimum standards for health and safety are present. Standards established by this rule include requirements for occupant loading, means of egress, fire watch personnel, fire protection water supply, and precautions against fire. Such precautions include provisions for open-flame decorative devices, cooking, open burning, smoking, storage of highly combustible material and agricultural products, decorative material, fireworks, and unsafe or otherwise hazardous areas.

In addition to fire and safety precautions, the proposed rule will require certain fire service features to be provided. These features include approved access to the building for emergency responders, building identification, water for fire protection, carbon monoxide alarms, smoke alarms, portable fire extinguishers, and an emergency telephone. The proposed rule will also regulate the use of certain equipment in and adjacent to the building that may present a fire hazard. Adequate plumbing facilities shall be required and shall allow the use of portable restrooms.

In addition to life safety, accessibility is also addressed. Under this rule, the sugarhouse shall be made accessible when repairs or alterations are necessary to demonstrate compliance with this Part. For example, if the entrance needs to be repaired or altered, such modification shall be made to be accessible. This modification could trigger other accessible provisions, such as accessible parking requirements.

Perhaps the two most important safety requirements established by this rule are the limited duration of a permit and the periodic inspections. A compressed public use period coupled with routine inspections shall help ensure that conditions conducive to health and safety are maintained.

4. COSTS.

Costs to Regulated Parties

It is reasonable to assume that most family owned and operated sugarhouses were not constructed according a code. These buildings could require a moderate investment to ensure compliance with this rule prior to receiving an initial permit. Once these building are brought into compliance, subsequent investments may simply include annual permit and inspection fees and the ongoing maintenance cost of the health and safety requirements established by this rule. Larger, nonagricultural sugarhouses are classified as Group B or F-1 occupancies. These occupancies may currently meet the minimum health and safety provisions established by this rule, such as accessibility, floor loading, egress, etc. The DOS anticipates that applicants will not seek compliance under this rule unless the benefits of obtaining said permit will exceed the cost of compliance.

The initial investment generally applicable to small, family owned and operated sugarhouses may include: smoke alarms ($227 each[3]), carbon monoxide alarms ($34 - $58[4] each), exit signs ($345[5] each), fire extinguishers ($150 each), and ADA compliant portable restrooms ($350/month each[6]). Egress in some cases could be a concern. Assuring that egress paths from any point in a building do not exceed 75' to the exterior may require the installation of an exterior door ($1,650[7]).

Other costs can only be determined on a case-by-case basis, such as assuring that cooking, heating and LP-gas equipment are in conformance with the Uniform Code, and the cost of fire safety and public safety plans. These plans involve not only plan preparation cost but also the cost to implement them. Such plans are a strict function of their scope, features, and equipment required by them. Their cost will generally depend on the number and nature of the requirements to be satisfied.

Costs to Department of State (DOS), New York State, and Local Governments

The DOS will include training for this rule to the courses offered to code enforcement officials at a negligible cost to the Department.

Local governments and State agencies required to enforce the Uniform Code will be required to provide their enforcement personnel with training on the requirements of this rule. The DOS anticipates that this training can be accomplished via the 24-hour annual in-service training that CEOs are required by regulation to receive, at a marginal cost to such local governments and agencies.

A local government or State agency that receives an application for a permit under this rule will be required to review the application, to inspect

the building, and enforce the requirements of this rule. The DOS anticipates that this can be accomplished without additional personnel at little or no additional cost.

5. LOCAL GOVERNMENT MANDATES.

Local governments that enforce the Uniform Code must ensure that their code enforcement personnel receive training on the provisions of this rule.

Local governments will be required to review permit applications, conduct inspections, and enforce the requirements of this rule.

The DOS anticipates that these additional obligations will have little or no impact on the code enforcement expenses incurred by local governments. Furthermore, local governments are authorized by existing law to charge fees to offset their enforcement costs.

6. PAPERWORK.

A building owner who wishes to conduct an alternative activity in a sugarhouse will be required to submit an application for a permit for such an activity. If the proposed activity will have an occupant load of 50 or more persons, the building owner will be required to submit a fire safety plan. Where fire apparatus access roads are not provided, a public safety plan for gatherings may be required.

7. DUPLICATION.

This rule does not duplicate any rule or other legal requirement of the State or Federal government.

8. ALTERNATIVES.

This rule was initially developed in response to a request by owners of "sugarhouses". The request was to allow alternative activities (tours, pancake breakfasts, and mercantile functions) to occur in sugarhouses during the annual "sugaring season", without requiring the sugarhouses to be brought into compliance with all provisions of the Uniform Code generally applicable to buildings used for such purposes.

Over the past seven years, the DOS and New York State Fire Prevention and Building Code Council (Code Council) explored many different variations of this rule. The most pursued variation would have allowed many different types of buildings to conduct activities not associated with the building's existing occupancy classification. Said activities would be permitted for limited periods of time without requiring the buildings to comply with the change of occupancy provisions of the Uniform Code. For example, a Group F-2 Low-hazard building that made apple cider would have been able to host tours or product sampling (generally associated with Group A occupancies), or sell products (typical of Group M occupancies). For varying reasons, the Code Council choose to abandon this variation and focus solely on sugarhouses, as was the original intent.

Because many different versions of this rule have been explored over the years, it seems that the only remaining alternative is to do nothing. This alternative will retain the status quo; some operations will continue to operate outside the confines of the Uniform Code, perhaps without any safeguards, while others are prohibited from operating even if they presently meet the proposed health and safety standards. Instead of turning a blind eye to the alternative activities that sometimes occur in sugarhouses, the DOS and Code Council chose to pursue regulations that would afford minimum standards for health and safety in these buildings.

The proposed rule will allow a simple, economical means of code compliance without negatively affecting occupant health or safety.

9. FEDERAL STANDARDS.

This rule does not exceed any minimum Federal standard for similar subject areas.

10. COMPLIANCE SCHEDULE.

If the Code Council finds this rule is necessary to protect health, safety, and security of the public, this rule will become effective immediately upon publishing the Notice of Adoption in the State Register. Otherwise, the rule will become effective 90 days after such publication. In either circumstance, the DOS anticipates that regulated parties will be able to comply with this rule immediately upon the rule becoming effective.

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[1] USDA National Agricultural Statistics Service, "Northeast Maple Syrup Production", June 15, 2016.

[2] Referred to as "alternative activities" in the proposed rule text.

[3] Includes installation; RSMeans Building Construction Cost Data, 2015.

[4] Google search, excludes installation.

[5] RSMeans Building Construction Cost Data, 2015 edition, LED w/battery unit, double face.

[6] http://www.purchasing.com/construction-equipment/portable-restrooms/rental/

[7] RSMeans Building Construction Cost Data, 2015 edition; 3'-6" x 7'-0" anodized aluminum entrance door and frame.

Regulatory Flexibility Analysis

1. EFFECT OF RULE.

Currently, the Uniform Fire Prevention and Building Code ("Uniform Code") does not have any provisions for alternative activities conducted in sugarhouses. A building owner who wishes to use a sugarhouse for an alternative activity, even on a temporary basis, must bring the building into compliance with all Uniform Code provisions applicable to said activity. This rule will amend the Uniform Code by adding a new Part 1228 (entitled "Sugarhouse Alternative Activities Provisions") to Title 19 of the Official Compilation of Codes, Rules, and Regulations of the State of New York (NYCRR). Part 1228 will allow alternative activities to be conducted in sugarhouses without requiring the building to satisfy the Uniform Code requirements applicable to such activity, provided that: (1) the building is used, in whole or in part, for the collection, storage, or processing of maple sap into maple syrup or maple sugar; (2) the alternative activity must be related to the maple product industry, such as product sampling, dining, educational tours and activities, and the marketing and sale of merchandise; and (3) the sugarhouse and alternative activity must comply with all applicable requirements specified in the rule.

The Uniform Code is applicable in all areas of the State with the exception of New York City. Therefore, this rule will affect any small business that owns a sugarhouse in any part of the State (except New York City) who wishes to conduct an alternative activity. The rule is not expected to affect local governments.

A small business that owns a sugarhouse and wishes to use the building for an alternative activity retains the option of bringing the building into full compliance with all Uniform Code provisions applicable to said activity. The Department of State anticipates that no small business will choose to use this rule, unless such small business first determines that the benefits of complying with this rule outweigh the costs of complying with the rule.

Local code enforcement personnel, who are responsible for enforcing the Uniform Code, will need to receive training on the requirements of Part 1228. A local government that receives a permit application shall review the application, review the fire safety plan (if required), conduct inspections, and otherwise enforce Part 1228. Most local governments in New York are responsible for enforcing the Uniform Code within their boundaries.

2. COMPLIANCE REQUIREMENTS.

A small business using this rule to conduct an alternative activity in a sugarhouse (or any part thereof) will be required to apply for a permit from the local authority enforcing the Uniform Code and to provide such authority with information sufficient to determine whether the building qualifies for a permit under Part 1228. If the building does not currently have all of the health and safety related features and equipment required by Part 1228, the small business will be required to add the missing features and equipment before a permit will be issued.

If the occupant load during the alternative activity is 50 or more persons, the small business will also be required to prepare, file, and implement a fire safety plan.

Local governments that are responsible for enforcing the Uniform Code will be required to provide training to their code enforcement personnel, to review applications for permits, to review fire safety plans (when required), to inspect the building before issuing a permit, and in general to enforce the provisions of Part 1228.

3. PROFESSIONAL SERVICES.

The Department of State anticipates that small businesses (or in the unlikely event a local government) that own a building where an alternative activity is to be conducted will rarely require professional services to comply with the rule. However, if an entity is required to add health and/or safety related features or equipment to the building to satisfy the requirements of Part 1228, or to prepare and implement a fire safety plan, the small business or local government may find it to be necessary or desirable to use the services of a design professional.

The Department of State anticipates that local governments will be able to enforce the provisions of Part 1228 with their current code enforcement personnel and will not require any additional professional services.

4. COMPLIANCE COSTS.

The initial costs of complying with this rule for a small business or local government that owns a sugarhouse where an alternative activity is to be conducted will include: (1) the cost of providing any health and/or safety related features and equipment that may be required to satisfy the requirements of Part 1228; (2) any application fees, inspection fees, and/or permit fees; and (3) if the occupant load will be 50 or more persons, the cost of preparing and implementing a fire safety plan. These costs will vary, depending on the specific fire prevention and other health and/or safety related features and equipment that must be provided, the specific local fee structure, and, where a fire safety plan is required, the required scope of the plan and the features, equipment and/or labor required for its implementation.

The Department of State anticipates that a small business or local government that owns a sugarhouse, where an alternative activity is conducted, may incur annual or on-going costs for continuing compliance

with this rule if the small business or local government is required to maintain certain health and/or safety related features and equipment in order to continue to be allowed to conduct the alternative activity.

Any variation in the costs of small businesses or local governments in complying with this rule is likely to be attributable to the size and configuration of the existing building, the nature of the intended alternative activity, and the type of fire prevention and other health and/or safety related features and equipment that must be added, and not to the type and/or size of the business or local government that owns the building.

The initial costs of compliance with this rule by local governments include the cost of training their code enforcement personnel on the requirements of Part 1228. Code enforcement personnel, however, are required by existing regulation to receive 24-hours of in-service training each year. The Department of State anticipates that training on the requirements of Part 1228 can be provided within required annual in-service training.

Annual or on-going compliance costs for a local government will include costs associated with time spent by the local government's code enforcement personnel in reviewing applications for permits, reviewing fire safety plans, conducting inspections, and issuing permits. The Department of State does not anticipate that these activities will result in a significant increase in the workload of local government code enforcement personnel. Local governments are authorized by existing law to charge fees to defray the cost of code enforcement activities.

Any variation in local government costs of complying with this rule is likely attributable to the number of sugarhouses within the local government that may be used for alternative activities, the size and configuration of those buildings, and the nature of the intended activity -not the type and/or size of the local government.

5. ECONOMIC AND TECHNOLOGICAL FEASIBILITY.

The health and safety related features and equipment required by Part 1228 are currently available and can be provided using existing technology and construction techniques. The Department of State anticipates that it is technologically feasible for small businesses to comply with this rule.

The Department of State anticipates that no small business or local government will use Part 1228 to conduct an alternative activity, unless the small business or local government first determines that it is economically feasible to satisfy the requirements of the regulation.

The Department anticipates that local governments will be able to provide training to their code enforcement personnel through required annual in-service training, that local governments will be able to enforce Part 1228 with their existing code enforcement personnel, and that local governments will be able to recoup any additional code enforcement expenses through fees that are authorized to be imposed by existing law.

6. MINIMIZING ADVERSE IMPACT.

The objective of this rule is to reduce regulatory requirements applicable to sugarhouse owners seeking to use their buildings for alternative activities. This rule accomplishes the objective by providing a means to allow a building owner to use such building for an activity without requiring compliance with all of the Uniform Code requirements that would otherwise apply to the activity, provided that the building and the intended activity comply with certain health and safety related requirements. Thus, this rule will reduce existing burdens on small businesses and local governments that wish to use buildings for alternative activities while still providing safeguards for public health and safety. The Department of State anticipates that the rule will have a positive economic impact.

Establishing different compliance requirements for small businesses and local governments and/or providing exemptions from coverage by the rule for small businesses and local governments was not considered because doing so would endanger the public health, safety or general welfare and would be inconsistent with the objectives of Article 18 of the Executive Law.

7. SMALL BUSINESS AND LOCAL GOVERNMENT PARTICIPATION.

This proposal was developed with assistance from the Department of Agriculture and Markets, the Department of Labor, and the Office of Fire Prevention and Control. Earlier versions of the proposed rule were discussed at Code Council meetings; speakers from the maple syrup industry and the Department of Agriculture and Markets provided comments at those meetings.

An earlier version of this rule was posted on the Department of State website. An explanation of the earlier draft, a link to the text of the draft, and a request for comments were distributed in Building New York, an electronic news bulletin covering topics related to the Uniform Code and the construction industry that is prepared by the Department of State and distributed to approximately 10,000 subscribers, including local governments, design professionals and others involved in all aspects of the construction industry. The proposed rule text was revised in response to comments received from representatives of local governments and other interested parties, including small businesses.

Rural Area Flexibility Analysis

1. TYPES AND ESTIMATED NUMBERS OF RURAL AREAS.

This rule will amend the Uniform Fire Prevention and Building Code (the Uniform Code) by adding a new Part 1228 (entitled "Sugarhouse Alternative Activity Provisions") to Title 19 of the Official Compilation of Codes, Rules, and Regulations of the State of New York (NYCRR). Part 1228 will allow certain "alternative activities" specifically associated with supporting the maple product industry to be conducted in sugarhouses. Alternative activities may be conducted for a limited period of time without requiring the sugarhouse to comply with all of the requirements of the Uniform Code which otherwise would be applicable to such uses. Alternative activities allowed by this rule may include events such as product sampling, dining, educational tours and activities, and the marketing and sale of merchandise. Within the context of this rule, "sugarhouse" means building used in whole or in part, for the collection, storage, or processing of maple sap into maple syrup or maple sugar. Prior to commencing an alternative activity, the sugarhouse must comply with certain health and safety requirements specified in this new Part 1228.

The Uniform Code is applicable in all areas of the State, except New York City. Therefore, this rule will apply in all rural areas of the State.

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

The rule will not impose any reporting or recordkeeping requirements.

The owner of a sugarhouse, who proposes to conduct an alternative activity, will be required to apply for a permit and provide the local code enforcement authority with the information required to determine if the building qualifies for such a permit.

If the building does not currently have all of the health and safety related features and equipment required by this rule, the building owner will be required to provide the missing features and equipment before a permit can be issued.

If the occupant load during the alternative activity will be 50 or more persons, the building owner will also be required to prepare and file a fire safety plan, and to implement the provisions of the plan.

Permits shall not exceed 60 days, consecutive or otherwise, within a twelve-month period and shall expire twelve months after issuance. New permits may be obtained at the expiration of the prior permit. No alternative activity shall be conducted beyond daylight hours unless an approved lighting source is provided.

As part of their general responsibility to administer and enforce the Uniform Code in accordance with Executive Law § 381 and regulations adopted by the Secretary of State, local governments will be required to provide training to their code enforcement personnel, to review applications for permits to conduct an alternative activity, to review fire safety plans (when required), to inspect the subject building before issuing a permit or renewing a permit, and otherwise enforce the provisions of the rule with respect to a subject building.

The Department of State anticipates that in most instances, the owners of sugarhouses where an alternative activity is to be conducted will not require professional services to comply with the rule. However, if the building owner is required to add health and/or safety related features or equipment to the building to satisfy the requirements of the rule, or to prepare and implement a fire safety plan, the building owner may find it to be necessary or desirable to use the services of a design professional.

The Department concludes that local governments will be able to enforce the provisions of the rule with current code enforcement personnel, and will not require any additional professional services.

3. COMPLIANCE COSTS.

The initial costs of complying with this rule for the owner of a sugarhouses where an alternative activity is to be conducted will include: (1) the cost of providing any health and/or safety related features and equipment that may be required to satisfy the requirements of the rule; (2) any application fees, inspection fees and/or permit fees imposed by the local code enforcement authority; and (3) if the occupant load during the alternative activity will be 50 or more persons, the cost of preparing and implementing a fire safety plan. These costs will vary, depending on the specific fire prevention and other health and/or safety related features and equipment that must be provided, the fee structure established by the local authorities, and, where a fire safety plan is required, the required scope of the plan and the features, equipment and/or labor required for its implementation.

The Department of State anticipates that a building owner may incur annual or ongoing costs for continuing compliance with this rule if the building owner intends to continue to conduct alternative activities. Ongoing maintenance cost will be associated with the health and/or safety related features and equipment required by this rule.

This rule does not require sugarhouses to be used for alternative activities. The Department of State anticipates that owners of sugarhouses will not apply for a permit allowed by this rule unless the building owner first determines that the benefits of being able to conduct said activities in

these buildings will outweigh such initial compliance costs. The Department also anticipates that owners will not seek a new or renewed permit, or incur the annual or on-going compliance costs associated therewith, unless the building owner first determines that the benefits of being able to continue said activities will outweigh the annual or on-going compliance costs. The costs of compliance with Part 1228 will typically be less than the cost of bringing the building into compliance with all Uniform Code provisions applicable to said activity.

Any variation in the costs of complying with this rule is likely to be attributable to the size and configuration of the existing building, the nature of the intended activity, and the type of fire prevention and other health and/or safety related features and equipment that must be added, and not to the type of the public or private entity that owns the building.

The initial costs incurred by local governments that enforce the Uniform Code will include the cost of training their code enforcement personnel on the requirements of the new rule. Code enforcement personnel are required by existing regulation to receive 24 hours of in-service training each year, and the Department of State anticipates that training on the requirements of Part 1228 can be provided as part of already required annual in-service training.

The ongoing costs incurred by a local government that enforces the Uniform Code will include the costs associated with the time spent by the local government code enforcement personnel in reviewing applications for permits for alternative activities, reviewing fire safety plans, conducting inspections, and issuing permits. However, DOS does not anticipate that these activities will result in a significant increase in the workload of local government code enforcement personnel.

4. MINIMIZING ADVERSE IMPACT.

The rule is designed to provide a means by which a sugarhouse, whether located in a rural or non-rural area, may conduct an alternative activity without requiring that the building comply with all code requirements generally applicable to said activity if it were made permanent. The rule will require that the sugarhouse and alternative activity satisfy certain health and safety related requirements. No sugarhouse is required to conduct an alternative activity. However, the rule would provide a less expensive, less burdensome path to code compliance should a building owner desire to use a sugarhouse for an alternative activity. The Department of State anticipates that the rule will have a positive economic impact on all areas of the State, including rural areas.

Establishing different compliance requirements for public and private sector interests in rural areas and/or providing exemptions from coverage by the rule in rural areas was not considered because doing so would endanger the public health, safety or general welfare and would be inconsistent with the objectives of Article 18 of the Executive Law.

5. RURAL AREA PARTICIPATION.

An earlier version of the proposed rule was posted by the Department of State in Building New York, an electronic news bulletin covering topics related to the Uniform Code and the construction industry. Building New York is prepared by the Division of Building Standards and Codes of the Department of State and is currently distributed to approximately 10,000 subscribers, including local governments, design professionals and others involved in all aspects of the construction industry in all parts of the State, including rural areas.

Representatives from the maple syrup industry and the New York Department of Agriculture and Markets provided comments at Code Council meetings where earlier versions of this proposal were considered by the Code Council. This proposal was developed with the assistance of the Department of Agriculture and Markets, the Department of Labor, and the Office of Fire Prevention and Control.

Job Impact Statement

The Department of State has determined that it is apparent from the nature and purpose of the proposed rule that it will not have a negative impact on jobs and employment opportunities.

This rule will amend 19 NYCRR Part 1219 (Uniform Fire Prevention and Building Code) and add a new Part 1228 (Sugarhouse Alternative Activity Provisions) to Title 19 of the Official Compilation of Codes, Rules and Regulations of the State of New York. The new Part 1228 will allow certain "alternative activities" specifically associated with supporting the maple product industry to be conducted in sugarhouses. Within the context of this rule, "sugarhouses" means buildings used in whole or in part, for the collection, storage, or processing of maple sap into maple syrup or maple sugar. Alternative activities may be conducted for a limited period of time without requiring a sugarhouse to comply with all of the requirements of the Uniform Code, which otherwise would be applicable to such uses. All alternative activities allowed by this rule shall be of the type that supports the maple product industry, such as product sampling, dining, educational tours and activities, and the marketing and sale of merchandise. Prior to commencing an alternative activity, a sugarhouse must comply with certain health and safety requirements specified in this new Part 1228.

The rule was designed to minimize the adverse economic impact that the change of occupancy provisions of the Uniform Code may have on sugarhouses. Any economic impact resulting from this rule is expected to be a positive impact. If the regulation resulted in a negative economic impact, sugarhouse owners would not apply for permits under the regulation. Instead, owners would choose to comply with the current provisions of the Uniform Code.

Office of Temporary and Disability Assistance

REVISED RULE MAKING NO HEARING(S) SCHEDULED

Storage of Furniture and Personal Belongings

I.D. No. TDA-46-15-00005-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 352.6(f) and 397.5(k) of Title 18 NYCRR.

Statutory authority: Social Services Law, sections 20(3)(d), 34(3)(f), 131(1) and 303(1)(k)

Subject: Storage of furniture and personal belongings.

Purpose: Provide clarification regarding allowances for the storage of furniture and personal belongings.

Text of revised rule: Subdivision (f) of section 352.6 of Title 18 NYCRR is amended to read as follows:

(f) An allowance for storage of furniture and personal belongings [shall] *must* be made when it is [essential,] *necessary* for circumstances such as relocation, eviction or temporary shelter, so long as eligibility for public assistance continues and so long as the circumstances necessitating the storage continue to exist*, and no other storage options exist*.

(1) Furniture to be stored must not exceed the rooms and items in schedule SA-4a of section 352.7(a)(2) of this Part. Furniture to be stored cannot exceed the amount needed for the household size.

(2) Personal belongings to be stored cannot exceed the amount needed for the household size and should be reasonable in number and total volume. For the purpose of storage, personal belongings are those items not found in schedule SA-4a of section 352.7(a)(2) of this Part, such as:

(i) Legal and identification documents;

(ii) Kitchen items, such as tables and chairs, cookware, appliances, dishware, glassware and utensils;

(iii) Bedding and towels;

(iv) Clothing of the household members;

(v) Washing machine and dryer;

(vi) Assistive medical devices;

(vii) Items needed for employment, excluding business inventory except as otherwise provided for in section 352.12(a)(2) of this Part;

(viii) Household electronic devices;

(ix) Items needed for educational purposes; and

(x) Personal keepsakes, including children's toys, high chairs, and changing tables.

(3) Such allowance is limited to the furniture and personal belongings, as provided for in paragraphs (1) and (2) of this subdivision, in the household's possession at the time the circumstance necessitating the storage occurred.

Subdivision (k) of section 397.5 of Title 18 NYCRR is amended to read as follows:

(k) Storage of furniture and personal belongings. The cost of [essential] *necessary* storage of furniture and personal belongings during relocation, eviction or residence in temporary shelter must be met for [as] *so* long as the circumstances necessitating the storage and eligibility for emergency assistance for adults continue to exist*, and no other storage options exist*.

(1) Furniture to be stored must not exceed the rooms and items in schedule SA-4a of section 352.7(a)(2) of this Title. Furniture to be stored cannot exceed the amount needed for the household size.

(2) Personal belongings to be stored cannot exceed the amount needed for the household size and should be reasonable in number and total volume. For the purpose of storage, personal belongings are those items not found in schedule SA-4a of section 352.7(a)(2) of this Title, such as:

(i) Legal and identification documents;

(ii) Kitchen items, such as tables and chairs, cookware, appliances, dishware, glassware and utensils;

(iii) Bedding and towels;

(iv) Clothing of the household members;

(v) Washing machine and dryer;

(vi) Assistive medical devices;

(vii) Items needed for employment, excluding business inventory except as otherwise provided for in section 352.12(a)(2) of this Title;

(viii) Household electronic devices;

(ix) Items needed for educational purposes; and

(x) Personal keepsakes, including children's toys, high chairs, and changing tables.

(3) Such allowance is limited to the furniture and personal belongings, as provided for in paragraphs (1) and (2) of this subdivision, in the household's possession at the time the circumstance necessitating the storage occurred.

Revised rule compared with proposed rule: Substantial revisions were made in sections 352.6(f)(2) and 397.5(k)(2).

Text of revised proposed rule and any required statements and analyses may be obtained from Joseph Mazza, NYS Office of Temporary and Disability Assistance, 40 North Pearl Street, Albany, NY 12243, (518) 474-0574, email: Joseph.Mazza@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, Regulatory Flexibility Analysis, Rural Area Flexibility Analysis and Job Impact Statement

The Office of Temporary and Disability Assistance has determined that 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.

Assessment of Public Comment

The Office of Temporary and Disability Assistance (OTDA) received comments from five entities or organizations regarding the proposed amendments to 18 NYCRR §§ 352.6(f) and 397.5(k). The proposed amendments, revised after consideration of the public comments, set forth the amounts and types of items for which storage allowances may be provided and limit storage to items in the possession of a Public Assistance (PA) applicant or recipient.

Items to be Stored

Comments asserted the proposed amendments impose limits which are too restrictive on the items that can be stored, and there should be exceptions allowing for additional storage when needed. One comment stated that counties have no way to determine what is "necessary" to a client household, and will have to screen and question clients as to what is necessary. Another comment stated the proposed amendments fail to consider the "circumstances of separated families." An additional comment inquired as to "who determines whether an item is a personal keepsake." The intent of the proposed amendments is to provide storage for items and personal belongings required to re-establish a household when a move is made from temporary housing to permanent housing; and to align the storage policy with the policy for establishing a home and the replacement of furniture as found in 18 NYCRR § 352.7. However, OTDA recognizes the need for exceptions, OTDA has revised the proposed language to clarify that the lists of personal belongings are illustrative, rather than prescriptive. OTDA has also expanded the list of personal belongings to specifically include kitchen tables and chairs, washing machines and dryers, assistive medical devices, and personal keepsakes which include children's toys, high chairs, and changing tables. Please note that the category of "Personal Keepsakes" may include a variety of items that either have sentimental or functional value. Whether or not an item is a personal keepsake is at the fair and reasonable discretion of the Social Services District (SSD) on a case-by-case basis. OTDA plans to issue administrative guidance providing additional details regarding these proposed amendments.

Multiple comments also asserted limiting storage to those items in the household's possession at the time the circumstances necessitating the storage occurred is unrealistic and would limit the ability to add needed belongings to those already in storage. The intent of the proposed regulations was never to allow the warehousing or collecting of additional items or the accumulation of belongings thereafter, but rather to preserve the furniture and personal belongings of an applicant or recipient in order to re-establish a household once permanent housing is secured. The proposed amendments would provide consistency and clarity to the intent of the regulations.

Storage Options

Comments asserted the creation of a new limitation that storage allowances are only available "when no other storage option exists" is outside of statutory authority and inquired as to who is responsible for establishing that "no other storage options exist." OTDA asserts that this is not a new limitation and is not outside the statutory authority provided by Social Services Law § 303(1)(k), which refers to "[e]ssential storage… for so long as the circumstances necessitating the storage continue to exist..." In addition, 18 NYCRR §§ 370.3, 372.2 and 397.4 require SSDs to explore all available resources and income, including available resources in the community, before the SSD can provide assistance to meet an emergency/immediate need. If less expensive storage can be obtained, then SSDs that administer these programs at public expense have the responsibility to minimize costs and seek efficiencies. It is the client's responsibility to establish that no other storage option is available. An SSD may make collateral contacts to verify this information.

Costs and Procedures

One comment asserted the claim of cost neutrality is misleading. After reviewing the proposed amendments, OTDA can see no reason for an increase of costs, but instead feels strongly that reductions in costs may occur. The proposed amendments would help standardize what items can and cannot be stored. They would also help establish a consistent statewide policy and reduce the likelihood that public funds will be used to store inappropriate items.

Additional comments asserted the proposed amendments would increase processing time for SSD staff, as they will have to determine what can and cannot be stored. These comments were concerned with how SSDs will implement the proposed amendments. OTDA previously convened a workgroup to allow SSDs to have input into the amendments. SSDs did not indicate concern with implementation or increased processing time during the workgroup sessions. As with any regulatory or policy change, SSDs must review their local processes to ensure their processes accommodate the change of policy. Some comments recommended that OTDA standardize the process for storage allowances as SSDs have different processes for the administration of storage allowances. OTDA does not feel such oversight would be appropriate. While OTDA establishes policy, it does not dictate process, and as such, the processes used in the delivery of policy are at the discretion of the SSDs.

Fair Hearings

Comments asserted that there would be increased fair hearing costs, as requests for fair hearings would increase and "the category and information of what is necessary to a household will not stand the test of hearings as listed in the pending regulation." OTDA does not agree with this comment. Fair hearing decisions are routinely based on applicable PA regulations and policies, and thus OTDA maintains that the proposed amendments would "stand the test of hearings." Additionally, consistent statewide policies regarding storage allowances may eventually result in a reduction in the number of fair hearing requests.

Additional Issues

An inquiry was received as to the impact the proposed amendments would have on child welfare cases that are funded through Emergency Assistance to Families (EAF). The proposed amendments would not impact EAF child welfare cases as storage allowances are not authorized on a child welfare case.

A comment stated "changing 'shall' to 'must' and 'essential' to 'necessary' strengthens the authorizing language of the regulation to reinforce the obligation of the [SSD] to meet the storage needs of every qualifying applicant." OTDA agrees with this comment.

A comment objected to local procedures relating to applications and payments and suggested that OTDA work to reduce homelessness, raise shelter allowances, and raise furniture and clothing allowances. This comment is outside the scope of the regulatory proposal. The proposed amendments provide consistency and clarity regarding the amounts and types of items for which storage allowances may be provided and limit storage to items in the possession of a PA applicant or recipient. They do not address the SSDs' application and payment procedures. While the proposed amendments would assist homeless persons in need of storage, the proposed amendments do not necessarily reduce homelessness, nor do they raise allowances. One comment asserted the proposed amendments would "increase bureaucratic obstacles and generate hardship for homeless New Yorkers." OTDA disagrees as the proposed amendments would promote consistent and efficient application of policies.

Comments suggested "SSD's may require homeless New Yorkers to provide inventories or extensive paperwork to justify payment for their storage units," and it could increase the burden to storage companies or the client as many storage companies do not provide or refuse to provide such inventories. OTDA agrees that SSDs may ask for an "inventory" of items to be stored. Some SSDs may already do so. However, it is anticipated that persons placing belongings into storage will know what is being stored. In addition, a burden would not be placed on the storage companies, as it is not the storage companies' responsibility to provide an "inventory," but the applicant's/recipient's responsibility to do so.

After consideration of the public comments, OTDA anticipates the revised proposal would provide consistency and clarity regarding eligibility for storage fee payments, as well as enhance the ability of SSDs to provide cost effective storage and ensure that a uniform policy is applied statewide.

New York State Thruway Authority

PROPOSED RULE MAKING
NO HEARING(S) SCHEDULED

Amend the Authority's Toll Rules to Enhance Violation Enforcement on the Thruway System

I.D. No. THR-46-16-00022-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 101.3 of Title 21 NYCRR.

Statutory authority: Public Authorities Law, section 354(5), (8) and (15); and Vehicle and Traffic Law, section 1630

Subject: Amend the Authority's toll rules to enhance violation enforcement on the Thruway System.

Purpose: To deter toll evasion.

Text of proposed rule: 101.3 Related toll rules.

(a) Evasion or nonpayment of tolls.

(1) The evasion, nonpayment, payment in other than lawful currency, payment of less than the full amount required or other failure to comply with the published toll rates or tolls for any reason along the Thruway system is prohibited.

(i) The owner of any vehicle which violates toll collection regulations without paying the charge prescribed by the Authority shall be liable to the Authority for an administrative fee, known as the toll violation fee: (a) for any cashless tolling facility, in the amount of $100.00 for each such toll violation unless a fee of less than $100.00 is set by the Authority in its sole discretion; (b) for all other facilities, in the amount of $50.00 for each such toll violation unless a fee of less than $50.00 is set by the Authority in its sole discretion,

The toll violation fee shall be in addition to the applicable toll charge and any fines and penalties otherwise prescribed by law or by agreement.

(2) Entering or leaving the controlled system except through the regular toll booth lanes (except in emergency cases and then only under the control and supervision of the State Police or toll collectors), is prohibited.

(3) Passage through a toll booth lane on the controlled system or at a bridge or barrier station without making a full stop is prohibited except in a dedicated E-ZPass lane.

(b) Loss of toll ticket. The driver of a vehicle required to have a toll ticket on the controlled system extending from, and including, the toll barrier at Woodbury, to and including the toll barrier at Williamsville, including the Berkshire section, and extending from, and including, the toll barrier at Lackawanna, to and including the toll barrier at Ripley, who, for any reason, does not have a toll ticket upon reaching an exit toll station, shall be charged the toll for the appropriate vehicle classification from the most distant toll station on such portion of the controlled system; provided, however, that if the operator presents satisfactory proof of the station of entry, the toll collector, with the approval of the toll plaza manager, may accept the toll from such station.

(c) Exit of vehicle at point of entry. The driver of a vehicle on the controlled system extending from and including, the toll barrier at Woodbury, to and including the toll barrier at Williamsville, including the Berkshire section and extending from, and including, the toll barrier at Lackawanna, to and including the toll barrier at Ripley, who presents a toll ticket for payment to a collector at the same toll station at which such toll ticket was issued shall be charged the toll for the appropriate vehicle classification from the most distant toll station of the controlled system. Disabled vehicles permissibly in tow (which shall include vehicles being pushed) by an emergency service vehicle on the controlled system (see Part 102 of this Chapter) and emergency service vehicles providing such towing, shall not be charged a toll if it is necessary under this Chapter for the particular vehicle to leave the Thruway at the same toll station at which it entered.

Text of proposed rule and any required statements and analyses may be obtained from: Kathleen Clark, New York State Thruway Authority, 200 Southern Boulevard, Albany, New York 12209, (518) 436-2876, email: kathy.clark@thruway.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:

Public Authorities Law (PAL) section 354 subdivision 5 authorizes the New York State Thruway Authority (Authority) to make rules and regulations for the use of the Thruway and any other facilities under the jurisdiction of the Authority. PAL section 354 subdivision 8, in pertinent part, authorizes the Authority "to fix fees for the use of the Thruway System or any part thereof necessary…to produce sufficient revenue to meet the expense of maintenance and operation and to fulfill the terms of any agreements made with the holders of its notes or bonds…" PAL section 354 subdivision 15 authorizes the Authority to do all things necessary or convenient to carry out its purposes or exercise the powers given in Title 9. Section 1630 of the Vehicle and Traffic Law authorizes the Authority to make rules and regulations to regulate traffic on any highway under its jurisdiction with respect to charging tolls, taxes, fees, licenses or permits for the use of the highway or any property under the Authority's jurisdiction. In addition to the Vehicle and Traffic Law authorization, the Authority is authorized pursuant to section 361 of the PAL to "promulgate such rules and regulations…for the use and occupancy of the Thruway…".

2. Legislative objectives:

The proposed rule will revise the Authority's toll rules to put toll violation fees in the regulation and enable the Authority to discourage toll violators and minimize losses more strenuously than with the current administratively imposed fees.

3. Needs and benefits:

Tolls are 95% of the Thruway Authority's revenues. The Thruway Authority has issued bonds which are secured under the Bond Resolution by a pledge of the toll revenues. It is a fundamental priority of the Thruway Authority to protect its funds and safeguard against any losses. The proposed rule is necessary to deter the nonpayment of tolls, particularly in a cashless tolling environment. Cashless tolling began on the Tappan Zee Bridge on April 23, 2016.

4. Costs:

a. To regulated parties: The proposed rule will have no impact upon motorists who pay their tolls in a timely fashion. Toll violators will be subjected to payment of the toll violation fees.

b. Costs to the State, the Authority and local governments: This proposed rule will impose no costs on local governments. The Authority will incur no additional costs because the proposed rule is consistent with current practices.

5. Local government mandates:

The proposed rule will not affect local governments.

6. Paperwork:

Not applicable because the proposed rule is consistent with current practices.

7. Duplication:

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

8. Alternatives:

The tolling authorities previously submitted legislative proposals to address the issue of non-payment, but such proposals were not enacted by the Legislature. A no action alternative was not considered.

9. Federal standards:

This rule does not exceed any Federal standards.

10. Compliance schedule:

Ongoing with implementation of the $100 fee scheduled for Spring 2017.

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

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

This proposed rulemaking would strengthen the Thruway Authority's toll rules for the evasion or nonpayment of tolls by specifying the toll violation fees in the rules including a fee of $100.00 for any cashless tolling facility.

Due to its narrow focus, this rule will not impose an adverse economic impact or reporting, record-keeping, or other compliance requirements on small businesses in rural or urban areas or on employment opportunities. No local government activities are involved.

Triborough Bridge and Tunnel Authority

PROPOSED RULE MAKING
NO HEARING(S) SCHEDULED

Proposal to Strengthen Toll Violation Enforcement at TBTA Bridges and Tunnels

I.D. No. TBA-46-16-00021-P

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

Proposed Action: Repeal of section 1021.3; and addition of new section 1021.3 to Title 21 NYCRR.

Statutory authority: Public Authorities Law, section 553(5) and (17)

Subject: Proposal to strengthen toll violation enforcement at TBTA bridges and tunnels.

Purpose: To deter toll evasion.

Text of proposed rule: *Section 1021.3 Toll Violation Enforcement*

1. The owner, as defined in Public Authorities Law § 2985(3), of any vehicle crossing a bridge or tunnel without paying the crossing charge prescribed by the Triborough Bridge and Tunnel Authority (''Authority'') at the place and time and in the manner established for the collection of such crossing charge commits a violation of toll collection regulations.

(a) Payment of crossing charges by E-ZPass shall be made by means of a properly mounted E-ZPass tag of the proper class that is classified as valid at the time of the toll transaction. For each such violation, the owner shall be charged the full undiscounted crossing charge for fare media other than E-ZPass. Nothing in this section shall be construed to limit the violation of an E-ZPass account holder for administrative violation fees established and imposed by the E-ZPass agreement for failure to pay crossing charges by means of a properly mounted E-ZPass Tag of the proper class that is classified as valid at the time of the transaction.

(b) Payment of crossing charges by fare media other than E-ZPass shall be made at the place and time and in the manner established for the collection of such crossing charge. Nothing in this section shall be construed to limit the violation of a video account holder for administrative violation fees established and imposed by the applicable video account agreement for failure to pay the crossing charges at the place and time and in the manner established for the collection of such crossing charges.

2. The owner of any vehicle which violates toll collection regulations by crossing a bridge or tunnel without paying the crossing charge prescribed by the Authority at the place and time and in the manner established for the collection of such crossing charge shall be liable to the Authority for an administrative fee, known as the toll violation fee. The fee shall be in the amount of $50.00, for each such violation arising from crossing the Henry Hudson Bridge, the Cross Bay Veterans Memorial Bridge and the Marine Parkway-Gil Hodges Memorial Bridge; and, $100.00 for each such violation arising from crossing the Bronx-Whitestone Bridge, the Hugh L. Carey Tunnel, the Queens Midtown Tunnel, the Robert F. Kennedy Bridge, the Throgs Neck Bridge and the Verrazano-Narrows Bridge. The toll violation fee shall be in addition to the applicable crossing charge and any fines and penalties otherwise prescribed by law or by agreement.

3. A Notice of Violation shall be sent by the Authority's authorized agent (''Authorized Agent'') to the individual or business alleged to be liable for the toll violation as owner and shall contain:

(a) the name and address of the individual or business alleged to be liable for the toll violation as owner;

(b) the registration number and state of the vehicle alleged to have been involved in the violation;

(c) the location, date and time of each use of the facility that forms the basis of such violation;

(d) the amount of the assessed toll and toll violation fee; and

(e) an image of the license plate of the vehicle being used or operated on the toll facility, provided that an image of each such license plate in the Notice of Violation shall be provided by the Authorized Agent upon request.

4. The individual or business alleged to be liable for the toll violation as owner may dispute the violation by submitting a Declaration of Dispute to the Authorized Agent at the time and place and in the manner established in the Notice of Violation and such toll violation and associated toll violation fee shall be dismissed if such individual or business provides a certification that:

(a) The individual or business was not the registered owner of the vehicle at the time of the toll transaction that forms the basis of such alleged violation and submits to the Authorized Agent: (i) a copy of the plate surrender receipt from the Department of Motor Vehicles; (ii) proof of sale of the vehicle; (iii) a copy of the report to a law enforcement agency that the plate was lost; and/or (iv) a copy of the report to a law enforcement agency that the vehicle was stolen; or

(b) The toll was paid by E-ZPass and the toll posted to an E-ZPass Account and submits to the Authorized Agent a copy of the E-ZPass statement showing the toll posting; or

(c) The toll was paid in cash at the time and submits to the Authorized Agent a copy of the toll receipt; or

(d) The registered owner's vehicle was not present at the facility at the time of the violation(s) or for other good cause shown.

5. If the owner is a vehicle rental or leasing company which seeks to perform a Transfer of Responsibility to the vehicle lessee or renter, the owner shall submit to the Authorized Agent at the time and place and in the manner established in the Notice of Violation a signed lease or rental agreement and certification of the name and address of the lessee or renter of the vehicle at the time of the toll transaction that forms the basis for the violation. A Notice of Violation or toll invoice shall be sent by the Authorized Agent to such lessee or renter within forty-five days of receipt of the signed lease or rental agreement and certification and such lessee or renter shall be deemed to the owner of such vehicle and shall be liable for the payment of tolls and any toll violation fees.

6. The Authorized Agent shall send the owner a written determination of the Declaration of Dispute under subdivision four.

(a) The owner may request a review by the Authority of the Authorized Agent's determination of the Declaration of Dispute by submitting a Request for Review to the Authority at the place and time and in the matter established in the Authorized Agent's written determination of the Declaration of Dispute.

(b) The Authorized Agent's determination of the Declaration of Dispute under subdivision four shall be final and binding on the owner unless overturned by the Authority upon review.

(c) The Authority's determination of the owner's Request for Administrative Review shall be final and binding on the owner unless overturned by a Court of competent jurisdiction of the State of New York, County of New York, under Article 78 of the New York Civil Practice law and Rules or a United States Court located in New York City, under the procedures and laws applicable in that court.

7. The individual or business alleged to be liable for each toll violation as owner shall be liable for each unpaid toll and toll violation fee unless: (i) such unpaid toll and/or toll violation fee has been dismissed under subdivision four or subdivision six; (ii) there has been a Transfer of Responsibility under subdivision five; or (iii) after payment of such toll, the toll violation fee has been dismissed or reduced under the Fee Waiver Policy adopted by the Authority. Such owners who fail to pay each toll and toll violation fee in response to a Notice of Violation may also have their vehicle registrations suspended under vehicle and traffic law section 510(3)(d) and implementing regulations.

Text of proposed rule and any required statements and analyses may be obtained from: M. Margaret Terry, Senior Vice President and General Counsel, Triborough Bridge and Tunnel Authority, 2 Broadway, 24th Floor, New York, NY 10004, (646) 252-7619, email: mterry@mtabt.org

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: Public Authority Law (PAL) § 553(5) provides that the Triborough Bridge and Tunnel Authority (Authority) has the power to make "rules and regulations for the regulation of the use of the project and the establishment and collection of tolls thereon" and "that violation of any rule or regulation governing or regulating traffic on the projects of the authority shall be a traffic infraction as the same is defined in the vehicle and traffic law and shall be punishable as such." PAL § 553(17) provides that the Authority may do "all things necessary or convenient to carry out the powers expressly given in this title."

2. Legislative objectives: The proposed rule will revise the Authority's toll violation enforcement regulations by (i) increasing the violation fees imposed on owners from $50.00 to $100.00 for toll violations at the Bronx-Whitestone, Robert F. Kennedy, Throgs Neck and Verrazano-Narrows Bridges and the Queens Midtown and Hugh L. Carey Tunnels, while continuing to impose a $50.00 violation fee for toll violations at the Henry Hudson, Cross Bay Veterans Memorial and Marine Parkway-Gil Hodges Memorial Bridges; and (ii) adding provisions prescribing the procedural protections for owners seeking to have their unpaid tolls and violation fees dismissed or transferred and warning that owners who persistently fail to pay tolls and violation fees may have their vehicle registrations suspended by the New York State Department of Motor Vehicles.

3. Needs and benefits: Before beginning its all-electronic tolling (AET) pilot program at the Henry Hudson Bridge (HHB) in January 2011, the Authority adopted a regulation imposing a $50.00 toll violation fee upon the owner of any vehicle crossing a bridge or tunnel without paying the prescribed crossing charge by means of a properly mounted and valid E-ZPass Tag or by fare media other than E-ZPass at the place and time and in the manner established by the Authority for the collection of such toll. Cashless tolling became the permanent method of toll collection at the HHB on January 1, 2015. By the end of 2016, a gantry based, cashless, all-electronic Open Road Tolling (ORT) system will be put into revenue service at the HHB. Since the elimination of cash collection at the HHB in November 2012, the $50.00 violation fee has been effective enough in deterring toll violations at the HHB that we are breaking even. The $50.00 violation fee would not, however, be as effective in deterring toll evasion at the major facilities which have higher tolls and significant truck traffic. Since Authority toll revenues are used to maintain and improve its bridges and tunnels and provide support for the Metropolitan Transportation Authority's integrated mass transportation system, effectively deterring toll evasion prevents toll violators from passing the burden of maintaining Authority infrastructure and supporting mass transit to law-abiding citizens who pay the tolls. It is anticipated that strengthening the Authority's toll violation enforcement procedures and increasing the toll violation fee to $100.00 at the Bronx-Whitestone, Robert F. Kennedy, Throgs Neck and Verrazano-Narrows Bridges and the Hugh L. Carey and Queens Midtown Tunnels, while continuing to impose a $50.00 violation fee for toll violations at the Henry Hudson, Cross Bay Veterans Memorial and Marine Parkway-Gil Hodges Memorial Bridges will increase toll revenue at Authority ORT facilities by deterring toll evasion. This proposal establishes a meaningful process to both deter toll evasion and encourage persons to pay delinquent tolls.

Additionally, this rule is being adopted in conjunction with the DMV's recent regulations to suspend vehicle registrations of owners who persistently fail to pay their tolls and violation fees, or who have them dismissed or transferred, under DMV's statutory authority to suspend registrations for habitual or persistent violators. As the DMV acknowledged in the Regulatory Impact Statement for its proposed regulations, toll violators should receive ample notice for each toll violation of the amount owed, how to pay and how to dispute the alleged violation. Moreover, violation enforcement procedures are most effective when they are both fair and predictable. This part of the proposed rule strengthens the Authority's toll violation enforcement regulations by enacting due process procedures and policies to give owners an opportunity to have their toll violations dismissed or transferred before being subject to a $50.00 or $100.00 violation fee per violation, or if persistent or habitual violators, to having their vehicle registration suspended by DMV.

4. Costs:

a. To regulated parties: This proposal does not impose new costs on individuals utilizing Authority facilities.

b. Cost to the State, the agency and local governments: This proposed rule will impose no costs on local governments. TBTA will incur no additional costs because the regulations are consistent with current practices.

c. Source: Authority records.

5. Local government mandates: The proposed rule will not affect local governments.

6. Paperwork: The proposed rule will require the Authority to formalize existing toll violation enforcement processes and procedures and develop an appeal procedure.

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

8. Alternatives: The tolling authorities previously submitted legislative proposals to address the issue of non-payment, but such proposals were not enacted by the Legislature. A no action alternative was not considered.

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

10. Compliance schedule: Implementation of this regulation is scheduled for February of 2017.

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

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

This proposed rulemaking would strengthen the Triborough Bridge and Tunnel Authority's toll violation enforcement regulations by (i) increasing the violation fees imposed on owners from $50.00 to $100.00 for toll violations the Bronx-Whitestone, Robert F. Kennedy, Throgs Neck and Verrazano-Narrows Bridges and the Queens Midtown and Hugh L. Carey Tunnels, while continuing to impose a $50.00 violation fee for toll violations at the Henry Hudson, Cross Bay Veterans Memorial and Marine Parkway-Gil Hodges Memorial Bridges; and (ii) adding provisions prescribing the procedural protections for owners seeking to have their unpaid tolls and violation fees dismissed or transferred and warning that owners who persistently fail to pay tolls and violation fees may have their vehicle registrations suspended by the New York State Department of Motor Vehicles. Due to its narrow focus, this rule will not impose an adverse economic impact or reporting, record-keeping, or other compliance requirements on small businesses in rural or urban areas or on employment opportunities. No local government activities are involved.