RULE MAKING ACTIVITIES

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

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

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

Department of Agriculture and Markets

EMERGENCY/PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Growth, Cultivation, Sale, Distribution, Transportation, and Processing of Industrial Hemp

I.D. No. AAM-47-16-00005-EP
Filing No. 1031
Filing Date: 2016-11-07
Effective Date: 2016-11-07

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

Proposed Action: Amendment of Part 159 of Title 1 NYCRR.

Statutory authority: Agriculture and Markets Law, sections 16, 18 and 508

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

Specific reasons underlying the finding of necessity: A farmer has planted thirty acres of industrial hemp and will not be able to sell it unless the proposed rule, which allows for such sale, is made effective close to the date of harvest.

Subject: Growth, cultivation, sale, distribution, transportation, and processing of industrial hemp.

Purpose: To allow industrial hemp to be sold, distributed, transported and processed.

Text of emergency/proposed rule: Section 159.2 of 1 NYCRR is amended to read as follows:

§ 159.2 Authorization to grow and cultivate industrial hemp

(a) Industrial hemp and industrial hemp seeds may not be possessed, grown, [or] cultivated*, sold, distributed, transported, or processed* unless an application therefor has been submitted to and authority has been granted by the Commissioner.

(b) Only an institution of higher education may submit an application to the Commissioner for authorization to grow*,* [or] cultivate*, possess, sell, distribute, transport, or process* industrial hemp.

(c) Industrial hemp may only be grown, cultivated, or processed upon registered premises.

(d) An application to grow*,* [or] cultivate*, possess, sell, distribute, transport, or process* industrial hemp *("application")* shall be made upon a form prescribed by the Commissioner and shall include an application fee of $500.00. Each application and renewal application shall provide the information deemed necessary by the Commissioner for the administration of this Part, including but not limited to:

(1) a description of each premises where industrial hemp will be grown or cultivated, harvested, stored, studied*, processed* or disposed of, by physical address and by GPS co-ordinates;

(2) a diagram for each premises that visually depicts the buildings, structures and improvements on the premises and identifies their use, and that sets forth the relevant activities conducted at the premises; and

(3) a detailed summary of the issues and matters that the applicant intends to study in conjunction with growing, cultivating, or processing industrial hemp which may include:

i. the soils, growing conditions, and harvest methods suitable for the growth or cultivation of various types of industrial hemp in the State;

ii. the cultivars suitable for the growth or cultivation of various types of industrial hemp, including the cost of each cultivar; the yield of industrial hemp attributable to each such cultivar; and the inputs required to assure that each such cultivar, when planted, results in a satisfactory yield of industrial hemp;

iii. the markets that the applicant has identified, in consultation with appropriate commercial interests, that exist or that could feasibly be developed for various types of industrial hemp, including but not limited to markets for apparel, energy, food, paper, and tools;

iv. the means and methods that could feasibly be used to process, market, advertise, expose, or publicize products that contain, in whole or in predominate part, industrial hemp, to facilitate the wholesale and/or retail sale thereof.

(4) a transportation plan, if industrial hemp will be moved from one location on the registered premises to another*,* [or] from one registered premises to another registered premises, *or from a registered premises to an unregistered premises,* that sets forth information relevant to the security requirements set forth in section 159.6 of this Part.

(5) a security plan that sets forth the measures that the applicant intends to take to ensure that the security requirements set forth in section 159.6 of this Part are complied with.

(e) Applications [to grow, cultivate, process, and market industrial hemp] shall be evaluated in the order in which they are received. In the event that two or more applications are received at the same time, the Department will determine the order of receipt at random.

(f) The Commissioner may decline to grant authority to grow, cultivate, process, [and market] *sell, distribute, transport, and possess* industrial hemp, and may revoke or decline to renew an authorization to grow*,* [and] cultivate*, possess, sell, distribute, transport, and process* industrial hemp *("an authorization")*, if he or she finds, after investigation and opportunity to be heard, that:

(1) the application does not set forth the information required pursuant to subdivision (d) of this section and fails to set forth such information within twenty days after the applicant has received notice that the required information was not set forth on the application; or

(2) ten authorizations to grow and cultivate industrial hemp have been issued and are in effect; or

(3) the applicant or authorization holder is not capable for whatever

reason of complying, or has failed to comply, with the provisions of this Part or with state or federal law relating to the possession, sale, [or] cultivation*, distribution, transportation and processing* of industrial hemp; or

(4) the Department determines, in its sole discretion, that it is or will be impracticable to regulate the applicant's or authorization holder's adherence to the requirements set forth in this Part; or

(5) the authorization holder has not complied with the requirements set forth in subdivision (e) of section 159.3 of this Part.

(g) [Authorization to grow and cultivate industrial hemp] *An authorization* shall be for a period of three years from the date application therefor was approved by the Commissioner. Notwithstanding the preceding, the Commissioner may grant or renew an authorization [to grow and cultivate industrial hemp] for a period of more than three years if he or she determines that the issues and matters that the applicant or authorization holder intends to study or is studying cannot be adequately and fully studied within three years from the date that authorization is granted or renewed.

An application for renewal shall be submitted to the Commissioner no later than thirty days prior to the date that the authorization expires and shall include an application fee of $500.00.

(h) The Commissioner may grant or renew an authorization [to grown and cultivate industrial hemp] with conditions, including but not limited to one or more of the following:

(1) industrial hemp is grown and cultivated on a limited number of acres; [or]

(2) industrial hemp is grown and cultivated in a limited volume[.]*; or*

(3) industrial hemp is not sold or distributed to a person(s) unwilling or unable to properly carry out the business of growing, cultivating, possessing, selling, distributing, transporting, or processing industrial hemp.

(i) An authorization holder may surrender its authorization at any time; however, the requirements set forth in section 159.6 of this Part shall remain applicable and binding upon such authorization holder until its authorization period would otherwise have expired.

Section 159.3 of 1 NYCRR is amended to read as follows:

§ 159.3 Requirements

(a) Studies and reports.

(1) An authorization holder shall, no later than three months after the date [of] *that his or her* application [to grow or cultivate industrial hemp] was approved by the Commissioner, furnish to the Commissioner a report that provides, in detail, its findings and conclusions regarding the issues and matters set forth in its application [to grow or cultivate industrial hemp].

(2) An authorization holder shall every three months after furnishing a report of the type referred to in paragraph (1) of this subdivision, furnish a report that supplements, in detail, the findings and conclusions set forth in earlier report(s).

(3) An authorization holder may study issues and matters different from those set forth in its application [to grow or cultivate industrial hemp], with the prior written approval of the Commissioner, and all reports required pursuant to this section, furnished after the date of the Commissioner's approval, shall set forth findings and conclusions regarding such different issues and matters.

(b) Except as provided in subdivision (a) of section 159.6 of this Part and in this subdivision, industrial hemp may be grown*,* [or] cultivated[,] *or* harvested[, stored, and disposed of] only on the registered premises. Industrial hemp that has been harvested shall be stored in a secured facility except when it is being transported within the registered premises, to a laboratory for testing, or to another registered premises or facility approved by the Commissioner.

(c) [Industrial hemp may be transported off registered premises only if it is being transported to a laboratory for testing or to another registered premises or facility approved by the Commissioner.] Industrial hemp may be transported only in an enclosed, locked compartment of a truck or van where it cannot be seen from the outside of the vehicle, the contents of the vehicle are not disclosed, and the operator of the vehicle has been approved by the authorization holder to transport industrial hemp, as indicated in the record required to be maintained pursuant to paragraph (1) of subdivision (a) of section 159.4 of this Part.

(d) Testing and disposition.

(1) An authorization holder shall prepare, maintain, and make available to the Commissioner, upon request, a record that sets forth an accurate inventory of industrial hemp plants and seeds and shall reasonably ensure that no plant is possessed or grown or cultivated that would not meet the definition of industrial hemp because it contains a concentration of more than 0.3 percent of delta-9 tetrahydrocannabinol, on a dry basis.

(2) An authorization holder shall ensure that a representative sample of plants grown or cultivated from each variety of seed used for the purpose of growing or cultivating industrial hemp is analyzed at a laboratory approved by the Commissioner, to determine the concentration of delta-9 tetrahydrocannabinol therein. The authorization holder shall furnish a report that sets forth the results of analysis(es) to the Commissioner promptly after such analysis(es) is made, in a form approved by the Commissioner.

(3) An authorization holder shall dispose of all plants determined, after laboratory analysis, to have a concentration of more than 0.3 percent of delta-9 tetrahydrocannabinol on a dry basis, and shall prepare and maintain on the registered premises for a period of two years, a record that sets forth the information required in section 159.4(a)(4)(iii) of this Part. The authorization holder shall make available to the Department such records upon request, in a form and at a location satisfactory to the Commissioner.

(4) An authorization holder shall prepare a record that sets forth the name and address of each person who will receive industrial hemp or to whom industrial hemp has been sold or distributed and the volume of industrial hemp sold or distributed on each occasion when industrial hemp was sold or distributed.

(e) An authorization holder shall, no later than fifteen days after having been granted authorization, notify, in writing, the applicable unit or units of law enforcement, including the unit or units of law enforcement in the political subdivision in which the registered premises is located, that it has received such authorization and shall provide such unit or units of law enforcement a copy of the security plan referred to in section 159.2(d)(5) of this Part *and the names and addresses of each person who will receive industrial hemp or to whom industrial hemp will be sold or distributed to*. The authorization holder shall, no later than fifteen days after having notified such unit or units of law enforcement, provide the Department with a copy of such notification. An authorization holder shall adequately monitor registered premises under its control and shall notify the appropriate unit or units of law enforcement and the Department regarding facts and circumstances that indicate that industrial hemp has been or may be held or possessed in violation of the provisions of this Part.

(f) (1) Notwithstanding any provision of this Part to the contrary, an authorization holder may enter into a contract with a person for that person to be involved in growing or cultivating, harvesting, storing, studying, transporting, *processing* and/or disposing of industrial hemp, if:

i. the contract has, prior to execution, been approved by the Commissioner; and

ii. the contract requires such subcontractor to comply with all relevant provisions of this Part.

(2) The Commissioner may decline to renew or may revoke an authorization [to grow and cultivate industrial hemp] if he or she finds, after investigation, that such subcontractor has failed to comply with all relevant provisions of this Part.

(g) An authorization holder may sell and distribute industrial hemp to a person if:

(1) such sale or distribution is made pursuant to a contract that has, prior to execution, been approved by the Commissioner; and

(2) such contract requires the person to whom such industrial hemp has been sold or distributed to maintain a record that sets forth the volume of industrial hemp received, the use to which such industrial hemp was put and the volume of industrial hemp allocated to each use, and the volume of industrial hemp disposed of.

Subdivision (a) of section 159.4 of 1 NYCRR is amended by adding a new paragraph (4) thereto, to read as follows:

(4) the name of each person to whom industrial hemp is sold and/or distributed to, the date of each such sale or distribution, and the volume of industrial hemp sold or distributed, on each occasion when industrial hemp was sold or distributed.

Subdivision (b) of section 159.4 of 1 NYCRR is amended to read as follows:

(b) The records and materials referred to in subdivision (a) of this section *and paragraph (4) of subdivision (d) of section 159.3 of this Part* shall be maintained on the registered premises*,* and *the records and materials referred to in paragraph (2) of subdivision (g) of section 159.3 of this Part shall be maintained on the premises of the person to whom industrial hemp has been sold or distributed, and all such records shall be* made available to the Commissioner for two years from the date they were made or prepared.

Section 159.4 of 1 NYCRR is amended by adding a new subdivision (c) thereto, to read as follows:

(c) Each record, material, and plan required to be prepared pursuant to this Part shall be revised, as frequently as necessary, so as to be accurate.

Subdivision (a) of section 159.6 of 1 NYCRR is amended to read as follows:

(a) An authorization holder shall take all actions necessary to ensure [that:

(1) industrial hemp is not removed from registered premises except for transportation to a laboratory for testing pursuant to the provisions of section 159.3(d)(2) of this Part or except as allowed by the Commissioner pursuant to his/her written authorization.

(2) industrial] *that industrial* hemp is not acquired, possessed, grown

or cultivated, harvested, stored, transported, *sold, processed, distributed* or disposed of except under conditions that ensure that it will not be [removed from registered premises or] used in violation of state or federal law.

This notice is intended: to serve as both a notice of emergency adoption and a notice of proposed rule making. The emergency rule will expire February 4, 2017.

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

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

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

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

Regulatory Impact Statement

A regulatory impact statement is not submitted, but will be published in the *Register* within 30 days of the rule's effective date.

Regulatory Flexibility Analysis

A regulatory flexibility analysis is not submitted, but will be published in the *Register* within 30 days of the rule's effective date

Rural Area Flexibility Analysis

A regulatory flexibility analysis is not submitted, but will be published in the *Register* within 30 days of the rule's effective date

Job Impact Statement

The proposed rule would allow educational institutions to sell, distribute, transport, and/or process industrial hemp, if authorized by the Commissioner of Agriculture and Markets to do so. The proposed rule implements the provisions of Agriculture and Markets Law Article 29, as amended by chapter 256 of the laws of 2016, and allows an educational institution to sell, distribute, transport, and/or process industrial hemp if authorized by the Commissioner of Agriculture and Markets to do so – such activities were not, prior to the passage of the 2016 amendments to Agriculture and Markets Law Article 29 and under current regulations, permissible.

The proposed rule will remove restrictions presently placed upon authorized educational institutions and, as such, will have no impact, or perhaps a minor positive impact, upon jobs and employment opportunities in such institutions and private businesses that use industrial hemp in products produced or manufactured by them.

Department of Audit and Control

NOTICE OF ADOPTION

Pre-Employment Physicals for Presumption Provisions

I.D. No. AAC-37-16-00005-A
Filing No. 1025
Filing Date: 2016-11-03
Effective Date: 2016-11-23

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

Action taken: Addition of Part 382 to Title 2 NYCRR.

Statutory authority: Retirement and Social Security Law, sections 11, 311, 63(g)(1)(b), 507(g)(1)(b) and 605(h)(1)(b)

Subject: Pre-employment physicals for presumption provisions.

Purpose: To address the requirement that records of a pre-employment physical be submitted in the event such records no longer exist.

Text or summary was published in the September 14, 2016 issue of the Register, I.D. No. AAC-37-16-00005-P.

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

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

Assessment of Public Comment

The agency received no public comment.

Department of Civil Service

NOTICE OF EXPIRATION

The following notices have expired and cannot be reconsidered unless the Department of Civil Service publishes new notices of proposed rule making in the NYS *Register.*

Jurisdictional Classification

I.D. No.	Proposed	Expiration Date
CVS-44-15-00006-P	November 4, 2015	November 3, 2016
CVS-44-15-00008-P	November 4, 2015	November 3, 2016
CVS-44-15-00010-P	November 4, 2015	November 3, 2016
CVS-44-15-00012-P	November 4, 2015	November 3, 2016
CVS-44-15-00014-P	November 4, 2015	November 3, 2016
CVS-44-15-00017-P	November 4, 2015	November 3, 2016
CVS-44-15-00018-P	November 4, 2015	November 3, 2016

Department of Economic Development

EMERGENCY RULE MAKING

START-UP NY Program

I.D. No. EDV-47-16-00003-E
Filing No. 1029
Filing Date: 2016-11-04
Effective Date: 2016-11-04

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

Action taken: Addition of Part 220 to Title 5 NYCRR.

Statutory authority: Economic Development Law, art. 21, sections 435-36; L. 2013, ch. 68

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

Specific reasons underlying the finding of necessity: On June 24, 2013, Governor Andrew Cuomo signed into law the SUNY Tax-free Areas to Revitalize and Transform UPstate New York (START-UP NY) program, which offers an array of tax benefits to eligible businesses and their employees that locate in facilities affiliated with New York universities and colleges. The START-UP NY program will leverage these tax benefits to attract innovative start-ups and high tech industries to New York so as to create jobs and promote economic development.

Regulatory action is required to implement the START-UP NY program. The legislation creating the START-UP NY program delegated to the Department of Economic Development the establishment of procedures for the implementation and execution of the START-UP NY program. Without regulatory action by the Department of Economic Development, procedures will not be in place to accept applications from institutions of higher learning desiring to create Tax-Free Areas, or businesses wishing to participate in the START-UP NY program.

Adoption of this rule will enable the State to begin accepting applications from businesses to participate in the START-UP NY program, and represent a step towards the realization of the strategic objectives of the START-UP NY program: attracting and retaining cutting-edge start-up companies, and positioning New York as a global leader in high tech industries.

Subject: START-UP NY Program.

Purpose: Establish procedures for the implementation and execution of START-UP NY.

Substance of emergency rule: START-UP NY is a new program designed to stimulate economic development and promote employment of New Yorkers through the creation of tax-free areas that bring together educational institutions, innovative companies, and entrepreneurial investment.

1) The regulation defines key terms, including: "business in the formative stage," "campus," "competitor," "high tech business," "net new job," "new business," and "underutilized property."

2) The regulation establishes that the Commissioner shall review and approve plans from State University of New York (SUNY) colleges, City University of New York (CUNY) colleges, and community colleges seeking designation of Tax-Free NY Areas, and report on important aspects of the START-UP NY program, including eligible space for use as Tax-Free Areas and the number of employees eligible for personal income tax benefits.

3) The regulation creates the START-UP NY Approval Board, composed of three members appointed by the Governor, Speaker of the Assembly and Temporary President of the Senate, respectively. The START-UP NY Approval Board reviews and approves plans for the creation of Tax-Free NY Areas submitted by private universities and colleges, as well as certain plans from SUNY colleges, CUNY colleges, and community colleges, and designates Strategic State Assets affiliated with eligible New York colleges or universities. START-UP NY Approval Board members may designate representatives to act on their behalf during their absence. START-UP NY Approval Board members must remain disinterested, and recuse themselves where appropriate.

4) The regulation establishes eligibility criteria for Tax-Free Areas. Eligibility of vacant land and space varies based on whether it is affiliated with a SUNY college, CUNY college, community college, or private college, and whether the land or space in question is located upstate, downstate, or in New York City. The regulation prohibits any allocation of land or space that would result in the closure or relocation of any program or service associated with a university or college that serves students, faculty, or staff.

5) The regulation establishes eligibility requirements for businesses to participate in the START-UP program, and enumerates excluded industries. To be eligible, a business must: be a new business to the State at the time of its application, subject to exceptions for NYS incubators, businesses restoring previously relocated jobs, and businesses the Commissioner has determined will create net new jobs; comply with applicable worker protection, environmental, and tax laws; align with the academic mission of the sponsoring institution (the Sponsor); demonstrate that it will create net new jobs in its first year of operation; and not be engaged in the same line of business that it conducted at any time within the last five years in New York without the approval of the Commissioner. Businesses locating downstate must be in the formative stages of development, or engaged in a high tech business. To remain eligible, the business must, at a minimum, maintain net new jobs and the average number of jobs that existed with the business immediately before entering the program.

6) The regulation describes the application process for approval of a Tax-Free Area. An eligible institution may submit a plan to the Commissioner identifying land or space to be designated as a Tax-Free Area. This plan must: identify precisely the location of the applicable land or space; describe business activities to be conducted on the land or space; establish that the business activities in question align with the mission of the institution; indicate how the business would generate positive community and economic benefits; summarize the Sponsor's procedures for attracting businesses; include a copy of the institution's conflict of interest guidelines; attest that the proposed Tax-Free Area will not jeopardize or conflict with any existing tax-exempt bonds used to finance the Sponsor; and certify that the Sponsor has not relocated or eliminated programs serving students, faculty, or staff to create the vacant land. Applications by private institutions require approval by both the Commissioner and START-UP NY Approval Board. The START-UP NY Approval Board is to approve applications so as to ensure balance among rural, urban and suburban areas throughout the state.

7) A sponsor applying to create a Tax-Free Area must provide a copy of its plan to the chief executive officer of any municipality in which the proposed Tax-Free Area is located, local economic development entities, the applicable university or college faculty senate, union representatives and the campus student government. Where the plan includes land or space outside of the campus boundaries of the university or college, the institution must consult with the chief executive officer of any municipality in which the proposed Tax-Free Area is to be located, and give preference to underutilized properties identified through this consultation. The Commissioner may enter onto any land or space identified in a plan, or audit any information supporting a plan application, as part of his or her duties in administering the START-UP program.

8) The regulation provides that amendments to approved plans may be made at any time through the same procedures as such plans were originally approved. Amendments that would violate the terms of a lease between a sponsor and a business in a Tax-Free Area will not be approved. Sponsors may amend their plans to reallocate vacant land or space in the case that a business, located in a Tax-Free Area, is disqualified from the program but elects to remain on the property.

9) The regulation describes application and eligibility requirements for businesses to participate in the START-UP program. Businesses are to submit applications to sponsoring universities and colleges by 12/31/20. An applicant must: (1) authorize the Department of Labor (DOL) and Department of Taxation and Finance (DTF) to share the applicant's tax information with the Department of Economic Development (DED); (2) allow DED to monitor the applicant's compliance with the START-UP program; (3) provide to DED, upon request, information related to its business organization, tax returns, investment plans, development strategy, and non-competition with any businesses in the community but outside of the Tax-Free Area; (4) certify efforts to ascertain that the business would not compete with another business in the same community but outside the Tax-Free Area, including an affidavit that notice regarding the application was published in a daily publication no fewer than five consecutive days; (5) include a statement of performance benchmarks as to new jobs to be created through the applicant's participation in START-UP; (6) provide a statement of consequences for non-conformance with the performance benchmarks, including proportional recovery of tax benefits when the business fails to meet job creation benchmarks in up to three years of a ten-year plan, and removal from the program for failure to meet job creation benchmarks in at least four years of a ten-year plan; (7) identify information submitted to DED that the business deems confidential, proprietary, or a trade secret. Sponsors forward applications deemed to meet eligibility requirements to the Commissioner for further review. The Commissioner shall reject any application that does not satisfy the START-UP program eligibility requirements or purpose, and provide written notice of the rejection to the Sponsor. The Commissioner may approve an application anytime after receipt; if the Commissioner approves the application, the business applicant is deemed accepted into the START-UP NY Program and can locate to the Sponsor's Tax-Free NY Area. Applications not rejected will be deemed accepted after sixty days. The Commissioner is to provide documentation of acceptance to successful applicants.

10) The regulation allows a business to amend a successful application at any time in accordance with the procedure of its original application. No amendment will be approved that would contain terms in conflict with a lease between a business and a SUNY college when the lease was included in the original application.

11) The regulation permits a business that has been rejected from the START-UP program to locate within a Tax-Free Area without being eligible for START-UP program benefits, or to reapply within sixty days via a written request identifying the reasons for rejection and offering verified factual information addressing the reasoning of the rejection. Failure to reapply within sixty days waives the applicant's right to resubmit. Upon receipt of a timely resubmission, the Commissioner may use any resources to assess the claim, and must notify the applicant of his or her determination within sixty days. Disapproval of a reapplication is final and non-appealable.

12) With respect to audits, the regulation requires businesses to provide access to DED, DTF, and DOL to all records relating to facilities located in Tax-Free Areas at a business location within the State during normal business hours. DED, DTF, and DOL are to take reasonable steps to prevent public disclosure of information pursuant to Section 87 of the Public Officers Law where the business has timely informed the appropriate officials, the records in question have been properly identified, and the request is reasonable.

13) The regulation provides for the removal of a business from the program under a variety of circumstances, including violation of New York law, material misrepresentation of facts in its application to the START-UP program, or relocation from a Tax-Free Area. Upon removing a business from the START-UP program, the Commissioner is to notify the business and its Sponsor of the decision in writing. This removal notice provides the basis for the removal decision, the effective removal date, and the means by which the affected business may appeal the removal decision. A business shall be deemed served three days after notice is sent. Following a final decision, or waiver of the right to appeal by the business, DED is to forward a copy of the removal notice to DTF, and the business is not to receive further tax benefits under the START-UP program.

14) To appeal removal from the START-UP program, a business must send written notice of appeal to the Commissioner within thirty days from the mailing of the removal notice. The notice of appeal must contain specific factual information and all legal arguments that form the basis of the appeal. The appeal is to be adjudicated in the first instance by an appeal officer who, in reaching his or her decision, may seek information from outside sources, or require the parties to provide more information. The appeal officer is to prepare a report and make recommendations to the Commissioner. The Commissioner shall render a final decision based upon the appeal officer's report, and provide reasons for any findings of fact or law that conflict with those of the appeal officer.

15) With regard to disclosure authorization, businesses applying to participate in the START-UP program authorize the Commissioner to disclose any information contained in their application, including the projected new jobs to be created.

16) In order to assess business performance under the START-UP program, the Commissioner may require participating businesses to submit annual reports within thirty days at the end of their taxable year describing the businesses' continued satisfaction of eligibility requirements, jobs data, an accounting of wages paid to employees in net new jobs, and any other information the Commissioner may require. The Commissioner shall prepare annual reports on the START-UP program for the Governor and publication on the DED website, beginning April 1, 2015. Information contained in businesses' annual reports may be published in these reports or otherwise disseminated.

17) The Freedom of Information Law is applicable to the START-UP program, subject to disclosure waivers to protect certain proprietary information submitted in support of an application to the START-UP program.

18) All businesses must keep relevant records throughout their participation in the START-UP program, plus three years. DED has the right to inspect all such documents upon reasonable notice.

19) If the Commissioner determines that a business has acted fraudulently in connection with its participation in the START-UP program, the business shall be immediately terminated from the program, subject to criminal penalties, and liable for taxes that would have been levied against the business during the current year.

20) The regulation requires participating universities and colleges to maintain a conflict of interest policy relevant to issues that may arise during the START-UP program, and to report violations of said policies to the Commissioner for publication.

This notice is intended to serve only as an emergency adoption, to be valid for 90 days or less. This rule expires February 1, 2017.

Text of rule and any required statements and analyses may be obtained from: Phillip Harmonick, New York State Department of Economic Development, 625 Broadway, Albany, New York 12207, (518) 292-5112, email: phillip.harmonick@esd.ny.gov

Regulatory Impact Statement

STATUTORY AUTHORITY:

Chapter 68 of the Laws of 2013 requires the Commissioner of Economic Development to promulgate rules and regulations to establish procedures for the implementation and execution of the SUNY Tax-free Areas to Revitalize and Transform UPstate New York program (START-UP NY). These procedures include, but are not limited to, the application processes for both academic institutions wishing to create Tax-Free NY Areas and businesses wishing to participate in the START-UP NY program, standards for evaluating applications, and any other provisions the Commissioner deems necessary and appropriate.

LEGISLATIVE OBJECTIVES:

The proposed rule is in accord with the public policy objectives the New York State Legislature sought to advance by enacting the START-UP NY program, which provides an incentive to businesses to locate critical high-tech industries in New York State as opposed to other competitive markets in the U.S. and abroad. It is the public policy of the State to establish Tax-Free Areas affiliated with New York universities and colleges, and to afford significant tax benefits to businesses, and the employees of those businesses, that locate within these Tax-Free Areas. The tax benefits are designed to attract and retain innovative start-ups and high-tech industries, and secure for New York the economic activity they generate. The proposed rule helps to further such objectives by establishing the application process for the program, clarifying the nature of eligible businesses and facilities, and describing key provisions of the START-UP NY program.

NEEDS AND BENEFITS:

The emergency rule is necessary in order to implement the statute contained in Article 21 of the Economic Development Law, creating the START-UP NY program. The statute directs the Commissioner of Economic Development to establish procedures for the implementation and execution of the START-UP NY program.

Upstate New York has faced longstanding economic challenges due in part to the departure of major business actors from the region. This divestment from upstate New York has left the economic potential of the region unrealized, and left many upstate New Yorkers unemployed.

START-UP NY will promote economic development and job creation in New York, particularly the upstate region, through tax benefits conditioned on locating business facilities in Tax-Free NY Areas. Attracting start-ups and high-tech industries is critical to restoring the economy of upstate New York, and to positioning the state as a whole to be competitive in a globalized economy. These goals cannot be achieved without first establishing procedures by which to admit businesses into the START-UP NY program.

The proposed regulation establishes procedures and standards for the implementation of the START-UP program, especially rules for the creation of Tax-Free NY Areas, application procedures for the admission of businesses into the program, and eligibility requirements for continued receipt of START-UP NY benefits for admitted businesses. These rules allow for the prompt and efficient commencement of the START-UP NY program, ensure accountability of business participants, and promote the general welfare of New Yorkers.

COSTS:

I. Costs to private regulated parties (the business applicants): None. The proposed regulation will not impose any additional costs to eligible business applicants.

II. Costs to the regulating agency for the implementation and continued administration of the rule: None.

III. Costs to the State government: None.

IV. Costs to local governments: None.

LOCAL GOVERNMENT MANDATES:

The rule establishes certain property tax benefits for businesses locating in Tax-Free NY Areas that may impact local governments. However, as described in the accompanying statement in lieu of a regulatory flexibility analysis for small businesses and local governments, the program is expected to have a net-positive impact on local government.

PAPERWORK:

The rule establishes application and eligibility requirements for Tax-Free NY Areas proposed by universities and colleges, and participating businesses. These regulations establish paperwork burdens that include materials to be submitted as part of applications, documents that must be submitted to maintain eligibility, and information that must be retained for auditing purposes.

DUPLICATION:

The proposed rule will create a new section of the existing regulations of the Commissioner of Economic Development, Part 220 of 5 NYCRR. Accordingly, there is no risk of duplication in the adoption of the proposed rule.

ALTERNATIVES:

No alternatives were considered in regard to creating a new regulation in response to the statutory requirement. The regulation implements the statutory requirements of the START-UP NY program regarding the application process for creation of Tax-Free NY Areas and certification as an eligible business. This action is necessary in order to clarify program participation requirements and is required by the legislation establishing the START-UP NY program.

FEDERAL STANDARDS:

There are no federal standards applicable to the START-UP NY program; it is purely a State program that offers tax benefits to eligible businesses and their employees. Therefore, the proposed rule does not exceed any federal standard.

COMPLIANCE SCHEDULE:

The affected State agency (Department of Economic Development) and the business applicants will be able to achieve compliance with the regulation as soon as it is implemented.

Regulatory Flexibility Analysis

Participation in the START-UP NY program is entirely at the discretion of qualifying business that may choose to locate in Tax-Free NY Areas. Neither statute nor the proposed regulations impose any obligation on any business entity to participate in the program. Rather than impose burdens on small business, the program is designed to provide substantial tax benefits to start-up businesses locating in New York, while providing protections to existing businesses against the threat of tax-privileged start-up companies locating in the same community. Local governments may not be able to collect tax revenues from businesses locating in certain Tax-Free NY Areas. However, the regulation is expected to have a net-positive impact on local governments in light of the substantial economic activity associated with businesses locating their facilities in these communities.

Because it is evident from the nature of the proposed rule that it will have a net-positive impact on small businesses and local government, no further affirmative steps were needed to ascertain that fact and none were taken. Accordingly, a regulatory flexibility analysis for small businesses and local government is not required and one has not been prepared.

Rural Area Flexibility Analysis

The START-UP NY program is open to participation from any business that meets the eligibility requirements, and is organized as a corporation, partnership, limited liability company, or sole proprietorship. A business's decision to locate its facilities in a Tax-Free NY Area associated with a rural university or college would be no impediment to participation; in fact, START-UP NY allocates space for Tax-Free NY Areas specifically to the upstate region which contains many of New York's rural areas. Furthermore, START-UP NY specifically calls for the balanced allocation of space for Tax-Free NY Areas between eligible rural, urban, and suburban areas in the state. Thus, the regulation will not have a substantial adverse economic impact on rural areas, and instead has the potential to generate significant economic activity in upstate rural areas designated as Tax-Free

NY Areas. Accordingly, a rural flexibility analysis is not required and one has not been prepared.

Job Impact Statement

The regulation establishes procedures and standards for the administration of the START-UP NY program. START-UP NY creates tax-free areas designed to attract innovative start-ups and high-tech industries to New York so as to stimulate economic activity and create jobs. The regulation will not have a substantial adverse impact on jobs and employment opportunities; rather, the program is focused on creating jobs. Because it is evident from the nature of the rulemaking that it will have either no impact or a positive impact on job and employment opportunities, no further affirmative 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.

Department of Environmental Conservation

EMERGENCY RULE MAKING

Special Fishing Regulations for a Portion of Esopus Creek

I.D. No. ENV-47-16-00001-E
Filing No. 1024
Filing Date: 2016-11-02
Effective Date: 2016-11-02

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

Action taken: Amendment of Part 10 of Title 6 NYCRR.

Statutory authority: Environmental Conservation Law, sections 11-0303, 11-0305, 11-1301 and 11-1303

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

Specific reasons underlying the finding of necessity: The immediate adoption of this rule is necessary for the preservation of the general welfare.

Subdivision 10.3(b) Table A of NYCRR designates fishing regulations for specially designated waters, including special regulations for a section of Esopus Creek located in Ulster County. This 11.9 mile stretch from the Shandaken tunnel outlet (Allaben) to Ashokan Reservoir currently provides a high quality recreational fishery for wild rainbow trout and wild and stocked brown trout. Harvest is limited to five trout per day with no more than two longer than twelve inches. The open season for trout extends from April 1 to November 30.

Normally, the diversion from Schoharie Reservoir via the Shandaken tunnel augments the flow of this section of Esopus Creek to the benefit of the trout population. However, since drought conditions have reduced the pool at Schoharie Reservoir to less than 10% of capacity, large quantities of suspended sediment have been entrained into the diversion such that the SPDES permit's immediate shutdown turbidity limit of 100 NTU has been exceeded since October 1st. In the short term, the augmented flow is preferable to the minimal natural flow resulting from continuing dry conditions. However, the negative impacts of the turbid diversion to the ecology of the stream become more severe with passing time and, in the absence of significant rainfall, it is increasingly probable that the remaining storage in Schoharie reservoir will be completely exhausted. For these reasons and also to discourage spawning trout from migrating upstream from Ashokan Reservoir and becoming stranded if Schoharie Reservoir storage is exhausted, the Department has directed that the diversion be severely curtailed.

While the above action is preferable to an unplanned cessation of the Shandaken tunnel diversion, the Department has several concerns with allowing the fishery to remain open until November 30th under the extremely low flows likely to persist during this period without a substantial tunnel diversion. First, trout are likely to become isolated in the remaining pools as the riffles between the pools become impassable to fish. Second, the anticipated low water levels and high concentrations of fish are not conducive to ethical fishing and would likely result in numerous fish being illegally hooked (snagged). Third, in order to maintain this high quality trout fishery, an adequate number of fish need to survive and overwinter this year. If the fishery were to remain open, the vulnerabilities resulting from the first two concerns noted above could result in a level of harvest that could impair the future value of this fishery.

In response to this situation, the Department is closing this section of stream from the Shandaken tunnel outlet (Allaben) to a downstream boundary in Ashokan Reservoir from the mouth of Traver Hollow Stream due east to the old railroad causeway to all fishing from October 16, 2016 through January 16, 2016. Although the Department is hopeful that conditions will return to levels that will allow fishing to resume in the closed section on January 17, 2017 and for trout fishing to resume on April 1, 2017 as usual, the Department reserves the right to extend the closure for a longer period of time should conditions not improve sufficiently.

Subject: Special fishing regulations for a portion of Esopus Creek.

Purpose: Reduce trout mortality due to drought conditions.

Text of emergency rule: Subparagraphs 10.3(b)(56)(e) is amended to read as follows:

(56) Ulster

(e)	Esopus Creek (other than below)	Trout	April 1 through November 30	Any size	5
	Portion*s* of Esopus Creek *and Ashokan Reservoir* – Shandaken tunnel outlet (Allaben) to *a downstream boundary in* Ashokan Reservoir *from the mouth of Traver Hollow Stream due east to the old railroad causeway*	[Trout] *All species*	April 1 through [November 30] *October 15; Fishing prohibited October 16 through January 16*	Any size	5 with no more than 2 longer than 12"

This notice is intended to serve only as an emergency adoption, to be valid for 90 days or less. This rule expires January 30, 2017.

Text of rule and any required statements and analyses may be obtained from: Fred Henson, Department of Environmental Conservation, 625 Broadway, Albany, NY 12233, (518) 402-8901, email: fred.henson@dec.ny.gov

Additional matter required by statute: A programmatic environmental impact statement is in file with the Department of Environmental Conservation.

Regulatory Impact Statement

1. Statutory Authority

Sections 11-0303 and 11-0305 of the Environmental Conservation Law (ECL) authorize the Department of Environmental Conservation (Department) to provide for the management and protection of the State's fisheries resources, taking into consideration ecological factors, public safety, and the safety and protection of private property. Sections 11-1301 and 11-1303 of the ECL empower the Department to fix by regulation open seasons, size and catch limits, and the manner of taking of all species of fish, except certain species of marine fish (listed in section 13-0339 of the Environmental Conservation Law), in all waters of the state.

2. Legislative Objectives

Open seasons, size restrictions, daily creel limits, and restrictions regarding the manner of taking fish are the basic tools used by the Department in achieving the Legislature's intent. The purpose of setting seasons is to prevent the over-exploitation of fish populations during vulnerable periods, such as during spawning, thereby insuring healthy fish populations. Size limits are necessary to maintain quality fisheries and to insure that adequate numbers survive to spawning size. Creel limits are used to distribute the harvest of fish among many anglers and angling days and to optimize resource benefits. Regulations governing the manner of taking fish enhance the quality of the recreational experience, provide for a variety of harvest techniques and angler preferences, and limit exploitation. Catch-and-release fishing regulations are used in waters capable of sustaining outstanding growth and survival of fish to reduce fishing mortality to the lowest possible level. Reduction of fishing mortality results in a larger population of desirable-sized fish and increases the quality of the recreational opportunities for anglers.

3. Needs and Benefits

Subdivision 10.3(b) Table A of NYCRR designates fishing regulations for specially designated waters, including special regulations for sections of Esopus Creek located in Ulster County. The 11.9 mile stretch affected by the proposed rulemaking currently provides a popular high quality recreational fishery for wild rainbow trout and wild and stocked brown trout.

Normally, the diversion from Schoharie Reservoir via the Shandaken tunnel augments the flow of this section of Esopus Creek to the benefit of

the trout population. However, since drought conditions have reduced the pool at Schoharie Reservoir to less than 10% of capacity, large quantities of suspended sediment have been entrained into the diversion such that the SPDES permit's immediate shutdown turbidity limit of 100 NTU has been exceeded since October 1st. In the short term, the augmented flow is preferable to the minimal natural flow resulting from continuing dry conditions. However, the negative impacts of the turbid diversion to the ecology of the stream become more severe with passing time and, in the absence of significant rainfall, it is increasingly probable that the remaining storage in Schoharie reservoir will be exhausted. For these reasons and also to discourage spawning trout from migrating upstream from Ashokan Reservoir and becoming stranded if Schoharie Reservoir storage is exhausted, the Department has directed that the diversion be severely curtailed.

While the above action is preferable to an unplanned cessation of the Shandaken tunnel diversion, the Department has several concerns with allowing the fishery to remain open until November 30th under the extremely low flows likely to persist during this period without a substantial tunnel diversion. First, trout are likely to become isolated in the remaining pools as the riffles between the pools become impassable to fish. Second, the anticipated low water levels and high concentrations of fish are not conducive to ethical fishing and would likely result in numerous fish being illegally hooked (snagged). Third, in order to maintain this high quality trout fishery, an adequate number of fish need to survive and overwinter this year. If the fishery were to remain open, the vulnerabilities resulting from the first two concerns noted above could result in a level of harvest that could impair the future value of this fishery.

In response to this situation, the Department is temporarily prohibiting all fishing on Esopus Creek between the Shandaken tunnel outlet (Allaben) and the mouth of Traver Hollow Stream in Ashokan Reservoir from October 21, 2016 through January 21, 2016. Although the Department is hopeful that conditions will return to levels that will allow fishing to resume in the closed section on January 22, 2017 and for trout fishing to resume on April 1, 2017 as usual, the Department reserves the right to extend the closure for a longer period of time should conditions not improve sufficiently.

4. Costs

Enactment of the emergency regulation described herein governing fishing will not result in increased expenditures by the State, local governments, or the general public.

5. Local Government Mandates

These amendments of 6 NYCRR will not impose any programs, services, duties or responsibilities upon any county, city, town, village, school district, or fire district.

6. Paperwork

No additional paperwork will be required as a result of these changes in regulations.

7. Duplication

There are no other state or federal regulations which govern the taking of fish.

8. Alternatives

The alternative to the regulation would be to retain the current fishing regulation, which the Department does not find acceptable. In the absence of the change, adequate numbers of fish may not overwinter, fish may be vulnerable to large scale harvest and catch and release mortality, and a high concentration of fish would be exposed to conditions not conducive to ethical angling (i.e., snagging).

9. Federal Standards

There are no minimum federal standards that apply to the regulation of sportfishing.

10. Compliance Schedule

This regulation will take effect immediately upon filing with the Department of State. Compliance with the closed period will be required as of October 21, 2016.

Regulatory Flexibility Analysis

1. Effect of rule:

The rule is intended to protect the trout fishery in Esopus Creek to avoid potential over-harvest and catch and release mortalities that would likely occur due to the low flow situation that currently exists. The rule would also eliminate unscrupulous fishing activity (i.e., snagging) that would likely occur given the current high density of fish in the area and the low flows.

2. Compliance requirements:

All fishing would be temporarily prohibited for ninety days from the date of filing. Absent further action by the Department, the open season for trout would resume on April 1, 2017.

3. Professional services:

NA.

4. Compliance costs:

NA.

5. Economic and technological feasibility:

NA.

6. Minimizing adverse impact:

Only the lower 11.9 miles of Esopus Creek between the Shandaken tunnel outlet (Allaben) and a downstream boundary in Ashokan Reservoir at the mouth of Traver Hollow Stream will be affected. This affords anglers the remainder of Ashokan Reservoir and Esopus Creek upstream of Allaben to fish under existing regulations. The open season for trout on the temporarily closed section of Esopus Creek will reopen on April 1, 2017.

7. Small business and local government participation:

The Department's outreach efforts on this rulemaking included notification to the area businesses. The Department will issue a press release on the regulation change, and notification of the temporary prohibition of fishing on the affected portion of Esopus Creek will be posted on the Department's website www.dec.ny. In addition, the Department will have staff on the stream to inform anglers of the closure and to suggest other fishing areas.

Rural Area Flexibility Analysis

This emergency rulemaking will close to fishing only one portion of one stream in the state. The remainder of Esopus Creek upstream from Allaben will remain open to fishing. In the context of ongoing drought conditions, the additional protection afforded fish in the temporarily closed section will help ensure the future of this renowned trout fishery. Therefore, the Department of Environmental Conservation has determined that this rule will not impose any significant adverse impact on rural areas.

The rulemaking simply closes an area to fishing for ninety days. Thus, the Department has determined that this rule will not impose any reporting, record-keeping, or other compliance requirements on public or private entities in rural areas.

Therefore, the Department has concluded that a rural area flexibility analysis is not required.

Job Impact Statement

The Department has determined that this emergency rulemaking will not have a substantial adverse impact on jobs and employment opportunities. The only jobs that could potentially be directly affected by this rule are fishing guides. While certain fishing guides may wish to take clients on this portion of Esopus Creek under typical flow conditions, the prevailing extreme low flow conditions are not attractive to such clients. Therefore, the effects are limited and temporary. Department knows of no guides that use this stream exclusively. The remainder of Esopus Creek upstream of Allaben is not impacted by this rulemaking and remains open to anglers and fishing guides.

Protection of the fish during this low water, high temperature period will benefit angling businesses and jobs by ensuring that sufficient fish will holdover this winter and will be available to support the fisheries in future years.

Therefore, the Department has determined that a job impact statement is not required.

Department of Financial Services

NOTICE OF ADOPTION

Standard Financial Aid Award Letters for Institutions of Higher Education

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

Filing No. 1026

Filing Date: 2016-11-03

Effective Date: 2016-11-23

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

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

Statutory authority: Banking Law, section 9-w

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

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

Text or summary was published in the January 20, 2016 issue of the Register, I.D. No. DFS-03-16-00003-EP.

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

Revised rule making(s) were previously published in the State Register on July 13, 2016.

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

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.

NOTICE OF ADOPTION

Workers' Compensation Safe Patient Handling Program

I.D. No. DFS-29-16-00020-A

Filing No. 1033

Filing Date: 2016-11-08

Effective Date: 2016-11-23

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

Action taken: Addition of Subpart 151-7 (Regulation 119) to Title 11 NYCRR.

Statutory authority: Financial Services Law, sections 202 and 302; Insurance Law, sections 301 and 2304(j)

Subject: Workers' Compensation Safe Patient Handling Program.

Purpose: To implement part A of chapter 60 of the Laws of 2014.

Text of final rule: *Subpart 151-7*

(Insurance Regulation 119)

Workers' Compensation Safe Patient Handling Program

§ 151-7.0 Preamble.

In March 2014, Governor Andrew M. Cuomo signed into law Part A of Chapter 60 of the Laws of 2014, which amended the Public Health Law and Insurance Law with regard to safe patient handling programs. Specifically, Part A of Chapter 60 added a new Title 1-A to Public Health Law Article 29-D. Section 2997-i of Title 1-A required the commissioner of health to establish a safe patient handling workgroup tasked with submitting a report to the commissioner of health by July 1, 2015. Section 2997-j of Title 1-A also required the commissioner of health to disseminate best practices, safe patient handling polices, and other resources and tools to all health care facilities covered by Title 1-A on or before January 1, 2016. Section 2997-k of Title 1-A required each health care facility to establish a safe patient handing committee by January 1, 2016, and requires a health care facility to establish a safe patient handling program on or before January 1, 2017. In addition, Part A of Chapter 60 added a new Insurance Law section 2304(j) to require the department to make rules establishing requirements for health care facilities to obtain a reduced workers' compensation insurance rate for safe patient handling programs implemented pursuant to Public Health Law section 2997-(k)(2) on or before July 1, 2016, which the department did on an emergency basis. Insurance Law section 2304(j) further requires the department to complete an evaluation of the results of the reduced rate, including changes in claim frequency and costs, and to report to the appropriate committees of the legislature on or before December 1, 2018 and again on or before December 1, 2020.

§ 151-7.1 Definitions.

In this Subpart, health care facility shall have the meaning set forth in Public Health Law section 2997-(h)(1).

§ 151-7.2 Safe patient handling program credits.

(a) For each workers' compensation insurance policy issued or renewed in this State on or after October 1, 2017, an insurer shall provide a credit to a health care facility that implements and maintains a safe patient handling program that meets the requirements of Public Health Law section 2997-(k)(2). The amount of the credit and the manner in which it is applied shall be in accordance with the approved manual filed by the rate service organization of which the insurer is a member.

(b) An insurer shall verify or obtain verification from a health care facility that the health care facility has implemented and maintains a safe patient handling program that meets the requirements of Public Health Law section 2997-(k)(2) before providing a credit.

§ 151-7.3 Reporting requirements.

By June 1 of each year, starting in 2018, every workers' compensation rate service organization shall submit a report to the superintendent regarding policies receiving a credit pursuant to this Part, including policy year payrolls, indemnity losses, indemnity claim counts, and medical losses by classification, and such other information as the superintendent may require. Every workers' compensation rate service organization shall report the information, including adjustments, consistent with the comparable classification relativity review.

Final rule as compared with last published rule: Nonsubstantive changes were made in sections 151-7.0, 151-7.2 and 151-7.3.

Text of rule and any required statements and analyses may be obtained from: Joana Lucashuk, NYS Department of Financial Services, One State Street, New York, NY 10004, (212) 480-2125, email: joana.lucashuk@dfs.ny.gov

Revised Regulatory Impact Statement

The non-substantive changes made to the proposed rule have no bearing on the last published Regulatory Impact Statement. Therefore, no changes have been made to the RIS.

Revised Regulatory Flexibility Analysis

The non-substantive changes made to the proposed rule have no bearing on the last published Regulatory Flexibility Analysis for small businesses and local governments. Therefore, no changes have been made to the RFA.

Revised Rural Area Flexibility Analysis

The non-substantive changes made to the proposed rule have no bearing on the last published Rural Area Flexibility Analysis. Therefore, no changes have been made to the RAFA.

Revised Job Impact Statement

The non-substantive changes made to the proposed rule have no bearing on the last published Job Impact Statement. Therefore, no changes have been made to the JIS.

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 New York State Department of Financial Services ("Department") received written and oral comments from interested parties, including insurers, the New York Compensation Insurance Rating Board ("CIRB"), which is the workers' compensation rate service organization in New York, a national organization that represents over 350 property/casualty insurers, and a national organization that represents over 1,000 property/casualty insurers, in response to its publication of the proposed rule in the New York State Register.

Comment

The Department received questions asking by what date an insurer must start applying the workers' compensation insurance credit required by the proposed rule.

Department's Response

The Public Health Law requires a health care facility to implement and maintain a safe patient handling program on or before January 1, 2017. In addition, CIRB has not yet filed its manual with and received approval from the Department. Given the foregoing and since the Department must approve workers' compensation loss costs by October 1 of each year and many workers' compensation policies renew on or after October 1 annually, the Department amended the rule to make clear that the credit will apply to policies issued or renewed on or after October 1, 2017 only. The Department does not consider this to be a substantive change since the Department is only clarifying the effective date.

Comment

The trade organizations commented that the credit would be provided up front to all facilities that have implemented safe patient handling programs, which is problematic from an actuarial standpoint because it likely will not reflect actual claims experience. The trade organizations suggested that the actual loss experience of a health care facility serve as the basis for any resulting credit.

Department's Response

The proposed rule does not say that the credit must be provided up front to all facilities that have implemented safe patient handling programs. Rather, the rule says that the amount of the credit and the manner in which it is applied must be in accordance with the approved manual filed by the rate service organization of which the insurer is a member. Therefore, there is nothing in the rule that prohibits actual loss experience of a health care facility from serving as the basis for any resulting credit.

Moreover, the Department amended the rule to make clear that the credit will apply to policies issued or renewed on or after October 1, 2017 only. Since the Public Health Law requires a health care facility to have a safe patient handling program in place on or before January 1, 2017 and some health care facilities already have safe patient handling programs in place notwithstanding the Public Health Law, insurers should be able to use actual loss experience as a basis for a credit.

Comment

A trade organization commented that the proposed rule does not specify that the credit could be removed from the policy if the insured facility does not comply with the safe patient handling program.

Department's Response

The rule says that an insurer must provide a credit to a health care facility that implements and maintains a safe patient handling program that meets the requirements of Public Health Law § 2997-(k)(2). Therefore, it follows that if a health care facility is not maintaining a safe patient handling program that meets the requirements of the Public Health Law, then the insurer need not provide the credit. As a result, the Department did not make any changes in response to this comment.

Comment

The trade organizations commented that requiring an insurer to verify that a health care facility has implemented a safe patient handling program will amount to a huge administrative burden that will add increased costs to the system. A trade organization stated that insurers may not have the requisite expertise or ability to make determinations relative to compliance with the Public Health Law, while another trade organization stated that insurers are not the ones best suited to verify that a health care facility's safe patient handling program meets statutory requirements and suggested that the New York State Department of Health ("DOH") handle the verification.

Department's Response

As a preliminary matter, the Department may not, by rule, impose requirements on DOH because the Department does not regulate DOH. However, after meeting with a trade organization, the Department amended the proposed rule to clarify the Department's intent that the verification requirement includes obtaining verification from the health care facility, such as a certification from the health care facility that the facility has a safe patient handling program in conformance with the Public Health Law. The Department does not consider this change to be a substantive change because the Department is only clarifying what was intended.

Comment

During a meeting with a trade organization, member insurers questioned whether CIRB must submit to the Superintendent of Financial Services ("Superintendent") its first report required by the proposed rule by June 1, 2017. The trade organizations noted that the proposed rule requires CIRB to report a significant amount of data to the Superintendent, that it will be difficult and time consuming to capture all of the required data, and that the rule will add costs to the system. A trade organization also explained that there may even be some insurers whose systems are not currently capable of collecting this information in its entirety.

Department's Response

Insurance Law § 2304(j)(2) requires the Department to complete an evaluation of the results of the reduced rate, including changes in claim frequency and costs, and to report to the appropriate committees of the Legislature on or before December 1, 2018 and again on or before December 1, 2020. The Department is unable to evaluate the results of the reduced rate and make reports to the Legislature without the information requested from CIRB in the rule. However, after meeting with a trade organization, the Department amended the rule to make clear its intent that the requirement that a workers' compensation rate service organization submit a report to the Superintendent by June 1 of each year does not start until 2018. This should give insurers time to update their systems, if necessary, to collect this information and then report it to the workers' compensation rate service organization, which in turn will report data to the Superintendent. The Department does not consider this to be a substantive change since the Department is only clarifying the date for the initial report.

Comment

During a meeting with a trade organization, member insurers asked that the Department amend the proposed rule so that the credit does not apply to loss sensitive business, such as retrospectively rated policies and large deductible plans.

Department's Response

The credit in the proposed rule is no different from an experience modification, which applies to retrospectively rated polices and large deductible policies. Therefore, the Department did not make any changes in response to this comment.

PROPOSED RULE MAKING
NO HEARING(S) SCHEDULED

Regulations Implementing Comprehensive Motor Vehicle Insurance Reparations Act; Unfair Claims Settlement Practices and Claim Cost Control Measures

I.D. No. DFS-47-16-00006-P

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

Proposed Action: This is a consensus rule making to amend Appendix 13 (Regulation 68-C) and Part 216 (Regulation 64) of Title 11 NYCRR.

Statutory authority: Financial Services Law, sections 202 and 302; Insurance Law, section 301

Subject: Regulations Implementing Comprehensive Motor Vehicle Insurance Reparations Act; Unfair Claims Settlement Practices and Claim Cost Control Measures.

Purpose: To update references to the address of the Department's Long Island office.

Text of proposed rule: Appendix 13 is amended as follows:

NYS Form NF-10 to Appendix 13 is repealed and a new NYS Form NF-10 to Appendix 13 is added. See Appendix in the back of this issue.

Section 216.6(h) is amended as follows:

(h) Any notice rejecting any element of a claim involving personal property insurance shall contain the identity and the claims processing address of the insurer, the insured's policy number, the claim number, and the following statement prominently set forth:

"Should you wish to take this matter up with the New York State Department of Financial Services, you may file with the Department either on its website at http://www.dfs.ny.gov/consumer/fileacomplaint.htm or you may write to or visit the Consumer Assistance Unit, Financial Frauds and Consumer Protection Division, New York State Department of Financial Services, at: One State Street, New York, NY 10004; One Commerce Plaza, Albany, NY 12257; [163B Mineola Boulevard, Mineola, NY 11501] *1399 Franklin Avenue, Garden City, NY 11530*; or Walter J. Mahoney Office Building, 65 Court Street, Buffalo, NY 14202."

Section 216.7(d)(3) is amended as follows:

(3) Any letter of explanation or rejection of any element of a claim shall contain the identity and claims processing address of the insurer, the insured's policy number, the claim number and the following statement, prominently set forth:

"Should you wish to take this matter up with the New York State Department of Financial Services, you may file with the Department either on its website at http://www.dfs.ny.gov/consumer/fileacomplaint.htm or you may write to or visit the Consumer Assistance Unit, Financial Frauds and Consumer Protection Division, New York State Department of Financial Services, at: One State Street, New York, NY 10004; One Commerce Plaza, Albany, NY 12257; [163B Mineola Boulevard, Mineola, NY 11501] *1399 Franklin Avenue, Garden City, NY 11530*; or Walter J. Mahoney Office Building, 65 Court Street, Buffalo, NY 14202."

Text of proposed rule and any required statements and analyses may be obtained from: Hoda Nairooz, Department of Financial Services, One State Street, New York, New York 10004, (212) 480-5595, email: Hoda.Nairooz@dfs.ny.gov

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

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

Consensus Rule Making Determination

The Department of Financial Services ("DFS") relocated its Long Island office from 163B Mineola Boulevard, Mineola, NY 11501 to 1399 Franklin Avenue, Garden City, NY 11530. This amendment updates the address of the Department of Financial Services' Long Island office referenced in 11 NYCRR Part 216 and NYS Form NF-10 to Appendix 13. No person or entity is likely to object to this amendment.

Accordingly, this rulemaking is determined to be a consensus rulemaking, as defined in State Administrative Procedure Act ("SAPA") § 102(11), and is proposed pursuant to SAPA § 202(1)(b)(i). Therefore, this rulemaking is exempt from the requirement to file a Regulatory Impact Statement, Regulatory Flexibility Analysis for Small Businesses and Local Governments, or a Rural Area Flexibility Analysis.

Job Impact Statement

Amendment of the regulation will not adversely impact job or employment opportunities in New York, or have any adverse impact on self-employment opportunities, because the revision imposes no new or additional requirements on any insurer subject to the rule. The Department of Financial Services ("DFS") relocated its Long Island office from 163B Mineola Boulevard, Mineola, NY 11501 to 1399 Franklin Avenue, Garden City, NY 11530. This amendment updates the address of DFS's Long Island office referenced in 11 NYCRR Part 216 and the NYS Form NF-10 to Appendix 13. Therefore, the amendment will not result in any adverse impact on jobs or employment opportunities.

New York State Gaming Commission

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Bonding of Video Lottery Agents to Prevent Potential Loss of State Revenue Earned from Video Lottery Gaming ("VLG")

I.D. No. SGC-47-16-00002-P

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

Proposed Action: Amendment of section 5103.5 of Title 9 NYCRR.

Statutory authority: Tax Law, sections 1601, 1604(b) and 1617-a; Racing, Pari-Mutuel Wagering and Breeding Law, sections 103(2), 104(1) and (19)

Subject: Bonding of video lottery agents to prevent potential loss of State revenue earned from video lottery gaming (''VLG'').

Purpose: To revise the manner in which the bond amount required from each VLG agent is determined, reflecting current vendor fees.

Text of proposed rule: Section 5103.5 of 9 NYCRR would be amended as follows:

§ 5103.5. Bonding of video lottery gaming agents.

(a) The commission shall require [a] *each video lottery gaming agent to provide to the commission a* bond or other surety agreement, including [but not limited to] *without limitation* a letter of credit, issued by a surety company or banking institution authorized to transact business in the State and approved by the [State Insurance] Department [or Banking Department] *of Financial Services* as to solvency and responsibility, [from any licensed video lottery gaming agent] in such amount as the commission may determine, so as to avoid monetary loss to the State because of the video lottery gaming agent's activities or those of a third party. [Such] *For each video lottery gaming agent, the commission shall set the minimum amount of such* bond or other surety agreement*, which amount* shall [at a minimum cover 65 percent of] *be not less than* the total of five days of estimated average daily net win [per the respective] *at such* video lottery gaming *agent's* facility*, as the commission may determine as appropriate, less an amount equal to the vendor's fee for such video lottery gaming agent set forth in Tax Law section 1612(b)(1)(ii).*

[The figure for estimated net win will be established by the commission for each video lottery gaming facility and may be adjusted from time to time thereafter by the commission.] The bond or other surety agreement shall name as beneficiaries the commission and the State.

(b) The commission may seek additional *bond,* surety or *other* guarantee of financial security consistent with the purposes of these regulations or video lottery gaming law, as *the commission* may [be deemed] *deem* appropriate.

(c) The failure of the video lottery gaming agent to post such bond or surety agreement in the amount required by the commission shall be [deemed] a violation of *the requirements of* such video gaming agent's license.

Text of proposed 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

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

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

Regulatory Impact Statement

1. Statutory authority: The New York State Gaming Commission ("Commission") is authorized to promulgate this rule by Tax Law Sections 1601 and 1617-a, and by Racing, Pari-Mutuel Wagering and Breeding Law ("Racing Law") Sections 103(2) and 104(1, 19). Tax Law Section 1601 describes the purpose of the New York State Lottery for Education Law (Tax Law Article 34) as being to establish a lottery operated by the State, the net proceeds of which are applied exclusively to aid to education. Tax Law Section 1604(b) reads, "The [lottery] division may require a bond from any licensed agent, in an amount to be determined by the [lottery] division." Tax Law Section 1617-a authorizes the licensing of Video Lottery Gaming ("VLG") at certain racetracks in the State of New York. Racing Law Section 103(2) provides that the Commission is responsible to operate and administer the state lottery for education, as prescribed by Article 34 of the Tax Law. Racing Law Section 104(1) provides the Commission with general jurisdiction over all gaming activities within the State and over any person, corporation or association engaged in such activities. Section 104(19) of such law authorizes the Commission to promulgate any rules it deems necessary to carry out its responsibilities.

2. Legislative objectives: To revise the manner in which the Commission determines the amount of the bond that is required from each video lottery agent to prevent potential loss of State revenue earned from video lottery gaming ("VLG"). The existing rule requires all video lottery agents to provide a bond that corresponds with no less than a defined percentage of five days of estimated average daily net win for each facility, which was intended to mirror the State's net proceeds from VLG at each facility. However, the defined percentage was established when the vendor fees retained by video lottery agents were uniform, and vendor fees have fluctuated since the inception of VLG when the regulation governing bonding was promulgated. Revision of the existing rule will provide the Commission with flexibility to require bond coverage from each VLG agent that is consistent with the State retention percentage at the agent's facility and the original intent of the regulation: to secure five days of the State's share of net win at each facility.

3. Needs and benefits: Since the commencement of VLG, agents have been required to provide a bond that corresponded with no less than a defined percentage of five days of estimated average daily net win. The percentage used for the last decade has been 65, set to mirror the State's statutory revenue retention from the facilities (that is, net win minus the 35 percent agent and vendor retention).

Following establishment of that initial percentage, laws have modified the vendor fee retained by each agent as compensation for operating a video lottery facility on the State's behalf. In general, the agent and vendor retention is no longer 35 percent; the State retention is no longer 65 percent. The agent and vendor retention and the State retention now vary at each video gaming facility. Amendment of the existing rule will allow the flexibility to require bond coverage from each video gaming facility that is commensurate with the State retention percentage at such facility. The cost of securing a bond in the amount determined by the Commission pursuant to the proposed rule will be significantly less than the cost that is prescribed by the existing regulation.

While the existing rule allows Commission staff to grant waivers of the 65 percent requirement for good cause, amendment of the rule would make the bonding requirement consistent with the original intent: to secure five days of the State's share of net win at a facility. Commission and video lottery agent staff would be spared the administrative burden involved in completing the waiver process required by § 5100.3 of the Commission's regulations.

Non-substantive and stylistic corrections to the text of the rule are also proposed. A reference to the State Insurance Department or Banking Department would be changed to the Department of Financial Services.

4. Costs:

a. Costs to regulated parties for the implementation and continuing compliance with the rule: No additional costs to video lottery agents are anticipated. The cost of securing a bond in the amount determined by the Commission pursuant to the proposed rule will be significantly less than is prescribed by the existing regulation.

b. Costs to the agency, the State, and local governments for the implementation and continuation of the rule: No additional operating costs are anticipated.

c. Sources of cost evaluations: The Commission evaluated the impact of the new rule with input from video lottery agents.

5. Local government mandates: The proposed amendment does not impose any new programs, services, duties or responsibilities upon any country, city, town, village school district, fire district or other special district.

6. Paperwork: Requests for relief from the 65 percent bond requirement as prescribed in 9 NYCRR § 5100.3 will no longer be necessary. Video lottery agents will no longer need to submit a request for relief from the 65 percent bond amount regulatory requirement. Therefore, paperwork requirements would decrease.

7. Duplication: There are no relevant State programs or regulations that duplicate, overlap or conflict with the proposed amendment.

8. Alternatives: The Commission considered taking no regulatory action. However, the Commission determined that flexibility to require bond coverage from each VLG agent that is consistent with the State retention percentage at the agent's facility is preferable to keeping a regulation that is inconsistent with its original intent: to secure five days of the State's share of net win at each facility.

9. Federal standards: The proposed amendment does not exceed any minimum standards imposed by the federal government.

10. Compliance schedule: The proposal will not impact daily operation of video lottery gaming in a significant manner.

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 because it will have no adverse effect on small businesses, local governments, rural areas or jobs.

The proposed rulemaking would revise the manner in which the Gaming Commission determines the amount of the bond that is required from each video lottery agent to prevent potential loss of State revenue earned from video lottery gaming ("VLG"). The revised rule will provide the Commission with flexibility to require bond coverage from each VLG agent that is consistent with the State retention percentage at the agent's facility and the original intent of the regulation: to secure five days of the State's share of net win at each facility. This rulemaking will not result in significant technological changes. The proposed amendment does not impose any new programs, services, duties or responsibilities upon any country, city, town, village school district, fire district or other special district. No local government activity is involved. There will be no new reporting, record keeping or other compliance requirements on small businesses or local governments or rural areas. The proposed amendments will not adversely affect employment opportunities or jobs.

Based on the foregoing, no regulatory flexibility analysis for small businesses and local governments, rural area flexibility analysis, or a job impact statement is required for this proposed rulemaking.

PROPOSED RULE MAKING
NO HEARING(S) SCHEDULED

Expands the Conflict of Interest Restrictions on Racing Secretaries and Their Assistants and Substitutes

I.D. No. SGC-47-16-00017-P

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

Proposed Action: Addition of section 4105.17; and repeal of section 4116.3 of Title 9 NYCRR.

Statutory authority: Racing, Pari-Mutuel Wagering and Breeding Law, sections 103(2), 104(1), (19) and 122

Subject: Expands the conflict of interest restrictions on racing secretaries and their assistants and substitutes.

Purpose: To ensure the integrity of harness racing.

Text of proposed rule: Section 4116.3 of 9 NYCRR would be repealed.

A new section 4105.17 would be added to 9 NYCRR, as follows:

§ 4105.17. Restriction on activities of officials.

(a) No officer, director or executive of a track, or a spouse of an officer, director, or executive of a track, shall drive a horse at such track except at limited pari-mutuel meetings or in nonbetting races, nor may a horse in which such person has any beneficial interest be entered in any overnight event at said track.

(b) No licensed racing secretary, assistant racing secretary or any person performing the duties of racing secretary or assistant racing secretary:

(1) shall be licensed as an owner, trainer or driver;

(2) own, train or drive a horse anywhere in any race in which pari-mutuel wagering occurs or in any race for which a purse is offered or awarded; or

(3) engage in any other horse racing activity that, in the judgment of the Commission, would create an actual or perceived conflict of interest with his or her duties in New York or otherwise would not be in the best interests of horse racing.

Text of proposed rule and any required statements and analyses may be obtained from: Kristen M. 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

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

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

Regulatory Impact Statement

1. Statutory authority: The New York State Gaming Commission ("Commission") is authorized to promulgate these rules pursuant to Racing Pari-Mutuel Wagering and Breeding Law sections 103(2), 104(1), 104(19) and 122. Under Section 103(2), the Commission is responsible to supervise, regulate, and administer all horse racing and pari-mutuel wagering activities in the State. Subdivision 1 of Section 104 confers upon the Commission general jurisdiction over all such gaming activities within the State and over the corporations, associations and persons engaged in such activities. Subdivision 19 of Section 104 authorizes the Commission to promulgate any rules and regulations that it deems necessary to carry out its responsibilities. Section 122 continues previous rules and regulations of the legacy New York State Racing and Wagering Board, subject to the authority of the Commission to modify or abrogate such rules and regulations.

2. Legislative objectives: To enable the Commission to enhance the integrity and safety of standardbred pari-mutuel racing while generating reasonable revenue for the support of government.

3. Needs and benefits: This rule making is necessary to enhance the real and perceived integrity of New York racing by prohibiting certain practices that could compromise, or appear to compromise, the writing of races at New York standardbred pari-mutuel racetracks.

The rule making will add a new section 4105.17 to 9 NYCRR, expanding the conflict-of-interest restrictions on racing secretaries, assistant racing secretaries and anyone who performs their duties at a New York racetrack.

The current rule (section 4116.3) prohibits, during a racetrack's racing season, such officials from being licensed by the Commission as owners, trainers or drivers. There are, however, potential conflicts of interest that may arise when such officials participate in pari-mutuel standardbred races, even out of season or out of state. The other owners, trainers, and drivers against whom they would compete might be affected by subsequent decisions made by such officials in the performance of their duties. The appearance of such conflicts of interest can damage the perception of integrity upon which betting handle depends in New York. It can create dissatisfaction among horsepersons who feel that they were treated unfairly in retaliation for the conflicts that inevitably arise in such competitions. Participation in such competition can also result in actual conflicts of interest for such officials. This proposal will strengthen the current rule by broadly prohibiting such competition and by empowering the Commission to forbid any apparent conflicts of interest that may arise.

Finally, this rule making will move such restrictions from Part 4116 (Drivers) to Part 4105 (Officials at Race Meetings), based on the broadening of such restrictions.

4. Costs:

(a) Costs to regulated parties for the implementation of and continuing compliance with the rule: This amendment would not add any new mandated costs to the existing rules.

(b) Costs to the agency, the state and local governments for the implementation and continuation of the rule: None. There will be no costs to local governments because local governments do not regulate pari-mutuel racing activities.

(c) The information, including the source(s) of such information and the methodology upon which the cost analysis is based: The Commission has determined that no costs will be imposed because the rule does not create any mandatory new duty or obligation.

5. Local government mandates: None. The Commission is the only governmental entity authorized to regulate pari-mutuel horse racing activities.

6. Paperwork: There are no changes in paperwork requirements. The proposed amendments will restrict certain activities that involve conflicts of interest.

7. Duplication: The proposed amendments do not duplicate any existing State or Federal requirement.

8. Alternatives: The Commission considered and rejected an alternative requirement that the enhanced restriction be limited to when such officials want to drive at other race meetings. The competition among drivers is more immediate and dangerous than that among trainers and owners. The Commission rejected this approach, however, because conflicts among trainers and owners might also have an effect on such officials, and the Commission does not want to allow such conflicts or perceived conflicts to arise. No other alternatives were considered.

9. Federal standards: None.

10. Compliance schedule: Regulated persons will be able to achieve compliance with the rule upon publication of a Notice of Adoption in the New York State Register.

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

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

This proposal concerns the restriction of the officials who are responsible for writing races at New York pari-mutuel harness racetracks, i.e., racing secretaries and their assistants or substitutes, not to participate in competitive horseracing at other racetracks, potentially against the same horsepersons who depend on such officials' unbiased writing of races, and not to have any other apparent conflict of interest that may undermine their performance of such duties. This rule will not have an adverse economic impact or reporting, record keeping or other compliance requirements on small businesses in rural or urban areas or on employment opportunities.

Department of Health

NOTICE OF ADOPTION

Zika Action Plan; Performance Standards

I.D. No. HLT-15-16-00016-A
Filing No. 1035
Filing Date: 2016-11-08
Effective Date: 2016-11-23

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

Action taken: Addition of section 40-2.24 to Title 10 NYCRR.

Statutory authority: Public Health Law, sections 602, 603 and 619

Subject: Zika Action Plan; Performance Standards.

Purpose: To require local health departments to develop a Zika Action Plan as a condition of State Aid.

Text of final rule: Pursuant to the authority vested in the Commissioner of Health by sections 602, 603 and 619 of the Public Health Law, Subpart 40-2 of Title 10 of the Official Compilation of Codes, Rules and Regulations of the State of New York is amended by adding a new section 40-2.24, to be effective upon publication of a Notice of Adoption in the State Register, as follows:

§ 40-2.24 Zika Action Plan; performance standards.

(a) By April 15, 2016, the local health department shall adopt and implement a Zika Action Plan (ZAP), in accordance with guidance to be issued by the Department, and which shall include, but not be limited to, the following activities:

(1) for all local health departments:

(i) human disease monitoring, response and control; and

(ii) education about Zika virus and its prevention; and

(2) in addition, for those local health departments identified by the Department as jurisdictions where mosquitoes capable of transmitting the Zika virus are currently located or may be located in the future:

(i) enhanced human disease monitoring, response, control;

(ii) enhanced education about Zika virus and its prevention;

(iii) mosquito trapping, testing and habitat inspections specific to Aedes albopictus, and for such other species as the Department may deem appropriate;

(iv) mosquito control; and

(v) identification and commitment of appropriate staff available to join State-coordinated rapid response teams, which may be deployed to those areas where the Department determines that there is the potential for transmission of Zika virus by mosquitoes.

(b) Local health departments shall update their ZAPs annually, or as directed by the Department, to include activities identified by the Department in guidance issued pursuant to subdivision (a) of this section.

(c) Local health departments shall submit such plans to the Department as part of the annual Application for State Aid made pursuant to section 40-1.0 of this Part. State Aid shall only be available for activities within ZAPs determined by the Department to be necessary and appropriate to control the spread of the Zika virus in guidance issued pursuant to subdivision (a) of this section.

Final rule as compared with last published rule: Nonsubstantive changes were made in section 40-2.24(b) and (c).

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

Revised Regulatory Impact Statement

Statutory Authority:

Article 6 of the Public Health Law (PHL) sets forth the statutory framework for the Department's State Aid program, which partially reimburses local health departments (LHDs) for eligible expenses related to specified public health services. PHL §§ 602(4), 603(1), and 619 authorize the commissioner to promulgate rules and regulations to effectuate the provisions of PHL Article 6. PHL § 619 specifies that such regulations shall include establishing standards of performance for core public health services and for monitoring performance, collecting data, and evaluating the provision of such services.

Legislative Objectives:

PHL Article 6 establishes a program that provides State Aid to LHDs to partially reimburse the cost of core public health services, including communicable disease control and emergency preparedness and response.

Needs and Benefits:

Zika virus is newly emerging as a worldwide threat to public health, and it is spreading widely in the Western Hemisphere. Zika virus has been associated with microcephaly and potentially other birth defects. In particular, there have been reports in Brazil and other countries of microcephaly in infants of mothers who were infected with Zika virus while pregnant. Developing research appears to support this association. Zika virus may also cause Guillain-Barré Syndrome, which can cause muscle weakness and sometimes paralysis. For these reasons, in February 2016, the World Health Organization declared the recent cluster of microcephaly and other neurological abnormalities associated with in utero exposure to the Zika virus a public health emergency of international concern.

Because 80% of cases are asymptomatic, limited control measures exist. Further, although Zika virus is transmitted primarily though the bite of a mosquito, sexual transmission has also been documented.

To date, the Department's Wadsworth Center has conducted tests on samples from more than 2,300 patients, and 55 have been found to be positive for Zika virus. New York has the second highest total of any state in the continental United States after Florida. With the exception of one possible case of sexual transmission, all of these infections have occurred in returning travelers from countries with active mosquito-borne transmission of Zika virus.

In the Western Hemisphere, the Zika virus has been primarily transmitted by a mosquito bite from the species Aedes aegypti. That species is not currently established in New York State; however, a related species of mosquito, Aedes albopictus, is established in New York City, as well as Orange, Nassau, Putnam, Rockland, Suffolk, and Westchester Counties. Additionally, Dutchess, Sullivan, and Ulster Counties are located on the northern border of these affected areas.

Because Aedes albopictus is a tropical mosquito, it has difficulty surviving cold winters, limiting its northward spread, but it has adapted to survive in a broader temperature range. Although researchers are currently uncertain if Aedes albopictus can effectively transmit the Zika virus, New York State must prepare for this contingency.

A primary public health objective is to reduce the risk to developing fetuses of pregnant women in New York State. As such, during the spring, summer and fall, it is important that the Department and LHDs take action to protect the health and safety of all New Yorkers from the Zika virus.

LHDs are integral State partners and play important roles in human disease monitoring, response and control; health education and prevention; and mosquito trapping, testing, habitat inspection, and control. As a result, it is essential that LHDs are prepared to respond to the threat of Zika virus in their communities. Many LHDs may need to respond to travel-associated cases only, because they do not have mosquitoes capable of transmitting Zika virus within their borders. However, those counties that do have mosquitoes capable of transmitting Zika virus generally have large human populations and a high number of travelers to affected areas.

Accordingly, these regulations require that, as a condition of State Aid for public health work, each LHD must adopt and implement a Zika Action Plan (ZAP) that includes specified elements, but that can also be tailored to the situation within its borders. Those counties that do not have Aedes albopictus, or other mosquitoes capable of transmitting the Zika virus, must perform human disease monitoring of travel-associated cases and provide education about Zika virus. For those counties that have, or that are at risk for acquiring, Aedes albopictus, or other mosquitoes capable of transmitting the Zika virus, additional required activities include: enhanced human disease monitoring and disease control; enhanced education about Zika virus and its prevention; mosquito trapping, testing and habitat inspection specific to Aedes albopictus, or other mosquitoes capable of transmitting the Zika virus; mosquito control; and identification and commitment of appropriate staff available to join State-coordinated rapid response teams, which may be deployed to those areas where the Department determines that there is a potential transmission of Zika virus by mosquitoes.

Costs:

Although exact costs cannot be predicted at this time, the Department does not expect compliance to result in significant costs with respect to plan development, which can be achieved using existing staff. Preparation time will vary according to the demographics of the jurisdiction served by the LHD. However, the cost of these personnel hours is expected to be greatly outweighed by the benefit to public health. LHDs may incur costs including salaries and related expenditures associated with ongoing human disease monitoring, response and control, as well as public education activities and programs.

Those LHDs identified by the Department as jurisdictions where mosquitoes capable of transmitting the Zika virus are currently located or may be located in the future may incur additional costs, including salaries and related expenditures associated with mosquito trapping, testing, and habitat inspections as well as expenditures related to mosquito control, to the extent such counties are not already performing these activities.

Local Government Mandates:

Although compliance is not strictly mandatory, the adoption, implementation, and updating of a ZAP is a condition of State Aid for general public health work. As set forth in the regulation, the activities that must be performed to be eligible for State Aid vary by county, and are described in detail below.

By April 15, 2016 all LHDs must electronically transmit a ZAP to the Department that describes how they will conduct timely education, as well as human disease monitoring and reporting of Zika virus.

For those LHDs identified by the Department as jurisdictions where mosquitoes capable of transmitting the Zika virus are currently located or may be located in the future, their ZAP must include processes and procedures for:

(1) enhanced human disease monitoring, response and control;

(2) enhanced education to the public and health care providers regarding the possibility of local Zika virus transmission and the risk to pregnant women;

(3) mosquito trapping, testing, and habitat inspections;

(4) mosquito control plans tailored to local needs; and

(5) names, roles and contact information of LHD and/or county staff that will join the state-coordinated rapid response teams.

LHDs must update their ZAPs annually, or as directed by the Department, to include activities identified by the Department in guidance issued pursuant to subdivision (a) of 10 NYCRR § 40-2.24. LHDs must submit their ZAPs as part of the annual Application for State Aid made pursuant to 10 NYCRR § 40-1.0. State Aid will only be available for activities within ZAPs that are determined by Departmental guidance to be necessary and appropriate to control the spread of the Zika Virus.

Paperwork:

This regulation requires preparation of a ZAP to respond to an emergency threat to public health.

Duplication:

No relevant rules or legal requirements of the Federal and State governments duplicate, overlap or conflict with this rule.

Alternatives:

The alternative would be to continue a situation in which there is inconsistent approaches across the State with respect to monitoring and control of the spread of the Zika virus.

Federal Standards:

The rule does not exceed any minimum standards of the Federal government for the same or similar subject area.

Compliance Schedule:

These permanent regulations will be effective upon publication of a Notice of Adoption in the State Register. LHDs must adopt and implement their ZAPs by April 15, 2016, consistent with the emergency regulations issued on March 17, 2016.

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

Changes made to the last published rule do not necessitate revision to the previously published Regulatory Flexibility Analysis, Rural Area Flexibility Analysis and Job Impact Statement.

Assessment of Public Comment

The agency received no public comment.

PROPOSED RULE MAKING
NO HEARING(S) SCHEDULED

Direct Clinical Services-Supervised Individual Residential Alternatives (IRAs), Community Residences (CRs) and Day Habilitation

I.D. No. HLT-47-16-00007-P

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

Proposed Action: Amendment of section 86-10.5 of Title 10 NYCRR.

Statutory authority: Public Health Law, section 201(1)(v); and Social Services Law, section 363-a

Subject: Direct Clinical Services-Supervised Individual Residential Alternatives (IRAs), Community Residences (CRs) and Day Habilitation.

Purpose: To exclude direct clinical services from the reimbursement for Supervised IRAs, CRs and Day Habilitation.

Text of proposed rule: The title of Section 86-10.5 is amended to read as follows:

86-10.5 Trend Factor*,* [and] Increases to Compensation *and Other Adjustments*

Section 86-10.5 is amended by adding a new subdivision (c) to read as follows:

(c) Other Adjustments. Effective July 1, 2016, the reimbursement for Supervised Residential Habilitation and Day Habilitation will exclude costs for direct clinical services. Direct clinical services are defined as face-to-face clinical interventions delivered by clinical staff directly to program participants. Direct clinical services include occupational therapy (OT), physical therapy (PT), speech language pathology (SLP), psychology and social work, where OT, PT and SLP direct services are provided by staff who are licensed clinicians, and where psychology and social work services are not related to the provision or oversight of habilitation services and are delivered or supervised by licensed clinical staff.

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

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

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

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

Regulatory Impact Statement

Statutory Authority:

Social Services Law (SSL) section 363-a and Public Health Law (PHL) section 201(1)(v) provide that the Department is the single state agency responsible for supervising the administration of the State's medical assistance ("Medicaid") program and for adopting such regulations, not inconsistent with law, as may be necessary to implement the State's Medicaid program.

Legislative Objective:

This amendment furthers the legislative objectives embodied in section 363-a of the Social Services Law, and section 201(1)(v) of the Public Health Law, and in Part I of chapter 60 of the laws of 2014. The amendment excludes the reimbursement of direct clinical services for Supervised Individualized Residential Alternatives (IRAs), Supervised Community Residences (CRs) and Day Habilitation.

Needs and Benefits:

The amendment complies with changes required by the federal Centers for Medicare and Medicaid Services (CMS) subsequent to the adoption of the regulation. Per CMS, effective July 1, 2016, the reimbursement for Supervised Residential Habilitation and Day Habilitation must exclude costs for direct clinical services. Direct clinical services are defined as face-to-face clinical interventions delivered by clinical staff directly to program participants. Direct clinical services include Occupational Therapy (OT), Physical Therapy (PT), Speech Language Pathology (SLP), Psychology and Social Work, where OT, PT and SLP Direct Services are provided by staff who are licensed clinicians, and where Psychology and Social Work services are not related to the provision or oversight of Habilitation services and are delivered or Supervised by Licensed clinical staff.

Costs:

There are no additional costs associated with this amendment. Providers will have the ability to bill for direct clinical services utilizing a separate fee methodology.

Costs to the Agency and to the State and its Local Governments:

The proposed regulations will result in no additional costs to the State.

The amendment does not apply to the State as a provider of services.

There will be no savings or costs to local governments as a result of this amendment because pursuant to Social Services Law sections 365 and 368-a, either local governments incur no costs for these services or the State reimburses local governments for their share of the cost of Medicaid funded programs and services.

Costs to Private Regulated Parties:

This amendment is not expected to affect costs to private regulated parties. Providers will have the ability to bill for direct clinical services utilizing a separate fee methodology.

Local Government Mandates:

There are no new requirements imposed by the rule on any county, city, town, village, school, fire or other special district.

Paperwork:

The amendment will not increase paperwork to be completed by providers.

Duplication:

The amendment does not duplicate any existing State or federal requirements that are applicable to services for persons with developmental disabilities.

Alternatives:

Since the change is mandated by Federal law, OPWDD and DOH did not consider any alternatives.

Federal Standards:

The amendment does not exceed any minimum standards of the federal government for the same or similar subject areas.

Compliance Schedule:

The amendment to the regulation is effective July 1, 2016. DOH expects to permanently adopt the regulations at the end of the public comments period. DOH expects to revise the rates on July 1, 2016.

Regulatory Flexibility Analysis

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

Rural Area Flexibility Analysis

No rural area flexibility analysis is required pursuant to section 202-bb(4)(a) of the State Administrative Procedure Act. The proposed amendment does not impose an adverse impact on facilities in rural areas, and it does not impose reporting, record keeping or other compliance requirements on facilities in rural areas.

Job Impact Statement

A job impact statement is not being submitted for this amendment because this amendment will not have a substantial adverse impact on jobs or employment opportunities.

The amendment excludes direct clinical services from the reimbursement for Supervised Individualized Residential Alternatives, Supervised Community Residences and Day Habilitation programs. The change will not impact the ability to provide these services.

The amendment, therefore, is expected to have no significant adverse impact on jobs and employment opportunities with providers.

Higher Education Services Corporation

EMERGENCY RULE MAKING

New York State Masters-in-Education Teacher Incentive Scholarship Program

I.D. No. ESC-47-16-00004-E
Filing No. 1030
Filing Date: 2016-11-07
Effective Date: 2016-11-07

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

Action taken: Addition of section 2201.17 to Title 8 NYCRR.

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

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

Specific reasons underlying the finding of necessity: This statement is being submitted pursuant to subdivision (6) of section 202 of the State Administrative Procedure Act and in support of the New York State Higher Education Services Corporation's ("HESC") Emergency Rule Making seeking to add a new section 2201.17 to Title 8 of the Official Compilation of Codes, Rules and Regulations of the State of New York.

This regulation implements a statutory student financial aid program providing for awards to be made to students beginning with the fall 2016 term, which generally starts in August. Emergency adoption is necessary to avoid an adverse impact on the processing of awards to eligible scholarship applicants. The statute provides for tuition benefits to college-going students attending a New York State public institution of higher education who pursue a graduate program of study in an education program leading to a career as a teacher in public elementary or secondary education. Decisions on applications for this Program are made prior to the beginning of the term. Therefore, it is critical that the terms of the program as provided in the regulation be effective immediately so that students can make informed choices and in order for HESC to process scholarship applications in a timely manner. To accomplish this mandate, the statute further provides for HESC to promulgate emergency regulations to implement the program. For these reasons, compliance with section 202(1) of the State Administrative Procedure Act would be contrary to the public interest.

Subject: New York State Masters-in-Education Teacher Incentive Scholarship Program.

Purpose: To implement the New York State Masters-in-Education Teacher Incentive Scholarship Program.

Text of emergency rule: New section 2201.17 is added to Title 8 of the New York Code, Rules and Regulations to read as follows:

Section 2201.17 New York State Masters-in-Education Teacher Incentive Scholarship Program.

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

(1) "Academic excellence" shall mean the attainment of a cumulative grade point average of 3.5 or higher upon completion of an undergraduate program of study from a college or university located within New York State.

(2) "Approved master's degree in education program" shall mean a program registered at a New York State public institution of higher education pursuant to Part 52 of the Regulations of the Commissioner of Education.

(3) "Award" shall mean a New York State Masters-in-Education Teacher Incentive Scholarship Program award pursuant to section 669-f of the New York State education law.

(4) "Elementary and secondary education" shall mean pre-kindergarten through grade 12 in a public school recognized by the board of regents or the university of the state of New York, including charter schools authorized pursuant to article fifty-six of the education law.

(5) "Full-time study" within an approved master's degree in education program shall be defined by the institution.

(6) "Initial certification" shall mean any certification issued pursuant to part 80 of this title which allows the recipient to teach in a classroom setting on a full-time basis.

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

(8) "Program" shall mean the New York State Masters-in-Education Teacher Incentive Scholarship Program codified in section 669-f of the education law.

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

(10) "Rank" shall mean an applicant's position, relative to all other applicants, based on cumulative grade point average upon completion of an undergraduate program of study from a college or university located within New York State.

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

(12) "Successful completion of a term" shall mean that at the end of any academic term, the recipient: (i) met the eligibility requirements for the award pursuant to sections 661 and 669-f of the Education Law; (ii) maintained full-time status as defined in this section; and (iii) possessed a cumulative grade point average of 3.5 or higher as of the date of the certification by the institution.

(13) "Teach in a classroom setting on a full-time basis" shall mean continuous employment providing classroom instruction in a public elementary or secondary school, including charter schools and public pre-kindergarten programs, located within New York State, for at least 10 continuous months, each school year, for a number of hours to be determined by the labor contract between the teacher and employer, or if none of the above apply, the chief administrator of the school.

(b) Eligibility. An applicant must satisfy the eligibility requirements contained in both sections 669-f and 661 of the education law, provided however that an applicant for this Program must meet the good academic standing requirements contained in section 669-f of the education law.

(c) Priorities. If there are more applicants than available funds, the following provisions shall apply:

(1) First priority shall be given to applicants who have received payment of an award pursuant to section 669-f of the education law for the academic year immediately preceding the academic year for which payment is sought and have successfully completed the academic term for which payment is sought. First priority shall include applicants who received payment of an award pursuant to section 669-f of the education law, were subsequently granted an interruption in graduate study by the corporation for the academic year immediately preceding the academic year for which payment is sought and have successfully completed the academic term for which payment is sought. If there are more applicants than available funds, recipients shall be chosen by lottery.

(2) Second priority shall be given to up to five hundred new applicants, within the remaining funds available for the Program, if any. If there are more applicants than available funds, recipients shall be chosen by rank, starting at the applicant with the highest cumulative grade point average beginning in the 2016-17 academic year. In the event of a tie, distribution of any remaining funds shall be done by lottery.

(d) Administration.

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

(2) Recipients of an award shall:

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

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

(iii) receive such awards for not more than four academic terms, or its equivalent, of full-time graduate study leading to certification as a public elementary or secondary classroom teacher, including charter schools, excluding any allowable interruption of study;

(iv) facilitate the submission of information from their employer attesting to the recipient's job title, the full-time work status of the recipient, and any other information necessary for the corporation to determine compliance with the program's employment requirements on forms and in a manner prescribed by the corporation; and

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

(e) Amounts.

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

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

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

(f) Failure to comply.

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

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

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

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

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

This notice is intended to serve only as a notice of emergency adoption. This agency intends to adopt this emergency rule as a permanent rule and will publish a notice of proposed rule making in the *State Register* at some future date. The emergency rule will expire February 4, 2017.

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

Regulatory Impact Statement

Statutory authority:

The New York State Higher Education Services Corporation's ("HESC") statutory authority to promulgate regulations and administer the New York State Masters-in-Education Teacher Incentive Scholarship Program ("Program") is codified within Article 14 of the Education Law. In particular, Subpart A of Chapter 56 of the Laws of 2015 created the Program by adding a new section 669-f to the Education Law. Subdivision 6 of section 669-f of the Education Law authorizes HESC to promulgate emergency regulations for the purpose of administering this Program.

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

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

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

Legislative objectives:

The Education Law was amended to add a new section 669-f to create the "New York State Masters-in-Education Teacher Incentive Scholarship Program" (Program). The objective of this Program is to incent New York's highest-achieving undergraduate students to pursue teaching as a profession.

Needs and benefits:

According to a recent Wall Street Journal article, many experts call teacher quality the most important school-based factor affecting learning. Studies underscore the impact of highly effective teachers and the need to put them in classrooms with struggling students to help them catch up. To improve teacher quality, New York State has significantly raised the bar by modifying the three required exams and adding the Educative Teacher Performance Assessment, known as edTPA, as part of the licensing requirement for all teachers. To supplement this effort, this Program aims to incentivize top undergraduate students to pursue their master's degree in New York State and teach in public elementary and secondary schools (including charter schools) across the State.

The Program provides for annual tuition awards to students enrolled full-time, at a New York State public institution of higher education, in a master's degree in education program leading to a career as a classroom teacher in elementary or secondary education. Eligible recipients may receive annual awards for not more than two academic years of full-time graduate study. The maximum amount of the award is equal to the annual tuition charged to New York State resident students attending a graduate program full-time at the State University of New York (SUNY). Payments will be made directly to schools on behalf of students upon certification of their successful completion of the academic term.

Students receiving a New York State Masters-in-Education Teacher Incentive Scholarship Program award must sign a service agreement and agree to teach in the classroom at a New York State public elementary or secondary school, which includes charter schools, for five years following completion of their master's degree. Recipients who do not fulfill their service obligation will have the value of their awards converted to a student loan and be responsible for interest.

Costs:

a. There are no application fees, processing fees, or other costs to the applicants of this Program.

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

c. The maximum cost of the Program to the State is $1.5 million in the first year, based upon budget estimates.

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

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

Local government mandates:

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

Paperwork:

This proposal will require applicants to file an electronic application, together with supporting documentation, for eligibility. Each year recipients will file an electronic request for payment together with supporting documentation for up to two years of award payments. Recipients are required to sign a contract for services in exchange for an award. Recipients must submit annual status reports until a final disposition is reached in accordance with the written contract.

Duplication:

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

Alternatives:

The proposed regulation is the result of HESC's outreach efforts to the State Education Department, the State University of New York and the City University of New York with regard to this Program. Several alternatives were considered in the drafting of this regulation. For example, several alternatives were considered in defining terms used in the regulation as well as the administration of the Program. Given the statutory language as set forth in section 679-g of the Education Law, a "no action" alternative was not an option.

Federal standards:

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

Compliance schedule:

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

Regulatory Flexibility Analysis

This statement is being submitted pursuant to subdivision (3) of section 202-b of the State Administrative Procedure Act and in support of the New York State Higher Education Services Corporation's ("HESC") Emergency Rule Making, seeking to add a new section 2201.17 to Title 8 of the Official Compilation of Codes, Rules and Regulations of the State of New York.

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

Rural Area Flexibility Analysis

This statement is being submitted pursuant to subdivision (4) of section 202-bb of the State Administrative Procedure Act and in support of the New York State Higher Education Services Corporation's Emergency Rule Making, seeking to add a new section 2201.17 to Title 8 of the Official Compilation of Codes, Rules and Regulations of the State of New York.

It is apparent from the nature and purpose of this rule that it will not impose an adverse impact on rural areas. Rather, it has potential positive impacts inasmuch as it implements a statutory student financial aid program that provides tuition benefits to students attending a New York State public institution of higher education who pursue their master's degree in an education program leading to a career as a teacher in public elementary or secondary education. Students will be rewarded for remaining and working in New York, which benefits rural areas around the State as well.

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

Job Impact Statement

This statement is being submitted pursuant to subdivision (2) of section 201-a of the State Administrative Procedure Act and in support of the New York State Higher Education Services Corporation's Emergency Rule Making seeking to add a new section 2201.17 to Title 8 of the Official Compilation of Codes, Rules and Regulations of the State of New York.

It is apparent from the nature and purpose of this rule that it will not have any negative impact on jobs or employment opportunities. Rather, it has potential positive economic impacts inasmuch as it implements a statutory student financial aid program that provides tuition benefits to students attending a New York State public institution of higher education who pursue their master's degree in an education program leading to a career as a teacher in public elementary or secondary education. Students will be rewarded for remaining and working in New York, which will benefit the State as well.

Public Service Commission

NOTICE OF ADOPTION

Submetering of Electricity

I.D. No. PSC-22-16-00015-A
Filing Date: 2016-11-07
Effective Date: 2016-11-07

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

Action taken: On 10/13/16, the PSC adopted an order approving Avalon Willoughby West LLC's (Avalon) notice of intent to submeter electricity at 100 Willoughby Street and 214 Duffield Street, Brooklyn, New York.

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

Subject: Submetering of electricity.

Purpose: To approve Avalon's notice of intent to submeter electricity at 100 Willoughby Street and 214 Duffield Street, Brooklyn, NY.

Substance of final rule: The Commission, on October 13, 2016, adopted an order approving Avalon Willoughby West LLC's notice of intent to submeter electricity at 100 Willoughby Street and 214 Duffield Street, Brooklyn, New York, subject to the terms and conditions set forth in the order.

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

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

Assessment of Public Comment

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

(15-E-0559SA1)

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Petition to Use Commercial Electric Meters

I.D. No. PSC-47-16-00009-P

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

Proposed Action: The Public Service Commission is considering a petition filed by Itron, Inc. on November 4, 2016 to use the Itron Open Way Centron Commercial Meters, Types CP2SO and CP2SOA, with Hardware Version 3.1, in commercial electric meter applications.

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

Subject: Petition to use commercial electric meters.

Purpose: To consider the petition of Itron, Inc. to use the Itron CP2SO and CP2SOA in commercial electric meter applications.

Substance of proposed rule: The Public Service Commission is considering a petition filed by Itron Inc., on November 4, 2016 to use the Itron Centron Commercial Meters, Types CP2SO and CP2SOA, with Hardware Version 3.1, in commercial electric metering applications. 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-0634SP1)

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Standby Service Rate Design

I.D. No. PSC-47-16-00010-P

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

Proposed Action: The Commission is considering a report filed by Central

Hudson Gas & Electric Corporation detailing the Company's current Standby Service rate design and considering whether modifications to such rates are warranted.

Statutory authority: Public Service Law, sections 5(1), 65(1), (2), (3), 66(1), (2), (3), (5), (8), (9), (10) and (12)

Subject: Standby Service rate design.

Purpose: To consider the report filed and the recommendations therein.

Substance of proposed rule: The Public Service Commission is considering a report filed by Central Hudson Gas & Electric Corporation (Central Hudson) in compliance with Commission Order issued May 19, 2016 in Case 14-M-0101 (REV Track Two Order) detailing rate design issues related to Service Classification No. 14 – Standby Service and Service Classification No. 10 – Buyback Service in its electric tariff schedule, P.S.C. No. 15 – Electricity. Central Hudson's report examines its current Standby and Buyback service rate design, and makes recommendations regarding various modifications to such rates identified in the REV Track Two Order. The report does not contain tariff amendments, and there is no effective 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.

(16-M-0430SP6)

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Petition to Use Residential Electric Meters

I.D. No. PSC-47-16-00011-P

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

Proposed Action: The Public Service Commission is considering a petition filed by Itron, Inc. on October 14, 2016 to use the Itron Open Way Riva Centron Residential Meters, Types C2SRD and CN2SRD, in residential electric meter applications.

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

Subject: Petition to use residential electric meters.

Purpose: To consider the petition of Itron, Inc. to use the Itron C2SRD and CN2SRD in residential electric meter applications.

Substance of proposed rule: The Public Service Commission is considering a petition filed by Itron, Inc. on October 14, 2016 to use the Itron OpenWay Riva Centron Residential Meters, Types C2SRD and CN2SRD, in residential electric metering applications. 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-0480SP1)

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Lease of Real Property

I.D. No. PSC-47-16-00012-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 the petition by New York State Electric & Gas Corporation (NYSEG) to lease space within a portion of a NYSEG facility located at 230 Baldwin Place Road, Mahopac, NY to Allied Dog Training, LLC.

Statutory authority: Public Service Law, section 70

Subject: Lease of real property.

Purpose: To consider NYSEG's request to lease a portion of certain real property to Allied Dog Training, LLC.

Substance of proposed rule: The Public Service Commission (Commission) is considering the petition by New York State Electric & Gas Corporation (NYSEG), for authority to lease space within a portion of NYSEG's facility located at 230 Baldwin Place Road, Mahopac, New York. The lessee is Allied Dog Training, LLC, who will use the space for the purpose of animal training and related activities. The Commission may adopt, reject, or modify, in whole or in part, the relief proposed and may resolve related matters.

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

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

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

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

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

(16-M-0624SP1)

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Standby Service Rate Design

I.D. No. PSC-47-16-00013-P

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

Proposed Action: The Commission is considering a report filed by Niagara Mohawk Power Corporation d/b/a National Grid detailing the Company's current Standby Service rate design and considering whether modifications to such rates are warranted.

Statutory authority: Public Service Law, sections 5(1), 65(1), (2), (3), 66(1), (2), (3), (5), (8), (9), (10) and (12)

Subject: Standby Service rate design.

Purpose: To consider the report filed and the recommendations therein.

Substance of proposed rule: The Public Service Commission is considering a report filed by Niagara Mohawk Power Corporation d/b/a National Grid (National Grid) in compliance with Commission Order issued May 19, 2016 in Case 14-M-0101 (REV Track Two Order) detailing rate design issues related to Standby Service and Buyback Service in its electric tariff schedule, P.S.C. No. 220 – Electricity. National Grid's report examines its current Standby and Buyback service rate design, and makes recommendations regarding various modifications to such rates identified in the REV Track Two Order. The report does not contain tariff amendments, and there is no effective 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.

(16-M-0430SP9)

PROPOSED RULE MAKING
NO HEARING(S) SCHEDULED

Standby Service Rate Design

I.D. No. PSC-47-16-00014-P

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

Proposed Action: The Commission is considering a report filed by New York State Electric and Gas Corporation and Rochester Gas & Electric Corporation detailing the Companies Standby Service rate design and considering whether modifications to such rates are warranted.

Statutory authority: Public Service Law, sections 5(1), 65(1), (2), (3), 66(1), (2), (3), (5), (8), (9), (10) and (12)

Subject: Standby Service rate design.

Purpose: To consider the report filed and the recommendations therein.

Substance of proposed rule: The Public Service Commission is considering a report filed by New York State Electric and Gas Corporation (NYSEG) and Rochester Gas & Electric Corporation (RG&E) (collectively, the Companies) in compliance with Commission Order issued May 19, 2016 in Case 14-M-0101 (REV Track Two Order) detailing rate design issues related Standby Service and Buyback Service in their electric tariff schedules, P.S.C. No. 120 – Electricity and P.S.C. No. 19 – Electricity, for NYSEG and RG&E, respectively. The Companies' report examines its current Standby and Buyback service rate design, and makes recommendations regarding various modifications to such rates identified in the REV Track Two Order. The report does not contain tariff amendments, and there is no effective 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.

(16-M-0430SP8)

PROPOSED RULE MAKING
NO HEARING(S) SCHEDULED

Joint Utilities' SDSIP to Achieve the Commission's Reforming the Energy Vision (REV) Initiative

I.D. No. PSC-47-16-00015-P

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

Proposed Action: The Commission is considering the Supplemental Distributed System Implementation Plan (SDSIP) filed jointly by the utilities in response to the Commission's Order Adopting DSIP Guidance, issued on April 20, 2016 in Case 14-M-0101.

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

Subject: Joint Utilities' SDSIP to achieve the Commission's Reforming the Energy Vision (REV) initiative.

Purpose: Development of utilities' joint SDSIP for improving utility planning and operations functions under REV.

Substance of proposed rule: The Public Service Commission (Commission) is considering the Supplemental Distributed System Implementation Plan (DSIP) filed jointly by the utilities in response to the Commission's Order Adopting DSIP Guidance, issued on April 20, 2016 in Case 14-M-0101. The Commission directed the utilities to provide common approaches or resolutions necessary to operate in a dynamic environment in the Supplemental DSIP. The joint Supplemental DSIP filing required utilities to provide additional information necessary for long-term planning and coordination, and to further develop the contents presented in the individual utilities' respective Initial DSIP filings. DSIPs are intended to promote utility/stakeholder relations, allow third-parties to provide cost-effective market solutions to identified energy needs, expand the use of distributed energy resources (DER), and increase energy efficient measures. The DSIP filings are the first steps toward establishing a grid that can support increasing levels of DERs into the future and ultimately, achieving Reforming the Energy Vision (REV) goals and objectives. The Commission may adopt, reject, or modify, in whole or in part, the Supplemental DSIP, and may resolve other related matters.

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

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

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

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

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

(16-M-0411SP2)

PROPOSED RULE MAKING
NO HEARING(S) SCHEDULED

Standby Service Rate Design

I.D. No. PSC-47-16-00016-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 report filed by Consolidated Edison Company of New York, Inc. and Orange and Rockland Utilities, Inc. detailing the Companies' Standby Service rate design and considering whether modifications to such rates are warranted.

Statutory authority: Public Service Law, sections 5(1), 65(1), (2), (3), 66(1), (2), (3), (5), (8), (9), (10) and (12)

Subject: Standby Service rate design.

Purpose: To consider the report filed and the recommendations therein.

Substance of proposed rule: The Public Service Commission is considering a report filed by Consolidated Edison Company of New York, Inc. (Con Edison) and Orange and Rockland Utilities, Inc. (O&R) (collectively, the Companies) in compliance with Commission Order issued May 19, 2016 in Case 14-M-0101 (REV Track Two Order) detailing rate design issues related Standby Service and Buyback Service in their electric tariff schedules, P.S.C. No. 10 – Electricity and P.S.C. No. 3 – Electricity, for Con Edison and O&R, respectively. The Companies' report examines its current Standby and Buyback service rate design, and makes recommendations regarding various modifications to such rates identified in the REV Track Two Order. The report does not contain tariff amendments, and there is no effective 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.

(16-M-0430SP7)

State University of New York

NOTICE OF ADOPTION

State University of New York's Patents and Inventions Policy

I.D. No. SUN-37-16-00006-A

Filing No. 1034

Filing Date: 2016-11-08

Effective Date: 2016-11-23

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

Action taken: Repeal of section 335.28; and addition of new section 335.28 to Title 8 NYCRR.

Statutory authority: Education Law, section 355(3)

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

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

Text or summary was published in the September 14, 2016 issue of the Register, I.D. No. SUN-37-16-00006-P.

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

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

Assessment of Public Comment

1. Purpose:

This assessment of public comment is provided pursuant to section 202 of the New York State Administrative Procedure Act. Proposed changes to 8 NYCRR Part 335.28 were published to the NYS Register on September 14, 2016. The public comment period ended on October 29, 2016.

2. Summary and Analysis of Issues Raised:

The agency received written comments from members of the public in response to publication of the proposed rule. A summary of the issues raised is as follows:

a. The definition of the term "Net Royalty" in section (b)(8) is ambiguous;

b. The amount of time SUNY has to determine whether to retain title to its Intellectual Property is twelve months—an increase from the current six month time limit is unreasonable; and

c. The reference to "within the scope of the Creator's employment by SUNY" contained in section (d)(1)(a) is ambiguous.

Each comment received by the agency was assessed upon receipt. Each comment was assessed as being consistent with comments received during the process of developing the proposed rule with input from key stakeholders. Efforts to amend 8 NYCRR Part 335.28 commenced approximately five years ago with the agency's launch of a robust stakeholder engagement process. Since 2013, the stakeholder engagement process has been particularly vigorous. The agency has presented proposed changes to and solicited feedback from individuals within and outside the agency, including stakeholders within the SUNY system, individuals from external agencies, and members of the public. This was done through interactive webinars, in-person presentations, and various other forms of outreach. Stakeholders who participated in the process and gave feedback include presidents, chief academic officers, vice presidents for research, faculty, students, technology transfer professionals, United University Professions, the SUNY Patents and Inventions Policy Board, and members of the public. An analysis of the issues raised by comments received since publication of the proposed rule on the NYS Register is set forth below:

a. The issue related to the definition of Net Royalty is one that has been adequately addressed in the proposed changes to the rule. Specifically, the definition of Net Royalty in the proposed rule was narrowed substantially from earlier versions to allow SUNY to deduct only "out-of-pocket costs incurred by SUNY and not reimbursed by licensees." This change was made in consultation with faculty stakeholders in an effort to narrow the field of eligible expense deductions and to maintain complete transparency in the method by which royalties are calculated. Additionally, consistent with such efforts towards transparency in the process, section (a)(3) of the rule allows the Creator of the Intellectual Property to request an accounting of the distribution of royalties earned by SUNY. This provision was included to address any concerns with regard to ambiguity in the definition of Net Royalty. Further, pursuant to section (f)(1) of the proposed rule, all agency decisions regarding evaluation, marketing, development, protection, maintenance, or enforcement of Intellectual Property (all expense-generating activities) are to be made in consultation with the Creator. This issue was also addressed with stakeholders prior to publication of the proposed rule.

b. The issue related to the one-year time period that SUNY will observe to make an initial determination of whether it will take title to its own Intellectual Property has been adequately addressed by the proposed changes to the rule. It is important to note that earlier iterations of the proposed rule did not provide for any time period restrictions. In response to faculty feedback, SUNY then proposed a two-year time period. With further concern, SUNY and stakeholders determined that a one-year time period was reasonable, appropriately addressed the concerns raised by both sides, and is consistent with the federal rules governing such matters. This issue was also addressed directly and consistently in communication with stakeholders prior to publication of the proposed rule.

c. The issue related to the asserted ambiguity of the language "within the scope of the Creator's employment by SUNY" included within section (d)(1)(a) has been adequately addressed in the proposed changes to the rule. The proposed rule eliminates ambiguities contained in the current rule by changing the test by which ownership to Intellectual Property is determined. The current rule uses a facilities and "own-time" test to determine ownership. This test has proven ambiguous and difficult to administer in practice. The proposed rule seeks to clarify these ambiguities by implementing a two-part test whereby ownership is based on whether the Intellectual Property was created 1) within the scope of the Creator's SUNY employment; or 2) through substantial use of SUNY resources. The phrase "scope of employment" is a legal term of art requiring a fact-specific inquiry. Thus, with respect to the proposed rule, ownership is determined on a case-by-case basis and the inquiry as to whether Intellectual Property was created within the Creator's "scope of employment" is a fact-specific inquiry evaluated on an individualized basis. The implementation of this two-part test is consistent with best practices in higher education. This issue was also addressed with stakeholders prior to publication of the proposed rule.

3. Significant Alternatives Suggested

At least one of the comments suggested that the distribution of royalties not be shifted from a gross to net calculation. Also, with respect to the issue raised in (b) above, it was suggested that the current six month time limit not be increased to a twelve month time limit.

4. Statement of Reasons why Significant Alternatives were not Incorporated into Rule:

The significant alternatives suggested by the comments were not incorporated into the final rule because each alternative was previously raised and addressed within the version of the proposed rule published to the NYS Register on September 14, 2016. Specifically, each comment was received by the agency during SUNY's robust stakeholder engagement process undertaken throughout the course of developing the proposed rule. As mentioned above, SUNY's stakeholder engagement process consisted of working with faculty, students, and campus and union leadership over the course of approximately five years to develop a comprehensive and thoroughly vetted policy. The five-year long stakeholder engagement process enabled SUNY to ensure that it properly considered and addressed all concerns and suggestions prior to commencing the rulemaking process. Based on the foregoing, significant alternatives were not incorporated into the final rule for adoption.

5. Description of Changes Made in the Rule as a Result of Comments:

There were no changes made to the rule as a result of comments received.