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.

Office of Children and Family Services

PROPOSED RULE MAKING
NO HEARING(S) SCHEDULED

Criminal History Checks of Prospective Foster and Adoptive Parents and Adult Household Members

I.D. No. CFS-45-16-00001-P

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

Proposed Action: Amendment of sections 421.11, 421.15, 421.19, 421.27, 443.2 and 443.8 of Title 18 NYCRR.

Statutory authority: Social Services Law, sections 20(3)(d), 34(3)(f), 378 and 378-a

Subject: Criminal history checks of prospective foster and adoptive parents and adult household members.

Purpose: To implement changes to the Social Services Law regarding criminal history checks.

Substance of proposed rule (Full text is posted at the following State website:http://ocfs.ny.gov): The proposed regulations would repeal the requirement set forth in of 18 NYCRR 421.11(g)(4), 421.19(a)(4), 421.27(c)(2), 443.2(b)(4), and 443.8(d)(2) that an individual, and any other person over the age 18 currently residing in the home of the individual, who applies to a voluntary authorized agency (VA) for approval as an adoptive parent or for certification or approval as a foster parent, sign a consent which would allow the disclosure of his or her criminal history information, provided by the Federal Bureau of Investigation (FBI), to a VA.

The proposed regulations would amend 18 NYCRR 421.15(c)(8) and 443.2(f)(13) to clarify that a VA may not approve an application for certification or approval as a foster or adoptive parent where the applicant has been convicted of a mandatory disqualifying crime or where directed by the Office of Children and Family Services (OCFS) to deny or hold the application in abeyance because of the results of the FBI criminal history record check.

The proposed regulations would add 18 NYCRR 421.27(c)(7)(i) and 443.8(d)(7)(i) to require OCFS to review the criminal history information provided by the Division of Criminal Justice Services (DCJS) and the FBI regarding a prospective adoptive or foster parent, and any person over the age of 18 who is currently residing in the home of the prospective adoptive or foster parent. OCFS must then provide to the local department of social services (LDSS) a summary of the criminal history record and advise the LDSS of the actions it must take regarding the prospective adoptive or foster parent.

The proposed regulations would add 18 NYCRR 421.27(c)(7)(ii) and 443.8(7)(ii) to address the actions that OCFS must take regarding the criminal history record information provided by DCJS for a prospective adoptive or foster parent, and any person over the age of 18 who is currently residing in the home of the prospective adoptive or foster parent who apply to a VA for approval or certification.

The proposed regulations would add 18 NYCRR §§ 421.27(c)(7)(iii) and 443.8(d)(7)(iii) to address the actions that OCFS must take regarding the criminal history record information provided by the FBI for a prospective adoptive or foster parent, and any person over the age of 18 who is currently residing in the home of the prospective adoptive or foster parent, who apply to a VA for approval or certification.

The proposed regulations would amend 18 NYCRR 421.27(d)(4) to require a VA to either deny or hold in abeyance an application for approval as an adoptive parent when the VA is notified by the OCFS to do so in accordance with 18 NYCRR 421.27(c)(7)(iii).

The proposed regulations would amend 18 NYCRR §§ 421.27(e)(1), 443.2(c)(7)(i), and 443.8(f)(1) to address the actions that an LDSS must take when denying or revoking the approval of a prospective or approved adoptive parent or a prospective or existing foster parent.

The proposed regulations would add 18 NYCRR §§ 421.27(e)(2), 443.2(c)(7)(ii), and 443.8(f)(2) to address the actions that a VA must take after denying an application of a prospective or approved adoptive parent or prospective or current foster parent based on the criminal history record information provided to OCFS by DCJS.

The proposed regulations would add 18 NYCRR §§ 421.27(e)(3), 443.2(c)(7)(ii), and 443.8(f)(3) to address the actions that OCFS must take when directing a VA to deny an application of a prospective adoptive or foster parent or revoke the approval of an adoptive parent or the certification or approval of a foster parent based on the review and evaluation of a criminal history record check from the FBI.

The proposed regulations would amend 18 NYCRR §§ 421.27(i) and 443.8(j) to remove the child care review service from the means by which an authorized agency must inform OCFS when an approved adoptive parent has completed an adoption or when a person is no longer certified or approved as a foster parent.

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

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

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

Regulatory Impact Statement

1. Statutory authority:

Section 20(3)(d) of the Social Services Law (SSL) authorizes the Office of Children and Family Services (OCFS) to establish rules and regulations to carry out its powers and duties pursuant to the provisions of the SSL.

Section 34(3)(f) of the SSL requires the Commissioner of OCFS to es-

tablish regulations for the administration of public assistance and care within the State.

Section 372-e of the SSL authorizes OCFS to promulgate regulations setting forth standards and procedures to be followed by authorized agencies in evaluating persons who have applied to such agencies for the adoption of a child.

Section 378(5) of the SSL authorizes OCFS to establish and amend regulations governing the issuance of certificates to board children.

2. Legislative objectives:

The proposed regulations would implement provisions set forth in Part M of Chapter 54 of the Laws of 2016, which are effective on December 30, 2016. Chapter 54 amended section 378-a(2) of the SSL which relates to Federal Bureau of Investigation (FBI) criminal history record checks of prospective foster and adoptive parents and adult household members of the prospective foster and adoptive parents who apply to voluntary authorized agencies (VAs) for certification or approval.

3. Needs and benefits:

The proposed regulations would make conforming changes to New York State adoptive parent approval and foster parent certification or approval regulations required by Part M of Chapter 54 of the Laws of 2016.

The proposed regulations address the role that the OCFS and VAs have in the review, evaluation, and notification of prospective foster and adoptive parents' FBI criminal history record checks. OCFS would become responsible for reviewing the criminal histories received from the FBI of applicants for certification or approval as foster or adoptive parents and their adult household members. OCFS would be responsible for determining, based on such history, whether the application for certification or approval must be denied, held in abeyance pending the receipt of further information or that the OCFS has no objection based on the FBI criminal history for the authorized agency to proceed with the application. The authorized agency to which the person applied would be bound by an OCFS determination to deny or to hold the application in abeyance.

4. Costs:

Because of the anticipated small volume of cases, the proposed regulations will not result in any additional staffing costs to the state. There will be some costs associated with modifications to current computer systems that support the criminal history review process within OCFS that are yet to be determined.

There will be no additional costs for local department of social services since the modifications to the criminal history check process do not apply to local governments. It is also anticipated that the proposed amendments will not have a fiscal impact on VAs.

5. Local government mandates:

The proposed regulations would not impact applications made to local departments of social services and would not impose any additional mandates on local governments.

6. Paperwork:

The requirements imposed by the proposed regulations will be recorded in CONNECTIONS and internal OCFS electronic systems.

7. Duplication:

The proposed regulations do not duplicate other state or federal requirements.

8. Alternatives:

No alternative approaches to implementing the changes to regulations were considered. These amendments are necessary to implement provisions of Part M of Chapter 54 of the Laws of 2016 and to conform to the SSL.

9. Federal standards:

The proposed regulations comply with applicable federal standards relating to the conducting of criminal history record checks of prospective foster or adoptive parents and the limitations on secondary dissemination of FBI criminal history information to non-government agencies.

10. Compliance schedule:

The proposed regulations will have a December 30, 2016 effective date to conform to the effective date of the Part M of Chapter 54 of the Laws of 2016.

Regulatory Flexibility Analysis

1. Effect on Small Business and Local Government:

These proposed regulations will have an effect on the 55 departments of social services (LDSSs) and 83 voluntary authorized agencies (VAs) with in New York State.

2. Compliance Requirements:

The proposed regulations would implement provisions set forth in Part M of Chapter 54 of the Laws of 2016, which are effective on December 30, 2016. Chapter 54 amended section 378-a(2) of the Social Services Law (SSL) which relates to Federal Bureau of Investigation (FBI) criminal history record checks of prospective foster and adoptive parents and adult household members of the prospective foster and adoptive parents who applied for certification or approval to Vas as foster or adoptive parents. The proposed regulations address the role that the Office of Children and Family Services (OCFS) and VAs have in the review, evaluation, and notification of prospective foster and adoptive parents' FBI criminal history record checks.

3. Professional Services:

These proposed regulations do not create the need for additional professional services.

4. Compliance Costs:

Because of the anticipated small volume of cases, the proposed regulations will not result in any additional staffing costs to the state. There will be some costs associated with modifications to current computer systems that support the criminal history record check process within OCFS that are yet to be determined.

There will be no additional costs to local departments of social services since the modifications to the criminal history check process do not apply to local governments. It is also anticipated that the proposed regulations will not have a fiscal impact on VAs.

5. Economic and Technological Feasibility:

These proposed regulations would not have an adverse economic impact on LDSSs or VAs, and would not require the hiring of additional staff.

6. Minimizing Adverse Impact:

It is not anticipated that the proposed regulations will have an adverse impact on local government agencies or small businesses. The proposed regulations do not apply to local departments of social services and do not apply to criminal history record checks performed by the New York State Division of Criminal Justice Services.

7. Small Business and Local Government Participation:

These proposed regulations are a result of amendments made to the SSL which were enacted in Part M of Chapter 54 of the Laws of 2016. LDSSs and VAs will be notified via policy directive about the changes to the FBI criminal history record checks process for prospective foster and adoptive parents.

8. For Rules That Either Establish or Modify a Violation or Penalties:

These proposed regulations do not establish or modify a violation or penalty.

Rural Area Flexibility Analysis

1. Types and estimated number of rural areas:

The proposed regulations will affect the 44 local departments of social services (LDSSs) and approximately 35 voluntary authorized agencies (VAs) that are in rural areas.

2. Reporting, recordkeeping and other compliance requirements:

The proposed regulations would implement provisions set forth in Part M of Chapter 54 of the Laws of 2016, which are effective on December 30, 2016. Chapter 54 amended section 378-a(2) of the Social Services Law (SSL) which relates to Federal Bureau of Investigation (FBI) criminal history record checks of prospective foster and adoptive parents and adult household members of such prospective foster and adoptive parents who apply to Vas for certification or approval as foster or adoptive parents. The proposed regulations address the role that the Office of Children and Family Services (OCFS) and VAs have in the review, evaluation, and notification of prospective foster and adoptive parents in regard to FBI criminal history record checks. The proposed regulations would not impact applications made to LDSSs and would not impact criminal history record checks performed by the New York State Division of Criminal Justice Services.

3. Costs:

Because of the anticipated small volume of cases, the proposed regulations will not result in any additional staffing costs to the state. There will be some costs associated with modifications to the current computer systems that support the criminal history review process within OCFS that are yet to be determined.

There will be no additional costs to local departments of social services since the modifications to the criminal history record check process do not apply to local governments. It is also anticipated that the proposed amendments will not have a fiscal impact on VAs.

4. Minimizing adverse impact:

It is not anticipated that the proposed regulations will have an adverse impact on LDSSs or VAs that are in rural areas.

5. Rural area participation:

These proposed regulations reflect the amendments made to the SSL which were enacted in Part M of Chapter 54 of the Laws of 2016. LDSSs and VAs will be notified via policy directive about the changes to the FBI criminal history record checks process for prospective foster and adoptive parents.

Job Impact Statement

The proposed amendment to regulations will not have a negative impact on jobs or employment opportunities in either public or private child welfare agencies. A full job impact statement has not been prepared for the proposed regulations as it is assumed that the proposed regulations will not result in the loss of any jobs.

Education Department

EMERGENCY/PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Annual Professional Performance Reviews (APPR) of Classroom Teachers and Building Principals

I.D. No. EDU-45-16-00005-EP
Filing No. 989
Filing Date: 2016-10-25
Effective Date: 2016-10-25

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

Proposed Action: Amendment of sections 30-3.4 and 30-3.5 of Title 8 NYCRR.

Statutory authority: Education Law, sections 101(not subdivided), 207(not subdivided), 215(not subdivided), 305(1), (2) and 3012-d

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

Specific reasons underlying the finding of necessity: The Department has over the course of the last year attempted to provide as much flexibility to districts as possible within the parameters of the law to comply with the requirements of the new law. The proposed amendment seeks to provide additional flexibility to the City School District of the City of New York relating to the growth targets for SLOs in the student performance category.

Education Law § 3012-d(4)(a) requires the Commissioner to set parameters for appropriate targets for student growth for both subcomponents of the student performance category, where there is no State-provided growth score. Sections 30-3.4(c)(3) and 30-3.5(c)(3) of the Rules of the Board of Regents require districts to calculate scores and ratings for SLOs in accordance with certain minimum percentages prescribed in the regulation. The current regulation provides an exception for teachers with courses with small "n" sizes as defined by the Commissioner in guidance.

The proposed amendment revises sections 30-3.4(c)(3) and 30-3.5(c)(3) of the Rules of the Board of Regents to provide further flexibility to allow the City School District of the City of New York to calculate scores and ratings for SLOs pursuant to a methodology approved by the Commissioner in guidance.

Since the Board of Regents meets at fixed intervals, the earliest the proposed rule can be presented for regular (non-emergency) adoption, after expiration of the required 45-day public comment period provided for in State Administrative Procedure Act (SAPA) section 202(4-a), would be the February 2017 Regents meeting. Furthermore, pursuant to SAPA section 203(1), the earliest effective date of the proposed rule, if adopted at the February meeting, would be March 1, 2017, the date a Notice of Adoption would be published in the State Register.

Emergency action at the October 2016 Regents meeting is therefore necessary for the preservation of the general welfare in order to immediately adopt revisions to the proposed amendment to provide additional flexibility for the City School District of the City of New York to calculate scores for student learning objectives pursuant to a methodology approved by the Commissioner in guidance so that it can be used in the 2016-2017 school year once an annual professional performance review plan is approved by the Commissioner.

Subject: Annual Professional Performance Reviews (APPR) of classroom teachers and building principals.

Purpose: To provide New York City with flexibility in the student performance category for teacher and principal evaluations.

Text of emergency/proposed rule:

1. Paragraph (3) of subdivision (c) of section 30-3.4 shall be amended, effective October 25, 2016, to read as follows:

(3) Each measure used in the student performance category (State provided growth score, SLOs, State-designed supplemental assessments) must result in a score between 0 and 20. The State will generate scores of 0-20 for measures using a State-provided growth score. Districts shall calculate scores for SLOs in accordance with the minimum percentages prescribed in the table below; provided however that for teachers with courses with small "n" sizes as defined by the commissioner in guidance, districts shall calculate scores for SLOs using a methodology prescribed by the commissioner in guidance *and for teachers in the City School District of the City of New York, districts shall calculate scores for SLOs using the methodology approved by the commissioner in its APPR plan*. For all other measures that are not State-provided growth measures, scores of 0-20 shall be computed locally in accordance with the State provided or approved growth model used.

2. Paragraph (3) of subdivision (c) of section 30-3.5 of the Rules of the Board of Regents shall be amended, effective October 25, 2016, to read as follows:

(3) Each measure used in the student performance category (State provided growth score, SLOs, State-designed supplemental assessments) must result in a score between 0 and 20. The State will generate scores of 0-20 for measures using a State-provided growth score. Districts shall calculate growth scores for SLOs in accordance with the minimum percentages prescribed in the table below; provided however that for principals of a building or program with small "n" sizes as defined by the commissioner in guidance, districts shall calculate scores for SLOs using a methodology prescribed by the commissioner in guidance *and for teachers in the City School District of the City of New York, districts shall calculate scores for SLOs using the methodology approved by the commissioner in its APPR plan*. For all other measures that are not State-provided growth measures, scores of 0-20 shall be computed locally in accordance with the State provided or approved growth model used.

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 January 22, 2017.

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

Data, views or arguments may be submitted to: Peg Rivers, State Education Department, Office of Higher Education, Room 979 EBA, 89 Washington Ave., Albany, NY 12234, (518) 486-3633, email: regcomments@nysed.gov

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

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

Regulatory Impact Statement

1. STATUTORY AUTHORITY:

Education Law § 101 charges the Department with the general management and supervision of the educational work of the State and establishes the Regents as head of the Department.

Education Law § 207 grants general rule-making authority to the Regents to carry into effect State educational laws and policies.

Education Law § 215 authorizes the Commissioner to require reports from schools under State educational supervision.

Education Law § 305(1) authorizes the Commissioner to enforce laws relating to the State educational system and execute Regents educational policies. Section 305(2) provides the Commissioner with general supervision over schools and authority to advise and guide school district officers in their duties and the general management of their schools.

Education Law § 3012-d, as added by Section 2 of Subpart E of Part EE of Chapter 56 of the Laws of 2015 establishes a new evaluation system for classroom teachers and building principals employed by school districts and BOCES for the 2015-16 school year and thereafter.

2. LEGISLATIVE OBJECTIVES:

The proposed rule is necessary to provide immediate notice to New York City of the additional flexibility in the student performance category, while they are negotiating their annual professional performance review plan under Education Law § 3012-d for the 2016-2017 school year and thereafter.

3. NEEDS AND BENEFITS:

On April 13, 2015, the Governor signed Chapter 56 of the Laws of 2015 to add a new Education Law § 3012-d, to establish a new evaluation system for classroom teachers and building principals. The Department implemented regulations to implement the new law in June 2015 and has revised those regulations over the course of the last year to provide school districts and BOCES with as much flexibility as possible to comply with the new law. Education Law § 3012-d(12) and the corresponding appropriation language require school districts to comply with the new law in order to receive their State aid increases.[1] The Department has over the course of the last year attempted to provide as much flexibility to districts as possible within the parameters of the law to comply with the requirements of the new law. The proposed amendment seeks to provide additional flexibility to the City School District of the City of New York relating to the growth targets for SLOs in the student performance category.

Education Law § 3012-d(4)(a) requires the Commissioner to set parameters for appropriate targets for student growth for both subcomponents of the student performance category, where there is no State-

provided growth score. Sections 30-3.4 (c)(3) and 30-3.5(c)(3) of the Rules of the Board of Regents require districts to calculate scores and ratings for SLOs in accordance with certain minimum percentages prescribed in the regulation. The current regulation provides an exception for teachers with courses with small "n" sizes as defined by the Commissioner in guidance.

The proposed amendment revises sections 30-3.4(c)(3) and 30-3.5(c)(3) of the Rules of the Board of Regents to provide further flexibility to allow the City School District of the City of New York to calculate scores and ratings for SLOs pursuant to a methodology approved by the Commissioner in its APPR plan. The New York City School District is the largest school district in the State of New York and the United States, serving more than 1.1 million students in over 1,800 schools. Given this size, the proposed flexibility is needed to allow the NYCDOE to use a standardized growth model to ensure an objective, consistent, district-level expectation for growth.

4. COSTS:

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

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

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

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

5. LOCAL GOVERNMENT MANDATES:

The proposed amendment revises sections 30-3.4(c)(3) and 30-3.5(c)(3) of the Rules of the Board of Regents to provide further flexibility to allow the City School District of the City of New York to calculate scores and ratings for SLOs pursuant to a methodology approved by the Commissioner in its APPR plan. The New York City School District is the largest school district in the State of New York and the United States, serving more than 1.1 million students in over 1,800 schools. Given this size, the proposed flexibility is needed to allow the NYCDOE to use a standardized growth model to ensure an objective, consistent, district-level expectation for growth.

6. PAPERWORK:

The proposed amendment does not impose any paperwork requirements.

7. DUPLICATION:

The rule does not duplicate existing State or Federal requirements.

8. ALTERNATIVES:

The proposed amendment was added in response to concerns raised by the field. No alternatives were considered.

9. FEDERAL STANDARDS:

There are no applicable Federal standards related to the amendment.

10. COMPLIANCE SCHEDULE:

It is anticipated that the parties will be able to comply by its stated effective date.

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[1] The Legislature subsequently extended this deadline until December 31, 2016 (see, Chapter 73 of the Laws of 2016).

Regulatory Flexibility Analysis

(a) Small businesses:

The proposed amendment revises sections 30-3.4(c)(3) and 30-3.5(c)(3) of the Rules of the Board of Regents to provide further flexibility to allow the City School District of the City of New York to calculate scores and ratings for SLOs pursuant to a methodology approved by the Commissioner in its APPR plan. The New York City School District is the largest school district in the State of New York and the United States, serving more than 1.1 million students in over 1,800 schools. Given this size, the proposed flexibility is needed to allow the NYCDOE to use a standardized growth model to ensure an objective, consistent, district-level expectation for growth.

The amendment does not impose any new recordkeeping or other compliance requirements, and will not have an adverse economic impact, on small business. Because it is evident from the nature of the rule that it does not affect small businesses, no further steps were needed to ascertain that fact and none were taken. Accordingly, a regulatory flexibility analysis for small businesses is not required and one has not been prepared.

(b) Local governments:

1. EFFECT OF RULE:

The City School District of the City of New York will be required to comply with the proposed amendment.

2. COMPLIANCE REQUIREMENTS:

On April 13, 2015, the Governor signed Chapter 56 of the Laws of 2015 to add a new Education Law § 3012-d, to establish a new evaluation system for classroom teachers and building principals. The Department implemented regulations to implement the new law in June 2015 and has revised those regulations over the course of the last year to provide school districts and BOCES with as much flexibility as possible to comply with the new law. Education Law § 3012-d(12) and the corresponding appropriation language require school districts to comply with the new law in order to receive their State aid increases.[1] The Department has over the course of the last year attempted to provide as much flexibility to districts as possible within the parameters of the law to comply with the requirements of the new law. The proposed amendment seeks to provide additional flexibility to the City School District of the City of New York relating to the growth targets for SLOs in the student performance category.

Education Law § 3012-d(4)(a) requires the Commissioner to set parameters for appropriate targets for student growth for both subcomponents of the student performance category, where there is no State-provided growth score. Sections 30-3.4 (c)(3) and 30-3.5(c)(3) of the Rules of the Board of Regents require districts to calculate scores and ratings for SLOs in accordance with certain minimum percentages prescribed in the regulation. The current regulation provides an exception for teachers with courses with small "n" sizes as defined by the Commissioner in guidance.

The proposed amendment revises sections 30-3.4(c)(3) and 30-3.5(c)(3) of the Rules of the Board of Regents to provide further flexibility to allow the City School District of the City of New York to calculate scores and ratings for SLOs pursuant to a methodology approved by the Commissioner in its APPR plan. The New York City School District is the largest school district in the State of New York and the United States, serving more than 1.1 million students in over 1,800 schools. Given this size, the proposed flexibility is needed to allow the NYCDOE to use a standardized growth model to ensure an objective, consistent, district-level expectation for growth.

3. PROFESSIONAL SERVICES:

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

4. COMPLIANCE COSTS:

There are no additional costs on local governments.

5. ECONOMIC AND TECHNOLOGICAL FEASIBILITY:

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

6. MINIMIZING ADVERSE IMPACT:

No alternatives were considered.

7. LOCAL GOVERNMENT PARTICIPATION:

Copies of the rule have been provided to Superintendents with the request that they distribute them to school districts within their supervisory districts for review and comment.

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[1] The Legislature subsequently extended this deadline until December 31, 2016 (see, Chapter 73 of the Laws of 2016).

Rural Area Flexibility Analysis

1. TYPES AND ESTIMATED NUMBER OF RURAL AREAS:

This proposed amendment applies to the City School District of the City of New York and does not apply to any rural areas of the State.

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

On April 13, 2015, the Governor signed Chapter 56 of the Laws of 2015 to add a new Education Law § 3012-d, to establish a new evaluation system for classroom teachers and building principals. The Department implemented regulations to implement the new law in June 2015 and has revised those regulations over the course of the last year to provide school districts and BOCES with as much flexibility as possible to comply with the new law. Education Law § 3012-d(12) and the corresponding appropriation language require school districts to comply with the new law in order to receive their State aid increases.[1] The Department has over the course of the last year attempted to provide as much flexibility to districts as possible within the parameters of the law to comply with the requirements of the new law. The proposed amendment seeks to provide additional flexibility to the City School District of the City of New York relating to the growth targets for SLOs in the student performance category.

Education Law § 3012-d(4)(a) requires the Commissioner to set parameters for appropriate targets for student growth for both subcomponents of the student performance category, where there is no State-provided growth score. Sections 30-3.4 (c)(3) and 30-3.5(c)(3) of the Rules of the Board of Regents require districts to calculate scores and ratings for SLOs in accordance with certain minimum percentages prescribed in the regulation. The current regulation provides an exception for teachers with courses with small "n" sizes as defined by the Commissioner in guidance.

The proposed amendment revises sections 30-3.4(c)(3) and 30-3.5(c)(3) of the Rules of the Board of Regents to provide further flexibility to allow the City School District of the City of New York to calculate scores and ratings for SLOs pursuant to a methodology approved by the Commissioner in its APPR plan. The New York City School District is the largest school district in the State of New York and the United States, serving more than 1.1 million students in over 1,800 schools. Given this size, the proposed flexibility is needed to allow the NYCDOE to use a standardized

growth model to ensure an objective, consistent, district-level expectation for growth.

3. COSTS:

The proposed amendment does not impose any costs on school districts located in rural areas of the State.

4. MINIMIZING ADVERSE IMPACT:

No alternatives were considered because it does not affect rural areas.

5. RURAL AREA PARTICIPATION:

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

[1] The Legislature subsequently extended this deadline until December 31, 2016 (see, Chapter 73 of the Laws of 2016).

Job Impact Statement

On April 13, 2015, the Governor signed Chapter 56 of the Laws of 2015 to add a new Education Law § 3012-d, to establish a new evaluation system for classroom teachers and building principals. The Department implemented regulations to implement the new law in June 2015 and has revised those regulations over the course of the last year to provide school districts and BOCES with as much flexibility as possible to comply with the new law. Education Law § 3012-d(12) and the corresponding appropriation language require school districts to comply with the new law in order to receive their State aid increases.[1] The Department has over the course of the last year attempted to provide as much flexibility to districts as possible within the parameters of the law to comply with the requirements of the new law. The proposed amendment seeks to provide additional flexibility to the City School District of the City of New York relating to the growth targets for SLOs in the student performance category.

Education Law § 3012-d(4)(a) requires the Commissioner to set parameters for appropriate targets for student growth for both subcomponents of the student performance category, where there is no State-provided growth score. Sections 30-3.4 (c)(3) and 30-3.5(c)(3) of the Rules of the Board of Regents require districts to calculate scores and ratings for SLOs in accordance with certain minimum percentages prescribed in the regulation. The current regulation provides an exception for teachers with courses with small "n" sizes as defined by the Commissioner in guidance.

The proposed amendment revises sections 30-3.4(c)(3) and 30-3.5(c)(3) of the Rules of the Board of Regents to provide further flexibility to allow the City School District of the City of New York to calculate scores and ratings for SLOs pursuant to a methodology approved by the Commissioner in its APPR plan. The New York City School District is the largest school district in the State of New York and the United States, serving more than 1.1 million students in over 1,800 schools. Given this size, the proposed flexibility is needed to allow the NYCDOE to use a standardized growth model to ensure an objective, consistent, district-level expectation for growth.

Because it is evident from the nature of the proposed rule that it will have no impact on the number of jobs or employment opportunities in New York State, and no further steps were needed to ascertain that fact and none were taken. Accordingly, a job impact statement is not required and one has not been prepared.

[1] The Legislature subsequently extended this deadline until December 31, 2016 (see, Chapter 73 of the Laws of 2016).

PROPOSED RULE MAKING
NO HEARING(S) SCHEDULED

Eligibility for Participation in Interscholastic Sports and Duration of Competition

I.D. No. EDU-45-16-00006-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 135.4(c)(7) of Title 8 NYCRR.

Statutory authority: Education Law, sections 101(not subdivided), 207(not subdivided), 305(1), (2), 803(not subdivided), 3204(2) and (3)

Subject: Eligibility for Participation in Interscholastic Sports and Duration of Competition.

Purpose: Clarifies when a student's eligibility for athletic competition may be extended and the use of the athletic placement process.

Text of proposed rule: 1. Subclause (4) of clause (a) of subparagraph (ii) of paragraph (7) of subdivision (c) of section 135.4 of the Regulations of the Commissioner of Education is amended, effective July 1, 2017 to read as follows:

(ii) Provisions for interschool athletic activities for pupils in grades 7 through 12. It shall be the duty of the trustees and boards of education to conduct interschool athletic competition for grades 7 through 12 in accordance with the following:

(a) Interschool athletic competition for pupils in junior high school grades seven, eight and nine. Such competition shall be conducted in accordance with the following: Seventh and eighth grade teams may participate only with teams of like grade groups, with the following exceptions:

(1) In junior high school, competition may include grades seven through nine.

(2) In six-year high schools, competition may include grades seven through nine.

(3) In four-year high schools, ninth grade pupils may participate in junior high competition.

(4) *(i)* A board of education may permit pupils in grades no lower than seventh to compete on any senior high school team, or permit senior high school pupils to compete on any teams in grades no lower than seventh, provided the pupils are placed at levels of competition appropriate to their physiological maturity, physical fitness and skills in relationship to other pupils on those teams in accordance with standards established by the commissioner.

(ii) Nothing in this subclause shall prohibit a bona fide seventh or eighth grade student, as defined by subdivision (g) of section 135.1, who is regularly enrolled in a public school district organized for pupils in kindergarten through eighth grade that contracts with a neighboring school district or districts on a tuition basis for the education of its high school students pursuant to Education Law sections 2040 and 2045 and section 174.4 of this Title, from seeking to participate in a high school team, in accordance with the standards described in item (i) of this subclause, provided that the boards of education of the sending school district (as such term is defined in section 174.4(a)(1) of this Title) and the receiving school district(s) (as such term is defined in section 174.4(a)(2) of this Title) adopt a resolution to permit such participation. In the case of seventh and eighth grade students attending a public school district organized for pupils in kindergarten through eighth grade that contracts with more than one neighboring school district for the education of its high school students, any such seventh or eighth grade student who participates in high school athletics pursuant to this subclause may select only one high school in which to compete during their seventh and eighth grade participation; if, following participation in a high school team during seventh and/or eighth grade, such student chooses to attend a different high school with which the student's kindergarten through eighth grade school district contracts for the education of its high school students, such student shall be ineligible to participate in any interscholastic athletic contest in a particular sport for a period of one year.

2. Clause (b) of subparagraph (ii) of paragraph (7) of subdivision (c) of section 135.4 of the Regulations of the Commissioner of Education shall be amended, effective July 1, 2017 to read as follows:

(b) Interschool athletic competition for pupils in senior high school grades 9, 10, 11 and 12. Inter-high school athletic competition shall be limited to competition between high school teams, composed of pupils in grades 9 to 12 inclusive, except as otherwise provided in subclause (a)(4) of this subparagraph. Such activities shall be conducted in accordance with the following:

(1) Duration of competition. A pupil shall be eligible for senior high school athletic competition in a sport during each of four consecutive seasons of such sport commencing with the pupil's entry into the ninth grade and prior to graduation, except as otherwise provided in this subclause, or except as authorized by a waiver granted under clause (d) of this subparagraph to a student with a disability. If a board of education has adopted a policy, pursuant to subclause (a)(4) of this subparagraph, to permit pupils in the seventh and eighth grades to compete in senior high school athletic competition, such pupils shall be eligible for competition during five consecutive seasons of a sport commencing with the pupil's entry into the eighth grade, or six consecutive seasons of a sport commencing with the pupil's entry into the seventh grade. A pupil enters competition in a given year when the pupil is a member of the team in the sport involved, and that team has completed at least one contest. A pupil shall be eligible for interschool competition in grades 9, 10, 11 and 12 until the last day of the school year in which he or she attains the age of 19, except as otherwise provided in subclause (a)(4) or clause (d) of this subparagraph, or in this subclause. The eligibility for competition of a pupil who has not attained the age of 19 years prior to July 1st may be extended under the following circumstances.

(i) If sufficient evidence is presented by the chief school officer to the section to show that the pupil's failure to enter competition during one or more seasons of a sport was caused by illness, [or] accident *or other circumstances beyond the control of the pupil* such pupil's eligibility shall be extended accordingly in that sport. In order to be deemed sufficient, the evidence must [include documentation showing

that as a direct result of the illness or accident, the pupil will be required to attend school for one or more additional semesters in order to graduate] *demonstrate that, (a) the pupil's failure to enter competition during one or more seasons of a sport was caused by illness, accident, or other circumstances beyond the control of the pupil; (b) as a direct result of such circumstances the pupil is required to attend school for one or more additional semesters in order to graduate; (c) the safety of the pupil or others is not at risk; and (d) that the pupil will not hold an unfair advantage in the competition. However, nothing herein shall be construed to extend a student's eligibility beyond the age of 19, except for a student with a disability pursuant to the requirements of clause (d) of subparagraph (ii)*.

(ii) If the chief school officer demonstrates to the satisfaction of the section that the pupil's failure to enter competition during one or more seasons of a sport is caused by such pupil's enrollment in a national or international student exchange program or foreign study program, that as a result of such enrollment the pupil will be required to attend school for one or more additional semesters in order to graduate, and that the pupil did not enter competition in any sport while enrolled in such program, such pupil's eligibility shall be extended accordingly in such sport.

(iii) If the section declines to extend the pupil's eligibility in accordance with this subclause, the section shall provide written notice of such determination to the chief school officer, with a copy to the pupil's parent, guardian or person in parental relation. Such notice shall include, as applicable: information regarding the athletic association's internal appeal process, including the name of the individual and address to which such appeal is to be directed; or a statement that the determination may be appealed to the Commissioner of Education, in accordance with Education Law section 310, within 30 days of the date of such determination and shall include the name and address of the section official upon whom such appeal shall be served. If the athletic association hears and denies an appeal, written notice of the determination shall be provided to the chief school officer, with a copy to the pupil's parent, guardian or person in parental relation. Such notice shall include a statement that the determination may be appealed to the Commissioner of Education, in accordance with Education Law, section 310, within 30 days of the date of such determination and shall include the name and address of the athletic association official upon whom such appeal shall be served.

(iv) Upon appeal pursuant to Education Law section 310, the commissioner shall review the record de novo and may extend the pupil's eligibility upon a finding based upon documentary evidence in the record that: (a) the pupil's failure to enter competition during one or more seasons of a sport was caused by illness, accident or circumstances beyond the control of the pupil; (b) as a direct result of such circumstances the pupil is required to attend school for one or more additional semesters in order to graduate; (c) the safety of the pupil or others is not at risk; and (d) that the pupil will not hold an unfair advantage in the competition. However, nothing herein shall be construed to extend a student's eligibility beyond the age of 19, except for a student with a disability pursuant to the requirements of clause (d) of subparagraph (ii).

Text of proposed rule and any required statements and analyses may be obtained from: Kirti Goswami, New York State Education Department, 89 Washington Avenue, Room 138, Albany, NY 12234, (518) 474-6400, email: legal@nysed.gov

Data, views or arguments may be submitted to: Angelica Infante-Green, Deputy Commissioner for P12 Instructional Support, New York State Education Department, 2M West, Albany, NY 12234, (518) 474-5510, email: regcomments@nysed.gov

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

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

Regulatory Impact Statement

1. STATUTORY AUTHORITY:

Education Law section 101 charges the Department with the general management and supervision of public schools and the educational work of the State.

Education Law section 207 empowers the Board of Regents and the Commissioner to adopt rules and regulations to carry out the laws of the State regarding education and the functions and duties conferred on the Department by law.

Education Law sections 305(1) and (2) provide that the Commissioner, as chief executive officer of the State system of education and of the Board of Regents, shall have general supervision over all schools and institutions subject to the provisions of the Education Law, or of any statute relating to education.

Education Law section 803 provides the Board of Regents with overall authority over physical education instruction in schools.

Education Law section 3204(2) and (3) relate to compulsory education.

2. LEGISLATIVE OBJECTIVES:

The proposed amendment is consistent with the authority conferred by the above statutes and is necessary to implement policy enacted by the Board of Regents relating to the age and four-year duration of competition limitations for athletic competition and the athletic placement process which provides a protocol for districts that choose to allow students in grades 7 and 8 to play at the high school level, or for students in grades 9-12 to participate at the middle school level.

3. NEEDS AND BENEFITS:

Commissioner's regulation section 135.4(c)(7)(ii) establishes the parameters for participation in interscholastic athletic competition for students in grades 7 through 12. The underlying spirit of Commissioner's regulations governing interscholastic athletics is to provide for the safety and equal opportunity for participation for public school students. These principles guide athletic eligibility determinations for students in seventh or eighth grade who wish to participate in high school athletics pursuant to the athletic placement process (8 NYCRR § 135.4(c)(7)(ii)(a)); as well as students who seek to extend athletic eligibility to a fifth season when they have missed a season of the sport due to accident or injury (8 NYCRR § 135.4(c)(ii)(b)); for purposes of mixed competition (8 NYCRR § 135.4(c)(ii)(c)); and for students with disabilities who wish to extend eligibility to participate in non-contact sports (8 NYCRR § 135.4(c)(7)(ii)(d)).

Athletic Placement Process

In general, interscholastic athletics for students in grades 7 through 12 must be organized for students in like grade groups. However, pursuant to Commissioner's regulation § 135.4(c)(7)(ii)(a), a school district may choose to permit certain students to compete at a level of competition deemed appropriate to their physiological maturity, physical fitness, and skill level in relationship to other students at the desired level of competition. The current regulation provides as follows:

A board of education may permit pupils in grades no lower than seventh to compete on any senior high school team, or permit senior high school pupils to compete on any teams in grades no lower than seventh, provided the pupils are placed at levels of competition appropriate to their physiological maturity, physical fitness, and skills in relationship to other pupils on those teams in accordance with standards established the Commissioner.

The standards by which such participation is permitted are commonly referred to as the Athletic Placement Process (APP). The APP, which was last updated in 2015, provides a protocol for districts that choose to allow students in grades 7 and 8 to play at the high school level, or for students in grades 9-12 to participate at the middle school level. Such protocol ensures that student athletes are able to participate safely at an appropriate level of competition based upon physical and emotional readiness and athletic ability, rather than age and grade alone. See Athletic Placement Process for Interschool Athletic programs: http://www.p12.nysed.gov/ciai/pe/documents/AthleticPlacementProcess2-11-15Revised.pdf

Though not required, many school districts throughout the State employ the APP to provide appropriate interscholastic athletic opportunities for exceptional student athletes in grades 7 and 8 to play at the high school level. Existing regulations provide that to be eligible for participation in interscholastic athletic competition at any level during a semester, the student must, among other things, be a bona fide student, enrolled during the first 15 school days of such semester (8 NYCRR § 135.4[c][7][ii][b][[2]). Commissioner's regulation § 135.1 defines a bona bide student as "a regularly enrolled student who is taking sufficient subjects to make an aggregate amount of three courses and who satisfies the physical education requirement."

Not all of the State's 728 school districts are traditional K-12 districts. Presently, there are 13 public school districts in the State that operate to serve students in grades K-8 only, and contract for the education of their high school students with other public school districts pursuant to the provisions of Education Law § § 2040, 2045 and Commissioner's regulation § 174.4. Because of their unique configuration, these 13 public school districts do not have their own "district high school," and as a result, questions have arisen regarding the ability of students who are enrolled in K-8 public school districts to participate in the APP because they are not "enrolled" in a district with its own high school.

The proposed regulation is therefore designed to clarify the conditions under which K-8 public school districts may employ the APP protocol to allow the opportunity for exceptional student athletes to participate in interscholastic sports at the high school(s) with which the K-8 school district contracts for the education of its high school students, when such students are bona fide students of the K-8 school district. However, in an effort to avoid recruitment or other efforts to entice middle-school students to play for a specific high school, the regulation provides for a year of ineligibility if, following participation on a high school team pursuant to APP, the student chooses to attend a different high school with which the K-8 district contracts for the 9th grade year.

The existing guidance relating to the APP protocol is comprehensive. However, additional revisions will be necessary to provide these few K-8 school districts and the districts with which they contract for the education of their high school students with the necessary guidance to safely and appropriately implement the APP, if they choose.

Duration of Competition

Commissioner's regulation § 135.4(c)(7)(ii)(b)(1)(i), relating to the duration of competition, limits the participation of students in high school athletic competition to four consecutive seasons commencing with the student's entry into the ninth grade and prior to graduation. However, the regulation provides that a request for an extension of duration of competition may be granted if sufficient evidence demonstrates that the student's failure to enter competition during one or more seasons was directly caused by illness or accident, and such illness or accident will require the student to attend school for one or more additional semesters to graduate.

Prior to October 2014, this regulation also allowed students to seek an extension of eligibility when the student failed to enter competition for "other circumstances beyond the control of the student." In response to confusion from the field, the Board of Regents amended the regulation to limit the eligibility extension for reasons only related to accident or illness. However, recognizing that extenuating circumstances may exist which do not neatly fit into the categories of accident or illness, but may still be suitable for extending a student's athletic eligibility, the Department seeks to amend the regulation and provide that the eligibility of a student who has not attained the age of 19 years prior to July 1st may be extended not only based on accident or illness, but also if sufficient evidence is presented that the failure to enter competition was based on "other circumstances beyond the student's control." The proposed amendment also provides the Commissioner with the discretion to review a determination to grant or deny an extension of eligibility based on specific criteria. As proposed, the regulation would permit a student's eligibility to be extended for illness, accident, or other circumstances beyond the control of the pupil if evidence in the record demonstrates that:

- (a) the pupil's failure to enter competition during one or more seasons of a sport was caused by illness, accident, or other circumstances beyond the control of the pupil;
- (b) as a direct result of such circumstances the pupil is required to attend school for one or more additional semesters in order to graduate;
- (c) the safety of the pupil or others is not at risk; and
- (d) that the pupil will not hold an unfair advantage in the competition.

These proposed amendments are intended to provide greater clarity and to ensure safe and equitable interscholastic athletic competition for all public school students.

4. COSTS:

(a) Costs to State government: none.

(b) Costs to local government: none.

(c) Costs to private regulated parties: none.

(d) Costs to the regulating agency for implementation and administration of this rule: none.

The proposed amendment does not impose any costs on the State, local governments, private regulated parties or the State Education Department, but merely clarifies when a student's eligibility for senior high school athletic competition may be extended for additional seasons for illness, accident or circumstances beyond the control of the pupil and for the utilization of the athletic placement process protocol for districts that choose to allow students in grades 7 and 8 to play at the high school level, or for students in grades 9-12 to participate at the middle school level.

5. LOCAL GOVERNMENT MANDATES:

The proposed amendment does not impose any additional program, service, duty or responsibility upon local governments. The proposed amendment merely clarifies when a student's eligibility for senior high school athletic competition may be extended for additional seasons for illness, accident, or circumstances beyond the control of the pupil and for the utilization of the athletic placement process protocol for districts that choose to allow students in grades 7 and 8 to play at the high school level, or for students in grades 9-12 to participate at the middle school level.

6. PAPERWORK:

This proposed amendment does not impose any additional paperwork requirements. The proposed amendment merely clarifies when a student's eligibility for senior high school athletic competition may be extended for additional seasons for illness, accident, or circumstances beyond the control of the pupil and for the utilization of the athletic placement process protocol for districts that choose to allow students in grades 7 and 8 to play at the high school level, or for students in grades 9-12 to participate at the middle school level.

7. DUPLICATION:

The proposed amendment does not duplicate existing State or federal regulations.

8. ALTERNATIVES:

The proposed amendment is necessary to clarify when a student's eligibility for senior high school athletic competition may be extended for additional seasons for illness, accident or other circumstances beyond the control of the pupil and for the utilization of the athletic placement process protocol for districts that choose to allow students in grades 7 and 8 to play at the high school level, or for students in grades 9-12 to participate at the middle school level. There were no significant alternatives considered.

9. FEDERAL STANDARDS:

There are no related federal standards.

10. COMPLIANCE SCHEDULE:

It is anticipated regulated parties will be able to achieve compliance with the proposed rule by its effective date. This proposed amendment does not impose any costs or compliance requirements, but merely clarifies when a student's eligibility for senior high school athletic competition may be extended for additional seasons for illness, accident or other circumstances beyond the control of the pupil and for the utilization of the athletic placement process protocol for districts that choose to allow students in grades 7 and 8 to play at the high school level, or for students in grades 9-12 to participate at the middle school level.

Regulatory Flexibility Analysis

Small Businesses:

The proposed amendment merely clarifies when a student's eligibility for senior high school athletic competition may be extended for additional seasons for illness, accident, or circumstances beyond the control of the pupil and for the utilization of the athletic placement process protocol for districts that choose to allow students in grades 7 and 8 to play at the high school level, or for students in grades 9-12 to participate at the middle school level. The proposed amendment does not impose any adverse economic impact, reporting, record keeping or any other compliance requirements on small businesses. Because it is evident from the nature of the proposed amendment that it does not affect small businesses, no further measures were needed to ascertain that fact and none were taken. Accordingly, a regulatory flexibility analysis for small businesses is not required and one has not been prepared.

Local Government:

1. EFFECT OF RULE:

The proposed amendment applies to each of the 695 school districts within the State.

2. COMPLIANCE REQUIREMENTS:

The proposed amendment does not impose any additional compliance requirements, but merely clarifies when a student's eligibility for senior high school athletic competition may be extended for additional seasons for illness, accident, or circumstances beyond the control of the pupil and for the utilization of the athletic placement process protocol for districts that choose to allow students in grades 7 and 8 to play at the high school level, or for students in grades 9-12 to participate at the middle school level.

Commissioner's regulation section 135.4(c)(7)(ii) establishes the parameters for participation in interscholastic athletic competition for students in grades 7 through 12. The underlying spirit of Commissioner's regulations governing interscholastic athletics is to provide for the safety and equal opportunity for participation for public school students. These principles guide athletic eligibility determinations for students in seventh or eighth grade who wish to participate in high school athletics pursuant to the athletic placement process (8 NYCRR § 135.4(c)(7)(ii)(a)); as well as students who seek to extend athletic eligibility to a fifth season when they have missed a season of the sport due to accident or injury (8 NYCRR § 135.4(c)(ii)(b)); for purposes of mixed competition (8 NYCRR § 135.4(c)(ii)(c)); and for students with disabilities who wish to extend eligibility to participate in non-contact sports (8 NYCRR § 135.4(c)(7)(ii)(d)).

Athletic Placement Process

In general, interscholastic athletics for students in grades 7 through 12 must be organized for students in like grade groups. However, pursuant to Commissioner's regulation § 135.4(c)(7)(ii)(a), a school district may choose to permit certain students to compete at a level of competition deemed appropriate to their physiological maturity, physical fitness, and skill level in relationship to other students at the desired level of competition. The current regulation provides as follows:

A board of education may permit pupils in grades no lower than seventh to compete on any senior high school team, or permit senior high school pupils to compete on any teams in grades no lower than seventh, provided the pupils are placed at levels of competition appropriate to their physiological maturity, physical fitness, and skills in relationship to other pupils on those teams in accordance with standards established the Commissioner.

The standards by which such participation is permitted are commonly referred to as the Athletic Placement Process (APP). The APP, which was last updated in 2015, provides a protocol for districts that choose to allow students in grades 7 and 8 to play at the high school level, or for students in grades 9-12 to participate at the middle school level. Such protocol

ensures that student athletes are able to participate safely at an appropriate level of competition based upon physical and emotional readiness and athletic ability, rather than age and grade alone. See Athletic Placement Process for Interschool Athletic programs: http://www.p12.nysed.gov/ciai/pe/documents/AthleticPlacementProcess2-11-15Revised.pdf

Though not required, many school districts throughout the State employ the APP to provide appropriate interscholastic athletic opportunities for exceptional student athletes in grades 7 and 8 to play at the high school level. Existing regulations provide that to be eligible for participation in interscholastic athletic competition at any level during a semester, the student must, among other things, be a bona fide student, enrolled during the first 15 school days of such semester (8 NYCRR § 135.4[c][7][ii][b][[2]). Commissioner's regulation § 135.1 defines a bona bide student as "a regularly enrolled student who is taking sufficient subjects to make an aggregate amount of three courses and who satisfies the physical education requirement."

Not all of the State's 728 school districts are traditional K-12 districts. Presently, there are 13 public school districts in the State that operate to serve students in grades K-8 only, and contract for the education of their high school students with other public school districts pursuant to the provisions of Education Law § § 2040, 2045 and Commissioner's regulation § 174.4. Because of their unique configuration, these 13 public school districts do not have their own "district high school," and as a result, questions have arisen regarding the ability of students who are enrolled in K-8 public school districts to participate in the APP because they are not "enrolled" in a district with its own high school.

The proposed regulation is therefore designed to clarify the conditions under which K-8 public school districts may employ the APP protocol to allow the opportunity for exceptional student athletes to participate in interscholastic sports at the high school(s) with which the K-8 school district contracts for the education of its high school students, when such students are bona fide students of the K-8 school district. However, in an effort to avoid recruitment or other efforts to entice middle-school students to play for a specific high school, the regulation provides for a year of ineligibility if, following participation on a high school team pursuant to APP, the student chooses to attend a different high school with which the K-8 district contracts for the 9th grade year.

The existing guidance relating to the APP protocol is comprehensive. However, additional revisions will be necessary to provide these few K-8 school districts and the districts with which they contract for the education of their high school students with the necessary guidance to safely and appropriately implement the APP, if they choose.

Duration of Competition

Commissioner's regulation § 135.4(c)(7)(ii)(b)(1)(i), relating to the duration of competition, limits the participation of students in high school athletic competition to four consecutive seasons commencing with the student's entry into the ninth grade and prior to graduation. However, the regulation provides that a request for an extension of duration of competition may be granted if sufficient evidence demonstrates that the student's failure to enter competition during one or more seasons was directly caused by illness or accident, and such illness or accident will require the student to attend school for one or more additional semesters to graduate.

Prior to October 2014, this regulation also allowed students to seek an extension of eligibility when the student failed to enter competition for "other circumstances beyond the control of the student." In response to confusion from the field, the Board of Regents amended the regulation to limit the eligibility extension for reasons only related to accident or illness. However, recognizing that extenuating circumstances may exist which do not neatly fit into the categories of accident or illness, but may still be suitable for extending a student's athletic eligibility, the Department seeks to amend the regulation and provide that the eligibility of a student who has not attained the age of 19 years prior to July 1st may be extended not only based on accident or illness, but also if sufficient evidence is presented that the failure to enter competition was based on "other circumstances beyond the student's control." The proposed amendment also provides the Commissioner with the discretion to review a determination to grant or deny an extension of eligibility based on specific criteria. As proposed, the regulation would permit a student's eligibility to be extended for illness, accident, or other circumstances beyond the control of the pupil if evidence in the record demonstrates that:

- (a) the pupil's failure to enter competition during one or more seasons of a sport was caused by illness, accident, or other circumstances beyond the control of the pupil;
- (b) as a direct result of such circumstances the pupil is required to attend school for one or more additional semesters in order to graduate;
- (c) the safety of the pupil or others is not at risk; and
- (d) that the pupil will not hold an unfair advantage in the competition.

3. PROFESSIONAL SERVICES:

The proposed amendment imposes no additional professional service requirements.

4. COMPLIANCE COSTS:

The proposed amendment does not impose any costs, but merely clarifies when a student's eligibility for senior high school athletic competition may be extended for additional seasons for illness, accident, or circumstances beyond the control of the pupil and for the utilization of the athletic placement process protocol for districts that choose to allow students in grades 7 and 8 to play at the high school level, or for students in grades 9-12 to participate at the middle school level.

5. ECONOMIC AND TECHNOLOGICAL FEASIBILITY:

The proposed amendment does not impose any technological requirements or costs on school districts.

6. MINIMIZING ADVERSE IMPACT:

The proposed amendments are intended to provide greater clarity and to ensure safe and equitable interscholastic athletic competition for all public school students.

7. LOCAL GOVERNMENT PARTICIPATION:

Copies of the proposed amendment have been provided to District Superintendents with the request that they distribute them to school districts within their supervisory districts for review and comment. Copies were also provided for review and comment to the chief school officers of the five big city school districts.

Rural Area Flexibility Analysis

1. TYPES AND ESTIMATED NUMBER OF RURAL AREAS:

The proposed rule applies to all school districts in the State, including those located in the 44 rural counties with less than 200,000 inhabitants and the 71 towns in urban counties with a population density of 150 per square mile or less.

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

The proposed amendment does not impose any additional reporting, recordkeeping or other compliance requirements on school districts in rural areas, but merely clarifies when a student's eligibility for senior high school athletic competition may be extended for additional seasons for illness, accident, or circumstances beyond the control of the pupil and for the utilization of the athletic placement process protocol for districts that choose to allow students in grades 7 and 8 to play at the high school level, or for students in grades 9-12 to participate at the middle school level.

Commissioner's regulation section 135.4(c)(7)(ii) establishes the parameters for participation in interscholastic athletic competition for students in grades 7 through 12. The underlying spirit of Commissioner's regulations governing interscholastic athletics is to provide for the safety and equal opportunity for participation for public school students. These principles guide athletic eligibility determinations for students in seventh or eighth grade who wish to participate in high school athletics pursuant to the athletic placement process (8 NYCRR § 135.4(c)(7)(ii)(a)); as well as students who seek to extend athletic eligibility to a fifth season when they have missed a season of the sport due to accident or injury (8 NYCRR § 135.4(c)(ii)(b)); for purposes of mixed competition (8 NYCRR § 135.4(c)(ii)(c)); and for students with disabilities who wish to extend eligibility to participate in non-contact sports (8 NYCRR § 135.4(c)(7)(ii)(d)).

Athletic Placement Process

In general, interscholastic athletics for students in grades 7 through 12 must be organized for students in like grade groups. However, pursuant to Commissioner's regulation § 135.4(c)(7)(ii)(a), a school district may choose to permit certain students to compete at a level of competition deemed appropriate to their physiological maturity, physical fitness, and skill level in relationship to other students at the desired level of competition. The current regulation provides as follows:

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The standards by which such participation is permitted are commonly referred to as the Athletic Placement Process (APP). The APP, which was last updated in 2015, provides a protocol for districts that choose to allow students in grades 7 and 8 to play at the high school level, or for students in grades 9-12 to participate at the middle school level. Such protocol ensures that student athletes are able to participate safely at an appropriate level of competition based upon physical and emotional readiness and athletic ability, rather than age and grade alone. See Athletic Placement Process for Interschool Athletic programs: http://www.p12.nysed.gov/ciai/pe/documents/AthleticPlacementProcess2-11-15Revised.pdf

Though not required, many school districts throughout the State employ the APP to provide appropriate interscholastic athletic opportunities for exceptional student athletes in grades 7 and 8 to play at the high school level. Existing regulations provide that to be eligible for participation in

interscholastic athletic competition at any level during a semester, the student must, among other things, be a bona fide student, enrolled during the first 15 school days of such semester (8 NYCRR § 135.4[c][7][ii][b][[2]). Commissioner's regulation § 135.1 defines a bona bide student as "a regularly enrolled student who is taking sufficient subjects to make an aggregate amount of three courses and who satisfies the physical education requirement."

Not all of the State's 728 school districts are traditional K-12 districts. Presently, there are 13 public school districts in the State that operate to serve students in grades K-8 only, and contract for the education of their high school students with other public school districts pursuant to the provisions of Education Law § § 2040, 2045 and Commissioner's regulation § 174.4. Because of their unique configuration, these 13 public school districts do not have their own "district high school," and as a result, questions have arisen regarding the ability of students who are enrolled in K-8 public school districts to participate in the APP because they are not "enrolled" in a district with its own high school.

The proposed regulation is therefore designed to clarify the conditions under which K-8 public school districts may employ the APP protocol to allow the opportunity for exceptional student athletes to participate in interscholastic sports at the high school(s) with which the K-8 school district contracts for the education of its high school students, when such students are bona fide students of the K-8 school district. However, in an effort to avoid recruitment or other efforts to entice middle-school students to play for a specific high school, the regulation provides for a year of ineligibility if, following participation on a high school team pursuant to APP, the student chooses to attend a different high school with which the K-8 district contracts for the 9th grade year.

The existing guidance relating to the APP protocol is comprehensive. However, additional revisions will be necessary to provide these few K-8 school districts and the districts with which they contract for the education of their high school students with the necessary guidance to safely and appropriately implement the APP, if they choose.

Duration of Competition

Commissioner's regulation § 135.4(c)(7)(ii)(b)(1)(i), relating to the duration of competition, limits the participation of students in high school athletic competition to four consecutive seasons commencing with the student's entry into the ninth grade and prior to graduation. However, the regulation provides that a request for an extension of duration of competition may be granted if sufficient evidence demonstrates that the student's failure to enter competition during one or more seasons was directly caused by illness or accident, and such illness or accident will require the student to attend school for one or more additional semesters to graduate.

Prior to October 2014, this regulation also allowed students to seek an extension of eligibility when the student failed to enter competition for "other circumstances beyond the control of the student." In response to confusion from the field, the Board of Regents amended the regulation to limit the eligibility extension for reasons only related to accident or illness. However, recognizing that extenuating circumstances may exist which do not neatly fit into the categories of accident or illness, but may still be suitable for extending a student's athletic eligibility, the Department seeks to amend the regulation and provide that the eligibility of a student who has not attained the age of 19 years prior to July 1st may be extended not only based on accident or illness, but also if sufficient evidence is presented that the failure to enter competition was based on "other circumstances beyond the student's control." The proposed amendment also provides the Commissioner with the discretion to review a determination to grant or deny an extension of eligibility based on specific criteria. As proposed, the regulation would permit a student's eligibility to be extended for illness, accident, or other circumstances beyond the control of the pupil if evidence in the record demonstrates that:

- (a) the pupil's failure to enter competition during one or more seasons of a sport was caused by illness, accident, or other circumstances beyond the control of the pupil;
- (b) as a direct result of such circumstances the pupil is required to attend school for one or more additional semesters in order to graduate;
- (c) the safety of the pupil or others is not at risk; and
- (d) that the pupil will not hold an unfair advantage in the competition.

The proposed amendment imposes no additional professional service requirements.

3. COMPLIANCE COSTS:

The proposed amendment does not impose any costs on school districts in rural areas, but merely clarifies when a student's eligibility for senior high school athletic competition may be extended for additional seasons for illness, accident, or circumstances beyond the control of the pupil and for the utilization of the athletic placement process protocol for districts that choose to allow students in grades 7 and 8 to play at the high school level, or for students in grades 9-12 to participate at the middle school level.

4. MINIMIZING ADVERSE IMPACT:

The proposed amendments are intended to provide greater clarity around the athletic placement process and to ensure safe and equitable interscholastic athletic competition for all public school students, including those located in rural areas of this State. Therefore, no alternatives were considered.

5. RURAL AREA PARTICIPATION:

Comments on the proposed amendment were solicited from the Department's Rural Advisory Committee, whose membership includes school districts located in rural areas.

Job Impact Statement

The proposed amendment clarifies when a student's eligibility for senior high school athletic competition may be extended for additional seasons for illness, accident, or circumstances beyond the control of the pupil and for the utilization of the athletic placement process protocol for districts that choose to allow students in grades 7 and 8 to play at the high school level, or for students in grades 9-12 to participate at the middle school level.

The proposed amendment will not have an adverse impact on jobs or employment opportunities. Because it is evident from the nature of the amendment that it will have no impact on jobs or employment opportunities, no further steps were needed to ascertain those facts and none were taken. Accordingly, a job impact statement is not required and one has not been prepared.

Department of Environmental Conservation

NOTICE OF ADOPTION

Rule Making to Implement Environmental Conservation Law Section 17-0826-a

I.D. No. ENV-26-16-00013-A

Filing No. 986

Filing Date: 2016-10-20

Effective Date: 2016-11-09

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

Action taken: Amendment of Parts 621 and 750 of Title 6 NYCRR.

Statutory authority: Environmental Conservation Law, sections 1-0101(3)(b), 3-0301(1)(b), (t), (2)(m), 17-0303(3), 17-0803, 17-0804 and 17-0826-a

Subject: Rule making to implement Environmental Conservation Law section 17-0826-a.

Purpose: Implementation of the reporting, notification and recordkeeping requirements described in Environmental Conservation Law section 17-0826-a.

Substance of final rule: The final rule revises provisions of 6 NYCRR Part 750 to implement ECL section 17-0826-a, known as the Sewage Pollution Right to Know Act (SPRTK). Under SPRTK, publicly owned treatment works (POTWs) and operators of publicly owned sewer systems (POSSs) are required to report untreated and partially treated sewage discharges to the New York State Department of Environmental Conservation (DEC) and the local health department, or if there is none, the New York State Department of Health, immediately, but in no case later than two hours from discovery of the discharge. Partially treated sewage discharged directly from a POTW that is in compliance with a DEC approved plan or permit does not need to be reported. SPRTK specifies the necessary minimum content of these two hour reports to the extent the information is knowable with existing systems and models. Furthermore, SPRTK requires POTWs and operators of POSSs to notify the chief elected official, or authorized designee, of the municipality in which the discharge occurred and the chief elected official, or authorized designee, of any adjoining municipality that may be affected of untreated and partially treated sewage discharges as soon as possible, but no later than four hours from discovery of the discharge. For discharges that may present a threat to public health, the same notification must also be provided to the general public within the same time frame through appropriate electronic media as determined by DEC. The rule making provisions to implement SPRTK are summarized below.

750-1.1

Subdivision (f) of section 750-1.1 is amended to reference POSS registrations which are the new regulatory mechanism for POSSs.

750-1.2

New definitions are added to section 750-1.2 to clarify the scope and meaning of the rule. Some paragraphs within subdivision (a) of this section are renumbered as a result of these new definitions. Paragraph (20) of subdivision (a) defines the term 'Combined Sewer Overflow (CSO)' and paragraph (21) of subdivision (a) defines the term 'Combined Sewer System (CSS).' SPRTK reporting and notification requirements apply to CSO discharges from CSSs to the extent these discharges are knowable with existing systems and models, so it is necessary to define these terms. The term 'Publicly Owned Sewer System (POSS)' is defined in paragraph (70) of subdivision (a). Under this definition, a 'POSS' means "a sewer system owned by a municipality and which discharges to a POTW owned by another municipality." The existing definition of 'municipality' in current 6 NYCRR 750-1.2(a)(51) applies to the new definition of 'POSS' and continues to apply to the current definition of 'POTW' which remains unchanged. Thus, both POTWs and POSSs include systems that are owned by a "county, town, city, village, district corporation, special improvement district, sewer authority or agency thereof." The new definition of 'POSS,' however, distinguishes POSSs from POTWs because POTWs are defined to include sewers that discharge to the POTW only if those sewers are owned by the same municipality that owns the POTW. Finally, paragraphs (63) and (96) of subdivision (a) define the terms 'partially treated sewage' and 'untreated sewage' to specify the type of waste addressed by the rule. The new definition of 'partially treated sewage' replaces the definition of 'partially treated' since Part 750 only uses the term 'partially treated' when referring to sewage. The new definition for 'partially treated sewage' is at least as stringent as the previous definition of 'partially treated' and aligns with SPRTK's goal to protect public health. The final rule revises the definitions of 'untreated sewage' and 'partially treated sewage' slightly from the previously proposed rule to clarify these terms.

750-1.22

The rule adds a new Section 750-1.22 to establish a registration program for POSSs and obligates owners and operators of these facilities to comply with specified reporting and notification requirements in amended Section 750-2.7. New Section 750-1.22 requires owners of existing POSSs to register the facility with DEC within 30 days from the effective date of the rule. This section also obligates owners of POSSs to obtain DEC approval and a new or amended registration before commencing construction of a new or modified POSS. Furthermore, this section requires owners of POSSs to notify DEC 30 days prior to a transfer in ownership or operation of the facility; establishes registration procedures regarding POSSs; and provides DEC authorized representatives with express authority to inspect POSSs and their records. Finally, this section requires owners and operators of POSSs to comply with the applicable reporting and notification provisions in subdivisions (b) and (d) of Section 750-2.7. Current Section 750-1.22 and subsequent sections of Subpart 750-1 are renumbered to accommodate this new section.

750-2.6

Subdivisions (a) and (b) of Section 750-2.6 are amended to specify that this section applies to SPDES permittees that are not POTWs. POSSs are only required to obtain registrations, not SPDES permits. Thus, the revisions make clear that the special reporting requirements in Section 750-2.6 continue to apply to non-POTW SPDES permittees (such as privately-owned commercial and industrial facilities), but that this section does not address POTWs or POSSs.

750-2.7

Subdivision (b) of section 750-2.7 is amended to implement the new reporting and notification obligations that apply to owners and operators of POTWs and POSSs.

Amended paragraph (b)(1) continues to limit two hour reporting for non-POTW SPDES permittees to discharges that would affect bathing areas during the bathing season, shellfishing or public drinking water intakes. A small number of minor revisions have been made to this paragraph and Subparagraphs (i) through (v) to eliminate obsolete language and to clarify that the content of two hour reports filed by non-POTW SPDES permittees is the same as that for POTWs and POSSs.

Amended paragraph (b)(2) provides that POTWs and POSSs are in compliance with the rule's electronic reporting and notification requirements if they register to use the DEC approved electronic media and submit timely and sufficient reports and notifications when required. The final rule also now clarifies in this paragraph that a CSO is considered untreated sewage for purposes of two hour reporting, four hour notifications and CSO advisories.

Amended subparagraph (b)(2)(i) requires owners and operators of POTWs and POSSs to report untreated and partially treated sewage discharges to DEC and the local health department, or if there is none, the New York State Department of Health, immediately, but in no case later than two hours from discovery of the discharge. Partially treated sewage discharged directly from a POTW that is in compliance with a DEC approved plan or permit does not need to be reported. Clauses (a) through (e) of this subparagraph set forth the necessary content of the reports to the extent the information is knowable with existing systems and models. Consistent with SPRTK, clause (d) in the final rule now contains an exception for wet weather CSO discharges from the requirement to provide a brief description of the measures taken and planned to contain the discharge.

Amended clause (b)(2)(ii)(a) implements SPRTK's four hour notification requirement with respect to municipalities. This provision requires owners and operators of POTWs and POSSs to notify the chief elected official, or authorized designee, of the municipality in which the discharge occurred and the chief elected official, or authorized designee, of any adjoining municipality that may be affected of untreated and partially treated sewage discharges to surface water as soon as possible, but no later than four hours from discovery of the discharge. However, this notification does not apply to partially treated sewage discharged directly from a POTW that is in compliance with a DEC approved plan or permit. For purposes of this clause, a 'municipality' means "a city, town or village" and an 'adjoining municipality' means "any municipality that is adjacent to the municipality in which the discharge occurred."

Amended clause (b)(2)(ii)(b) implements SPRTK's four hour notification requirement for the general public. This provision obligates owners and operators of POTWs and POSSs to notify the general public as soon as possible, but no later than four hours from discovery of discharges of untreated and partially treated sewage to surface water, except that this notification is not required for partially treated sewage discharged directly from a POTW that is in compliance with a DEC approved plan or permit.

Amended subparagraph (b)(2)(iii) of the final rule now provides that "[f]or combined sewer overflows for which real-time telemetered discharge monitoring and detection does not exist, owners and operators of POTWs and POSSs must expeditiously issue advisories to the general public through appropriate electronic media as determined by the department when, based on actual rainfall data or predictive models, enough rain has fallen that combined sewer overflows may discharge." Under this subparagraph, these advisories may be made on a waterbody basis rather than by individual combined sewer overflow points.

Amended Subdivision (b), Subparagraph (2)(iv) requires owners and operators of POTWs and POSSs to submit daily reports for each day that the discharge continues after the date that the initial discharge report is made. On the day the discharge terminates, a termination report may be made in lieu of the daily report. Daily and termination reports must be made within 24 hours of the previous report and include the same content as the initial discharge report, except that the DEC may modify or waive daily and termination reports on a case by case basis if acceptable alternate reporting methods are available. Daily and termination reports are not required for wet weather CSO events.

Subdivision (c) is amended to eliminate 24 hour oral reporting by POTW SPDES permittees of those discharges that are covered by the new two hour reporting. The other existing 24 hour oral reporting requirements for POTWs that are not affected by SPRTK have been left unchanged. Consistent with this approach, the final rule relocates subparagraph (1)(ii) to subparagraph (2)(i) within this subdivision, while excepting sewage discharges already reported within two hours. Furthermore, the current 24 hour oral reporting requirements for non-POTW SPDES permittees are not impacted by SPRTK and remain the same.

Subdivision (d) is amended to extend the requirement to file a five-day written incident report to owners and operators of POSSs; provides that these reports must be submitted to DEC (rather than the regional water engineer specifically); and requires that such reports be submitted on a form prescribed by DEC. Furthermore, this subdivision provides that DEC may waive the requirement for a five-day written incident report for both SPDES permittees and POSSs in situations where applicable reporting requirements have been satisfied. The final rule also now expressly specifies that five day written incident reports are not required for wet weather CSOs that are in compliance with a DEC approved plan or permit.

750-2.8

New Subdivision (g) is added to Section 750-2.8 to set forth operation and maintenance requirements for POSSs.

750-2.10

New Subdivision (j) is added to Section 750-2.10 to provide that owners of new or modified POSSs must comply with the registration requirements of Section 750.1.22 before construction and connection to any existing POTW or POSS.

Other Revisions

Various United States Environmental Protection Agency guidance documents and federal regulations are listed as references in current section 750-1.24. The rule renumbers this section to be section 750-1.25. Consequently, the rule also amends the various provisions throughout Subpart 750-1, Subpart 750-2, and Part 621 that cross reference this section to denote the proper renumbered section. In addition, the headings of Subpart 750-1 and 750-2 are amended to reference POSS Registrations.

The Table of Contents for Subpart 750-1 is also amended to reflect the addition of new section 750-1.22 and renumbering of subsequent sections of this Subpart. Furthermore, the Table of Contents for Subpart 750-2 is amended to modify the heading language for sections 750-2.6 and 750-2.7 to clarify the scope of the rule making. This heading language is also amended at the locations where these sections appear in the regulations.

Final rule as compared with last published rule: Nonsubstantive changes were made in sections 750-1.1, 750-1.2, 750-1.22, 750-2.7 and 750-2.8.

Text of rule and any required statements and analyses may be obtained from: Robert J. Simson, New York State Department of Environmental Conservation, 625 Broadway, 4th Floor, Albany, NY 12233-3505, (518) 402-8271, email: robert.simson@dec.ny.gov

Summary of Revised Regulatory Impact Statement

1. Statutory authority. The rule is authorized by Environmental Conservation Law (ECL) 17-0826-a, known as the Sewage Pollution Right to Know Act (SPRTK), which took effect on May 1, 2013 and expressly directs the Department of Environmental Conservation (DEC) to promulgate regulations that are necessary to implement this statute (ECL 17-0826-a (2), (4)). In addition to the specific statutory authority for the rule contained in SPRTK, DEC has general rule making authority pursuant to ECL 3-0301(2)(m) to effectuate the purposes of the ECL and authority to promulgate regulations with respect to the SPDES program in ECL 17-0303(3), 17-0803 and 17-0804.

SPRTK requires publicly owned treatment works (POTWs) and operators of publicly owned sewer systems (POSSs) to report untreated and partially treated sewage discharges to DEC and the local health department, or if there is none, the New York State Department of Health (NYSDOH) immediately, but in no case later than two hours from discovery of the discharge. Partially treated sewage discharged directly from a POTW that is in compliance with a DEC approved plan or permit does not have to be reported. Under existing regulations, two hour reporting is limited to discharges by State Pollutant Discharge Elimination System (SPDES) permittees (consisting primarily of POTWs and privately-owned commercial and industrial facilities) that would affect bathing areas during the bathing season, shellfishing or public drinking water intakes. Therefore, it is necessary to revise the regulations to be consistent with the new expansive two hour reporting obligation. SPRTK also requires POTWs and operators of POSSs to notify the chief elected official of the municipality where the discharge occurred and adjoining municipalities that may be affected of untreated and partially treated sewage discharges as soon as possible, but no later than four hours from discovering the discharge. The general public must also be notified within the same timeframe of any discharges that may present a public health threat. The rule implements the new reporting and notification obligations through language that aligns with SPRTK.

The rule defines a 'POSS' as "a sewer system owned by a municipality and which discharges to a POTW owned by another municipality" because under current regulations those sewer systems that discharge to a POTW owned by the same municipality are considered part of the POTW and are covered by the SPDES permit for the POTW. The rule requires owners of POSSs to register their facilities and notify DEC of a change in facility ownership or operation. Furthermore, owners and operators of POSSs are obligated to properly operate and maintain their facilities; file five day written incident reports; and allow DEC to conduct inspections and copy records.

2. Legislative objectives. The rule accords with the public policy objectives that the Legislature sought to advance by enacting SPRTK. One public policy objective of the Legislature was to protect the public health and the environment. Untreated and partially treated sewage contains pathogens that can cause acute illnesses.

3. Needs and benefits. The purpose of the rule is to implement ECL 17-0826-a which is intended to facilitate prompt responses to untreated and partially treated sewage discharges by state and local authorities and inform the public of these discharges so that they may avoid exposure. The rule helps protect the public health and environment by obligating owners and operators of POTWs and POSSs to report untreated and partially treated sewage discharges to DEC and health authorities immediately, but in no case later than two hours from discovery of the discharge and for each day until the discharge terminates, irrespective of the area impacted by the discharge. The rule also requires owners and operators of POTWs and POSSs to notify the municipality where the discharge occurred and adjoining municipalities that may be affected as soon as possible, but no later than four hours from discovery of surface water discharges. The same notification must also be made within the same timeframe to the general public for surface water discharges. Furthermore, the rule accords with the legislative objective to bring POSSs into DEC's regulatory program by requiring registrations for POSSs.

The rule does not obligate municipalities to upgrade the infrastructure of POTWs and POSSs or install monitoring equipment because SPRTK expressly limits reporting and notification requirements to discharges that are "knowable with existing systems and models" (ECL 17-0826-a (1)). The rule, however, does require owners and operators of POTWs and POSSs in specified situations to expeditiously issue CSO advisories. These advisories may be made on a waterbody basis.

Sewage discharge reports may be used by DEC to make decisions regarding closing of shellfish lands and prohibiting shellfish activities. DEC may also use reported information to take enforcement action against wastewater utilities, seeking penalties and permanent corrective measures. Furthermore, NYSDOH and local health departments may use reported information to assess the potential impact on public and private water supplies and to make determinations about regulating bathing beaches.

The rule is necessary to implement SPRTK's reporting and notification requirements and to establish a registration program for POSSs. The rule will benefit the public health and the environment by obligating owners and operators of POTWs and POSSs to report and disclose untreated and partially treated sewage discharges.

4. Costs. Some municipalities that have POTWs or POSSs (or their contractors) may need to upgrade their computer systems at a cost of approximately $1,000 to comply with the rule's electronic reporting and notification provisions and incur employee expenses to comply with the rule at the average pay rate for a POTW or POSS operator in the locality. Some local health departments are also expected to incur expenses of approximately $1,000 to upgrade their computer systems as well as minimal annual expenses associated with employee services. Furthermore, DEC will need to incur expenses to develop the electronic media to be used by owners and operators of POTWs and POSSs to carry out the rule's electronic reporting and notification requirements. DEC has currently selected the NY-ALERT system maintained by the Department of Homeland Security and Emergency Services (DHSES) for this purpose. The necessary upgrade to NY-ALERT is expected to cost DEC approximately $50,000. This estimate was supplied by Buffalo Computer Graphics, the NY-ALERT consultant for DHSES. Moreover, NYS Information Technology Services estimates that DEC will need to spend approximately $125,000 to upgrade its own computer systems so that it may post reported information expeditiously to its website as required by SPRTK. This rule imposes no cost on POTWs and POSSs to develop CSO reporting systems.

5. Local government mandates. The rule requires owners and operators of POTWs and POSSs to report untreated and partially treated sewage discharges to DEC and health authorities immediately, but in no case later than two hours from discovery of the discharge, irrespective of the area impacted by the discharge, except partially treated sewage discharged directly from a POTW that is in compliance with a DEC approved plan or permit. POTWs and POSSs include systems that are owned by "a county, town, city, village, district corporation, special improvement district, sewer authority or agency thereof."

The rule also obligates owners and operators of POTWs and POSSs to notify the chief elected official of the municipality where the discharge occurred and adjoining municipalities that may be affected of untreated and partially treated sewage discharges to surface water as soon as possible, but no later than four hours from discovery of the discharge and provides that these entities must also notify the general public of surface water discharges within the same timeframe. As with the two hour reporting requirement, four hour notifications will not apply to partially treated sewage discharged directly from a POTW that is in compliance with a DEC approved plan or permit. For purposes of the municipal notification, the rule defines 'municipality' to mean "a city, town or village," and an 'adjoining municipality' to be "any municipality that is adjacent to the municipality in which the discharge occurred." Furthermore, the rule requires owners of POSSs to register their facilities and notify DEC of a change in facility ownership or operation. Finally, the rule obligates owners and operators of POSSs to file five day written incident reports; properly operate and maintain their facilities; and allow DEC to conduct inspections and copy records.

6. Paperwork. The rule requires POTWs and POSSs to use the Department approved form of electronic media (currently NY-ALERT) to carry out all of the electronic reporting and notification provisions described in new 6 NYCRR 750-2.7(b)(2)(i)-(iv). Registrations for POSSs, five day written incident reports, and notifications of a change in POSS ownership or operation need to be completed on forms prescribed by or acceptable to DEC. The rule's reporting, notification and paperwork requirements are necessary to implement SPRTK which expressly mandates two hour reporting and four hour notifications and establishes POSSs as a new group of regulated entities.

7. Duplication. Under existing regulations, SPDES permittees are only required to report untreated and partially treated sewage discharges to DEC and the local health department within two hours of discovery if the discharge would affect a bathing area during the bathing season, shellfishing or a public drinking water intake, whereas untreated and partially

treated sewage discharges affecting other areas must be orally reported to DEC, in most instances, within 24 hours of discovery (6 NYCRR 750-2.7(b), (c)). Under the rule, two hour reporting by owners and operators of POTWs and POSSs generally applies to all untreated and partially treated sewage discharges that have been discovered, irrespective of the area impacted by the discharge. The rule prevents duplication by eliminating 24 hour oral reporting by POTW SPDES permittees of those discharges currently described in 6 NYCRR 750-2.7(c) that will now be covered by the new two hour reporting. NY-ALERT eliminates the current need to report separately to regulatory agencies listed in the POTW permit by replacing telephone and paper reporting with a single NY-ALERT report.

8. Alternatives. DEC considered requiring owners of POSSs to obtain SPDES permits rather than registrations. This alternative was rejected because registrations are sufficient to implement SPRTK's requirements for POSSs. DEC also considered requiring municipalities to develop their own systems to comply with SPRTK. This alternative was also rejected due to the many benefits of NY-ALERT. NY-ALERT will be easy for owners and operators of POTWs and POSSs to use and will allow them to satisfy all of the rule's electronic reporting and notification obligations at the same time through a common system. By using NY-ALERT, DEC will be able to track discharges, control computer system security, maintain data quality and satisfy its statutory obligations efficiently. NY-ALERT will also save municipalities the expense of developing their own systems. If DEC switches from NY-ALERT to another electronic system in the future, it will seek a system that provides similar attributes.

9. Federal standards. The rule exceeds federal standards for the same or similar subject areas. The rule extends the requirement to file five day written incident reports to owners and operators of POSSs which are not currently subject to federal or state five day reporting (40 CFR 122.41(l)(6); 6 NYCRR 750-2.7(d)). Furthermore, there is no federal requirement that owners and operators of POTWs and POSSs report untreated and partially treated sewage discharges to the government within two hours of discovery or that they notify the municipality where the discharge occurred, adjoining municipalities that may be affected, or the general public of discharges within four hours of discovery. Federal law also does not provide for expeditious issuance of CSO advisories by owners and operators of POTWs and POSSs. Finally, owners of POSSs are not required by federal law to obtain registrations or inform the government of a change in facility ownership or operation. The rule exceeds federal standards because SPRTK mandates the specific reporting and notification requirements imposed by this rule.

10. Compliance schedule. The rule takes effect upon filing of the rule with the secretary of state and publication of the notice of adoption in the State Register. Regulated entities will be able to comply with the rule as soon as it takes effect.

Revised Regulatory Flexibility Analysis

1. Effect of rule. All counties, towns, cities, villages, district corporations, special improvement districts, sewer authorities and agencies thereof in the state that own or operate a publicly owned treatment works (POTW) or a publicly owned sewer system (POSS) will be subject to the requirements of this rule. There are approximately 620 POTWs that will be affected, and the Department of Environmental Conservation (DEC) estimates that there are approximately 300 POSSs that will be affected. The rule extends regulatory oversight to POSSs as DEC does not currently regulate POSSs through its SPDES program. Cities, towns and villages that have POTWs or POSSs or that adjoin these entities will be beneficially affected by the rule as they will benefit from the notification requirements imposed by the rule. No small businesses will be affected by this rule.

2. Compliance requirements. The rule requires owners and operators of POTWs and POSSs to report untreated and partially treated sewage discharges to the DEC and the local health department, or if there is none, the New York State Department of Health immediately, but in no case later than two hours from discovery of the discharge. Partially treated sewage discharged directly from a POTW that is in compliance with a DEC approved plan or permit does not have to be reported. Owners and operators of POTWs and POSSs will also be required to continue reporting for each day after the initial report is made until the discharge terminates, except that on the day the discharge terminates, a report documenting termination of the previously reported discharge may be made in lieu of the daily report. The definition of 'municipality' in the current regulations (6 NYCRR 750-1.2 (a) (51)) will apply to the rule's definition of 'POSS' and continue to apply to the existing definition of 'POTW' which has been left unchanged. Thus, both POTWs and POSSs will include systems that are owned by a "county, town, city, village, district corporation, special improvement district, sewer authority or agency thereof." The rule, however, distinguishes a POSS from a POTW by defining a POSS as "a sewer system owned by a municipality and which discharges to a POTW owned by another municipality." In contrast, a POTW does not include a municipally owned sewer system unless the sewer system that discharges to the POTW is owned by the same municipality. The rule also describes the necessary content of two hour reports to the extent knowable with existing systems and models as prescribed by Environmental Conservation Law (ECL) 17-0826-a (1) (a)-(f).

Furthermore, the rule obligates owners and operators of POTWs and POSSs to notify the chief elected official, or authorized designee, of the municipality where the discharge occurred and the chief elected official, or authorized designee, of any adjoining municipality that may be affected of untreated and partially treated sewage discharges to surface water as soon as possible, but no later than four hours from discovery of the discharge. The municipal notification requirement does not apply to partially treated sewage discharged directly from a POTW that is in compliance with a DEC approved plan or permit. For purposes of the municipal notification requirement, a 'municipality' is limited to mean "a city, town or village" and an 'adjoining municipality' means "a municipality that is adjacent to the municipality in which the discharge occurred."

In addition, the rule requires owners and operators of POTWs and POSSs to notify the general public as soon as possible, but no later than four hours from discovery of discharges of untreated and partially treated sewage to surface water, except that no notification is required for partially treated sewage discharged directly from a POTW that is in compliance with a DEC approved plan or permit.

The rule does not require POTWs or POSSs to upgrade their infrastructure or install monitoring equipment. However, for combined sewer overflows for which real-time telemetered discharge monitoring and detection does not exist, the rule requires owners and operators of POTWs and POSSs to expeditiously issue advisories to the general public through appropriate electronic media as determined by the department when, based on actual rainfall data or predictive models, enough rain has fallen that combined sewer overflows may discharge. These advisories may be made on a waterbody basis rather than by individual combined sewer overflow points.

Under the rule, owners of POSSs need to obtain registrations for these facilities and notify DEC of a change in facility ownership or operation. Furthermore, owners and operators of POSSs are required to properly operate and maintain their facilities; file five day written incident reports (as currently required for POTW SPDES permittees and other SPDES permittees); and allow DEC to conduct inspections and copy records.

3. Professional services. Municipalities that own POTWs and POSSs may need to employ professional services to comply with the rule if existing employees are not sufficient to handle these duties. The services needed under the rule consist of two hour reporting and four hour notification of untreated and partially treated sewage discharges by owners and operators of POTWs and POSSs; continued reporting by owners and operators of POTWs and POSSs for each day after the initial report is made until the discharge terminates; expeditious advisories to the public by owners and operators of POTWs and POSSs regarding certain combined sewer overflows; filing five day written incident reports by owners and operators of POSSs (as currently required for POTW SPDES permittees and other SPDES permittees); registering of POSSs; and notifying DEC of a change in ownership or operation of POSSs.

4. Compliance costs. There may be some initial capital costs to municipalities (or their contractors) to comply with the rule. These costs would consist of upgrades to computer systems to meet the rule's electronic reporting and notification requirements if existing computer systems are not adequate. It is estimated that the cost to a municipality (or its contractor) to upgrade its computer system to comply with the rule would be a single expenditure of about $1,000. Approximately 140 smaller municipalities in rural areas (or their contractors) will need to upgrade their computer systems to comply with the rule. It may also be necessary for some municipalities to hire additional employees or to extend the work hours of current employees on an annual basis to comply with the rule if existing staff are unable to handle these duties during current work hours. The pay rate of a qualified employee to handle the duties associated with the rule is estimated to be $34.80 to $60.85 per hour. Some local health departments are also expected to incur expenses of approximately $1,000 to upgrade their computer systems as well as minimal annual expenses associated with employee services.

There are approximately 620 permitted POTWs and 300 identified POSSs statewide. DEC estimates that 890 municipalities own a single POTW or POSS and that the remaining 30 POTWs and POSSs are owned by municipalities that own more than one of these facilities. DEC anticipates that each POTW and POSS will have, on average, two (2) reportable sanitary sewer overflow events per year at a de minimis cost for reporting and record keeping and that 570 of these POTWs and POSSs will be located in smaller rural municipalities. Some communities, however, are expected to have a considerable number of combined sewer overflow events each year. The rule, however, imposes no cost on POTWs and POSSs to develop CSO reporting systems. DEC based the above labor

costs on use of the department approved alert system that will notify DEC, NYSDOH, local health departments, elected officials, adjoining municipalities, and the general public. The rule requires that POTWs and POSSs use the department approved form of electronic media (currently NY-ALERT) to carry out all of the rule's electronic reporting and notification requirements. The department acknowledges that initial capital costs and annual costs will vary depending on the municipality and the circumstances regarding each sewage release event.

5. Economic and technological feasibility. Compliance with the rule is expected to be feasible for local governments both economically and technologically. It is expected that local governments will have the ability to finance the costs associated with the rule. Two hour reporting to DEC and health authorities under the rule (as well as daily and termination reports) will be accomplished by electronic entry of information into the NY-ALERT system which will forward the entered information to DEC and health authorities. The NY-ALERT system will also accommodate four hour notification to the chief elected official of the municipality where the discharge occurred, adjoining municipalities that may be affected and the general public. The NY-ALERT system will not be technologically complex to use and will not require substantial upgrades to the existing computer systems of local governments. If DEC switches to a system other than NY-ALERT in the future, it will seek a system that provides similar attributes.

6. Minimizing adverse impact. The rule is designed to minimize adverse economic impacts to local governments within the context of the statutory mandate. The timeframes for two hour reporting and four hour notification in the rule match the timeframes set forth in the enabling statute (Environmental Conservation Law (ECL) section 17-0826-a). There are not expected to be any significant costs to local governments to comply with the rule. It is expected that local governments will be able to use existing computer systems to comply with the rule without needing substantial upgrades to these systems. The approaches for minimizing adverse economic impact suggested in SAPA 202-b (1) and other similar approaches were considered, but ECL 17-0826-a does not provide for exemptions from coverage, or for differing compliance or reporting requirements or timetables, based upon the resources of the local government. Therefore, no such approaches are contained in the rule. Nevertheless, the rule is written and will be implemented in a manner that minimizes adverse economic impacts to local governments within the parameters of the statutory authority.

7. Small business and local government participation. DEC has complied with SAPA 202 (b) (6) by assuring that small businesses and local governments have had an opportunity to participate in the rule making process. This occurred through posting notice of the proposed rule making on the DEC website; maintaining a public website informing public and private interests of the impact of the rule; and through interaction with owners and operators of POTWs and POSSs, environmental groups, and others. DEC also held Water Management Advisory Committee (WMAC) meetings on the rule which were attended by various stakeholders. Furthermore, the proposed rule was published in the State Register and the public was provided with an opportunity to comment on the proposed rule. The Department has reviewed the comments received and has completed an Assessment of Public Comments.

8. For rules that either establish or modify a violation or penalties associated with a violation. The entities regulated by the rule will have the ability to satisfy the requirements of the rule and thereby prevent the imposition of penalties as soon as the rule takes effect. No cure period or opportunity for ameliorative action beyond the language already contained in the rule is necessary to provide regulated entities with the ability to immediately comply with the rule.

Revised Rural Area Flexibility Analysis

1. Types and estimated numbers of rural areas. The rule will apply to all towns and villages in rural areas throughout the state that have publicly owned treatment works (POTWs) or publicly owned sewer systems (POSSs) or that adjoin communities that have POTWs or POSSs.

2. Reporting, recordkeeping and other compliance requirements; and professional services. The rule requires owners and operators of POTWs and POSSs to report untreated and partially treated sewage discharges to the New York State Department of Environmental Conservation (DEC) and the local health department, or if there is none, the New York State Department of Health immediately, but in no case later than two hours from discovery of the discharge, except partially treated sewage discharged directly from a POTW that is in compliance with a DEC approved plan or permit does not have to be reported. Owners and operators of POTWs and POSSs also need to continue reporting for each day after the initial report is made until the discharge terminates, except that on the day the discharge terminates, a report documenting termination of the previously reported discharge may be made in lieu of the daily report. Daily and termination reports must be made within 24 hours of the previous report. The definition of 'municipality' in the existing regulations (6 NYCRR 750-1.2 (a) (51)) will apply to the rule's definition of 'POSS' and continue to apply to the current definition of 'POTW' which has been left unchanged. Thus, both POTWs and POSSs will include systems that are owned by a "county, town, city, village, district corporation, special improvement district, sewer authority or agency thereof." The rule, however, distinguishes a POSS from a POTW by defining a POSS as "a sewer system owned by a municipality and which discharges to a POTW owned by another municipality." In contrast, a POTW does not include a municipally owned sewer system unless the sewer system that discharges to the POTW is owned by the same municipality. The rule also describes the necessary content of two hour reports to the extent knowable with existing systems and models as prescribed by Environmental Conservation Law (ECL) 17-0826-a (1) (a)-(f).

Furthermore, the rule obligates owners and operators of POTWs and POSSs to notify the chief elected official, or authorized designee, of the municipality where the discharge occurred and the chief elected official, or authorized designee, of any adjoining municipality that may be affected of untreated and partially treated sewage discharges to surface water as soon as possible, but no later than four hours from discovery of the discharge. The municipal notification requirement does not apply to partially treated sewage discharged directly from a POTW that is in compliance with a DEC approved plan or permit. For purposes of the municipal notification requirement, the rule defines a 'municipality' to be "a city, town or village" and an 'adjoining municipality' to mean "a municipality that is adjacent to the municipality in which the discharge occurred."

In addition, the rule requires owners and operators of POTWs and POSSs to notify the general public as soon as possible, but no later than four hours from discovery of discharges of untreated and partially treated sewage to surface water, except that no notification is required for partially treated sewage discharged directly from a POTW that is in compliance with a DEC approved plan or permit.

The rule does not require POTWs or POSSs to upgrade their infrastructure or install monitoring equipment. However, for combined sewer overflows for which real-time telemetered discharge monitoring and detection does not exist, the rule requires owners and operators of POTWs and POSSs to expeditiously issue advisories to the general public through appropriate electronic media as determined by the department when, based on actual rainfall data or predictive models, enough rain has fallen that combined sewer overflows may discharge. These advisories may be made on a waterbody basis rather than by individual combined sewer overflow points.

Finally, the rule establishes a registration program for POSSs; requires owners and operators of POSSs to properly operate and maintain their facilities; obligates owners and operators of POSSs to file five day written incident reports (as currently required for POTW SPDES permittees and other SPDES permittees); directs owners of POSSs to notify DEC of a change in ownership or operation of their facilities; and provides that DEC has authority to inspect POSSs and copy records. It may be necessary for municipalities in rural areas to employ professional services to carry out the responsibilities associated with the rule if existing staff are insufficient to handle these duties.

3. Costs. There may be some initial capital costs to municipalities or their contractors (including those in rural areas) to comply with the rule. These costs would consist of upgrades to computer systems to comply with the rule's electronic reporting and notification requirements if existing computer systems are not adequate. It is estimated that the cost to a municipality (or its contractor) to upgrade its computer system to comply with the rule would be a single expenditure of about $1,000. Approximately 140 municipalities (or their contractors) will need to upgrade their computer systems to comply with the rule, all of which are located in rural areas. It may also be necessary for some municipalities to hire additional employees or to extend the work hours of current employees on an annual basis to comply with the rule if existing staff are unable to handle these duties during current work hours. The rule imposes two hour reporting and four hour notification requirements on owners and operators of POTWs and POSSs (along with daily and termination reports); requires POTWs and POSSs to issue advisories for certain combined sewer overflows; establishes a registration program for POSSs and obligates them to file five day written incident reports; and requires owners of POSSs to notify DEC of a change in ownership or operation of the facility. The pay rate of an employee to handle the duties associated with the rule is estimated to be $34.80 to $60.85 per hour. Some local health departments are also expected to incur expenses of approximately $1,000 to upgrade their computer systems as well as minimal annual expenses associated with employee services.

There are approximately 620 permitted POTWs and 300 identified POSSs statewide. DEC estimates that 890 municipalities own a single POTW or POSS and that the remaining 30 POTWs and POSSs are owned by municipalities that own more than one of these facilities. DEC

anticipates that each POTW and POSS will have, on average, two (2) reportable sanitary sewer overflow events per year at a de minimis cost for reporting and record keeping and that 570 of these POTWs and POSSs will be located in rural areas. Some communities, however, are expected to have a considerable number of combined sewer overflow events each year. The rule, however, imposes no cost on POTWs and POSSs to develop CSO reporting systems. DEC based the above labor costs on use of the department approved alert system that will notify DEC, NYSDOH, local health departments, elected officials, adjoining municipalities, and the general public. The rule requires that POTWs and POSSs use the department approved form of electronic media (currently NY-ALERT) to carry out all of the rule's electronic reporting and notification requirements. The department acknowledges that initial capital costs and annual costs will vary depending on the municipality, including those in rural areas, and the circumstances regarding each sewage release event.

4. Minimizing adverse impact. There are no adverse environmental, public health or other impacts to rural areas associated with the rule. The rule imposes the same compliance, reporting and notification requirements (and associated timeframes) upon all owners and operators of POTWs and POSSs statewide. The rule is being carried out in this manner because the enabling legislation, ECL section 17-0826-a, does not distinguish between POTWs and POSSs located in rural areas and those located elsewhere. The approaches suggested by SAPA 202-bb (2) and other similar approaches were considered, but the statutory authority does not provide for exemptions and imposes the same requirements and timetables on all POTWs and POSSs throughout the state irrespective of their location.

5. Rural area participation. DEC complied with SAPA 202-bb (7) by providing public and private interests in rural areas with the opportunity to participate in the rule making process. This occurred through posting notice of the proposed rulemaking on the DEC website; maintaining a public website informing public and private interests of the impact of the rule; and through interaction with owners and operators of POTWs and POSSs, environmental groups, and others. The Department also held Water Management Advisory Committee (WMAC) meetings on the rule which were attended by various stakeholders. Furthermore, notice of the proposed rule was published in the State Register and the public was provided with an opportunity to comment on the proposed rule. The Department has reviewed the comments received and has completed an Assessment of Public Comments.

Revised Job Impact Statement

The rule will not have any substantial adverse impact on jobs or employment opportunities as apparent from the rule's nature and purpose. The rule reiterates and implements the requirements set forth in ECL section 17-0826-a (the Sewage Pollution Right to Know Act) and establishes a registration program for publicly owned sewer systems. As evident from its subject matter, the rule will not have any adverse impact on jobs or employment opportunities as the new requirements will not hinder jobs or employment opportunities, but rather could necessitate the hiring of additional personnel or the extension of work hours for current employees to meet the requirements of the rule.

Assessment of Public Comment

Introduction

In June of 2015, the New York State Department of Environmental Conservation ("DEC") filed a Notice of Proposed Rulemaking to revise provisions of 6 NYCRR Parts 750 and 621 to implement ECL 17-0826-a, known as the Sewage Pollution Right to Know Act ("SPRTK"). DEC accepted public comments from June 17, 2015 until the close of business on August 3, 2015. DEC re-filed the identical proposed rule on June 13, 2016 and accepted additional public comments from June 29, 2016 until the close of business on August 15, 2016.

The Assessment of Public Comments responds to all substantive comments received during both public comment periods. Changes were made to the proposed rule based upon comments received. The changes made are non-substantive and do not require a revised or new rule making. DEC recognizes the time, effort, and dedication taken by the individuals and groups who have participated in this process.

This is a Summary of the full Assessment of Public Comments which can be found at the DEC website: http://www.dec.ny.gov/regulations/39559.html. The comments have been consolidated and grouped by subject category.

I. CSO Reporting Requirements

A. Wet Weather CSO Reporting

Comments

A number of comments were received regarding wet weather CSO reporting and whether or not such reporting should be required under the rule.

Response

Consistent with SPRTK, the final rule requires CSOs to be reported by POTWs and POSSs immediately, but in no case later than two hours from discovery of the discharge. Likewise, four hour notifications to municipalities and the general public include CSOs. The final rule as modified in response to comments also requires expeditious issuance of CSO advisories by POTWs and POSSs based upon actual rainfall data or predictive models in situations where there is no monitoring equipment to detect CSOs when they may occur. These advisories may be made on a waterbody basis.

II. Implementation of the Law

A. Common Electronic Reporting System

Comments

Several commenters urged DEC to mandate use of the same reporting system to satisfy all of the rule's electronic reporting and notification requirements. Other commenters noted the difficulty associated with keeping track of the contact information for municipalities that are entitled to be notified of untreated and partially treated sewage discharges.

Response

In response to these comments, the rule has been changed to require use of the DEC approved electronic system (currently NY-Alert) for all of the rule's electronic reporting and notification requirements. In addition, the final rule now expressly provides that POTWs and POSSs are in compliance with the rule's electronic reporting and notification requirements if they register to use the DEC approved electronic system and submit timely and sufficient reports and notifications when required. NY-Alert has been developed so that anyone can sign up to receive alerts without charge. Therefore, it is unnecessary to obligate POTWs and POSSs to keep track of the contact information for municipalities.

B. Registration Program for POSSs

Comments

Some commenters wanted clarification whether the rule required POSSs to obtain registrations rather than SPDES permits. Commenters also wanted to ensure that POSSs obtained the required registrations.

Response

POSSs are only required to obtain registrations, not SPDES permits (See, new 750-1.22). POSS operation and maintenance requirements have been relocated to new 750-2.8(g). The final rule revises the headings of 6 NYCRR Subparts 750-1 and 750-2 to reference POSS registrations. DEC has determined that 98% of POTWs and an estimated 70% POSSs have registered with DEC to be authorized to report using NY-Alert.

C. Scope of Reporting Requirements

Comments

Some comments raised questions about what precise sewage releases needed to be reported citing examples of various scenarios and asking for clarification.

Response

Under SPRTK and these regulations, all untreated and partially treated sewage discharges to surface and ground water, irrespective of volume, must be reported immediately, but in no case later than two hours from discovery of the discharge, except that partially treated sewage discharged directly from a POTW that is in compliance with a DEC approved plan or permit does not need to be reported. The final rule clarifies that CSOs are considered to be untreated sewage for purposes of § 750-2.7 and that they are subject to two hour reporting and four hour notifications. The modified provision regarding CSO advisories also applies to those CSOs for which real-time telemetered discharge monitoring and detection does not exist. See, new 750-2.7(b)(2)(iii).

D. Implementation Costs

Comments

Some commenters asserted that DEC's assessment of the costs was too low, especially for employee services necessary to satisfy the requirements of the rule.

Response

DEC's assessment was based upon the average treatment plant operator hourly wage ($34.80 to $60.85 per hour) and the estimated time for reporting each SSO event. DEC estimates that POTWs and POSSs will have, on average, two SSO events per year. DEC acknowledges that some communities with combined sewer systems will have a considerable number CSO events each year and that the pay rate for a qualified individual to report these events will be comparable. Costs will vary based upon the municipality and circumstances associated with each sewage release event. There is no charge to use NY-Alert, but some regulated entities may also need to incur expenses of about $1,000 to purchase computers to use NY-Alert.

E. Enforcement

Comments

Some commenters wanted to know how penalties would be assessed for those that violated the new regulations.

Response

ECL Article 71, Title 19 contains penalty provisions under the law that apply to violations of SPRTK and the new regulations. DEC will refer to applicable enforcement guidance when pursuing enforcement.

III. Draft Regulations and Process
A. Steps Taken to Contain the Discharge
Comments
Commenters pointed out that under SPRTK, there is no requirement to report the steps taken to contain the discharge if the discharge is a wet weather combined sewer overflow discharge.
Response
The rule has been revised in response to these comments and now aligns more closely with SPRTK.
B. Timeframe for Reports and Notifications
Comments
Some commenters indicated that the language in the proposed rule should be revised to include the words "immediately, but in no case later than" for two hour reporting and "as soon as possible, but no later than" with respect to four hour notifications to match SPRTK.
Response
In response to these comments, the rule has been revised to include the above language.
C. Daily and Termination Reports
Comments
DEC received several comments about daily and termination reports. Issues raised by the comments included: CSOs should be exempted; who could make these reports; the timeframe for making reports; authority for the requirement; burdens associated with these reports; and concern that the public could misinterpret reports.
Response
In response to the comments, the final rule now specifies that daily and termination reports are not required for wet weather CSO events and that these reports must be made within 24 hours of the previous report. Daily and termination reports may be made by any authorized notifier and the notifier does not need to be the same person that made the initial discharge report or a previous daily report. Daily and termination reports are consistent with DEC's authority to promulgate rules and regulations that are necessary to implement SPRTK. Although there is some burden associated with these reports, DEC believes the reports provide an important benefit to DEC, health authorities and the general public since they track the status of a discharge until it terminates. The New York State Department of Health ("DOH") and local health departments will assess the public health risk.
D. Volume of the Discharge
Comments
Some commenters asserted that there should be a minimum volume for the reporting of untreated and partially treated sewage discharges.
Response
DEC considered these comments, but decided to leave the rule unchanged in this regard because SPRTK does not specify a minimum volume. DEC also consulted with DOH regarding this aspect of the rule and it was decided not to specify a minimum volume since even a small volume may present some public health threat.
E. Five Day Written Incident Reports
Comments
Some comments pointed out that there is no requirement that five day written incident reports be made for wet weather combined sewer overflow events.
Response
DEC agrees that under the prior version of 6 NYCRR 750-2.7(b)-(d) there is no requirement to file a five day written incident report for wet weather combined sewer overflows in accordance with a DEC approved plan or permit and that SPRTK does not change this aspect of the law. The final rule expressly clarifies that five day written incident reports are not required for wet weather CSO events that are in compliance with a DEC approved plan or permit. See, revised 750-2.7(d).
Comments
Some commenters stated that five day written incident reports should not be required if termination reports are required.
Response
DEC has not eliminated the requirement to file five day written incident reports. Termination reports do not have a legal certification statement. Under the final rule, DEC may waive five day written incident reports in certain circumstances.
IV. Clarification of Definitions
A. "Adjoining Municipality"
Comments
A number of commenters indicated that they believed that the scope of the municipal notification requirement was too narrow and urged DEC to extend the notification requirement to all potentially impacted downstream communities and media outlets. Other organizations commenting on behalf of the regulated community felt that the definition was too broad and that a notification should not be required for an upstream adjacent community, but rather only for downstream adjacent communities in the flow path of a sewage discharge.
Response
SPRTK requires notification to adjoining municipalities "that may be affected." Consistent with SPRTK, the final regulations add the words "that may be affected." The definition of "adjoining municipality" in the final rule has not been changed from the definition previously proposed in 750-2.7(b)(2)(ii)(a). Although only adjacent municipalities that may be affected by a surface water discharge must be notified, anyone including downstream communities that are not adjacent to the municipality where the discharge occurred and the media may sign up to receive alerts at no charge.
B. "Discharge"
Comments
Some commenters stated that clarification was needed regarding definition of the term "discharge."
Response
DEC believes that the definition of "discharge" in 6 NYCRR 750-1.2(a)(26), re-numbered to be 750-1.2(a)(28), is clear and has left this definition unchanged.
C. "Partially Treated Sewage" and "Untreated Sewage"
Comments
Some comments questioned the meaning of the definitions of "partially treated sewage" and "untreated sewage."
Response
DEC has revised the definitions of "partially treated sewage" and "untreated sewage" to clarify the meaning of these terms.
D. Impact of Definition of "Partially Treated Sewage"
Comments
Some commenters expressed concern about the previously proposed definition of "partially treated sewage." SPRTK does not require reporting for "partially treated sewage discharged directly from a POTW that is in compliance with a department approved plan or permit." These commenters indicated concern that any type of treatment, such as chlorination in the collection system, could have the unintended consequence of rendering a discharge occurring before the treatment plant something other than raw sewage, thereby placing it beyond the scope of SPRTK reporting.
Response
The final rule revises the definition of "partially treated sewage" to mean "sewage that is diverted around any portion of the treatment plant of a sewage treatment works after it enters the treatment plant." Furthermore, the final rule adds language to 750-2.7(b)(2) explaining that a CSO is considered to be untreated sewage for purposes of the requirement to make two hour reports, four hour notifications, and CSO advisories. This eliminates the concern raised by the comment by clarifying that a discharge before the treatment plant is considered untreated sewage rather than partially treated sewage even if there is some treatment in the collection system.

Department of Financial Services

NOTICE OF ADOPTION

Financial Statement Filings and Accounting Practices and Procedures

I.D. No. DFS-24-16-00004-A
Filing No. 985
Filing Date: 2016-10-19
Effective Date: 2016-11-09

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

Action taken: Amendment of Part 83 (Regulation 172) of Title 11 NYCRR.

Statutory authority: Financial Services Law, sections 202 and 302; Insurance Law, sections 107(a)(2), 301, 307, 308, 1109, 1301, 1302, 1308, 1404, 1405, 1407, 1411, 1414, 1501, 1505, 3233, 4117, 4233, 4239, 4301, 4310, 4321-a, 4322-a, 4327 and 6404; Public Health Law, sections 4403, 4403-a, 4403-c(12) and 4408-a; and L. 2002, ch. 599; L. 2008, ch. 311

Subject: Financial Statement Filings and Accounting Practices and Procedures.

Purpose: To update citations in Part 83 to the Accounting Practices and Procedures Manual as of March 2016.

Text or summary was published in the June 15, 2016 issue of the Register, I.D. No. DFS-24-16-00004-P.

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

Text of rule and any required statements and analyses may be obtained from: Sally Geisel, New York State Department of Financial Services, One State Street, New York, NY 10004, (212) 480-7608, email: sally.geisel@dfs.ny.gov

Revised Job Impact Statement

The Department of Financial Services ("Department") does not believe that this rulemaking will have any impact on jobs and employment opportunities, including self-employment opportunities. The amendment adopts the most recent edition published by the National Association of Insurance Commissioners ("NAIC") of the Accounting Practices and Procedures Manual As of March 2016 ("2016 Accounting Manual"), replacing the rule's current reference to the Accounting Practices and Procedures Manual As of March 2015.

All states require insurers to comply with the 2016 Accounting Manual, which establishes uniform practices and procedures for U.S.-licensed insurers. Adoption of the rule is necessary for the Department to maintain its accreditation status with the NAIC. The NAIC accreditation standards require that state insurance regulators have adequate statutory and administrative authority to regulate insurers' corporate and financial affairs, and that they have the necessary resources to carry out that authority.

Assessment of Public Comment

The agency received no public comment.

PROPOSED RULE MAKING
NO HEARING(S) SCHEDULED

Agent Training Allowance Subsidies

I.D. No. DFS-45-16-00003-P

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

Proposed Action: Amendment of section 12.2 (Regulation 50) of Title 11 NYCRR.

Statutory authority: Financial Services Law, sections 202 and 302; Insurance Law, sections 301 and 4228

Subject: Agent Training Allowance Subsidies.

Purpose: To update the limits of training allowance subsidies contained in 11 NYCRR 12 (Regulation 50).

Text of proposed rule: Section 12.2 is amended as follows:

Insurance Law Section 4228(e)(3)(G) provides that the superintendent shall periodically adjust the cumulative maximum training allowance subsidy limits to agents set forth in sections 4228(e)(3)(C) through (E) for agents with respect to the types of policies specified in Insurance Law Section 4228(a). Accordingly, the amounts as specified in section 4228(e)(3)(C) through (E) are adjusted as follows:

(a) Subparagraph (e)(3)(C): an agent may receive a training allowance subsidy, provided:

(1) the agent has earned less than [$26,000] *$30,000* from the sale of policies and contracts cumulatively during the three years prior to such agent's appointment; or

(2) less than 25 percent of the agent's earned income has been received from the sale of policies and contracts during each of the three years prior to appointment.

(b) Subparagraph (e)(3)(D): an agent may not receive a training allowance subsidy, on a cumulative basis:

(1) for an agent in the first year of the subsidies, the greater of [$37,000] *$43,000* and 60 percent of the first year commission limit;

(2) for an agent in the second year of the subsidies, the greater of [$58,000] *$67,000* and 60 percent of the first year commission limit in the first year and 40 percent of the first year commission limit in the second year;

(3) for an agent in the third year of such subsidies, the greater of [$71,000] *$82,000* and 60 percent of the first year commission limit in the first year and 40 percent of the first year commission limit in the second year, and 20 percent of the first year commission limit for the third year; and

(4) for an agent in the fourth year of such subsidies, the greater of [$78,000] *$90,000* and 60 percent of the first year commission limit in the first year and 40 percent of the first year commission limit in the second year, 20 percent of the first year commission limit in the third year, and 10 percent of the first year commission limit in the fourth year.

(c) Subparagraph (e)(3)(E): if the agent has earned at least [$86,000] *$99,000* of income during either of the two calendar years immediately preceding commencement of receipt of training allowance subsidies, a company may pay additional training allowance subsidies of [$1,300] *$1,500* to the agent during each of the first two years of this agent's receipt of training allowance subsidies for every [$2,600] *$3,000* of the earned income in excess of [$86,000] *$99,000*, provided that the cumulative training allowance subsidy does not exceed [$59,000] *$68,000* in the agent's first year of receipt of a training allowance subsidy and provided further that the agent receives not greater than [$78,000] *$90,000* in total training allowance subsidies.

Text of proposed rule and any required statements and analyses may be obtained from: James MacDonald, New York State Department of Financial Services, One State Street, New York, NY 10004, (212) 480-5331, email: james.macdonald@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.

Regulatory Impact Statement

1. Statutory authority: The Superintendent's authority to promulgate the First Amendment to Insurance Regulation 50 (11 NYCRR 12) derives from sections 202 and 302 of the Financial Services Law ("FSL") and sections 301 and 4228 of the Insurance Law.

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

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

Section 4228 of the Insurance Law contains limits on the amount of training allowance subsidies and other compensation an insurer may pay its agents. Insurance Law section 4228(e)(3)(G) provides that the Superintendent shall periodically adjust the cumulative maximum training allowance subsidy limits set forth in sections 4228(e)(3)(C) through (E).

2. Legislative objectives: Insurance Law sections 4228(e)(3)(C) through (E) describe the cumulative maximum training allowance limits an insurer may pay its agents. Section 4228 recognizes that the dollar amount of the training allowance limits contained in sections 4228(e)(3)(C) through (E) would eventually become insufficient due to inflation. Therefore, section 4228(e)(3)(G) provides that the Superintendent shall periodically adjust these cumulative maximum training allowance limits. Insurance Regulation 50, which was promulgated on September 28, 2007, increased these limits to reflect the rise in costs due to inflation since the January 1, 1998 effective date of Insurance Law section 4228.

3. Needs and benefits: More than eight years have passed since the promulgation of Insurance Regulation 50, which increased the training allowance limits that were initially set by statute in 1998 to adjust for inflation. Because inflation has caused costs to rise over the years, the cumulative maximum training allowance limits on the amount an insurer can pay its new and inexperienced agents set by the current regulation have become insufficient. This amendment, permitting an increase in these limits, is necessary to adjust for inflationary increases that have arisen since the regulation was first promulgated on September 28, 2007.

4. Costs: The proposed amendment increases the amount of training allowance subsidies an insurer authorized to do business in New York State may pay. Costs to a life insurer may increase moderately, if the insurer opts to increase the training allowance subsidy. However, an insurer that now pays subsidies under the lower limits contained in Insurance Regulation 50 or Insurance Law sections 4228(e)(3)(C) through (E) does not have to increase its training allowance and does not have to make any new filing with the Department. Thus, an insurer that does not wish to increase training allowance subsidies will not experience any cost increase.

The Department does not anticipate any increased cost impact on it by this amendment, and the amendment may reduce Department costs to the extent that it reduces the number of filings made under Insurance Law section 4228(e)(3)(H), requiring an insurer to seek approval from the Superintendent in order to obtain a deviation from the current limits. There are no anticipated costs to other government agencies or local governments.

While there is a possibility that costs to insureds may increase, it is anticipated that any increase will be offset by lower per policy administrative costs. The higher permitted training allowances should allow insurers to hire more able agents and sell more policies, which should result in the decline of per policy administrative costs. The expectation is that this decline in administrative costs will outweigh the increase in costs due to the higher training allowance payments.

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

6. Paperwork: The amendment imposes no new reporting requirements.

7. Duplication: The amendment does not duplicate any existing laws or regulations.

8. Alternatives: The Department circulated a draft of this proposal to the Life Insurance Council of New York ("LICONY") and National Association of Insurance and Financial Advisors – New York State ("NAIFA"), which represent the affected insurers and insurance agents. The Department received no written comments from either of the associations. However, LICONY, NAIFA, and life insurers have actively advocated that the Department raise the limits and thus fully support this amendment because they believe that it would provide much needed incentives for new agents.

The Department believes that there are no other viable alternatives to accomplish the objective of this amendment, to increase the life insurance agent training allowance limits to adjust for inflation. Furthermore, Insurance Law section 4228(e)(3)(G) sets forth the method to adjust the limits for inflation, which is to amend the limits by regulation.

9. Federal standards: There are no federal standards in this subject area.

10. Compliance schedule: The amendment, if adopted, will be effective immediately. Since this proposal lessens the restrictions on paying agent training allowance subsidies, the promulgation of this amendment will not adversely impact any training allowance program now in effect.

Regulatory Flexibility Analysis

1. Small businesses: The Department of Financial Services ("Department") finds that this rule will not impose any adverse economic impact on small businesses and will not impose any reporting, recordkeeping or other compliance requirements on small businesses. The basis for this finding is that this rule is directed at all life insurers authorized to do business in New York State, none of which fall within the definition of "small business" as defined in section 102(8) of the State Administrative Procedure Act. The Department has reviewed filed reports on examination and annual statements of authorized life insurers and found that none of them fall within the definition of a "small business", because there are none that are both independently owned and have less than one hundred employees. Furthermore no life insurance agent affected by this rule who meets the definition of a "small business" will undergo any additional reporting, recordkeeping or other compliance requirements. Any such reporting, recordkeeping or other compliance requirements are borne by the insurer who makes the training allowance payments. The only effect on the agent is to receive an increased level of training allowance payments.

2. Local governments: The amendment does not impose any impacts, including any adverse impacts, or any reporting, recordkeeping, or other compliance requirements on any local governments.

Rural Area Flexibility Analysis

1. Types and estimated number of rural areas: Insurance companies and insurance agents covered by the rule do business in every county in this state, including rural areas as defined under State Administrative Procedure Act section 102(10).

2. Reporting, recordkeeping and other compliance requirements; and professional services: This amendment does not change the reporting, recordkeeping and other compliance requirements that have been in effect since the adoption of 11 NYCRR 12 (Insurance Regulation 50) in September 2007.

3. Costs: The proposed amendment increases the amount of training allowance subsidies an insurer authorized to do business in New York State may pay. Costs to a life insurer may increase moderately, if the insurer opts to increase the training allowance subsidy. However, an insurer that now pays subsidies under the lower limits contained in Insurance Regulation 50 or Insurance Law sections 4228(e)(3)(C) through (E) does not have to increase its training allowance and does not have to make any new filing with the Department of Financial Services ("Department"). Thus, an insurer that does not wish to increase training allowance subsidies will not experience any cost increase.

The Department does not anticipate any increased cost impact on it by this amendment, and the amendment may reduce Department costs to the extent that it reduces the number of filings made under Insurance Law section 4228(e)(3)(H), requiring an insurer to seek approval from the Superintendent in order to obtain a deviation from the current limits.

While there is a possibility that costs to insureds may increase, it is anticipated that any increase will be offset by lower per policy administrative costs. The higher permitted training allowances should allow insurers to hire more able agents and sell more policies, which should result in the decline of per policy administrative costs. The expectation is that this decline in administrative costs will outweigh the increase in costs due to the higher training allowance payments.

4. Minimizing adverse impact: This amendment uniformly affects insurers and insurance agents that are located in both rural and non-rural areas of New York State. The rulemaking should not impose any adverse impact on rural areas.

5. Rural area participation: Prior to proposing this amendment, the Department had conversations with the National Association of Insurance and Financial Advisors – New York State ("NAIFA") and the Life Insurance Council of New York ("LICONY"), which represent affected insurers and insurance agents, some of which are located in rural areas. The Department circulated a draft of this proposal to both associations and received no written comments from them. However, LICONY, NAIFA, and life insurers have actively advocated that the Department raise the limits and thus fully support this amendment because they believe that it would provide much needed incentives to attract new agents. Also, public and private interests in rural areas will have an additional opportunity to participate in the rulemaking process once the proposed rule is published in the State Register and posted on the Department's website.

Job Impact Statement

The amendment to Insurance Regulation 50 should either have a positive or no impact on jobs and employment opportunities, including self-employment opportunities, in New York State. This amendment allows life insurers to increase limits on training allowance subsidies. As a result, employment as a life insurance agent may become more desirable, which may lead to more people taking the agent licensing examination, a greater number of license applications being filed, the hiring of new agents, and greater enrollment in required continuing education classes, all of which may require the hiring of additional employees or create new employment opportunities to provide more of those services.

New York State Gaming Commission

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Permit Jockeys to Wear Trade Logos and Own Name on Jockey Clothing

I.D. No. SGC-45-16-00002-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 4041.6 of Title 9 NYCRR.

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

Subject: Permit jockeys to wear trade logos and own name on jockey clothing.

Purpose: To preserve the safety and integrity of pari-mutuel racing while generating reasonable revenue for the support of government.

Text of proposed rule: Section 4041.6 of 9 NYCRR would be amended as follows:

§ 4041.6. Wearing of advertising or promotional material.

(a) A jockey may not wear any clothing other than the usual helmet, silks, pants, boots and gloves nor display on such clothing any material other than:

(1) a logo of the Jockeys' Guild that does not exceed 10 square inches;

(2) a logo of the Permanently Disabled Jockeys Fund that does not exceed 10 square inches; and

(3) authorized advertising or promotional material [without] *worn with* permission of the stewards.

(b) Advertising or promotional material may be worn by a jockey provided such jockey has filed with the stewards and the race track in a form furnished by the commission at least 24 hours before the applicable race, a description of the advertising or promotional material to be worn with the name of the brands and sponsors and referring to a written authorization by the managing owner of the horse to be ridden which authorization is also filed.

(c) Notwithstanding the foregoing when a corporation, company or any other entity sponsors a race or raceday at the track, the track may prohibit such advertising or promotional material from being worn that represents a competitor of such sponsoring corporation, company or other entity. In this regard the track shall notify the stewards of such prohibition at least two hours before the first race of the day, and the jockey upon arrival in the jockeys' enclosure.

(d) A jockey may display the jockey's name on the pants and the rear of the helmet, only if the name:

(1) is the jockey's legal name;

(2) appears on any combination of the outside of the right thigh, the

outside of the left thigh, the rear of the pants between the waistline and the base of the spine or the rear of the helmet;

(3) does not exceed 32 square inches on the outside of each thigh, 10 square inches on the rear of the pants and six square inches on the rear of the helmet; and

(4) appears in black lettering.

Text of proposed rule and any required statements and analyses may be obtained from: Kristen M. Buckley, New York State Gaming Commission, 1 Broadway Center, PO 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 ("Racing Law") Sections 103(2) and 104(1, 19). Under Section 103(2), the Commission is responsible for supervising, regulating and administering 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.

2. Legislative objectives: To preserve the safety and integrity of pari-mutuel racing while generating reasonable revenue for the support of government.

3. Needs and benefits: This rule making is needed to permit the limited use of certain advertising materials on the clothing of jockeys.

The current rules provide that jockeys may not wear any advertising or promotional material without the permission of the stewards. As a result, jockeys are required to obtain permission to wear the standard logos of their trade and to display their own names in a limited fashion on their clothing. It would be more sensible to permit such to be displayed without requiring stewards' permission.

The proposal would amend 9 NYCRR § 4041.6(a) to allow a jockey to wear the logos of the Jockeys' Guild and the Permanently Disabled Jockeys Fund, provided that each logo does not exceed 10 square inches in size.

The proposal would add a new subdivision (d) to 9 NYCRR § 4041.6 to allow a jockey to display his or her legal name on the pants and helmet of the jockey. The name must be in black lettering and be limited in location and size. The permissible locations would be the outer thighs, the rear waist area, and the back of helmet. The size limitations would be 32, 10 and six square inches, respectively, for each display of the jockey's name.

The proposal reflects the input and support of Jockeys' Guild, Inc., a trade organization that represents jockeys who compete in New York horse racing.

4. Costs:

(a) Costs to regulated parties for the implementation of and continuing compliance with the rule: These amendments will not add any new mandated costs to the existing rules. The jockey will not be required to wear the additional materials that are permitted on the jockey's clothing.

(b) Costs to the agency, the state and local governments for the implementation and continuation of the rule: None. The amendments will not add any new costs. There will be no costs to local government because the Commission is the only governmental entity authorized to regulate pari-mutuel harness racing.

(c) The information, including the source(s) of such information and the methodology upon which the cost analysis is based: N/A.

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

6. Paperwork: There will be no additional paperwork.

7. Duplication: No relevant rules or other legal requirements of the state and/or federal government exist that duplicate, overlap or conflict with this rule.

8. Alternatives: The Commission considered requiring the Stewards to grant their permission for these displays. This was rejected as inefficient and unnecessary.

9. Federal standards: There are no minimum standards of the Federal government for this or a similar subject area.

10. Compliance schedule: The Commission believes that regulated persons will be able to achieve compliance with the rule upon adoption of this rule.

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.

The proposed amendment permits jockeys to wear their trade organization logos (the Jockeys' Guild and the Permanently Disabled Jockeys Fund) and their own legal names on their clothing without having to gain the permission of the race stewards. The logos and names must be limited in size or location. The amendments will make the wearing of such neutral displays more efficient than under the current rule that requires a jockey obtain advance permission from the stewards.

This rule will not impose an adverse economic impact or reporting, record keeping, or other compliance requirements on small businesses in rural or urban areas or on employment opportunities. No local government activities are involved.

PROPOSED RULE MAKING
NO HEARING(S) SCHEDULED

Anti-Stacking of NSAIDs and Diclofenac Made a 48 Hour NSAID

I.D. No. SGC-45-16-00004-P

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

Proposed Action: Amendment of sections 4043.2(e) and 4120.2(e) of Title 9 NYCRR.

Statutory authority: Racing, Pari-Mutuel Wagering and Breeding Law, sections 103(2), 104(1), (19), 301(1), (2) and 902(1)

Subject: Anti-stacking of NSAIDs and diclofenac made a 48 hour NSAID.

Purpose: To enable the Commission to preserve the integrity of pari-mutuel racing while generating reasonable revenue for the support of government.

Text of proposed rule: Subdivision (e) of section 4043.2 of 9 NYCRR would be amended as follows:

§ 4043.2. Restricted use of drugs, medication and other substances.

* * *

(e) The following substances are permitted to be administered by any means until 48 hours before the scheduled post time of the race in which the horse is to compete:

* * *

(14) *no more than one of* the following nonsteroidal anti-inflammatory drugs ([NSAID's] *NSAIDs*): [Phenylbutazone (e.g., Butazolidin)] *diclofenac,* [Flunixin] *flunixin* (e.g., Banamine), *ketoprofen (e.g., Orudis),* meclofenamic acid (*e.g.,* Arquel), naproxen (e.g., Naprosyn, Equiproxen), [Ketoprofen (e.g., Orudis)] *and phenylbutazone (e.g., Butazolidin)*;

* * *

Subdivision (e) of section 4120.2 of 9 NYCRR would be amended as follows:

§ 4120.2. Restricted use of drugs, medication and other substances.

* * *

(e) The following substances are permitted to be administered by any means until 48 hours before the scheduled post time of the race in which the horse is to compete:

* * *

(9) hormones and*, except for any formulation of methylprednisolone,* non-anabolic steroids, e.g., progesterone, estrogens, chorionic gonadatropin, glucocorticoids, except in joint injections as restricted in subdivision (i) of this section;

* * *

(14) *no more than one of the* following nonsteroidal anti-inflammatory drugs ([NSAID's] *NSAIDs*): [Phenylbutazone (e.g., Butazolidin)] *diclofenac*, [Flunixin] *flunixin* (e.g., Banamine), *ketoprofen (e.g., Orudis),* meclofenamic acid (*e.g.,* Arquel), naproxen (e.g., Naprosyn, Equiproxen), [Ketoprofen (e.g., Orudis)] *and phenylbutazone (e.g., Butazolidin)*;

* * *

(18) sulfonamide drugs (e.g., Sulfa; [and]

(19) . . . [.]*; and*

* * *

[(21) notwithstanding paragraph (9) of this subdivision, the corticosteroid methylprednisolone (e.g., Depo Medrol) is not a substance that is permitted to be administered by any means until 48 hours before the scheduled post time of the race in which the horse is to compete.]

* * *

Text of proposed rule and any required statements and analyses may be obtained from: Kristen M. Buckley, New York State Gaming Commission, 1 Broadway Center, PO 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 ("Racing Law") Sections 103(2), 104(1, 19), 301(1, 2) and 902(1). Under Section 103(2), the Commission is responsible for supervising, regulating and administering 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. Under Section 301, which applies to only harness racing, the Commission is authorized to supervise generally all harness race meetings and to adopt rules to prevent the circumvention or evasion of its regulatory purposes and provisions, and is directed to adopt rules to prevent horses from racing under the influence of substances affecting their speed. Section 902(1) authorizes the Commission to promulgate rules and regulations for an equine drug testing program that assures the public's confidence and continues the high degree of integrity in pari-mutuel racing and to impose administrative penalties for racing a drugged horse.

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

3. Needs and benefits. This rule making is necessary to amend the Commission's rules that permit the use of more than one non-steroidal anti-inflammatory drug ("NSAID") within one week of racing and to adjust the Commission's restricted time period governing the administration of the NSAID diclofenac to be consistent with regulatory thresholds.

The current rules permit the use of various approved NSAIDs to treat a horse until 48 hours before racing, 9 NYCRR §§ 4043.2(e)(14) (thoroughbred) and §§ 4120.2(e)(14) (harness), which is an exception to the general rules that no drugs may be used for one week before racing, 9 NYCRR 4043.2(h) (thoroughbred) and 4120.2(n) (harness). The purpose of the 48-hour restricted time period has been to allow more veterinary care for conditions of mild inflammation, but with treatments that cannot affect a horse's pre-race veterinary examination or race performance. The effect of an NSAID, when administered singly, is known to dissipate by race day.

NSAIDs can be administered in combination, however, to increase the potency and duration of effect of each drug. Two NSAIDs administered in small, sub-clinical doses inside of 48 hours before the race, for example, can have a synergistic effect that makes them efficacious on race day. The testing laboratory cannot distinguish such an impermissible administration from two clinical doses given 48 hours before racing. Also, clinical doses given in combination more than 48 hours before racing can be efficacious for more than two days (i.e., on race day).

The administration of more than one kind of NSAID is not necessary to provide good veterinary care to a horse in active racing.

The proposal would amend the governing rules to allow only one NSAID to be used within one week of racing. As amended, the rules would permit the use of NSAIDs as originally intended, namely, to provide therapeutic relief to a horse while ensuring the administrations are neither efficacious on race day nor endanger the horse, jockey, driver, or race integrity.

The proposal would also amend subdivision (e) of sections 4043.2 and 4120.2 to add diclofenac to the list of permissible NSAIDs. This change will make the restricted time period for diclofenac, which is currently impermissible for one week before racing, consistent with the regulatory threshold that the Commission has adopted for diclofenac. A 48-hour restricted time period will provide an assurance to thoroughbred horsepersons that compliance would protect them from violation of such threshold.

Finally, the proposal makes various changes in style to clarify the rules.

4. Costs:

(a) Costs to regulated parties for the implementation of and continuing compliance with the rule: These amendments will not add any new mandated costs to the existing rules. There is no cost to the regulated party by administering only one NSAID to a horse, rather than administering a combination of NSAIDs.

(b) Costs to the agency, the state and local governments for the implementation and continuation of the rule: None. The amendments will not add any new costs. There will be no costs to local government because the Commission is the only governmental entity authorized to regulate pari-mutuel harness racing.

(c) The information, including the source(s) of such information and the methodology upon which the cost analysis is based: N/A.

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

6. Paperwork: There will be no additional paperwork.

7. Duplication: No relevant rules or other legal requirements of the state and/or federal government exist that duplicate, overlap or conflict with this rule.

8. Alternatives: The Commission considered the adoption of a complex set of interlocking threshold values for all permissible NSAIDs, whose only advantage would purportedly be to permit more than one NSAID to be administered during the week before a horse races, but rejected this alternative because of its needless complexity and permissiveness.

9. Federal standards: There are no minimum standards of the Federal government for this or a similar subject area.

10. Compliance schedule: The Commission believes that regulated persons will be able to achieve compliance with the rule upon adoption of this rule.

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.

These proposals would limit the administration of non-steroidal anti-inflammatory drugs ("NSAIDs") to using only one kind of NSAID within one week of racing. The practice of using multiple such drugs is not necessary for good veterinary care and may endanger the horse and jockey or driver, as well as race integrity. The proposal would also approve the use of another NSAID, known as diclofenac. These amendments will serve to enhance the health and safety of racehorses and the drivers or jockeys on race day.

This rule will not impose an adverse economic impact or reporting, record keeping, or other compliance requirements on small businesses in rural or urban areas or on employment opportunities. No local government activities are involved.

State Liquor Authority

NOTICE OF WITHDRAWAL

Updated Price Posting Rules, License Durations, and Recordkeeping Requirements, and Rescinding of Whiskey Dividend Rules

I.D. No. LQR-17-16-00002-W

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

Action taken: Notice of proposed rule making, I.D. No. LQR-17-16-00002-P, has been withdrawn from consideration. The notice of proposed rule making was published in the *State Register* on April 27, 2016

Subject: Updated price posting rules, license durations, and recordkeeping requirements, and rescinding of whiskey dividend rules.

Reason(s) for withdrawal of the proposed rule: The authority received an industry objection that the addition of a 30 day cutoff for breakage retention didn't go far enough.

Public Service Commission

NOTICE OF ADOPTION

Submetering of Electricity

I.D. No. PSC-26-15-00016-A
Filing Date: 2016-10-19
Effective Date: 2016-10-19

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 39 Plaza Housing Corporation's (39 Plaza) petition to submeter electricity at 39 Plaza Street West, 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 39 Plaza's petition to submeter electricity at 39 Plaza Street West, Brooklyn, New York.

Substance of final rule: The Commission, on October 13, 2016, adopted an order approving 39 Plaza Housing Corporation's petition to submeter electricity at 39 Plaza Street West, 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-0300SA1)

NOTICE OF ADOPTION

Submetering of Electricity

I.D. No. PSC-20-16-00007-A

Filing Date: 2016-10-19

Effective Date: 2016-10-19

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 BAM GO Developers LLC's (BAM GO) notice of intent to submeter electricity at 250 Ashland Place, 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 BAM GO's notice of intent to submeter electricity at 250 Ashland Place, Brooklyn, New York.

Substance of final rule: The Commission, on October 13, 2016, adopted an order approving BAM GO Developers LLC's notice of intent to submeter electricity at 250 Ashland Place, 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.

(16-E-0120SA1)

NOTICE OF ADOPTION

Submetering of Electricity

I.D. No. PSC-21-16-00007-A

Filing Date: 2016-10-19

Effective Date: 2016-10-19

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 Affinity Potsdam Properties, LLC's (Affinity) notice of intent to submeter electricity at 206 Outer Main Street, Building #67, Potsdam, 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 Affinity's notice of intent to submeter electricity at 206 Outer Main Street, Building #67, Potsdam, New York.

Substance of final rule: The Commission, on October 13, 2016, adopted an order approving Affinity Potsdam Properties, LLC's notice of intent to submeter electricity at 206 Outer Main Street, Building #67, Potsdam, 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.

(16-E-0225SA1)

NOTICE OF ADOPTION

Submetering of Electricity

I.D. No. PSC-23-16-00008-A

Filing Date: 2016-10-19

Effective Date: 2016-10-19

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 135 West 52nd Street Condominium's (135 West) notice of intent to submeter electricity at 135 West 52nd Street, New York, New York.

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

Subject: Submetering of electricity.

Purpose: To approve 135 West's notice of intent to submeter electricity at 135 West 52nd Street, New York, New York.

Substance of final rule: The Commission, on October 13, 2016, adopted an order approving 135 West 52nd Street Condominium's notice of intent to submeter electricity at 135 West 52nd Street, New York, 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.

(16-E-0265SA1)

NOTICE OF ADOPTION

Submetering of Electricity

I.D. No. PSC-26-16-00020-A

Filing Date: 2016-10-19

Effective Date: 2016-10-19

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 QPS 23-10 Development LLC's (QPS) notice of intent to submeter electricity at 23-01 42nd Street, Long Island City, 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 QPS' notice of intent to submeter electricity at 23-01 42nd Street, Long Island City, New York.

Substance of final rule: The Commission, on October 13, 2016, adopted an order approving QPS 23-10 Development LLC's notice of intent to submeter electricity at 23-01 42nd Street, Long Island City, 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.

(16-E-0320SA1)

PROPOSED RULE MAKING
NO HEARING(S) SCHEDULED

Proposed Debt Financing for CCI Rensselaer LLC

I.D. No. PSC-45-16-00007-P

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

Proposed Action: The Commission is considering a Petition filed by CCI Rensselaer LLC requesting approval for proposed debt financing.

Statutory authority: Public Service Law, sections 4(1), 66(1) and 69

Subject: Proposed debt financing for CCI Rensselaer LLC.

Purpose: To consider proposed debt financing for CCI Rensselaer LLC.

Substance of proposed rule: The New York State Public Service Commission is considering a Verified Petition filed by CCI Rensselaer LLC (CCI Rensselaer) under Section 69 of the Public Service Law. In the Verified Petition, CCI Rensselaer is requesting an order authorizing a planned debt financing in an amount not to exceed $350 million to support facility improvements and for other lawful purposes. 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-0552SP1)

PROPOSED RULE MAKING
NO HEARING(S) SCHEDULED

Petition to Use a Commercial Electric Meter

I.D. No. PSC-45-16-00008-P

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

Proposed Action: The Public Service Commission is considering a petition filed by Landis+Gyr, Inc. on September 22, 2016, to use the Landis+Gyr S4X Commercial Meter with Gridstream Series 5 RF Mesh IP AMI, in commercial electric meter applications.

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

Subject: Petition to use a commercial electric meter.

Purpose: To consider the petition to use the Landis+Gyr S4X Commercial Meter with Gridstream Series 5 RF Mesh IP AMI.

Substance of proposed rule: The Public Service Commission is considering a petition filed by Landis+Gyr, Inc., on September 22, 2016, to use the Landis+Gyr S4x Commercial Meter platform with Gridstream Series 5 RF Mesh IP AMI, 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-0548SP1)

PROPOSED RULE MAKING
NO HEARING(S) SCHEDULED

Petition to Use a Residential Gas Meter

I.D. No. PSC-45-16-00009-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 Consolidated Edison Company of New York, Inc. on September 21, 2016, to use the Elster/American AT210TC gas meter in residential applications.

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

Subject: Petition to use a residential gas meter.

Purpose: To consider the petition to use the Elster/American AT210TC gas meter in residential applications.

Substance of proposed rule: The Public Service Commission is considering a petition filed by Consolidated Edison Company of New York, Inc., to use the Elster-American AT210TC gas meter, in residential gas 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-G-0541SP1)

PROPOSED RULE MAKING
NO HEARING(S) SCHEDULED

Petition to Use a Residential Gas Meter

I.D. No. PSC-45-16-00010-P

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

Proposed Action: The Public Service Commission is considering a petition filed by Consolidated Edison Company of New York, Inc. on September 21, 2016, to use the Sensus RT230TC gas meter in residential applications.

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

Subject: Petition to use a residential gas meter.

Purpose: To consider the petition to use the Sensus RT230TC temperature compensated gas meter in residential applications.

Substance of proposed rule: The Public Service Commission is consider-

ing a petition filed by Consolidated Edison Company of New York, Inc., to use the Sensus RT230TC gas meter, in residential gas 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-G-0542SP1)

PROPOSED RULE MAKING
NO HEARING(S) SCHEDULED

Petition to Use a Residential Electric Meter

I.D. No. PSC-45-16-00011-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 Landis+Gyr, Inc., on September 22, 2016, to use the Landis+Gyr Focus AXe Residential Meter with Gridstream Series 5 RF Mesh IP AMI, in residential electric metering applications.

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

Subject: Petition to use a residential electric meter.

Purpose: To consider the petition to use the Landis+Gyr Focus AXe Meter with Gridstream Series 5 RF Mesh IP AMI.

Substance of proposed rule: The Public Service Commission is considering a petition filed by Landis+Gyr, Inc., on September 22, 2016, to use the Landis+Gyr Focus AXe Residential Meter platform, with Gridstream Series 5 RF Mesh IP AMI, 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-0549SP1)

PROPOSED RULE MAKING
NO HEARING(S) SCHEDULED

Disposition of Property Tax Benefits

I.D. No. PSC-45-16-00012-P

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

Proposed Action: The Commission is considering a request by Consolidated Edison of New York, Inc. and Orange & Rockland Utilities, Inc. proposing the disposition of certain property tax benefits.

Statutory authority: Public Service Law, sections 65 and 66

Subject: Disposition of property tax benefits.

Purpose: To consider the disposition of property tax benefits.

Substance of proposed rule: The Public Service Commission is considering a petition by Consolidated Edison Company of New York, Inc. (Con Edison) and Orange and Rockland Utilities, Inc. (O&R) regarding the disposition of certain future property tax benefits. The Companies have proposed to retain 14% of the estimated future property tax savings from a settlement with the Town of Ramapo or $1,512,600 for Con Edison and $888,500 for O&R 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-0300SP2)

PROPOSED RULE MAKING
NO HEARING(S) SCHEDULED

Financial Incentives to Create Customer Savings and Develop Market-Enabling Tools, with a Focus on Outcomes and Incentives

I.D. No. PSC-45-16-00013-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 the Interconnection Survey Process and Proposed Earnings Adjustment Mechanism proposed by the Joint Utilities, to inform each utility's Earning Adjustment Mechanisms and other efforts in Reforming the Energy Vision.

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

Subject: Financial incentives to create customer savings and develop market-enabling tools, with a focus on outcomes and incentives.

Purpose: To consider the Interconnection Survey Process and Proposed Earnings Adjustment Mechanism.

Substance of proposed rule: The Public Service Commission (Commission) is considering the Interconnection Survey Process and Proposed Earning Adjustment Mechanism filed by the Joint Utilities in response to the Commission's Order Adopting a Ratemaking and Utility Revenue Model Policy Framework, issued on May 19, 2016 in Case 14-M-0101. Each utility will conduct Interconnection Surveys with distributed energy resource providers, the results of which will inform each utility's positive earning opportunity. Satisfactory achievement of a baseline level of timely and cost-effective interconnection approvals is a threshold condition for earning positive adjustments. Interconnection Earnings Adjustment Mechanisms are financial incentives that a utility may capture to create customer savings and develop market-enabling tools. The Commission may adopt, reject, or modify, in whole or in part, the proposed Interconnection Survey Process and Proposed Earning Adjustment Mechanism filing, 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-0429SP1)

PROPOSED RULE MAKING
NO HEARING(S) SCHEDULED

Disposition of Property Tax Benefits

I.D. No. PSC-45-16-00014-P

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

Proposed Action: The Public Service Commission is considering a request by Orange & Rockland Utilities, Inc. proposing the disposition of certain property tax benefits.

Statutory authority: Public Service Law, sections 65 and 66

Subject: Disposition of property tax benefits.

Purpose: To consider the disposition of property tax benefits.

Substance of proposed rule: The Public Service Commission is considering a petition by Orange and Rockland Utilities, Inc. (O&R) regarding the disposition of certain future property tax benefits. O&R has proposed to retain 14% of the estimated future property tax savings from a settlement with the Town of Clarkstown or $494,270 and 14% of the estimated future property tax savings from a settlement with the Town of Orangetown or $250,334. 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, Department of Public Service, 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-0362SP2)

PROPOSED RULE MAKING
NO HEARING(S) SCHEDULED

Arbor Hills Water Works Inc.'s Rates for the Provision of Water

I.D. No. PSC-45-16-00015-P

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

Proposed Action: The Commission is considering a proposal filed by Arbor Hills Water Works, Inc. to increase its rates by approximately $36,500 or 45% to become effective February 1, 2017.

Statutory authority: Public Service Law, sections 4(1), 5(1)(f), 89-c(1), (3), (10)(a), (b) and (f)

Subject: Arbor Hills Water Works Inc.'s rates for the provision of water.

Purpose: To consider an increase in Arbor Hills Water Works Inc.'s annual water revenues by approximately $36,500 or 45%.

Substance of proposed rule: The Commission is considering a proposal filed by Arbor Hills Water Works, Inc. (Arbor Hills or the Company) to increase its total annual revenues by approximately $36,500 or 45% with an effective date of February 1, 2017. Arbor Hills provides metered water service to 67 customers in the Town of Lewisboro, Westchester County. Fire protection is not provided. The Company states the rate increase is necessary due to increases in operating expenses, accounting fees, unexpected expenses, and mandatory testing by the Westchester County Health Department on a more frequent basis. The Company states these expenses have increased significantly since the current rates went into effect on May 29, 2009. The Company is also requesting approval to increase its escrow account maximum value, increasing the total from $25,000 to $50,000. The Company further requests to increase the escrow account surcharge maximum from $150 per quarter to $300 per quarter. The Commission may adopt, reject or modify, in whole or in part, the relief proposed and may resolve related matters.

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

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

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

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

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

(16-W-0606SP1)

PROPOSED RULE MAKING
NO HEARING(S) SCHEDULED

Boniville Water Company Inc.'s Rates for the Provision of Water

I.D. No. PSC-45-16-00016-P

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

Proposed Action: The Commission is considering a proposal filed by Boniville Water Company, Inc. to increase its rates by approximately $25,000 or 45% to become effective February 1, 2017.

Statutory authority: Public Service Law, sections 4(1), 5(1)(f), 89-c(1), (3), (10)(a), (b) and (f)

Subject: Boniville Water Company Inc.'s rates for the provision of water.

Purpose: To consider an increase in Boniville Water Company Inc.'s annual water revenues by approximately $25,000 or 45%.

Substance of proposed rule: The Commission is considering a proposal filed by Boniville Water Company, Inc. (Boniville or the Company) to increase its total annual revenues by approximately $25,000 or 45% with an effective date of February 1, 2017. Boniville provides metered water service to 97 customers in the Town of Carmel, Putnam County. Fire protection is not provided. The Company states the rate increase is necessary due to increases in operating expenses, accounting fees, unexpected expenses, and mandatory testing by the Westchester County Health Department on a more frequent basis. The Company states these expenses have increased significantly since the current rates went into effect on May 29, 2009. The Company is also requesting approval to increase its escrow account maximum value, increasing the total from $10,000 to $20,000. The Company further requests to increase the escrow account surcharge maximum from $100 per quarter to $200 per quarter. The Commission may adopt, reject or modify, in whole or in part, the relief proposed and may resolve related matters.

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

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

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

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

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

(16-W-0607SP1)

PROPOSED RULE MAKING
NO HEARING(S) SCHEDULED

Knolls Water Co., Inc.'s Rates for the Provision of Water

I.D. No. PSC-45-16-00017-P

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

Proposed Action: The Commission is considering a proposal filed by Knolls Water Co., Inc. to increase its rates by approximately $26,600 or 45% to become effective February 1, 2017.

Statutory authority: Public Service Law, sections 4(1), 5(1)(f), 89-c(1), (3), (10)(a), (b) and (f)

Subject: Knolls Water Co., Inc.'s rates for the provision of water.

Purpose: To consider an increase in Knolls Water Co., Inc.'s annual water revenues by approximately $26,600 or 45%.

Substance of proposed rule: The Commission is considering a proposal filed by Knolls Water Co., Inc. (Knolls or the Company) to increase its total annual revenues by approximately $26,600 or 45% with an effective date of February 1, 2017. Knolls provides metered water service to 72 customers in the Town of Warwick, Orange County. Fire protection is not provided. The Company states the rate increase is necessary due to increases in operating expenses, unexpected expenses, and mandatory testing by the Westchester County Health Department on a more frequent basis. The Company states these expenses have increased significantly since the current rates went into effect on May 29, 2009. The Company is also requesting approval to increase its escrow account maximum value, increasing the total from $10,000 to $20,000. The Company further requests to increase the escrow account surcharge maximum from $50 per quarter to $100 per quarter. The Commission may adopt, reject or modify, in whole or in part, the relief proposed and may resolve related matters.

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

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

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

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

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

(16-W-0608SP1)

PROPOSED RULE MAKING
NO HEARING(S) SCHEDULED

Proposed Water Supply Agreement Between NYAW and Glen Cove

I.D. No. PSC-45-16-00018-P

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

Proposed Action: The Public Service Commission is considering a Petition filed by New York American Water Company Inc. (NYAW) and Glen Cove Water District (Glen Cove) requesting approval of a water supply agreement.

Statutory authority: Public Service Law, section 89-c

Subject: Proposed water supply agreement between NYAW and Glen Cove.

Purpose: To consider the proposed water supply agreement between NYAW and Glen Cove.

Substance of proposed rule: The Public Service Commission is considering a petition filed on August 29, 2016 by New York American Water Company Inc. (NYAW) requesting approval for a water supply agreement between NYAW and Glen Cove Water District (Glen Cove). NYAW is requesting approval for an agreement to sell water to Glen Cove through an interconnection to its Sea Cliff water district (Sea Cliff). Sea Cliff serves approximately 4,380 customers via two supply wells in Nassau County. Glen Cove is a municipal water supply district that supplies water to approximately 8,020 customers in Nassau County. Glen Cove currently has an unmetered emergency interconnection with Sea Cliff that was used ten times in 2015 to provide supplemental water supply for the municipal water system. 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 Comission, 3 Empire State Plaza, Albany, New York 12223-1350, (518) 474-6530, email: secretary@dps.ny.gov.

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

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

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

(16-W-0605SP1)

Department of State

PROPOSED RULE MAKING
NO HEARING(S) SCHEDULED

Rules Relating to Political Consultants

I.D. No. DOS-45-16-00019-P

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

Proposed Action: Addition of Part 153 to Title 19 NYCRR.

Statutory authority: Executive Law, section 109

Subject: Rules relating to political consultants.

Purpose: To prescribe the statutorily mandated form for political consultants and related regulations relating to political consultants.

Text of proposed rule: New Part 153 to Title 19 of the NYCRR is added as follows:

This Part shall be known as "Political Consultant Filings".

153.1 Definitions

For the purposes of this Part, the following terms shall have the following meanings:

(a) "Address" shall mean business address, except that in the case of an individual with no business address then address shall mean home address.

(b) "Client" shall mean a person or entity who in the preceding calendar year retained or hired the political consultant relating to matters before any state or local government agency, authority or official, including services, advice or consultation relating to any state or local government contract for real property, goods or services, an appearance in a ratemaking proceeding, an appearance in a regulatory matter, or an appearance in a legislative matter other than matters described in subparagraph (E) of the second undesignated paragraph of subdivision (c) of section one-c of the legislative law.

(c) "Department" shall mean the Department of State.

(d) "Government employee" shall mean any employee of the State, a county, city, town, village, or any other political subdivision or civil division of the State, or a county, city, town, village. "Government employee" shall also include any employee of a public authority, commission or public benefit corporation.

(e) "Political consultant" shall mean a person who holds himself or herself out to persons in this state as a person who performs political consulting services in a professional capacity and who is usually compensated, excluding reimbursement for expenses, for such services. "Political consultant" shall not include a government employee while acting in his/her official capacity, except when such employee also engages in outside political consulting services, in which case such outside activities would be subject to the reporting requirements of this Part.

(f) "Political consulting services" shall mean services provided by a political consultant to or on behalf of an elected public official in New York state or to or on behalf of a candidate for elected office in New York state, or to or on behalf of a person nominated for elected public office which services: (1) assist or are intended to assist in a campaign for nomination for election or election to office in New York state, including fundraising activities, voter outreach, composition and distribution of promotional literature, advertisements, or other similar communications, as set forth in section 14-106 of the election law; or (2) consist of political advice to an elected public official or candidate for elected public office in New York state or person nominated for elected public office; provided, however, that political consulting services shall not include bona fide legal work directly related to litigation or legal advice with regard to

securing a place on the ballot, the petitioning process, the conduct of an election, or which involves the election law. "Political consulting services" shall not include activities that are solely ministerial in nature that do not include any substantive advice or counseling, such as canvassing.

(g) "Professional capacity" shall mean activities offered or undertaken for a fee or other valuable consideration.

(h) "Official capacity" shall mean activities conducted within a government employee's official duties or responsibilities.

(i) "Reporting period" shall mean the six month period within a calendar year starting January first and ending June thirtieth or the six month period within a calendar year starting July first and ending December thirty-first.

(j) "Telephone number" shall mean business telephone number, except that in the case of an individual with no business telephone number then telephone number shall mean home telephone number.

153.2 Registration of certain service providers

Every political consultant shall, within ten days of the close of the applicable reporting period, unless otherwise directed by the Department, file with the Department the registration form prescribed by this Part.

153.3 Registration form

(a) Every political consultant shall file with the Department a registration form which shall include the following information:

(1) the name, address, and telephone number of the political consultant;

(2) the name, address, and telephone number of each sitting elected public official, candidate for elected public office, and person nominated for elected public office who the political consultant provided political consulting services to;

(3) the name, address, and telephone number of each client who retains or hires a political consultant in the preceding calendar year provided, that in the event the client is an entity, at least one natural person who has a controlling interest in such entity shall be identified;

(4) a brief description of the nature of the political consulting services provided to each identified client; and

(5) such other information as directed by the Department.

153.4 Civil penalties

(a) Notwithstanding any other law or rule to the contrary, the Department shall, before imposing any civil penalty, notify the political consultant in writing that the registration form required by this Part was not filed and shall afford the political consultant an opportunity to be heard in person or by counsel at an administrative hearing. Such notification shall be served personally or by certified mail to the political consultant's last known address or in any manner authorized by the civil practice law and rules.

(b) Administrative hearings held pursuant to this Section shall be conducted by the Department's Office of Administrative Hearings pursuant to Part 400 of Title 19 of the NYCRR and subject to the rules provided therein.

(c) Any notice issued pursuant to this Section shall be served at least ten days prior to the date set for the administrative hearing.

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

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

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

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

Regulatory Impact Statement

1. Statutory authority:

Section 109 of the New York Executive Law ("Exec. Law") requires, inter alia, that the Secretary of State (the "Secretary") "adopt, amend and rescind rules and regulations defining the degree and extent of political consulting services".

2. Legislative objectives:

Section 109 of the Exec. Law was enacted, in part, so that political consultants who have provided services to sitting elected public officials and individuals seeking elected public office would have to disclose their past clients. This mandated disclosure is intended to inform the public of potential conflicts of interests resulting from a political consultant's past business relationship(s).

3. Needs and benefits:

This regulation is needed to fulfill the legislative mandate set forth in Section 109 of the Exec. Law. Promulgation of this rule will benefit the public at large by establishing the specific disclosures which must be made by political consultants.

4. Costs:

a. Costs to regulated parties:

Political consultants will be required to submit a fee of $25.00, for each filing, as required by Exec. Law Section 96(12).

b. Costs to the State:

Currently, the Department has neither the technological capabilities nor resources to accept electronic submissions, payments and provide public disclosure of the information required by Section 109 of the Exec. Law. To meet the legislative objectives imposed by Section 109 the Department, in consultation with the Office of Information Technology Services (OITS), will have to develop a new online portal to allow political consultants to submit the required disclosures, establish a secure system to process and accept filing fees, and facilitate public posting of such disclosures within 30 days of filing. OITS estimates the cost for new software/hardware, maintenance, and staff allocation to create a system capable of fulfilling the legislative objects to be approximately $1,000,000.00.

5. Local government mandates:

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

6. Paperwork:

Section 109 of the Exec. Law requires political consultants to publically disclose certain professional relationships. Accordingly, this regulation implements the legislative objective by establishing the contents and process for completing the required disclosure form.

7. Duplication:

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

8. Alternatives:

The purpose of the regulation is to carry out the statutory mandate of requiring political consultants to publically disclose their relationships. The Department is not aware of any alternative that is available to the instant regulations.

9. Federal standards:

There are no federal standards relating to this rule.

10. Compliance schedule:

The rule will be effective following publication of the Notice of Adoption. Individuals subject to this rulemaking will have to submit the required disclosure form for the first reporting period which runs from July 1, 2016 through December 31, 2016. Thereafter, the reporting periods will cover the six-month period within each calendar year starting January 1st and ending June 30th and the six-month period within each calendar year starting July 1st and ending December 31st. Filings will be due within 10 days after the close of such period unless otherwise directed by the Department.

Regulatory Flexibility Analysis

1. Effect of rule:

The rule establishes the content and process for filing the statutorily mandated public disclosure form for political consultants.

The rule does not impact local government.

2. Compliance requirements:

Political consultants, as defined by this rule, are required to file a public disclosure form twice each year. For the purposes of compliance, the first reporting period covers the period from July 1, 2016 thru December 31, 2016 as set forth in Section 109 of the New York Executive Law. Thereafter, the reporting periods will cover the six-month period within each calendar year starting January 1st and ending June 30th and the six-month period within each calendar year starting July 1st and ending December 31st. Filings will be due within 10 days after the close of such period unless otherwise directed by the Department.

The rule does not impose any compliance requirements on local governments.

3. Professional services:

Political consultants will not have to rely upon any professional services to comply with this rule. The rule does not impose any compliance requirements on local governments.

4. Compliance costs:

Political consultants will be required to submit a filing fee of $25.00 for each filing pursuant to NY Executive Law § 96(12).

5. Economic and technologic feasibility:

The Department of State will make available the necessary public disclosure form, thus this rule is both economically and technologically feasible for political consultants to comply. The rule does not impose any technology requirements on local governments.

6. Minimizing adverse economic impact:

The rule does adversely impact small businesses or local governments.

7. Small business participation:

Small businesses and local governments will have the opportunity to participate in the rulemaking process by submitting comments during the public comment period following the publication of the Notice of Proposed Rule Making.

8. Cure period:

A cure period is not included because individuals subject to the reporting obligations of this rule will have sufficient time to comply. Additionally, pursuant to the statutory text, political consultants are required to be provided with a reasonable opportunity to cure any violations prior to the imposition of any penalties. Accordingly, a cure period is not required.

Rural Area Flexibility Analysis

1. Types and estimated numbers of rural areas:

The proposed rulemaking is not expected to have any adverse or disproportionate impact on rural areas. This rule will apply uniformly throughout the state, including in rural areas.

2. Reporting, recordkeeping and other compliance requirements:

Political consultants, including those in rural areas, have to comply with the same reporting requirements as political consultants in other areas of the state. Accordingly, political consultants, as defined by this rule, are required to file twice a year a public disclosure form.

3. Costs:

Political consultants, including those in rural areas, will be required to submit a filing fee of $25.00 for each filing pursuant to NY Executive Law § 96(12).

4. Minimizing adverse economic impacts:

The rule does not adversely impact any rural area.

5. Rural area participation:

Public and private interests in rural areas will have the opportunity to participate in the rulemaking process by submitting comments during the public comment period following the publication of the Notice of Proposed Rule Making.

Job Impact Statement

As is evident by the nature of this rulemaking, this rule prescribes the content of the statutorily mandated disclosure form filed by political consultants and ancillary related matters, and will not have a substantial adverse impact on jobs and employment opportunities. Therefore, it does not require a Job Impact Statement.

This rule is intended to provide notice to political consultants of the information which will be required to be disclosed as part of the filing requirement mandated by Section 109 of the Executive Law. The rule will not have any adverse impact on political consultants or employment opportunities because the rule does not prohibit or limit conduct; rather, it clarifies disclosure of past activities that are required to be disclosed pursuant to statute.

Triborough Bridge and Tunnel Authority

NOTICE OF WITHDRAWAL

Proposal to Strengthen Toll Violation Enforcement on TBTA Bridges and Tunnels

I.D. No. TBA-08-16-00005-W

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

Action taken: Notice of proposed rule making, I.D. No. TBA-08-16-00005-P, has been withdrawn from consideration. The notice of proposed rule making was published in the *State Register* on February 24, 2016.

Subject: Proposal to strengthen toll violation enforcement on TBTA bridges and tunnels.

Reason(s) for withdrawal of the proposed rule: Anticipated change in toll violation fees.