RULE MAKING ACTIVITIES

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

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

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

Department of Agriculture and Markets

PROPOSED RULE MAKING
NO HEARING(S) SCHEDULED

Sanitation in Retail Food Stores and Method of Sale, at Retail, of Certain Food

I.D. No. AAM-42-16-00006-P

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

Proposed Action: This is a consensus rule making to add Parts 271 and 272 to Title 1 NYCRR.

Statutory authority: Agriculture and Markets Law, sections 16, 18, 96-s and 214-b

Subject: Sanitation in retail food stores and method of sale, at retail, of certain food.

Purpose: To cause the republication of regulations governing retail food stores and the method of sale of certain foods at retail.

Substance of proposed rule: Subpart 271-1. General Provisions.

This Subpart sets forth the purpose of Part 271 as protecting the public health (sec. 271-1.1).

This Subpart also contains a definition section (sec. 271-1.2).

Subpart 271-2. Food Supplies.

This Subpart generally sets forth the existing requirements governing the storage, handling, preparation, offering for sale and sale of food by retail food stores.

Subpart 271-3. Personnel.

This Subpart sets forth the existing requirements for management and personnel in food stores.

Subpart 271-4. Equipment and Utensils.

This Subpart sets forth the existing requirements for equipment and utensils, including design and condition.

Subpart 271-5. Cleaning, Sanitization and Storage of Equipment and Utensils.

This Subpart sets forth the existing requirements for maintenance of equipment and utensils, including cleaning, sanitizing and storage of same.

Subpart 271-6. Sanitary Facilities and Controls.

This Subpart sets forth the existing requirements for water, steam, sewage, plumbing, toilet rooms, handwash facilities, garbage and vermin control.

Subpart 271-7. Construction and Maintenance of Physical Facilities.

This Subpart sets forth the existing requirements for the physical structure and layout of the store, including the exterior of the establishment.

Subpart 271-8. Food Display and Service at Salad Bars.

This Subpart generally sets forth the existing requirements for maintaining food free of contamination and ensuring that food displays and salad bars are kept under sanitary conditions.

Subpart 271-9. Compliance and Enforcement.

This Subpart generally sets forth the existing required contents of a Hazard Analysis and Critical Control Point (HACCP) Plan as well as circumstances under which a HACCP Plan is required for processing certain high risk foods.

Subpart 272-1. Meat for Sale at Retail.

This Subpart sets forth existing requirements and conditions regarding labeling and advertising; exceptions to labeling and advertising requirements in certain cases; the use of the name of the meat on labeling; use of USDA grading terms; labeling of certain meat food products; and labeling of fabricated steak and frozen meat. There are also charts depicting beef, veal, lamb and pork carcasses. Finally, there is a prohibition against advertising meat for sale at retail unless there is a sufficient quantity of product available at each outlet listed in the advertisement to meet demand.

Subpart 272-2. Advertising and Marketing of Food for Sale at Retail.

This Subpart sets forth existing requirements concerning availability of advertised items; mispricing of advertised items; and general disclaimers.

Subpart 272-3. Sale of Small Quantities of Prepackaged Fresh Fruits and Vegetables.

This Subpart sets forth existing requirements which provide that small quantities of fresh fruits or vegetables shall be made available by opening a package of the commodity in stock, when the commodity in question is unavailable in unpackaged form. The Subpart also requires the posting of a sign which reads "Small Quantities of Prepackaged Fresh Fruits and Vegetables are Available upon Request."

Subpart 272-4. Sale of Seafood, Fish, Meat and Poultry in Frozen State.

This Subpart sets forth existing requirements which prohibit the sale of seafood, food fish or shellfish, meat, meat by-product or meat food product, poultry or poultry product in a frozen state when it was previously offered for sale in an unfrozen state, unless the package or container with the product is labeled with the words "This product was previously offered for sale in an unfrozen state." This Subpart has the same requirements regarding these products sold in bulk.

Text of proposed rule and any required statements and analyses may be obtained from: Stephen D. Stich, NYS Department of Agriculture and Markets, 10B Airline Drive, Albany, NY 12235, (518) 457-4492, email: Stephen.Stich@agriculture.ny.gov

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

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

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

Consensus Rule Making Determination

The proposed rule will have the effect of "republishing" the retail food store sanitation regulations and the retail food sales regulations that were

set forth in Parts 271 and 272 of 1 NYCRR, respectively. As a result of a drafting error set forth in the express terms of a notice of adoption published in the New York State Register on June 22, 2016 relating to moving Part 270 of 1 NYCRR (maple syrup regulations) from Subchapter E of Chapter VI of 1 NYCRR to Subchapter D, all of Subchapter E was purportedly repealed, which also includes Part 271 and Part 272. The Department's rulemaking, however, only involved the deletion of Part 270 from Subchapter E and its placement in Subchapter D and did not provide for the repeal of all of Subchapter E.

This consensus rulemaking is technical in nature and has been commenced to correct the error referred to above. The purported repeal of Subchapter E was, based upon the foregoing, without legal force and effect with respect to Parts 271 and 272 and this technical rulemaking ensures that the public will be on notice that Subchapter E, and Parts 271 and 272 therein, remain in full force and effect and were and are unaffected by the deletion of Part 270 from that Subchapter. As such, it is unlikely that any person could raise an objection to the proposed rule.

Job Impact Statement

The proposed rule will have the effect of "republishing" the retail food store sanitation regulations and the retail food sales regulations that were set forth in Parts 271 and 272 of 1 NYCRR, respectively. As a result of a drafting error set forth in the express terms of a notice of adoption published in the New York State Register on June 22, 2016 relating to moving Part 270 of 1 NYCRR (maple syrup regulations) from Subchapter E of Chapter VI of 1 NYCRR to Subchapter D, all of Subchapter E was purportedly repealed, which also includes Part 271 and Part 272. The Department's rulemaking, however, only involved the deletion of Part 270 from Subchapter E and its placement in Subchapter D and did not provide for the repeal of all of Subchapter E.

This consensus rulemaking is technical in nature and has been commenced to correct the error referred to above. The purported repeal of Subchapter E was, based upon the foregoing, without legal force and effect with respect to Parts 271 and 272 and this technical rulemaking ensures that the public will be on notice that Subchapter E, and Parts 271 and 272 therein, remain in full force and effect and were and are unaffected by the deletion of Part 270 from that Subchapter. As such, the proposed rule will have no impact upon jobs and employment opportunities.

Board of Commissioner of Pilots

NOTICE OF ADOPTION

Supplemental Fees, Hudson River

I.D. No. COP-31-16-00005-A
Filing No. 900
Filing Date: 2016-09-28
Effective Date: 2016-10-01

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

Action taken: Amendment of section 55.2 of Title 21 NYCRR.

Statutory authority: Navigation Law, section 95

Subject: Supplemental Fees, Hudson River.

Purpose: Assessing supplemental fees for pilotage on the Hudson River.

Text or summary was published in the August 3, 2016 issue of the Register, I.D. No. COP-31-16-00005-P.

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

Text of rule and any required statements and analyses may be obtained from: Frank Keane, Board of Commissioner of Pilots of the State of New York, 17 Battery Place, Suite 1230, New York, NY 10004, (212) 425-5027, email: FWKeane@bdcommpilotsny.org

Revised Regulatory Impact Statement

A revised regulatory impact statement 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.

Revised Regulatory Flexibility Analysis

A revised regulatory flexibility analysis 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.

Revised Rural Area Flexibility Analysis

A revised rural area flexibility analysis 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.

Revised Job Impact Statement

A revised job impact statement 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.

Assessment of Public Comment

The agency received no public comment.

Education Department

EMERGENCY/PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Establishment of Tuition Rates

I.D. No. EDU-42-16-00001-EP
Filing No. 906
Filing Date: 2016-09-30
Effective Date: 2016-10-01

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

Proposed Action: Amendment of section 200.18 of Title 8 NYCRR.

Statutory authority: Education Law, sections 207, 4003, 4401, 4403, 4405, 4408 and 4410

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

Specific reasons underlying the finding of necessity: The proposed amendment clarifies that the Department maintains discretion in establishing tuition rates based on a financial audit, specifically in deciding whether or not to adopt all of the recommended audit fiscal disallowances and/or whether to take further disallowances as deemed warranted upon internal review and desk audits. Pursuant to the proposed amendment, the Department would establish tuition rates based on an audit to the extent that the Commissioner determines the audit findings and recommendations are warranted and consistent with applicable federal and state Education Law, Commissioner's regulations, and tuition reimbursement guidelines and requirements. Upon a determination that a particular finding or recommendation is not warranted, or is not consistent with applicable state and federal Education Law, Commissioner's regulations, or tuition reimbursement guidelines and requirements, discretion will be exercised in establishing a rate based on audit, subject to the approval of the Director of the Budget.

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 the State Administrative Procedure Act (SAPA) sections 201(1) and (5), would be the September 12-13, 2016 Regents meeting. Furthermore, pursuant to SAPA section 203(1), the earliest effective date of the proposed rule, if adopted at the December meeting, would be December 28, 2016, the date a Notice of Adoption would be published in the State Register. Therefore, emergency action is necessary at the September 2016 Regents meeting for the preservation of the general welfare to allow the Commissioner to exercise discretion in setting tuition rates based on a financial audit to the extent that the Commissioner determines the audit findings and recommendations are warranted and consistent with applicable federal and state Education Law, Commissioner's regulations, and tuition reimbursement guidelines and requirements.

It is anticipated that the proposed rule will be presented for adoption as a permanent rule at the December 28, 2016 Regents meeting, which is the first scheduled meeting after expiration of the 45-day public comment period prescribed in the State Administrative Procedure Act for State agency rule makings.

Subject: Establishment of tuition rates.

Purpose: To clarify that the Education Department maintains discretion in establishing tuition rates based on a financial audit.

Text of emergency/proposed rule: Subdivision (c) of section 200.18 of the Regulations of the Commissioner of Education shall be amended, effective October 1, 2016, to read as follows:

(c) The establishment of tuition rates and repayment of funds resulting from audits performed in accordance with subdivision (a) or (b) of this section.

(1) A final audit report shall be issued for each such audit. [The final audit report shall be used to establish tuition rates based on audit. The rates based on audit shall be developed by the Commissioner and certified by the Director of the Budget.]

(i) The Commissioner shall review the final audit report, which shall be used to establish tuition rates based on audit to the extent the Commissioner determines that the audit findings and recommended disallowances contained therein are warranted and consistent with the Individuals with Disabilities Education Act (20 U.S.C. sections 1400 et seq.), Articles 81 and 89 of the Education Law, Parts 100 and 200 of the Commissioner's regulations and the Department's tuition reimbursement guidelines and requirements.

(ii) After consideration of the final audit by the Commissioner pursuant to subparagraph (i) of this paragraph, tuition rates based on audit shall then be established by the Commissioner and become final after certification by the Director of Budget.

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 December 28, 2016.

Text of rule and any required statements and analyses may be obtained from: Kirti Goswami, New York State Education Department, 89 Washington Avenue, Room 148, Albany, NY 12234, (518) 474-8966, email: legal@nysed.gov

Data, views or arguments may be submitted to: Doreen Ryan, New York State Education Department, 2M West, 89 Washington Avenue, Albany, NY 12234, (518) 474-5510, email: nysedp12@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 207 empowers the Board of Regents and the Commissioner to adopt rules and regulations to carry out laws of the State regarding education and the functions and duties conferred on the State Education Department by law.

Education Law section 4401(5) defines tuition and the sources from which it can be calculated, and sections 4401(10)–(11) outline the structure of tuition rates.

Education Law section 4402(1) through (8) outlines the responsibilities of school districts with respect to educational programs and services for students with disabilities.

Education Law section 4403 outlines the responsibilities of the Department with respect to the provision of education programs and services to students with disabilities and authorizes the Commissioner of Education to promulgate such rules and regulations pertaining to the physical and educational needs of such students as the Commissioner deems to be in their best interest.

Education Law section 4405(1) through (6) establishes the process for computing financial responsibility for special education services for certain children with handicapping conditions, including the tuition rates, once certified by the director of the budget.

Education Law section 4410(1)(g) defines ''municipality'' for purposes of the section. Education Law section 4410(11)(i) and (ii) provides that a municipality or, in addition, the board of education in a city having a population of one million or more, may perform a fiscal audit of special education programs and services for which it bears fiscal responsibility. Section 4410(10) defines ''approved costs'' and details the commissioner's authority to set tuition rates for approved services or programs, and outlines the process by which such rates shall be determined. Section 4410(11) outlines a municipality's financial responsibility for those approved costs, and what portions shall be reimbursed by the state. Section 4410(13) authorizes the Commissioner to promulgate regulations to implement the provisions of Education Law section 4410.

Education Law section 4410-c directs the New York State Comptroller to audit the expenses reported to the Department by every preschool special education provider, to the extent such funds as are made available for such purpose, and requires that all such providers be audited by March 31, 2018.

2. LEGISLATIVE OBJECTIVES:

Consistent with the above statutory authority, the proposed amendment is necessary to clarify that the Education Department maintains discretion in establishing tuition rates based on a financial audit, specifically in deciding whether or not to adopt all of the recommended audit fiscal disallowances and/or whether to take further disallowances as deemed warranted upon internal review and desk audits. All such tuition rates based on financial audit are subject to Division of the Budget review and approval prior to becoming certified.

3. NEEDS AND BENEFITS:

Section 200.18(a) of Commissioner's Regulations provides that all approved programs shall be subject to audit by the State.[1] Audits of approved special education programs may be conducted by the Department, the Office of the State Comptroller, and other State agencies or agencies of other states. Additionally, pursuant to section 4410 of the Education Law and 200.18(b) of Commissioner's Regulations, approved preschool special education providers may be also be audited by each municipality, or in the case of a city having a population of one million or more, the board of education, bearing fiscal responsibility for tuition reimbursement. Additionally, chapter 545 of the Laws of 2013 directed the New York State Comptroller to audit the expenses reported to the Department by every preschool special education provider, to the extent such funds as are made available for such purpose.

In accordance with Education Law sections 4003, 4401, 4402, 4403, 4405, 4408 and 4410 and sections 200.9 and 200.19 of the Regulations of the Commissioner, the Commissioner establishes tuition reimbursement rates for approved special education programs. Following an official financial audit, the Department revises a program's originally established tuition rate to reflect a "rate based on audit" which is defined in section 200.9(a)(19) of Commissioner's Regulations as "a tuition rate that has been calculated based on a final audit of actual program expenses, revenues, enrollment data and other relevant program information performed by the Commissioner, the State Comptroller, other State agencies or agencies or subdivisions of other states, or a municipality in accordance with section 200.18 of this Part." The existing language of section 200.18(c)(1) of the Regulations of the Commissioner states that a final audit report shall be issued for each audit and used to establish tuition rates developed by the Commissioner and certified by the Director of the Budget. This tuition rate is used by the appropriate school district, local agency or municipality to recoup any overpayment deemed due.

In October of 2012, the Supreme Court, Appellate Division, Third Department, interpreted the language of section 200.18(c)(1) of the Regulations of the Commissioner and held that "the Commissioner's otherwise broad discretion in setting the reconciliation rate is curtailed where the service provider has been audited by the Comptroller" and that as a result the Department was "bound to accept the data provided by the [provider] petitioner in establishing its tuition rates."[2] This decision resulted in the Department being prohibited from making an adjustment to a provider's reimbursement rate, even with documented evidence to support the adjustment, as the adjustment was not specifically mentioned in the final audit report. This decision could also be interpreted to limit the Department's ability to use its discretion regarding the implementation of audit report findings and recommendations thus requiring the Department to adopt all disallowances regardless of whether it agrees with the audit determination or not. This interpretation would effectively restrict the Department's ability to exercise discretion in the enforcement of its own reimbursement standards under applicable laws, rules and regulations, and placed constraints constrains the Commissioner's general duties with respect to establishing tuition reimbursement rates subject to the approval of the Director of the Budget.

The proposed amendment clarifies that the Department maintains discretion in establishing tuition rates based on a financial audit, specifically in deciding whether or not to adopt all of the recommended audit fiscal disallowances and/or whether to take further disallowances as deemed warranted upon internal review and desk audits. Pursuant to the proposed amendment, the Department would establish tuition rates based on an audit to the extent that the Commissioner determines the audit findings and recommendations are warranted and consistent with the Individuals with Disabilities Education Act (20 U.S.C. sections 1400 et seq.), Articles 81 and 89 of the Education Law, Parts 100 and 200 of the Commissioner's regulations and the Department's tuition reimbursement guidelines and requirements. Upon a determination that a particular finding or recommendation is not warranted, or is not consistent with the Individuals with Disabilities Education Act (20 U.S.C. sections 1400 et seq.), Articles 81 and 89 of the Education Law, Parts 100 and 200 of the Commissioner's regulations and/or the Department's tuition reimbursement guidelines and requirements, discretion will be exercised in establishing a rate based on audit, subject to the approval of the Director of the Budget.

4. COSTS:

(a) Costs to the State: none.

(b) Costs to local governments: none required. The proposed amendment does not impose any costs on local governments beyond those imposed by statute. The proposed amendment simply serves to clarify what the Commissioner and the Department's discretion is in accepting the final report in an audit in setting tuition rates, a process which the Department is also already engaged in.

(c) Costs to private regulated parties: none.

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

5. LOCAL GOVERNMENT MANDATES:

The proposed amendment clarifies that the Education Department maintains discretion in establishing tuition rates based on a financial audit, specifically in deciding whether or not to adopt all of the recommended audit fiscal disallowances and/or whether to take further disallowances as deemed warranted upon internal review and desk audits. Pursuant to the proposed amendment, the Department would establish tuition rates based on an audit to the extent that the Commissioner determines the audit findings and recommendations are warranted and consistent with applicable federal and state Education Law, Commissioner's regulations, and tuition reimbursement guidelines and requirements. Upon a determination that a particular finding or recommendation is not warranted, or is not consistent with applicable state and federal Education Law, Commissioner's regulations, or tuition reimbursement guidelines and requirements, discretion will be exercised in establishing a rate based on audit, subject to the approval of the Director of the Budget. Because the proposed amendment simply clarifies the Education Department's discretion in a currently existing process, it imposes no new local government mandates.

6. PAPERWORK:

The proposed amendment clarifies where discretion lies in a preexisting process performed by the Education Department, and therefore no additional paperwork will be generated as a result of the proposed amendment.

7. DUPLICATION:

The proposed amendment does not duplicate any existing State or Federal requirements.

8. ALTERNATIVES:

The proposed amendment is necessary to clarify that the Education Department maintains discretion in establishing tuition rates based on a financial audit, specifically in deciding whether or not to adopt all of the recommended audit fiscal disallowances and/or whether to take further disallowances as deemed warranted upon internal review and desk audits. Differences of opinion as to the degree to which the Department's discretion is curtailed when an approved special education provider has been subject to audit has resulted in litigation. The proposed amendment will resolve this issue and provide clarification to other agencies and providers involved in the rate-setting process following the issuance of an official financial audit. There are no significant alternatives and none were considered.

9. FEDERAL STANDARDS:

There are no applicable Federal standards.

10. COMPLIANCE SCHEDULE:

It is anticipated that regulated parties will be able to achieve compliance with the proposed amendment by its effective date.

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[1] For purposes of this regulation, approved programs include programs that provide special education to students with disabilities requiring the establishment of a tuition rate, in accordance with sections 4003, 4401, 4403, 4405, 4408 and 4410 of the Education Law. These include preschool and school-age special education private providers, Special Act School Districts, BOCES, and school-districts.

[2] 99 A.D.3d at 1084-85.

Regulatory Flexibility Analysis

Small Businesses:

The proposed amendment is needed to clarify that the Education Department maintains discretion in establishing tuition rates based on a financial audit, specifically in deciding whether or not to adopt all of the recommended audit fiscal disallowances and/or whether to take further disallowances as deemed warranted upon internal review and desk audits. 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:

EFFECT OF RULE:

The proposed amendment applies to municipalities, defined in Education Law section 4410(1)(g) as a county outside of the city of New York or the city of New York in the case of a county contained within the city of New York, and the board of education of the city of New York, that choose to perform a fiscal audit of Education Law section 4410 preschool special education programs and services for which the municipality bears fiscal responsibility. Pursuant to Education Law section 4410(1)(g), the proposed amendment is applicable to all counties in the State that are located outside of the city of New York and the city of New York in the case of a county contained within the city of New York. The proposed amendment also applies to fiscal audits performed by the New York State Education Department, the Office of the State Comptroller, other State agencies or agencies of other states of school-age providers operated by private providers, special act school districts, boards of cooperative educational services and public school districts receiving public funds for the education of students with disabilities who have been enrolled pursuant to articles 81 and 89 of the Education Law.

COMPLIANCE REQUIREMENTS:

Section 200.18(a) of Commissioner's Regulations provides that all approved programs shall be subject to audit by the State.[1] Audits of approved special education programs may be conducted by the Department, the Office of the State Comptroller, and other State agencies or agencies of other states. Additionally, pursuant to section 4410 of the Education Law and 200.18(b) of Commissioner's Regulations, approved preschool special education providers may be also be audited by each municipality, or in the case of a city having a population of one million or more, the board of education, bearing fiscal responsibility for tuition reimbursement. Additionally, chapter 545 of the Laws of 2013 directed the New York State Comptroller to audit the expenses reported to the Department by every preschool special education provider, to the extent such funds as are made available for such purpose.

In accordance with Education Law sections 4003, 4401, 4402, 4403, 4405, 4408 and 4410 and sections 200.9 and 200.19 of the Regulations of the Commissioner, the Commissioner establishes tuition reimbursement rates for approved special education programs. Following an official financial audit, the Department revises a program's originally established tuition rate to reflect a "rate based on audit" which is defined in section 200.9(a)(19) of Commissioner's Regulations as "a tuition rate that has been calculated based on a final audit of actual program expenses, revenues, enrollment data and other relevant program information performed by the Commissioner, the State Comptroller, other State agencies or agencies or subdivisions of other states, or a municipality in accordance with section 200.18 of this Part." The existing language of section 200.18(c)(1) of the Regulations of the Commissioner states that a final audit report shall be issued for each audit and used to establish tuition rates developed by the Commissioner and certified by the Director of the Budget. This tuition rate is used by the appropriate school district, local agency or municipality to recoup any overpayment deemed due.

In October of 2012, the Supreme Court, Appellate Division, Third Department, interpreted the language of section 200.18(c)(1) of the Regulations of the Commissioner and held that "the Commissioner's otherwise broad discretion in setting the reconciliation rate is curtailed where the service provider has been audited by the Comptroller" and that as a result the Department was "bound to accept the data provided by the [provider] petitioner in establishing its tuition rates."[2] This decision resulted in the Department being prohibited from making an adjustment to a provider's reimbursement rate, even with documented evidence to support the adjustment, as the adjustment was not specifically mentioned in the final audit report. This decision could also be interpreted to limit the Department's ability to use its discretion regarding the implementation of audit report findings and recommendations thus requiring the Department to adopt all disallowances regardless of whether it agrees with the audit determination or not. This interpretation would effectively restrict the Department's ability to exercise discretion in the enforcement of its own reimbursement standards under applicable laws, rules and regulations, and placed constraints constrains the Commissioner's general duties with respect to establishing tuition reimbursement rates subject to the approval of the Director of the Budget.

The proposed amendment clarifies that the Department maintains discretion in establishing tuition rates based on a financial audit, specifically in deciding whether or not to adopt all of the recommended audit fiscal disallowances and/or whether to take further disallowances as deemed warranted upon internal review and desk audits. Pursuant to the proposed amendment, the Department would establish tuition rates based on an audit to the extent that the Commissioner determines the audit findings and recommendations are warranted and consistent with the Individuals with Disabilities Education Act (20 U.S.C. sections 1400 et seq.), Articles 81 and 89 of the Education Law, Parts 100 and 200 of the Commissioner's regulations and the Department's tuition reimbursement guidelines and requirements. Upon a determination that a particular finding or recommendation is not warranted, or is not consistent with the Individuals with Disabilities Education Act (20 U.S.C. sections 1400 et seq.), Articles 81 and 89 of the Education Law, Parts 100 and 200 of the Commissioner's regulations and/or the Department's tuition reimbursement guidelines and requirements, discretion will be exercised in establishing a rate based on audit, subject to the approval of the Director of the Budget.

PROFESSIONAL SERVICES:

The proposed amendment does not impose any additional professional services requirements. Existing statute (Education Law 4410) and regula-

tion (Part 200.18) required municipalities and the board of education in the city of New York that choose to perform audits pursuant to Education Law section 4410 to do so in accordance with audit standards established by the commissioner.

COMPLIANCE COSTS:

None required. The proposed amendment simply serves to clarify what the Commissioner and the Department's discretion is in accepting the final report in an audit in setting tuition rates, a process which the Department is also already engaged in.

ECONOMIC AND TECHNOLOGICAL FEASIBILITY:

The proposed amendment does not impose any additional costs or new technological requirements on local governments. The proposed amendment does not impose any adverse economic impact, reporting, record keeping or any other compliance requirements on local governments; municipalities and the board of education of the city of New York are not required to perform new functions pursuant to the proposed amendment.

MINIMIZING ADVERSE IMPACT:

The proposed amendment is necessary to clarify that the Education Department maintains discretion in establishing tuition rates based on a financial audit, specifically in deciding whether or not to adopt all of the recommended audit fiscal disallowances and/or whether to take further disallowances as deemed warranted upon internal review and desk audits. Because the statute upon which the proposed amendment is based applies to all affected municipalities and all approved special education programs in the State, it is not possible to establish differing compliance or reporting requirements or timetables or to exempt them from the provisions of the proposed amendment.

LOCAL GOVERNMENT PARTICIPATION:

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

INITIAL REVIEW OF RULE (SAPA § 207):

Pursuant to State Administrative Procedure Act section 207(1)(b), the State Education Department proposes that the initial review of this rule shall occur in the fifth calendar year after the year in which the rule is adopted, instead of in the third calendar year. The justification for a five year review period is that, following the decision of the New York State Supreme Court, Appellate Division, Third Department's decision in Mid Island Therapy Associates, LLC v. New York State Dep't of Educ., 99 A.D.3d 1082, 1084 (3d Dept. 2012), the proposed amendment is necessary to clarify that the Education Department maintains discretion in establishing tuition rates based on a financial audit, specifically in deciding whether or not to adopt all of the recommended audit fiscal disallowances and/or whether to take further disallowances as deemed warranted upon internal review and desk audit, and therefore changes to the substantive provisions of the proposed amendment are dependent on subsequent judicial interpretation. Accordingly, there is no need for a shorter review period. The Department invites public comment on the proposed five year review period for this rule. Comments should be sent to the agency contact listed in item 10. of the Notice of Proposed Rule Making published herewith, and must be received within 45 days of the State Register publication date of the Notice.

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[1] For purposes of this regulation, approved programs include programs that provide special education to students with disabilities requiring the establishment of a tuition rate, in accordance with sections 4003, 4401, 4403, 4405, 4408 and 4410 of the Education Law. These include preschool and school-age special education private providers, Special Act School Districts, BOCES, and school-districts.

[2] 99 A.D.3d at 1084-85.

Rural Area Flexibility Analysis

TYPES AND ESTIMATED NUMBER OF RURAL AREAS:

The proposed amendment applies to municipalities, defined in Education Law section 4410(1)(g) as a county outside of the city of New York or the city of New York in the case of a county contained within the city of New York, and the board of education of the city school district of the city of New York, that choose to perform a fiscal audit of Education Law section 4410 preschool special education programs and services for which the municipality bears fiscal responsibility, and all other preschools subject to audit by the New York State Comptroller pursuant to Education Law section 4410-c. The proposed amendment also applies to fiscal audits performed by the New York State Education Department, the Office of the State Comptroller, other State agencies or agencies of other states of school-age providers operated by private providers, special act school districts, boards of cooperative educational services and public school districts receiving public funds for the education of students with disabilities who have been enrolled pursuant to articles 81 and 89 of the Education Law. This proposed amendment impacts all counties including the 44 rural counties with less than 200,000 inhabitants.

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

The proposed amendment clarifies that the Education Department maintains discretion in establishing tuition rates based on a financial audit, specifically in deciding whether or not to adopt all of the recommended audit fiscal disallowances and/or whether to take further disallowances as deemed warranted upon internal review and desk audits. Pursuant to the proposed amendment, the Department would establish tuition rates based on an audit to the extent that the Commissioner determines the audit findings and recommendations are warranted and consistent with applicable federal and state Education Law, Commissioner's regulations, and tuition reimbursement guidelines and requirements. Upon a determination that a particular finding or recommendation is not warranted, or is not consistent with applicable state and federal Education Law, Commissioner's regulations, or tuition reimbursement guidelines and requirements, discretion will be exercised in establishing a rate based on audit, subject to the approval of the Director of the Budget.

The proposed amendment does not impose any additional professional services requirements.

COSTS:

None required. The proposed amendment simply serves to clarify what the Commissioner and the Department's discretion is in accepting the final report in an audit in setting tuition rates, a process which the Department is also already engaged in.

MINIMIZING ADVERSE IMPACT:

The proposed amendment is necessary to clarify that the Education Department maintains discretion in establishing tuition rates based on a financial audit, specifically in deciding whether or not to adopt all of the recommended audit fiscal disallowances and/or whether to take further disallowances as deemed warranted upon internal review and desk audits. Because Education Law section 4410-c requires the New York State Comptroller to audit all preschool special education providers by March 31, 2018, and because the proposed amendment applies to all preschool and school-age approved special education programs, it was not possible to establish different requirements for entities in rural areas, or to exempt them from the amendment's provisions.

RURAL AREA PARTICIPATION:

The proposed rule was submitted for review and comment to the Department's Rural Education Advisory Committee, which includes representatives of school districts in rural areas.

Job Impact Statement

The proposed amendment is necessary to clarify that the Education Department maintains discretion in establishing tuition rates based on a financial audit, specifically in deciding whether or not to adopt all of the recommended audit fiscal disallowances and/or whether to take further disallowances as deemed warranted upon internal review and desk audits. Because it is evident from the nature of the proposed amendment that it will have a positive impact, or 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.

State Board of Elections

NOTICE OF ADOPTION

Routine Testing of Voting Systems

I.D. No. SBE-17-16-00009-A

Filing No. 931

Filing Date: 2016-10-03

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: Amendment of section 6210.2 of Title 9 NYCRR.

Statutory authority: Election Law, sections 3-102(1), 7-202(3) and 7-206(3)

Subject: Routine testing of voting systems.

Purpose: To provide for testing of voting machines not less than once per year.

Text of final rule: Part 6210.2 of Subtitle V of Title 9 of the Official Compilation of Codes, Rules and Regulations of the State of New York is amended to read as follows:

§ 6210.2 Routine [maintenance and] testing of voting systems

(a) Testing of all voting systems shall be conducted by the county board before the use of the system in any election and at such other times of the year as prescribed by these regulations. Testing procedures shall be approved by the State Board. The voting system shall be tested to determine that the system is functioning correctly and that all system equipment, including but not limited to hardware, memory, and report printers, are properly integrated with the system and are capable of properly performing in an election. Testing, other than pre-qualification testing, shall be conducted by casting manual votes and may include the casting of simulated votes.

(b) *All voting equipment owned by a county board of election shall be tested at least once every calendar year. All other voting equipment that has not undergone pre-qualification testing prior to use in any election in the calendar year shall be tested no later than December 31st of the calendar year. Such tests are in* [In] addition to vendor-prescribed maintenance tasks and diagnostic tests, [tests of voting equipment shall be] conducted by the county board [, on each piece of equipment owned by the county board. Such testing shall be administered periodically and be completed during the following periods during each year that the equipment is in use:

(1) January 15-April 15;

(2) April 16-July 15;

(3) July 16-September 15; or

(4) September 16-November 15].

Whenever a voting system is to be tested for pre-qualification purposes, such test must be conducted while the voting system is in election mode. Votes cast for pre-qualification test purposes shall be manually cast using all of the devices available to voters on election day (i.e.: audio, key pads and or pneumatic switches, and/or alternate language displays).

(c) Testing shall include the comparison of software installed on the delivered system to certified software, via the use of a Secure Hash Signature Standard (SHS) Validation Program, as described in Federal Information Processing Standards Publication 180-2 issued by the National Institute Standards Technology (This publication is available electronically by accessing [http:// csrc.nist.gov/publications/] *the NIST website*. Alternatively, copies of NIST computer security publications are available from: National Technical Information Service (NTIS), 5285 Port Royal Road, Springfield, VA 22161.)

Testing shall consist of the re-calibration of equipment, as appropriate, pursuant to recommendations made in vendor's maintenance documentation, and the casting of a test deck by voting the minimum number of ballots, determined pursuant to the requirements of section 6210.8 of this Part, to ensure that all voting positions for each ballot configuration are tested. Votes cast for the purposes of this section shall be cumulative ballots cast on each piece of equipment [during each of the prescribed periods outlined].

(1) If the system does not accurately count the votes from the test deck cast manually, simulated, or both, (aside from those that were deliberately designed to fail), or the calibration test, the cause or causes for the error or errors shall be ascertained and corrected. The voting system shall be retested until there are two consecutive error-free tests before the system is approved for use in the count of actual ballots. The commissioners of the county board or their designees shall certify that they have reviewed and verified the results of said testing. The summary results of all tests, including all inaccurate test results, their causes and the actions taken to correct them, as well as the results of all errorless counts, shall be entered upon the maintenance log. *Maintenance logs are to be kept as a permanent record of the county board.* All *other* documentation and/or test decks, simulation cartridges and any test data including but not limited to copies of ballot programming used for required maintenance tests shall be maintained in secure locked storage for two years after the election, pursuant to Election Law section 3-222.

[(2) Maintenance logs are to be kept as a permanent record of the county board.]

(d) [During the period including July 16 - September 15 (and in years when a presidential primary is conducted, during the January 15 - April 15 period),] *For pre-qualification testing of a system to be used in a primary election,* the test ballot format for each piece of equipment *assigned for use in said primary election* shall consist of each primary ballot configuration as certified by the county board [, if said equipment is to be utilized in a primary election]. The voting system shall be cleared of all votes and a printed report shall be produced by the system, to verify the correct ballot configuration and election configuration, and to confirm that all voting positions are at zero. Ballots cast for the purposes of this test shall be manually cast and a printed tabulation report shall be produced. The system shall again be cleared of all votes and a printed report shall be produced by the system to confirm that all voting positions are at zero. *Each officer or board charged with the duty of preparing voting machines for use in any election shall give written notice pursuant to Election Law section 7-128 and section 7-207, by first class mail, to the State Board and to all candidates, except candidates for member of the county committee, who are lawfully entitled to have their names appear thereon, of the time when, and the place where, they may inspect the voting machines to be used for such election.* [Each officer or board charged with the duty of preparing voting machines for use in any election shall give written notice, by first class mail, to the State Board and to all candidates, except candidates for member of the county committee, who are lawfully entitled to have their names appear thereon, of the time when, and the place where, they may inspect the voting machines to be used for such election.] The candidates or their designated representatives may appear at the time and place specified in such notice to inspect such machines, provided, however, that the time so specified shall be not less than two days prior to the date of the election.

(e) For the period between ballot certification and seven days before the general election, the test ballot format for each piece of equipment shall consist of each general election ballot configuration as certified by the county board. The voting system shall be cleared of all votes and a printed report shall be produced by the system, to verify the correct ballot configuration and election configuration, and to confirm that all voting positions are at zero. Ballots cast for the purposes of this test shall be manually cast and a printed tabulation report shall be produced. The system shall again be cleared of all votes and a printed report shall be produced by the system to confirm that all voting positions are at zero. Each officer or board charged with the duty of preparing voting machines for use in any election shall give written notice pursuant to Election Law section 7-128 and section 7-207, by first class mail, to the State Board and to all candidates, except candidates for member of the county committee, who are lawfully entitled to have their names appear thereon, of the time when, and the place where, they may inspect the voting machines to be used for such election. The candidates or their designated representatives may appear at the time and place specified in such notice to inspect such machines, provided, however, that the time so specified shall be not less than two days prior to the date of the election.

(f) In addition to any vendor provided training, the State Board shall provide training on routine maintenance and testing of voting systems to county board personnel responsible for voting systems. The State Board shall provide sample tests to be utilized by each county board. The State Board may revise said testing format, based upon its audit and review.

(g) All results of [each] *any testing* [routine maintenance, test and/or] *in addition to* pre-qualification test*ing*, including the final errorless test, shall be certified as accurate by the county board commissioners or their designees, and such certification shall be entered upon the maintenance log for each such piece of equipment, together with any other information prescribed in said log by the State Board.

(h) The county board shall certify to the State Board, the completion of *any* [each routine maintenance], *testing* [and/or] *including* pre-qualification test*ing*. All documentation and/or test decks, simulation cartridges and any test data including but not limited to copies of ballot programming used for required maintenance tests shall be maintained in secure locked storage for two years after the election, pursuant to Election Law section 3-222. Such certification shall be on a form prescribed and furnished by the State Board, and shall be accompanied by copies of each maintenance log.

(i) Each county shall keep a detailed log of maintenance performance and testing procedures. Such logs shall be in a format provided by the State Board and the same shall have been reviewed by the vendor.

(j) Such logs shall be provided *upon completion of any testing, including pre-qualification testing* [quarterly to] or as requested by the State Board, for their review and inspection, and shall be made available to the public, *upon request*.

(k) The State Board may, upon review of the maintenance logs, require further testing of any such piece of equipment or may remove a piece of equipment from use in an election until further examination and testing has been completed, or may rescind certification pursuant to section 6209.8 of the State Board regulations.

(1) The State Board may reinstate the certification if the equipment passes these further tests, and a review of the maintenance logs supports such reinstatement.

(2) County boards shall make the system or equipment available to the State Board for any such additional testing and shall provide such assistance as may be deemed necessary.

(l) During the initial time period in which such system or equipment is used, to include a primary election and a general election, the State Board shall assist in the routine maintenance, testing and the operation of the voting machines or systems. Such assistance shall include but not be limited to:

(1) election configuration and ballot configuration related to voting system testing and use;

(2) pre-qualification and post-election tests;

(3) election day support, via phone, email, facsimile or on-site, as necessary;

(4) post-election support, to include recanvass, challenges, and audit conducted pursuant to Election Law section 9-211;

(5) staff training;

(6) defining personnel requirements and tasks;

(7) defining procedures for pre-qualification, post-election, and maintenance tests; and

(8) defining procedures for canvassing and recanvassing votes cast in an election.

(m) During successive years, the State Board, whenever it deems necessary, or at the request of a county board, may assist in any or all aspects of the operation of the system.

Final rule as compared with last published rule: Nonsubstantive changes were made in section 6210.2.

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

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

The only change to such section since publication is the replacement of the term "pre-election testing" with the term "pre-qualification testing" the latter being defined and used elsewhere in the part, such change being non substantive and not requiring republication.

Assessment of Public Comment

The agency received no public comment.

Department of Financial Services

EMERGENCY RULE MAKING

Workers' Compensation Safe Patient Handling Program

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

Filing No. 904

Filing Date: 2016-09-29

Effective Date: 2016-09-29

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

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

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

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

Specific reasons underlying the finding of necessity: Part A of Chapter 60 of the Laws of 2014 added a new Title 1-A to Public Health Law Article 29-D to require health care facilities to establish safe patient handling programs by January 1, 2017. Part A also added a new Insurance Law § 2304(j) to require the Superintendent of Financial Services ("Superintendent") to make rules, by July 1, 2016, establishing requirements for health care facilities to obtain a reduced workers' compensation insurance rate for safe patient handling programs implemented pursuant to Public Health Law § 2997-(k)(2). Section 2304(j) further requires the Superintendent to submit reports to the Legislature by December 1, 2018 and December 1, 2020 that evaluate the effects of the reduced rate, including changes in claim frequency and costs.

The regulation states that for each workers' compensation insurance policy issued or renewed in New York, an insurer must provide a credit to a health care facility that implements and maintains a safe patient handling program that meets the requirements of Public Health Law § 2997-(k)(2). The amount of the credit and the manner in which it is applied must be in accordance with the approved manual filed by the rate service organization of which the insurer is a member. The regulation also requires an insurer to verify that a health care facility has implemented and maintains a safe patient handling program that meets the requirements of Public Health Law § 2997-(k)(2) before providing a credit, and requires every workers' compensation rate service organization to submit an annual report to the Superintendent regarding policies receiving a credit pursuant to the regulation, including policy year payrolls, indemnity losses, indemnity claim counts, medical losses by classification, and such other information as the Superintendent may require.

Insurance Law § 2304(j) requires that the regulation be in place by July 1, 2016. Therefore, it is necessary to promulgate the regulation on an emergency basis for the furtherance of the general welfare.

Subject: Workers' Compensation Safe Patient Handling Program.

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

Text of emergency rule: *§ 151-7.0 Preamble.*

In March 2014, Governor Andrew M. Cuomo signed into law Part A of Chapter 60 of the Laws of 2014, which amended the Public Health Law and Insurance Law with regard to safe patient handling programs. Specifically, Chapter 60 added a new Title 1-A to Public Health Law Article 29-D to require health care facilities to establish safe patient handling programs, and added a new Insurance Law section 2304(j) to require the department to make rules establishing requirements for health care facilities to obtain a reduced workers' compensation insurance rate for safe patient handling programs implemented pursuant to Public Health Law section 2997-(k)(2).

§ 151-7.1 Definitions.

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

§ 151-7.2 Safe patient handling program credits.

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

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

§ 151-7.3 Reporting requirements.

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

This notice is intended to serve only as a notice of emergency adoption. This agency intends to adopt the provisions of this emergency rule as a permanent rule, having previously submitted to the Department of State a notice of proposed rule making, I.D. No. DFS-29-16-00020-EP, Issue of July 20, 2016. The emergency rule will expire November 27, 2016.

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

Regulatory Impact Statement

1. Statutory authority: Financial Services Law §§ 202 and 302 and Insurance Law §§ 301 and 2304(j).

Financial Services Law § 202 establishes the office of the Superintendent of Financial Services ("Superintendent"). Financial Services Law § 302 and Insurance Law § 301, in material part, authorize the Superintendent to effectuate any power accorded to the Superintendent by the Financial Services Law, Insurance Law, or any other law, and to prescribe regulations interpreting the Insurance Law.

Insurance Law § 2304(j) requires the Superintendent to make rules establishing requirements for health care facilities to obtain a reduced workers' compensation insurance rate for safe patient handling programs implemented pursuant to Public Health Law § 2997-k(2). This section also requires the Superintendent to evaluate the results of the reduced rate, including changes in claim frequency and costs, and submit a report to the Legislature by December 1, 2018 and December 1, 2020.

2. Legislative objectives: In March 2014, Governor Andrew M. Cuomo signed into law Chapter 60 of the Laws of 2014, Part A of which amended the Public Health Law and Insurance Law with regard to safe patient handling programs. Specifically, Part A of Chapter 60 added a new Title 1-A to Public Health Law Article 29-D to require health care facilities to establish safe patient handling programs. Part A also added a new Insurance Law § 2304(j) requiring the Superintendent to make rules establishing requirements for health care facilities to obtain a reduced workers' compensation insurance rate for safe patient handling programs implemented pursuant to Public Health Law § 2997-k(2). It also requires the Superintendent to evaluate the results of the reduced rate, including changes in claim frequency and costs, and submit a report to the Legislature by December 1, 2018 and December 1, 2020.

This rule accords with the public policy objectives that the Legislature sought to advance in Insurance Law § 2304(j) by requiring an insurer to provide a credit on each workers' compensation insurance policy issued or renewed in New York State to a health care facility that implements and maintains a safe patient handling program pursuant to the requirement prescribed in Public Health Law § 2997-k(2). The amount of the credit and the manner in which it is applied must conform with the approved manual filed by the rate service organization ("RSO") of which the insurer is a member.

3. Needs and benefits: Part A of Chapter 60 of the Laws of 2014 amended the Public Health Law to require health care facilities to establish safe patient handling programs. Part A also amended the Insurance Law to require the Superintendent to establish, by regulation, requirements for health care facilities to obtain a reduced workers' compensation insurance rate for safe patient handling programs, and to require the Superintendent to evaluate the results of the reduced rate, including changes in claim frequency and costs, and submit a report to the Legislature by December 1, 2018 and December 1, 2020.

This rule requires an insurer to provide a credit on each workers' compensation insurance policy issued or renewed in New York State to a health care facility that implements and maintains a safe patient handling program pursuant to the requirements prescribed in Public Health Law § 2997-k(2). The amount of the credit and the manner in which it is applied must conform with the approved manual filed by the RSO of which the insurer is a member. The rule also requires every workers' compensation RSO to file certain information with the Superintendent by June 1 of each year so that the Superintendent may collect information for the reports due to the Legislature in 2018 and 2020.

4. Costs: This rule may impose compliance costs on insurers because an insurer must verify that a health care facility has a safe patient handling program implemented pursuant to Public Health Law § 2997-k(2). However, this is a consequence of Part A of Chapter 60 of the Laws of 2014, which requires an insurer to provide a credit on each workers' compensation insurance policy issued or renewed in New York State to a health care facility that implements and maintains a safe patient handling program pursuant to the requirements prescribed in Public Health Law § 2997-k(2).

A workers' compensation RSO may incur costs for the implementation and continuation of this rule, because every workers' compensation RSO must submit a report to the Superintendent regarding policies receiving the credit, including providing information on policy year payrolls, indemnity losses, indemnity claim counts, and medical losses by classification, and such other information as the Superintendent may require. This report is necessary, however, in order to comply with the statutory mandate that the Superintendent report to the Legislature the effects of the reduced rate.

The Department of Financial Services ("DFS") also may incur costs for the implementation and continuation of this rule, because DFS will need to review the workers' compensation RSO's report, as well as draft its own report for submission to the Legislature. However, any additional costs incurred should be minimal and DFS should be able to absorb the costs in its ordinary budget.

This rule does not impose compliance costs on any local government.

5. Local government mandates: This rule does not impose any program, service, duty, or responsibility upon a county, city, town, village, school district, fire district, or other special district.

6. Paperwork: Workers' compensation RSOs may incur additional paperwork because this rule requires every workers' compensation RSO to submit a report to the Superintendent regarding policies receiving the credit, including providing information regarding policy year payrolls, indemnity losses, indemnity claim counts, and medical losses by classification, and such other information as the Superintendent may require.

7. Duplication: This rule does not duplicate, overlap, or conflict with any existing state or federal rules or other legal requirements.

8. Alternatives: DFS considered requiring a workers' compensation RSO to file its annual report electronically but decided that an RSO likely will want to file the report electronically and therefore it is not necessary to require it in the rule.

DFS also considered prescribing the way in which an insurer must verify that a health care facility has implemented and is maintaining a safe patient handling program that meets the requirements of Public Health Law section 2997-k(2) before providing a credit. However, DFS decided it was not necessary to prescribe the method of verification because the insurer is in the best position to determine the ideal way to verify compliance with the law before providing a credit.

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

10. Compliance schedule: An insurer and workers' compensation RSO must comply with this rule as of July 1, 2016.

Regulatory Flexibility Analysis

1. Effect of rule: Part A of Chapter 60 of the Laws of 2014 amended the Public Health Law by adding a new Title 1-A to Public Health Law Article 29-D to require health care facilities to establish safe patient handling programs. Part A also added a new Insurance Law § 2304(j), requiring the Superintendent of Financial Services ("Superintendent") to make rules establishing requirements for health care facilities to obtain a reduced workers' compensation insurance rate for safe patient handling programs implemented pursuant to Public Health Law § 2997-k(2). This section also requires the Superintendent to evaluate the results of the reduced rate, including changes in claim frequency and costs, and submit a report to the Legislature by December 1, 2018 and December 1, 2020.

This rule reflects the amendments to the Insurance Law by Chapter 60. The rule also requires every workers' compensation rate service organization ("RSO") to file certain information with the Superintendent by June 1 of each year so that the Superintendent may collect information for the reports due to the Legislature in December 2018 and December 2020. As such, it should not affect local governments.

In addition, this rule is in part directed at workers' compensation RSOs, which the Department does not believe fall within the definition of a "small business" as defined by State Administrative Procedure Act § 102(8) because in general they are not independently owned and do not have fewer than 100 employees.

Industry asserts that certain domestic insurers, in particular co-op insurers and mutual insurers, subject to the rule are small businesses. However, the law, rather than the rule, requires that an insurer provide a credit to a health care facility that implements and maintains a safe patient handling program. The rule cannot vary a requirement imposed by law.

2. Compliance requirements: No local government will have to undertake any reporting, recordkeeping, or other affirmative acts to comply with the rule because the rule does not apply to any local government. An insurer that is a small business affected by this rule, if any, may be subject to reporting, recordkeeping, or other compliance requirements because the insurer must verify that a health care facility has a safe patient handling program implemented pursuant to Public Health Law § 2997-k(2). However, this is a consequence of Part A of Chapter 60 of the Laws of 2014, which requires an insurer to provide a credit on each workers' compensation insurance policy issued or renewed in New York State to a health care facility that implements and maintains a safe patient handling program that meets the requirements of the Public Health Law.

3. Professional services: No local government will need professional services to comply with this rule because the rule does not apply to any local government. No insurer that is a small business affected by the rule, if any, should need to retain professional services, such as lawyers or auditors, to comply with this rule.

4. Compliance costs: No local government will incur any costs to comply with this rule because the rule does not apply to any local government. An insurer that is a small business affected by this rule, if any, may incur additional compliance costs because the insurer must verify that a health care facility has a safe patient handling program implemented pursuant to Public Health Law § 2997-k(2). However, this is a consequence of Part A of Chapter 60 of the Laws of 2014, which requires an insurer to provide a credit on each workers' compensation insurance policy issued or renewed in New York State to a health care facility that implements and maintains a safe patient handling program that meets the requirements of the Public Health Law.

5. Economic and technological feasibility: This rule does not apply to any local government; therefore, no local government should experience any economic or technological impact as a result of the rule. No insurer that is a small business affected by this rule, if any, should experience any economic or technological impact as a result of the rule. Furthermore, this rule merely implements Part A of Chapter 60 of the Laws of 2014, which requires an insurer to provide a credit on each workers' compensation insurance policy issued or renewed in New York State to a health care facility that implements and maintains a safe patient handling program that meets the requirements of the Public Health Law.

6. Minimizing adverse impact: There will not be an adverse impact on any local government because the rule does not apply to any local government. This rule should not have an adverse impact on an insurer that is a small business affected by the rule, if any, because the rule uniformly affects all insurers that are subject to the rule and merely implements Part A of Chapter 60 of the Laws of 2014, which requires an insurer to provide a credit on each workers' compensation insurance policy issued or renewed in New York State to a health care facility that implements and maintains a safe patient handling program that meets the requirements of the Public Health Law.

7. Small business and local government participation: Small businesses and local governments were provided an opportunity to participate in the rule-making process when the notice of emergency adoption and proposed rule-making was published in the State Register on July 20, 2016 and posted on the Department of Financial Services' website.

Rural Area Flexibility Analysis

1. Types and estimated numbers of rural areas: Insurers and workers' compensation rate services organizations ("RSOs") affected by this rule

operate in every county in this state, including rural areas as defined by State Administrative Procedure Act § 102(10).

2. Reporting, recordkeeping and other compliance requirements; and professional services: The rule imposes additional reporting, recordkeeping, and other compliance requirements by requiring workers' compensation RSOs, including RSOs located in rural areas, to submit a report to the Superintendent of Financial Services ("Superintendent") regarding policies receiving the credit, including information regarding policy year payrolls, indemnity losses, indemnity claim counts, and medical losses by classification, and such other information as the Superintendent may require.

An insurer may be subject to additional reporting, recordkeeping, or other compliance requirements because the insurer must verify that a health care facility has a safe patient handling program implemented pursuant to Public Health Law § 2997-k(2). However, this is a consequence of Part A of Chapter 60 of the Laws of 2014, which requires the Superintendent to make rules establishing requirements for health care facilities to obtain a reduced workers' compensation insurance rate for safe patient handling programs implemented pursuant to Public Health Law § 2997-k(2), by requiring an insurer to provide a credit on each workers' compensation insurance policy issued or renewed in New York State to a health care facility that implements and maintains a safe patient handling program pursuant to the requirements prescribed in the Public Health Law.

An insurer or workers' compensation RSO in a rural area should not need to retain professional services, such as lawyers or auditors, to comply with this rule.

3. Costs: The rule may result in additional costs to workers' compensation RSOs, including RSOs located in rural areas, because it requires workers' compensation RSOs to submit a report to the Superintendent regarding policies receiving the credit, including information regarding policy year payrolls, indemnity losses, indemnity claim counts, and medical losses by classification, and such other information as the Superintendent may require. Such costs are difficult to estimate because of several factors, such as the number of policies that will receive the credit. However, this report is necessary in order to implement the statutory mandate that the Superintendent report to the Legislature the effects of the credit. In addition, any additional costs to workers' compensation RSOs in rural areas should be commensurate with costs for workers' compensation RSOs in non-rural areas.

An insurer may incur additional compliance costs because the insurer must verify that a health care facility has a safe patient handling program implemented pursuant to Public Health Law § 2997-k(2). However, this is a consequence of Part A of Chapter 60 of the Laws of 2014, which requires an insurer to provide a credit on each workers' compensation insurance policy issued or renewed in New York State to a health care facility that implements and maintains a safe patient handling program that meets the requirements of the Public Health Law.

4. Minimizing adverse impact: This rule uniformly affects insurers and workers' compensation RSOs that are located in both rural and non-rural areas of New York State. The rule should not have an adverse impact on rural areas.

5. Rural area participation: Insurers and workers' compensation RSOs in rural areas were provided an opportunity to participate in the rule-making process when the notice of emergency adoption and proposed rule-making was published in the State Register on July 20, 2016 and posted on the Department of Financial Services' website.

Job Impact Statement

This rule should not adversely impact jobs or employment opportunities in New York State. With regard to insurers, the rule merely implements Part A of Chapter 60 of the Laws of 2014 by requiring that for each workers' compensation insurance policy issued or renewed in New York State, an insurer provide a credit to a health care facility that implements and maintains a safe patient handling program that meets the requirements of Public Health Law § 2997-(k)(2). The amount of the credit and the manner in which it is applied must be in accordance with the approved manual filed by the rate service organization ("RSO") of which the insurer is a member. The rule also requires every workers' compensation RSO to file certain information with the Superintendent of Financial Services ("Superintendent") by June 1 of each year so that the Superintendent may collect information for the statutorily-required reports due to the Legislature in 2018 and 2020.

New York State Gaming Commission

NOTICE OF EXPIRATION

The following notice has expired and cannot be reconsidered unless the New York State Gaming Commission publishes a new notice of proposed rule making in the NYS *Register*.

Reimbursement of Awards for Capital Improvement Projects at Video Lottery Gaming ("VLG") Facilities

I.D. No.	Proposed	Expiration Date
SGC-39-15-00006-P	September 30, 2015	September 29, 2016

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Casino Alcoholic Beverage Licenses

I.D. No. SGC-42-16-00002-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 5328 to Title 9 NYCRR.

Statutory authority: Racing, Pari-Mutuel Wagering and Breeding Law, sections 104(19), 1307(1), 1340(1), (5), (8) and (11)

Subject: Casino alcoholic beverage licenses.

Purpose: To regulate the presence and sale of alcoholic beverages on the premises of gaming facilities.

Text of proposed rule: *PART 5328*

Alcoholic Beverages

§ 5328.1. Definitions.

Unless the context indicates otherwise, the following definitions apply throughout this Part. The definitions contained in Alcoholic Beverage Control Law, to the extent to which they are not in conflict with this Part, are fully incorporated into this Part by reference.

(a) Casino alcoholic beverage license means a license issued to a gaming facility licensee, or a licensed or registered vendor providing alcoholic beverages within a gaming facility, for the sale of alcoholic beverages at retail in accordance with Racing, Pari-Mutuel Wagering and Breeding Law section 1340 and this Part.

(b) Complimentary means without payment of money or other form of monetary-like consideration.

§ 5328.2. Casino alcoholic beverage license.

(a) A gaming facility licensee or casino vendor licensee or registrant applying for a casino alcoholic beverage license shall establish by clear and convincing evidence its good character, honesty and integrity, and provide such other financial information as may be required by the commission. Each casino vendor licensee or registrant that intends to purchase and select alcoholic beverage product and profit from the sale of such product at a gaming facility shall not do so unless and until duly licensed pursuant to this Part.

(b) A gaming facility licensee or casino vendor licensee or registrant intending to serve alcoholic beverages within a gaming facility shall file a casino alcoholic beverage license application the commission supplies and may amend from time to time, except that the commission may instead consider an application for facilities applying for a conversion of an existing alcoholic beverage license pursuant to subdivision (g) of this section.

(c) A gaming facility licensee or casino vendor licensee or registrant intending to serve alcoholic beverages at the commencement of operations of a gaming facility shall file its application at least 30 days prior to the projected date, except for an application for conversion of an existing alcoholic beverage license pursuant to subdivision (g) of this section, which the commission may accept at any time.

(d) Each casino alcoholic beverage licensee shall submit to the commission for review and approval any amendments to its casino alcoholic beverage license at least 30 days prior to the intended implementation of such amendment. The casino alcoholic beverage licensee may implement a proposed amendment on the 30th calendar day following the filing of such amendment with the commission, unless the commission provides notice pursuant to subdivision (e) of this section objecting to such amendment.

(e) If during the 30-day review period the commission determines that any amendment is inconsistent with the intent of this Part, the commission shall, by delivering written notice to the casino alcoholic beverage licensee, object to such amendment. Such objection notice shall:

(1) specify the nature of the objection and, when possible, an acceptable alternative; and

(2) direct that such amendment not be implemented.

(f) When the commission has objected to an amendment pursuant to subdivision (e) of this section, the casino alcoholic beverage licensee may submit a revised amendment for review within seven days of delivery of the commission's objection, pursuant to subdivision (d) of this section.

(g) A gaming facility licensee holding an active alcoholic beverage license issued by the state liquor authority may file a request in writing to the commission for the conversion of such license to a casino alcoholic beverage license, as set forth in Racing, Pari-Mutuel Wagering and Breeding Law section 1340(11), along with a sworn statement detailing any violations or penalties imposed by the state liquor authority in regard to such existing license in the five-year period preceding the request.

(h) A casino alcoholic beverage applicant or licensee shall require each employee authorized to serve or deliver alcohol to complete an alcohol training and awareness program certified by the state liquor authority and submit to the commission such employee's certificate of completion.

§ 5328.3. License determination.

(a) Upon receipt of a completed application for a casino alcoholic beverage license, the commission shall confirm that the gaming facility licensee or casino vendor licensee or registrant has met the requirements set forth in Racing, Pari-Mutuel Wagering and Breeding Law section 1340 and this Part.

(b) The commission, following consultation with the state liquor authority, or the designee of the state liquor authority, shall either:

(1) grant the application for a casino alcoholic beverage license, if the commission determines that doing so is in the best interests of gaming in this State; or

(2) deny the application for a casino alcoholic beverage license and notify the applicant of the reason or reasons for denial.

If the application is for conversion of an existing alcoholic beverage license and there are no state liquor authority violations or penalties in regard to the existing license, the commission shall grant the request for conversion of the license. If there are one or more state liquor authority violations or penalties in regard to the existing license, the commission shall consider whether granting the request for conversion of the license is in the best interests of gaming in this State. The commission may impose such conditions, restrictions, limitation or covenants upon a casino alcoholic beverage license, whether from a request for conversion of an existing license or otherwise, as the Commission may deem appropriate in its discretion to mitigate risk of violations, protect the public health safety or welfare, or serve the best interests of gaming in this State.

§ 5328.4. Review of license determination.

Within 30 days of the denial of a casino alcoholic beverage license, the applicant may submit a written request to the commission for a review of such determination. The commission or its designee shall confirm the denial or grant the application within 30 days of the request for review.

§ 5328.5. Form and posting of license.

(a) Following the grant of a casino alcoholic beverage license, the commission shall issue a license document that contains at a minimum:

(1) a complete identification of the applicant's identity and address;

(2) any conditions; and

(3) the signature of the secretary of the commission.

(b) Each casino alcoholic beverage license shall at all times be displayed in a conspicuous place in the gaming facility where alcoholic beverages are sold or distributed so that all patrons visiting such licensed area may readily see such license.

(c) Each point of sale location approved under the casino alcoholic beverage license shall display a certificate issued by the commission for that point of sale location.

§ 5328.6. Duration.

A casino alcoholic beverage license shall expire two years from the date of issuance and shall be renewable thereafter for a period of no less than three years. An application to renew a casino alcoholic beverage license shall be submitted to the commission at least 30 days prior to the expiration of the license.

§ 5328.7. Restrictions and limitations.

(a) Any violation of the Alcoholic Beverage Control Law, the regulations and rulings promulgated by the state liquor authority, Racing, Pari-Mutuel Wagering and Breeding Law section 1340 or this Subdivision by a casino alcoholic beverage license or its agents or employees shall be grounds for suspension or revocation of a casino alcoholic beverage license or other disciplinary action, including, without limitation, monetary penalties following notice and an opportunity for a hearing.

(b) Pursuant to paragraph five of Racing, Pari-Mutuel Wagering and Breeding Law section 1340, the commission may from time to time by means of bulletins, special rulings or findings notify casino alcoholic beverage licensees of provisions of the alcoholic beverage control law and rules, regulations, bulletins, orders, and advisories promulgated by the state liquor authority that are inapplicable to gaming facilities or portions of gaming facilities.

(c) Pursuant to paragraph eight of Racing, Pari-Mutuel Wagering and Breeding Law section 1340, a gaming facility licensee holding a casino alcoholic beverage license may provide complimentary alcoholic beverages to a patron under the following conditions:

(1) there shall be no delivery of more than two drinks to one patron at a time, except that a bottle of wine may be served to one or more patrons;

(2) there shall be no sale or delivery to any patron an unlimited number of drinks during any set period of time for a fixed price (i.e. open bar), except at invitation-only private functions not open to the public;

(3) there shall be no game or contest that involves drinking alcoholic beverages or the awarding of alcoholic beverages as prizes; and

(4) there shall be no service of any alcoholic beverage to minors.

§ 5328.8. Special events.

A gaming facility licensee seeking to serve alcoholic beverages in an unlicensed area of the facility shall submit a Special Event Casino Alcoholic Beverage permit application, on a form the commission prescribes. The commission shall approve the application and issue the permit if the commission determines that the application contains all required information and issuance would not compromise the integrity of gaming or the public health, welfare or safety. The application shall be submitted to the commission at least 30 days prior to the proposed event and contain, at a minimum:

(a) name and description of the event;

(b) a description of the mapped location of the event;

(c) date, time and duration of the event;

(d) a copy of the advertisement, program and promotional material for the event;

(e) number of persons anticipated to attend the event;

(f) admission price to the event;

(g) type of alcoholic beverages to be served;

(h) security and staffing arrangements;

(i) the identity of any jointly responsible person, persons, sponsor or sponsors, including the contact information and casino vendor enterprise license or registration number or numbers issued in accordance with Part 5307 of this Subchapter; and

(j) the identities of the licensed employees for the special event area, including the license or registration numbers of such employees issued in accordance with Parts 5304 through 5306 of this Subchapter.

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

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

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

Regulatory Impact Statement

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

Racing Law section 1340(1) authorizes the Commission to grant any license or permit for alcoholic beverages in, on, or about the gaming facilities.

Racing Law section 1340(5) authorizes the Commission to establish regulations necessary for the proper enforcement, regulation, and control of alcoholic beverages in gaming facilities to accommodate for the uniqueness of the gaming facilities.

Racing Law section 1340(8) authorizes the Commission to establish regulations for facilities providing complimentary beverages.

Racing Law section 1340(11) authorizes the Commission to establish regulations for the conversion of an existing alcoholic beverage license into a casino alcoholic beverage license.

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

3. NEEDS AND BENEFITS: The proposed rules implement the above listed statutory directives regarding the issuance and regulation of casino alcoholic beverage licenses. The rules provide specificity with respect to the above listed statutory directives to ensure the proper licensing and regulation of alcoholic beverages at a gaming facility. The rules provide the process of applying for a casino alcoholic beverage license, the standard of review for the license, the restrictions and limitations that may be placed on a license, and the duration of a casino alcoholic beverage license.

4. COSTS:

(a) Costs to the regulated parties for the implementation of and continuing compliance with these rules: The regulated parties will incur minimal costs associated with the filing of the application for a casino alcoholic beverage license. Additionally, the regulated parties may incur costs for the alcohol training awareness program required for each employee authorized to serve or deliver alcoholic beverages. An alcohol training and awareness program costs between twenty-five and thirty-five dollars per employee.

(b) Costs to the regulating agency, the State, and local governments for the implementation of and continued administration of the rule: These rules will impose costs to the Commission for the review and issuance of a casino alcoholic beverage license. Based upon the Commission's experience in conducting hearings in lottery, video lottery gaming and horse racing, the Commission anticipates that the hearing costs associated with the proposed rules would be negligible. These rules will not impose any additional costs on local governments.

(c) The information, including the source or sources of such information, and methodology upon which the cost analysis is based: The costs associated with the alcoholic training and awareness programs are based upon the actual costs of the approved programs listed by the state liquor authority. All other cost estimates are based on the Commission's experience regulating racing and gaming activities within the State.

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

6. PAPERWORK: The rules impose paperwork burdens on gaming facility licensees and casino vendors or registrants intending to serve or sell alcoholic beverages upon the premises of the gaming facilities by requiring the submission of an application for a casino alcoholic beverage license.

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

8. ALTERNATIVES: The Commission consulted with the state liquor authority and reviewed other gambling jurisdiction best practices and regulations. Alternatives were discussed and considered with the state liquor authority and compared to other jurisdiction regulations. These included the documentation required to be provided to the Commission to apply for a casino alcoholic beverage license, the review of the license application by the Commission, and the types of restrictions or limitations the Commission may place on a license.

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

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

Regulatory Flexibility Analysis

1. EFFECT OF RULE: These rules provide for the issuance of casino alcoholic beverage licenses for the sale and service of alcoholic beverages upon the premises of gaming facilities. Small business casino vendor enterprises or vendor registrants intending to hold a casino alcoholic beverage license will be impacted by these rules. Local government will not be affected by these rules.

2. COMPLIANCE REQUIREMENTS: These rules require all casino vendor enterprises or registrants intending to serve or sell alcohol to apply for and obtain a casino alcoholic beverage license with the Commission.

3. PROFESSIONAL SERVICES: No new or additional professional services are required in order to comply with these rules.

4. COMPLIANCE COSTS: Casino vendor enterprises and registrants intending to serve or sell alcohol need to apply for a casino alcoholic beverage license with the Commission and may incur costs associated with the paperwork burden of filing the application. Additionally, all employees selling or delivering alcoholic beverages are required to complete a certified alcohol training and awareness program. These programs cost approximately twenty-five to thirty-five dollars per person.

5. ECONOMIC AND TECHNOLOGICAL FEASIBILITY: These rules will not impose any technological costs on small businesses or local government.

6. MINIMIZING ADVERSE IMPACT: These rules do not impose adverse impacts on small businesses or local government.

7. SMALL BUSINESS AND LOCAL GOVERNMENT PARTICIPATION: Small businesses and host local governments will have the opportunity to participate in the rule making process during the public comment period which will commence when these rules are formally proposed.

Rural Area Flexibility Analysis and Job Impact Statement

These rules will not have any adverse impact on rural areas or jobs. These rules provide the process of applying for a casino alcoholic beverage license, the standard of review for the license, the restrictions and limitations that may be placed on a license, and the duration of a casino alcoholic beverage license.

These rules apply uniformly throughout the state and therefore do not have an adverse impact upon rural areas. These rules will have no adverse impact on job opportunities.

Accordingly, a full Rural Area Flexibility Analysis and Job Impact Statement are not required and have not been prepared.

PROPOSED RULE MAKING
NO HEARING(S) SCHEDULED

Prescribing Methods of Notice to Applicants, Registrants, and Licensees and Restrictions on Employee Wagering

I.D. No. SGC-42-16-00003-P

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

Proposed Action: Amendment of Part 5300 of Title 9 NYCRR.

Statutory authority: Racing, Pari-Mutuel Wagering and Breeding Law, sections 104(19), 1307(1), (2)(d) and 1336(2)

Subject: Prescribing methods of notice to applicants, registrants, and licensees and restrictions on employee wagering.

Purpose: To set forth the methods of notice and restrict employee wagering.

Text of proposed rule: Part 5300

General

§ 5300.1. Definitions.

Unless the context indicates otherwise, the following definitions and the definitions set forth in Racing, Pari-Mutuel Wagering and Breeding Law section 1301 are applicable throughout this Subchapter:

(a) Ancillary casino vendor means a vendor providing goods or services to a gaming facility applicant or licensee that are ancillary to gaming activity.

(b) Casino vendor means a vendor providing goods or services to a gaming facility applicant or licensee that directly relate to gaming activity.

(c) Career or professional offender means any person whose behavior is pursued in an occupational manner or context for the purpose of economic gain, using such methods as are deemed criminal violations of the public policy of this State.

(d) Career offender cartel means any group of persons who operate together as career offenders.

(e) Commission means the commissioners, staff and designees of the New York State Gaming Commission.

(f) Credit slip means a form used to record either the return of chips from a gaming table to the cage or the transfer of markers or negotiable checks from a table game to a cage or bankroll.

(g) Dealer means a person assigned to operate games.

(h) Drop box means the box attached to a table game that is used to collect the following items:

(1) currency;

(2) coin;

(3) cash equivalents;

(4) damaged chips; and

(5) all other forms used by the gaming facility and deposited in the drop box as part of the audit trail.

(i) Excluded person means a person who is excluded from a gaming facility pursuant to Part 5326 of this Subchapter.

(j) Fill means a transaction whereby a supply of chips or coins is transferred from a bankroll to a table.

(k) Gaming cheat means a person who is engaging in or attempting to engage in, or who is suspected of cheating, theft, embezzlement, a violation of this Subchapter or other illegal activities, or activities that are deemed a violation under Penal Law article 225 or equivalent violations in other jurisdictions, including a person who is required to be excluded or

ejected from the licensed facility under Racing, Pari-Mutuel Wagering and Breeding Law section 1342 or Part 5327 of this Subchapter.

(l) Gaming facility means the premises approved under a gaming license, which includes a gaming area and any other nongaming structure related to the gaming area and may include, without limitation, hotels, restaurants and other amenities.

(m) Hand means either one game in a series, one deal in a card game or the cards held by a player in a card game, as the context requires.

(n) Match-play coupon means a coupon with a fixed, stated value that is issued and redeemed and the stated value of which, when presented by a patron with chips that are equal to or greater in value to the stated value of the coupon, is included in the amount of the patron's wager in determining the payout on any winning bet at an authorized game.

(o) Material change means modification to physical or financial aspects in a manner that creates an inconsistency with the application submitted by a licensee or applicant for license. Physical aspects impact the proposed gaming facility or project site through addition, removal or alteration of the quality and nature of gaming and non-gaming amenities. Financial aspects impact the capital and financing structure through addition, removal or alteration of financing source or sources, schedule of financing source or sources and arrangement or agreements of financing plan.

(p) Non-gaming employee means any natural person, not otherwise included in the definition of casino key employee or gaming employee, who is employed by a gaming facility licensee or an affiliate, intermediary, subsidiary or holding company of a gaming facility licensee.

(q) Passive investor means an investor owning, holding or controlling up to 25 percent of the publicly traded securities issued by a gaming facility licensee or applicant or holding, intermediate or parent company of a licensee in the ordinary course of business for investment purposes only and who does not, nor intends to, exercise influence or control over the affairs of the issuer of such securities, nor over any licensed subsidiary of the issuer of such securities.

(r) Pit means the area enclosed or encircled by the arrangement of table games in which gaming facility personnel administer and supervise the live games played at the tables by patrons located outside the perimeter of such area.

(s) Promotional gaming chip and promotional coupon mean noncashable instruments that may be used for game play.

(t) Qualified institutional investor means an institutional investor holding up to 15 percent of the publicly traded securities of a gaming facility applicant or licensee, or holding, intermediary or subsidiary company thereof, for investment purposes only and does not, nor intends, to exercise influence or control over the affairs of the issuer of such securities, nor over any licensed subsidiary of the issuer of such securities. To qualify as an institutional investor, an investor, other than a State or Federal pension plan, must meet the requirements of a qualified institutional buyer as defined in regulations of the United States Securities and Exchange Commission. A qualified institutional investor includes, without limitation, any of the following:

(1) bank as defined under Federal securities laws;

(2) an insurance company as defined under Federal investment company laws;

(3) an investment company registered under Federal investment company laws;

(4) an investment advisor registered under Federal investment company laws;

(5) collective trust funds as defined under Federal investment company laws;

(6) an employee benefit plan or pension fund subject to the Employee Retirement Income Security Act, subject to certain exclusions;

(7) a State or Federal government pension plan; and

(8) such other persons as the commission many determine for reasons consistent with policies of the commission.

(u) Qualifier means a related party in interest to an applicant, including, without limitation, a close associate or financial resource of such applicant. Qualifiers may include, without limitation:

(1) if the gaming facility applicant is a corporation:

(i) each officer;

(ii) each director;

(iii) each shareholder holding five percent or more of the common stock of such company; and

(iv) each lender;

(2) if the gaming facility applicant is a limited liability corporation:

(i) each member;

(ii) each transferee of a member's interest;

(iii) each director;

(iv) each manager; and

(v) each lender;

(3) if the gaming facility applicant is a limited partnership:

(i) each general partner;

(ii) each limited partner; and

(iii) each lender;

(4) if the gaming facility applicant is a partnership:

(i) each partner; and

(ii) each lender;

(5) any gaming facility licensee manager or operator;

(6) any direct and indirect parent entity of a gaming facility applicant or licensee, including any holding company;

(7) any entity having a beneficial or proprietary interest of five percent or more in a gaming facility applicant or licensee;

(8) any other person or entity that has a business association of any kind with the gaming facility applicant or licensee; and

(9) any other person or entity that the commission may designate as a qualifier.

(v) Shift means the normal daily work period of a group of employees administering and supervising the operations of live gaming devices.

(w) Supervisor means a person employed in the operation of the authorized games in a gaming facility in a supervisory capacity or empowered to make discretionary decisions that regulate gaming facility operations, including without limitation, pit managers, floorpersons, gaming facility shift managers, the assistant gaming facility manager and the gaming facility manager.

(x) Temporary service provider means a vendor, a vendor's agents, servants and employees engaged by a gaming facility licensee to perform temporary services at a gaming facility for no more than 30 days in any 12-month period.

(y) Vendor registrant means any vendor that offers goods and services to a gaming facility applicant or licensee that is not a casino vendor or an ancillary casino vendor.

§ 5300.2. Method of Notice

Pursuant to Racing, Pari-Mutuel Wagering and Breeding Law section 1307(2)(d), the Commission shall post on its website as notice to all applicants, registrants, or licensees, the specifications of the confidentiality of all information provided to the Commission by any applicant, registrant, or licensee, and the release thereof.

§ 5300.3. Restrictions on employee wagering.

In addition to the requirements set forth in section 1336 of the Racing, Pari-Mutuel Wagering and Breeding Law, all employees of a gaming facility licensee holding a gaming employee registration issued by the commission are prohibited from wagering in any facility in which the employee is employed or any facility owned or operated by that gaming facility or an affiliate of that gaming facility.

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

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

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

Regulatory Impact Statement

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

Racing Law section 1307(2)(d) requires the Commission to prescribe the method of notice to be provided to an applicant, registrant, or licensee in regard to the release of information or data provided to the commission from any applicant, registrant, or licensee.

Racing Law section 1336(2) authorizes the Commission to prescribe restrictions and prohibitions on employee wagering at gaming facilities.

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

3. NEEDS AND BENEFITS: The proposed amendment to the rules implement the above listed statutory directives regarding the method of notice to be provided to applicants, registrants, or licensee for the release of information or data provided by such applicant, registrant, or licensee to the Commission. The proposed amendments to the rules also prescribe necessary clarification to the restrictions on employee wagering at gaming facilities.

4. COSTS:

(a) Costs to the regulated parties for the implementation of and continuing compliance with these rules: These amendments to the rules will not impose any additional costs on the regulated parties. The amendments

impose requirements upon the Commission and clarify the prohibitions on employee wagering at gaming facilities.

(b) Costs to the regulating agency, the State, and local governments for the implementation of and continued administration of the rule: These amendments only require the Commission to publish the Commission's policy on the release of information provided to the Commission by any applicant, registrant, or licensee on its website. Based upon the Commission's experience in regulating racing and gaming activities within the state, any costs associated with this rule will be negligible. The rule will not impose any additional costs on other State or local governments.

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

5. LOCAL GOVERNMENT: The rule does not impose any mandatory program, service, duty, or responsibility upon local government.

6. PAPERWORK: The rule is not expected to impose any significant paperwork or reporting requirements for regulated entities.

7. DUPLICATION: The rule does not duplicate, overlap or conflict with any existing State or federal requirements.

8. ALTERNATIVES: The Commission created the rule to fulfill the statutory mandate in Racing Law section 1307(2)(d) and to clarify restrictions on employee wagering, therefore, no alternatives were considered.

9. FEDERAL STANDARDS: There are no federal standards applicable to the rule. It is purely a matter of New York State law.

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

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

These amendments will not have any adverse impact on small businesses, local governments, jobs or rural areas. The proposed amendments to the rules implement the method of notice to be provided to applicants, registrants, or licensee for the release of information or data provided by such applicant, registrant, or licensee to the Commission. Additionally, the proposed amendments set forth restrictions on employee wagering at gaming facilities. The amendments impose no obligations on any regulated party, local government or small business. Therefore this rule amendment will not impact local governments or small businesses. This rule applies uniformly throughout the state and does not adversely impact rural areas. This rule will have no impact on job opportunities.

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

PROPOSED RULE MAKING
NO HEARING(S) SCHEDULED

To Set Forth the Standards for Electronic Table Game Systems

I.D. No. SGC-42-16-00004-P

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

Proposed Action: Addition of sections 5317.41 and 5319.60 to Title 9 NYCRR.

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

Subject: To set forth the standards for electronic table game systems.

Purpose: To prescribe the technical standards for the testing and certification of electronic table game systems.

Text of proposed rule: A new section 5317.41 would be added to 9 NYCRR as follows:

§ 5317.41. Electronic table games system.

(a) This section shall apply when an electronic table game (ETG) or games operate as a part of a table game system that is independent of any external gaming system.

(b) All electronic table games systems shall meet the requirements set forth in sections 5317.16, 5317.17, 5317.26, 5317.33, and 5317.36 of this Part.

(c) All communications in ETGs shall pass through at least one application-level firewall approved by the commission and shall not have a facility that allows for an alternate network path.

(1) A firewall application shall:

(i) maintain an audit log of the following information:

(a) all changes to configuration of the firewall;

(b) all successful and unsuccessful connection attempts through the firewall; and

(c) the source and destination IP addresses, port numbers and MAC addresses; and

(ii) disable all communications and generate an error event if the audit log becomes full.

(2) The system shall provide for interrogation that enables online comprehensive searching of the significant-event log.

(3) The system shall contain an access-level control structure that is capable of limiting access to programs, menu items or other secure areas of the system by means of a user name and login combination, personal identification number or other equivalent means.

(4) The system shall not permit the alteration of any significant log information without supervised access control.

(5) There shall be a system administrator notification and user lockout or audit trail entry after a set number of unsuccessful login attempts.

(6) The system shall record:

(i) date and time of the login attempt;

(ii) username supplied; and

(iii) success or failure.

(7) The use of generic user accounts on servers is not permitted.

(8) The system shall not permit the alteration of any accounting or significant event log information without supervised access controls. In the event financial data is changed, an audit log shall be capable of being produced to document:

(i) data element altered;

(ii) data element value prior to alteration;

(iii) data element value after alteration;

(iv) time and date of alteration; and

(v) user login.

(d) In addition to the requirements set forth in section 5317.36 of this Part, a gaming facility licensee or a licensed manufacturer shall submit to the commission for review and approval procedures to be established in the use of remote access as set forth in subdivision (b) of section 5321.10 of this Subchapter. Such procedures shall designate, at a minimum, authorized users and authorized settings of the electronic table game or games.

(1) Remote access shall authenticate all computer systems based on the authorized settings of the electronic table game and firewall application that establishes a connection with the electronic table game pursuant to the following requirements:

(i) a remote access user activity log is maintained by both the gaming facility and the licensed manufacturer, depicting the following information:

(a) authorizing individual;

(b) purpose;

(c) user login;

(d) time and date; and

(e) duration and activity while logged in;

(ii) unauthorized remote user administration functionality is prohibited;

(iii) unauthorized access to the database is prohibited;

(iv) unauthorized access to the operating system is prohibited; and

(v) if remote access is to be on a continuous basis, then a network filter shall be installed to protect access, as approved by the commission.

(2) The system shall implement self-monitoring of all critical interface elements and shall have the ability to notify effectively the system administrator of any error condition, provided the condition is not catastrophic.

(3) The system shall be able to perform the operation prescribed in paragraph (2) of this section with a frequency of at least once in every 24-hour period and during each power-up and power reset.

(e) A gaming facility licensee shall report any requirements that cannot be met as a result of manual intervention from a live dealer to the commission prior to submission for required testing as set forth in Part 5318 of this Subchapter.

A new section 5319.60 would be added to 9 NYCRR as follows:

§ 5319.60. Electronic table games.

All electronic table games (ETGs) shall meet the requirements set forth in sections 5319.12, 5319.13, 5319.14 and 5319.35 of this Part.

(a) Communication protocol. Each component of an ETG system shall function as indicated by the communication protocol implemented. All protocols shall use communication techniques that have proper error detection and/or recovery mechanisms that are designed to prevent unauthorized access or tampering, employing data encryption standards or equivalent encryption with secure seeds or algorithms. Any alternative measures shall require approval of the commission in writing.

(b) System integrity. The server or system component or components shall reside in a secure area where access is limited to authorized staff as set forth in the gaming facility licensee's approved system of internal controls. Access to the logic components of the game shall be logged on the system or on a computer or other logging device that resides outside

the secure area and is not accessible to the employee or employees gaining access to the secure area.

(1) The logged data shall include time and date and user login.

(2) The resulting logs shall be retained for a minimum of 90 days.

(c) RNG. Each RNG shall meet the requirements set forth in section 5319.35 of this Part and the following requirements:

(1) In the game selection process:

(i) each possible permutation or combination of game elements that produces winning or losing game outcomes shall be available for random selection at the initiation of each play, unless otherwise denoted by the game;

(ii) after selection of the game outcome, the ETG shall not make a variable secondary decision that affects the result shown to the player; and

(iii) an ETG shall use protocols that effectively protect the RNG and random selection process from influence by associated equipment that may be communicating with the ETG.

(2) The RNG shall be cycled continuously in the background between games and during game play at a speed that cannot be timed by the player. Periods when the RNG may not be cycled (e.g., interrupts) shall be kept to a minimum.

(3) The first seed shall be determined randomly by an uncontrolled event such that the seed randomly changes after every game. A licensed manufacturer is not required to use a random seed so long as such manufacturer shall ensure that games do not synchronize.

(4) Games depicting cards being drawn from a deck shall meet the following requirements:

(i) at the start of each hand, the cards shall be drawn from a randomly shuffled deck;

(ii) replacement cards shall not be drawn until needed and allow for multi-deck and depleting decks in accordance with game rules;

(iii) cards once removed from the deck shall not be returned to the deck except as provided by the rules of the game depicted; and

(iv) as cards are removed from the deck, such cards shall be used immediately as directed by the rules of the game.

(d) Maintenance of critical memory. Critical memory storage may be maintained by the player terminal or the system, where applicable.

(e) Player interface terminal requirements. Player interface terminals may either be a display mechanism where the system performs all operations of the game (also known as thin client) or a mechanism that contains its own logic function in conjunction with the ETG (also known as thick client). Such player interface terminals shall meet the hardware and software requirements set forth in this Part.

(f) Notification of non-compliance. A gaming facility shall report any requirements that cannot be met as a result of manual intervention from a live dealer to the commission prior to submission for required testing as set forth in Part 5318 of this Subchapter.

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

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

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

Regulatory Impact Statement

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

Racing Law section 1335(8) authorizes the Commission to regulate the testing of gaming devices and associated equipment.

Racing Law section 1335(8) authorizes the Commission to establish technical standards for the testing and certification of gaming devices and associated equipment.

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

3. NEEDS AND BENEFITS: The proposed rules implement the above listed statutory directives regarding the technical specifications for the testing and certification of electronic table game systems. The rules represent the best practices in areas of communication protocol, system integrity, random number generators, maintenance of critical memory, player interface terminals and notification in case of non-conformance.

4. COSTS:

(a) Costs to the regulated parties for the implementation of and continuing compliance with these rules: The gaming facilities are required to have electronic table game systems tested and certified by an independent testing laboratory. The total fee for an independent testing laboratory's inspection and certification will be approximately $500,000 to $750,000 annually.

(b) Costs to the regulating agency, the State, and local governments for the implementation of and continued administration of the rule: The costs to the Commission for the implementation of and continued administration of the rule will be negligible given that all such costs are the responsibility of the gaming facility. These rules will not impose any additional costs on local governments.

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

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

6. PAPERWORK: The rule is not expected to impose any significant paperwork or reporting requirements for regulated entities.

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

8. ALTERNATIVES: The Commission consulted stakeholders and reviewed other gambling jurisdiction best practices and regulation. Alternatives were discussed and considered with stakeholders and compared to other jurisdictions regulations. These include clarifications on the definition of an authorized person, remote access procedures and denotation of games where winning and losing game outcomes are not available for random selection at the initiation of each play.

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

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

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

These rules establish the standards for electronic table game systems and will not have any adverse impact on small businesses, local governments, jobs or rural areas.

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

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

These rules will have no adverse impact on job opportunities.

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

Department of Health

NOTICE OF ADOPTION

Perinatal Services

I.D. No. HLT-06-16-00002-A

Filing No. 901

Filing Date: 2016-09-28

Effective Date: 2017-01-16

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

Action taken: Amendment of section 405.21 of Title 10 NYCRR.

Statutory authority: Public Health Law, section 2505-a

Subject: Perinatal Services.

Purpose: To update the Breastfeeding Mother's Bill of Rights to conform with recommended standards of care.

Text of final rule: Subdivision (f)(3) Section 405.21 is amended to read as follows:

(f)(3) Education and orientation of the mother who is planning to raise the baby.

(i) The hospital shall provide instruction and assistance to each maternity patient who has chosen to breastfeed and shall provide information on the advantages [and disadvantages] of breastfeeding *and possible impacts of not breastfeeding* to women who are undecided as to the feeding method for their infants. At a minimum:

(a) the hospital shall designate at least one person who is thoroughly trained in breastfeeding physiology and management to be responsible for ensuring the implementation of an effective breastfeeding program. At all times, there should be available at least one staff member qualified to assist and encourage mothers with breastfeeding;

(b) written policies and procedures shall be developed, *updated,* implemented, *and disseminated annually to staff providing maternity or newborn care* to assist and encourage the mother to breastfeed which shall include, but not be limited to:

(1) prohibition of the application of standing orders for antilactation drugs;

(2) placement of the newborn *skin-to-skin* for breastfeeding immediately following delivery, unless contraindicated;

(3) restriction of the newborn's supplemental feedings to those indicated by the medical condition of the newborn or of the mother;

(4) provision for the newborn to be fed on demand;

(5) *pacifiers or artificial nipples may be supplied by the hospital to breastfeeding infants to decrease pain during procedures, for specific medical reasons, or upon the specific request of the mother. Before providing a pacifier or artificial nipple that has been requested by the mother, the hospital shall educate the mother on the possible impacts to the success of breastfeeding and discuss alternative methods for soothing her infant, and document such education;*

[provision for distribution of discharge packs of infant formula only upon a specific order by the attending practitioner or at the request of the mother;]

(6) prohibition of the distribution of marketing materials, samples or gift packs that include breast milk substitutes, bottles, nipples, pacifiers, or coupons for any such items to pregnant women, mothers or their families;

(7) prohibition of the use of educational materials that refer to proprietary product(s) or bear product logo(s), unless specific to the mother's or infant's needs or condition; and

(8) prohibition of the distribution of any materials that contain messages that promote or advertise infant food or drinks other than breast milk.

(c) the hospital shall provide an education program as soon after admission as possible which shall include but not be limited to:

(1) the importance of scheduling follow-up care with a pediatric care provider within the timeframe following discharge as directed by the discharging pediatric care provider;

(2) the nutritional and physiological aspects of human milk;

(3) the normal process for establishing lactation, including care of the breasts, common problems associated with breastfeeding and frequency of feeding;

(4) *the potential impact of early use of pacifiers on the establishment of breastfeeding;*

[(4)] *(5)* dietary requirements for breastfeeding;

[(5)] *(6)* diseases and medication or other substances which may have an effect on breastfeeding;

[(6)] *(7)* sanitary procedures to follow in collecting and storing human milk;

[(7)] *(8)* sources for advice and information available to the mother following discharge; *and*

(d) for mothers who have chosen formula feeding or for whom breastfeeding is medically contraindicated, hospitals shall provide *individual* training in formula preparation and feeding techniques.

Subdivision (f)(5) of Section 405.21 is amended to read as follows:

(f)(5) Discharge planning. The discharge of mother and newborn shall be performed in accordance with section 405.9 of this Part. In addition, prior to discharge, the hospital shall determine that:

(i) sources of nutrition for the infant and mother will be available and sufficient and if this is not confirmed, the attending practitioner and an appropriate social services agency shall be notified;

(ii) follow-up medical arrangements [for mother and infant], *consistent with current perinatal guidelines and recommendations,* have been made *for mother and newborn;*

(iii) *the mother has been informed of community services, including the Special Supplemental Nutrition Program for Women, Infants and Children (WIC), and shall make referrals to such community services as appropriate.*

[(iii)] *(iv)* the mother has been instructed regarding normal postpartum events, care of breasts and perineum, care of the urinary bladder, amounts of activity allowed, diet, exercise, emotional response, family planning, resumption of coitus and signs of common complications;

[(iv)] *(v)* the mother has been advised on what to do if any complication or emergency arises;

[(v)] *(vi)* the newborn has had a documented and complete physical examination and verification of a passage of stool and urine;

[(vi)] *(vii)* the means of identification of mother and newborn are matched. If the newborn is discharged in the care of someone other than the mother, the hospital shall ensure that the person or persons are entitled to the custody of the newborn; and

[(vii)] *(viii)* the newborn is stable; sucking and swallowing abilities are normal. Routine medical evaluation of the neonate's status at two to three days of age shall have been conducted or arranged[as well as newborn]. *Newborn* screening *shall be conducted* at time of discharge, provided discharge is greater than 24 hours after the birth, or between the third and fifth day of life, whichever occurs first, in accordance with Part 69 of this Title.

Final rule as compared with last published rule: Nonsubstantive changes were made in section 405.21(f)(3) and (i)(b)(7).

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

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

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

Assessment of Public Comment

Public comments were submitted to the New York State Department of Health (DOH) in response to the proposed changes to Title 10 NYCRR section 405.21, requiring updates to the minimum standards for hospitals regarding perinatal services. The Department received comments from two health care organizations, one hospital, and one city health department. These comments and DOH's responses are summarized below.

COMMENT: A comment suggested that the prohibition of the distribution of formula discharge packs should also pertain to obstetrical practices.

RESPONSE: These regulations, including the prohibition in the distribution of marketing materials, samples and gift bags to pregnant women, mothers and their families, apply to general hospitals, general hospital extension clinics and freestanding birthing centers providing perinatal services. Private obstetrical practices, however, are outside the Department's legislated authority.

COMMENT: A comment suggested the elimination of "dietary requirements for breastfeeding," or changing the word "requirements" to "suggestions" in section 405.21(f)(3)(i)(c)(5).

RESPONSE: In its Dietary Guidelines, the United States Department of Agriculture (USDA) states that: "When you are pregnant or breastfeeding, you have special nutritional needs." See http://www.choosemyplate.gov/moms-breastfeeding-nutritional-needs. DOH believes that using the term "requirements" accomplishes the intent of the above guidance.

COMMENT: A comment suggested that information on the advantages of breastfeeding and possible impacts of not breastfeeding should be offered to all maternity patients, not just to those who are undecided.

RESPONSE: DOH encourages all women to be educated about the advantages of breastfeeding and possible impacts of not breastfeeding during prenatal care visits. However, the decisions of pregnant women who have been admitted to the hospital for delivery, and who have already decided to not breastfeed, should be respected.

COMMENT: A comment suggested that the regulations should specify that "skin-to-skin" placement applies in the case of both vaginal births and births by cesarean section, unless contraindicated.

RESPONSE: The regulations do not specify the method of delivery, but rather that all newborns should be placed skin-to-skin for breastfeeding immediately following delivery, unless contraindicated. DOH believes that the regulations provide sufficient clarity that skin-to-skin contract should occur after a birth by cesarean section.

COMMENT: A comment suggested that the Supplemental Nutrition Assistance Program (SNAP) be added to section 405.21(f)(5)(iii), in addition to the reference to the Special Supplemental Nutrition Program for Women, Infants, and Children (WIC).

RESPONSE: The regulations require mothers to be informed of community services. A specific reference to WIC is included because WIC targets pregnant and postpartum women, infants and children. Referrals to additional community services, including SNAP, are also encouraged. Furthermore, the WIC program is required to make referrals to SNAP, if an individual is eligible for SNAP but not enrolled.

NOTICE OF ADOPTION

New York State Newborn Screening Panel

I.D. No. HLT-21-16-00003-A
Filing No. 902
Filing Date: 2016-09-28
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: Amendment of section 69-1.2 of Title 10 NYCRR.

Statutory authority: Public Health Law, section 2500-a

Subject: New York State Newborn Screening Panel.

Purpose: To add adrenoleukodystrophy (ALD) and Pompe disease to the list of diseases and conditions on the newborn screening panel.

Text or summary was published in the May 25, 2016 issue of the Register, I.D. No. HLT-21-16-00003-P.

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

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

Assessment of Public Comment

The agency received no public comment.

NOTICE OF EXPIRATION

The following notice has expired and cannot be reconsidered unless the Department of Health publishes a new notice of proposed rule making in the NYS *Register*.

Women Infants and Children (WIC) Program Vendor Applicant Enrollment Criteria

I.D. No.	Proposed	Expiration Date
HLT-39-15-00015-P	September 30, 2015	September 29, 2016

Department of Labor

PROPOSED RULE MAKING HEARING(S) SCHEDULED

Farm Worker Minimum Wage

I.D. No. LAB-42-16-00016-P

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

Proposed Action: Amendment of Part 190 of Title 12 NYCRR.

Statutory authority: Labor Law, sections 21, 652, 673 and 674

Subject: Farm Worker Minimum Wage.

Purpose: To comply with chapter 54 of the Laws of 2016 that increased the minimum wage.

Public hearing(s) will be held at: 10:00 a.m., December 5, 2016 at Building 12, State Campus, Albany, NY

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

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

Text of proposed rule: Part 190 of Title 12 of the New York Codes, Rules, and Regulations is amended as follows:

Subdivision (d) of section 190-1.3 is amended to read as follows:

(d) Basic minimum hourly wage means*, in*:

[(1) $7.15 per hour on and after January 1, 2007;
(2) $7.25 per hour on and after July 24, 2009;
(3) $8.00 per hour on and after December 31, 2013;
(4) $8.75 per hour on and after December 31, 2014;
(5) $9.00 per hour on and after December 31, 2015 or, if greater, such other wage as may be established by Federal law pursuant to 29 U.S.C. section 206 or any successor provisions.]

(1) New York City for
(i) Large employers of eleven or more employees
$11.00 per hour on and after December 31, 2016;
$13.00 per hour on and after December 31, 2017;
$15.00 per hour on and after December 31, 2018;
(ii) Small employers of ten or fewer employees
$10.50 per hour on and after December 31, 2016;
$12.00 per hour on and after December 31, 2017;
$13.50 per hour on and after December 31, 2018;
$15.00 per hour on and after December 31, 2019;
(2) Remainder of downstate (Nassau, Suffolk and Westchester counties)
$10.00 per hour on and after December 31, 2016;
$11.00 per hour on and after December 31, 2017;
$12.00 per hour on and after December 31, 2018;
$13.00 per hour on and after December 31, 2019;
$14.00 per hour on and after December 31, 2020;
$15.00 per hour on and after December 31, 2021,
(3) Remainder of state (outside of New York City and Nassau, Suffolk and Westchester counties)
$9.70 per hour on and after December 31, 2016;
$10.40 per hour on and after December 31, 2017;
$11.10 per hour on and after December 31, 2018;
$11.80 per hour on and after December 31, 2019;
$12.50 per hour on and after December 31, 2020.
(4) If a higher wage is established by Federal law pursuant to 29 U.S.C. section 206 or its successors, such wage shall apply.

Section 190-2.1 is amended to read as follows:

§ 190-2.1 Basic minimum wage rate.

The basic minimum wage rate *shall be,* for each hour worked *in* [shall be $7.15 per hour on and after January 1, 2007; $7.25 per hour on and after July 24, 2009; $8.00 per hour on and after December 31, 2013; $8.75 per hour on and after December 31, 2014; $9.00 per hour on and after December 31, 2015; or, if greater, such other wage as may be established by Federal law pursuant to 29 U.S.C. section 206 or any successor provisions.]

(a) New York City for
(1) Large employers of eleven or more employees
$11.00 per hour on and after December 31, 2016;
$13.00 per hour on and after December 31, 2017;
$15.00 per hour on and after December 31, 2018;
(2) Small employers of ten or fewer employees
$10.50 per hour on and after December 31, 2016;
$12.00 per hour on and after December 31, 2017;
$13.50 per hour on and after December 31, 2018;
$15.00 per hour on and after December 31, 2019;
(b) Remainder of downstate (Nassau, Suffolk and Westchester counties)
$10.00 per hour on and after December 31, 2016;
$11.00 per hour on and after December 31, 2017;
$12.00 per hour on and after December 31, 2018;
$13.00 per hour on and after December 31, 2019;
$14.00 per hour on and after December 31, 2020;
$15.00 per hour on and after December 31, 2021,
(c) Remainder of state (outside of New York City and Nassau, Suffolk and Westchester counties)
$9.70 per hour on and after December 31, 2016;
$10.40 per hour on and after December 31, 2017;
$11.10 per hour on and after December 31, 2018;
$11.80 per hour on and after December 31, 2019;
$12.50 per hour on and after December 31, 2020.
(d) If a higher wage is established by Federal law pursuant to 29 U.S.C. section206 or its successors, such wage shall apply.

Text of proposed rule and any required statements and analyses may be obtained from: Michael Paglialonga, New York State Department of Labor, Building 12, Room 509, State Campus, Albany, NY 12240, (518) 457-4380, email: regulations@labor.ny.gov

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

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

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

Regulatory Impact Statement

Statutory Authority: Labor Law § 21 at subdivision (11), which provides that the Commissioner of Labor ("Commissioner") may promulgate regulations related to the Labor Law;, 652, as amended by chapter 54 of the laws of 2016, at subdivision (2), which provides that the Commis-

sioner must increase all monetary amounts set forth in Wage Orders in the same proportion as the increase in the minimum wage, Labor Law § 673which provides that the minimum wage for farm workers shall be not less than the rate established in Labor Law § 652, and Labor Law § 674 which provides that the Commissioner may promulgate regulations to carry out the provisions of Article 19-a of the Labor Law.

Legislative Objectives: Chapter 54 of the laws of 2016 provided that the minimum wage will be raised up to $15.00 per hour through phased annual increases ranging from $2.00 per year in New York City, to $0.70 per year upstate, on the following schedules: (1) $11.00, $13.00 and $15.00 on December 31 of each year from 2016-18, respectively, for work performed in New York City for large employers of 11 or more employees; (2) $10.50, $12.00, $13.50 and $15.00 on December 31 of 2016-19, respectively, for work performed in New York City for small employers of 10 or less employees; (3) $10.00, $11.00, $12.00, $13,00, $14.00 and $15.00 on December 31 of 2016-21, respectively, for work performed in the counties of Nassau, Suffolk and Westchester; and (4) $9.70, $10.40, $11.10, $11.80 and $12.50 on December 31 of 2016-20 for work performed in the rest of the state, with additional increases for the rest of the state to determined annually starting in 2021 and continuing until the rate reaches $15.00. The above rates are subject to annual administrative reviews, starting on or after January 1, 2019, to determine whether there should be a temporary suspension or delay in any scheduled increases, pursuant to a new subdivision 6 of Labor Law § 652. Labor Law § 652 provides for this rulemaking to amend existing wage orders to: (1) increase all monetary amounts in proportion to the increases in the minimum wage rates set forth in subdivision 1 and summarized above (subdivision 3); (2) set cash wage rates for tipped food service workers at two-thirds of the minimum wage rates, or $7.50, whichever is higher (subdivision 4); and (3) limit increases in meal and lodging allowances to two-thirds of the increase required by subdivision 2 (subdivision 5).

Needs and Benefits: The regulations implement the recent increases in the minimum wage rates enacted by chapter 54 of the laws of 2016 according to the statutory formulas set forth in Labor Law § 652 at subdivisions 2, 4 & (5), as amended. Specifically, the legislation increased the basic hourly minimum wage from its current rate of $9.00 up to $15.00 on the phased-in schedules set forth at subdivision 1 of Labor Law § 652 and summarized above. The regulations will benefit farmers and farm workers who are subject to the regulation by specifying the exact dollar amounts that result from those statutory formulas to facilitate compliance with statutory increases. Farm Workers will benefit from increases in those rates that specify additional pay required under certain circumstances, while employers will benefit from increases in those rates that specify allowances that employers can use as credits towards partial satisfaction of the minimum wage. The regulations do not establish or eliminate any requirements for additional pay or opportunities for allowances that employers may claim, but simply establish the new dollar amounts that result from the legislation enacted this year.

Costs: The cost of these rules to the regulated community is related to the cost of the increase in the minimum wage enacted by the legislature. There will be costs associated with providing the increase in the minimum wage.

Local Government Mandates: None. Federal, state and municipal governments and political subdivisions thereof are excluded from coverage under Part 190 and by Articles 19 and 19-a of the Labor Law.

Paperwork: None.

Duplication: This rule exceeds the federal minimum wage requirements, but follows the requirements set by the New York State Legislature.

Alternatives: These amendments made are required by law and thus there are no alternatives to amending these regulations.

Federal Standards: This rule implements the minimum wage and requirements set forth in New York law that exceeds the federal minimum wage. There are no other federal standards relating to this rule.

Compliance Schedule: The regulated community will be required to comply with this regulation on and after December 31, 2016.

Regulatory Flexibility Analysis

Effect of Rule: Some farms, but no local governments, are potentially affected by the changes in the regulations.

Compliance Requirements: There are no changes in the reporting or record-keeping requirements regarding the minimum wage. Farms that employ workers at rates that are near, or below, the new statutory minimum wage rates will have to review their payrolls in light of the new statutory minimum wage rates and the farm worker wage order, as amended by this rulemaking, to determine whether they must increase rates that they pay to their workers. During the phase-in period, when different minimum wage rates apply in different regions, employers who choose to pay different hourly rates for hours worked in different regions for a given employee during a single payroll period will have to track the hours worked at each rate. The requirement to track hours worked at different rates is not a new requirement imposed by this rulemaking and is based on the employer's decision to pay different rates for different hours. That requirement can be avoided by paying the same hourly rate for work performed in two regions, as long as that hourly rate does not fall below the minimum rate for either region. Small businesses that employ 10 or fewer employees will have a slower phase-in schedule for hours worked in New York City than larger employers: their hourly minimum wage rates will be $0.50 lower during the first year, $1.00 lower during the second year, and $1.50 lower during the third year before equaling the same $15.00 rate in the fourth year.

Professional Services: No professional services would be required to effectuate the purposes of this rule.

Compliance Costs: These rules do not impose any additional costs separate and apart from the costs imposed by the legislature in increasing minimum wage rates and in establishing statutory formulas for adjusting amounts set forth in these rules. Such compliance costs, however characterized, do not exceed the cost of reviewing and increasing pay rates consistent with the statutory increases implemented by this rulemaking.

Economic and Technological Feasibility: Compliance with these regulations will be economically and technologically feasible because these regulations simply adjust existing rates, without imposing new, or altering existing, requirements or procedures for complying with minimum wage requirements.

Minimizing Adverse Impact: The increases to the minimum wage rates are required by law, which minimizes the adverse impact on small businesses by providing a slower phase-in schedule and lower minimum wage rates during that phase-in schedule, as set forth above. In addition, small businesses may choose to take steps to minimize their costs by claiming available allowances for items such as meals and lodging and by avoiding practices that trigger additional pay requirements for certain work shifts and uniform (clothing) practices.

Small Business and Local Government Participation: The increases in minimum wage rates were enacted by the legislature following public hearings held by an administrative wage board across the state in 2015 that resulted in establishment of a $15.00 minimum wage with different phase-in periods for New York City and the rest of the state for fast food chains. At those hearings, some small businesses joined workers, elected officials, public interest groups and academics in calling for a $15.00 minimum wage, and some small businesses joined others in calling for any future increases in the minimum wage to be applied across the board to employers in all industries, and to take into account differences between large and small employers. After administratively adopting a $15.00 minimum wage with different phase-in schedules for New York City and the rest of the state, the administration proposed statutory increases for all industries, with different phase-in schedules for three regions, and different phase-in schedules for work performed in New York City for large and small employers and those proposals were the subject of extensive public dialogue and input leading up to the enactment in 2016. Additional participation will be afforded through the public comment period for these regulations.

Rural Area Flexibility Analysis

1. Types and estimated numbers of rural areas: These rules apply to farm workers in all areas of the state.

2. Reporting, recordkeeping and other compliance requirements; and professional services: There are no changes in the reporting or record-keeping requirements regarding the minimum wage and no professional services will be required to comply with this rule. Farms that employ workers at rates that are near, or below, the new statutory minimum wage rates will have to review their payrolls in light of the new statutory minimum wage rates and the farm worker wage order, as amended by this rulemaking, to determine whether they must increase the rates that they pay to their workers. During the phase-in period, when different minimum wage rates apply in different regions, employers who choose to pay different hourly rates for hours worked in different regions for a given employee during a single payroll period will have to track the hours worked at each rate. The requirement to track hours worked at different rates is not a new requirement imposed by this rulemaking and is based on the employer's decision to pay different rates for different hours. That requirement can be avoided by paying the same hourly rate for work performed in two regions, as long as that hourly rate does not fall below the minimum rate for either region.

3. Costs: These rules do not impose any additional costs separate and apart from the costs imposed by the legislature in increasing minimum wage rates and in establishing statutory formulas for adjusting amounts set forth in these rules. Such compliance costs, however characterized, do not exceed the cost of reviewing and increasing pay rates consistent with the statutory increases implemented by this rulemaking.

4. Minimizing adverse impact: The increases to the minimum wage rates are required by law, but rural businesses may choose to take steps to minimize their costs by claiming available allowances for items such as

meals and lodging and by avoiding practices that trigger additional pay requirements for certain work shifts and uniform (clothing) practices.

5. Rural area participation: The increases in minimum wage rates were enacted by the legislature following public hearings held by an administrative wage board across the state in 2015 that resulted in establishment of a $15.00 minimum wage with different phase-in periods for New York City and the rest of the state for fast food chains. At those hearings, some businesses joined workers, elected officials, public interest groups and academics in calling for a $15.00 minimum wage, and many businesses called for any future increases in the minimum wage to be applied across the board to employers in all industries. After administratively adopting a $15.00 minimum wage with different phase-in schedules for New York City and the rest of the state, the administration proposed statutory increases for all industries, with different phase-in schedules for three regions, and different phase-in schedules for work performed in New York City for large and small employers and those proposals were the subject of extensive public dialogue and input leading up to the enactment in 2016. Additional participation will be afforded through the public comment period for these regulations.

Job Impact Statement

1. Nature of impact: These regulations conform the Wage Orders to the statutory increases in the New York State minimum hourly wage rate that is required by Labor Law § 652 and the amendments thereto made by chapter 54 of the laws of 2016.

2. Categories and numbers affected: These regulations are required by statute or will have no impact on employment within the state.

3. Regions of adverse impact: These regulations will track the regions defined by the statutory increases and will provide the same statutory phase-in schedules that provide additional time for employment in upstate regions, and in downstate regions outside of New York City on the following schedules: (1) $11.00, $13.00 and $15.00 on December 31 of each year from 2016-18, respectively, for work performed in New York City for large employers of 11 or more employees; (2) $10.50, $12.00, $13.50 and $15.00 on December 31 of 2016-19, respectively, for work performed in New York City for small employers of 10 or less employees; (3) $10.00, $11.00, $12.00, $13,00, $14.00 and $15.00 on December 31 of 2016-21, respectively, for work performed in the counties of Nassau, Suffolk and Westchester; and (4) $9.70, $10.40, $11.10, $11.80 and $12.60 on December 31 of 2016-20 for work performed in the rest of the state, with additional increases for the rest of the state to determined annually starting in 2021 and continuing until the rate reaches $15.00.

4. Minimizing adverse impact: The increases to the minimum wage rates are required by law, but employers may minimize their costs and impact on jobs, by claiming available allowances for items such as meals and lodging and by avoiding practices that trigger additional pay requirements for certain work shifts and uniform (clothing) practices.

PROPOSED RULE MAKING
NO HEARING(S) SCHEDULED

Minimum Wage

I.D. No. LAB-42-16-00015-P

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

Proposed Action: Amendment of Parts 141, 142, 143 and 146 of Title 12 NYCRR.

Statutory authority: Labor Law, sections 21 and 652

Subject: Minimum Wage.

Purpose: To comply with chapter 54 of the Laws of 2016 that increased the minimum wage.

Substance of proposed rule (Full text is posted at the following State website: http://labor.ny.gov/legal/counsel): The proposed rule amends existing wage orders codified at 12 NYCRR Parts 141, 142, 143 and 146 to comply with the statutory mandates of Labor Law § 652 at subdivisions 2, 4 and 5 to increase all monetary amounts specified in existing wage orders in proportion to the increases in minimum wage rates that were enacted at part K of chapter 54 of the laws of 2016.

Throughout this summary, the term "New Statutory Rates" is used to refer to the schedule of minimum wage hourly rates set forth at subdivision 1 of Labor Law § 652, as amended by part K of chapter 54 of the laws 2016, which increased the minimum wage from the current state-wide rate of $9.00 to the following four schedules of regional rates and effective dates for every hour worked in: (1) New York City for large employers of 11 or more employees, $11.00 (12/31/16), $13.00 (12/31/17) and $15.00 (12/31/18); (2) New York City for small employers of 10 or fewer employees, $10.50 (12/31/16), $12.00 (12/31/17), $13.50 (12/31/18) and $15.00 (12/31/19); (3) the counties of Nassau, Suffolk and Westchester, $10.00 (12/31/16), $11.00 (12/31/17), $12.00 (12/31/18), $13,00 (12/31/19), $14.00 (12/31/20) and $15.00 (12/31/21; and (4) Remainder of state outside of New York City and the counties of Nassau, Suffolk and Westchester, $9.70 (12/31/16), $10.40 (12/31/17), $11.10 (12/31/18), $11.80 (12/31/19) and $12.50 (12/31/20). The term "Old Rates" is used to refer to the various statewide minimum wage and other monetary amounts that are, or were, in effect prior to December 31, 2016. The term "Proportionally Increased Rates" refers to rates calculated in accordance with subdivisions 2, 4 and 5 of Labor Law § 652, as amended by part K of chapter 54 of the laws 2016.

12 NYCRR Part 141 (Minimum Wage Order for the Building Service Industry) is amended: at 141-1.3 to increase the basic hourly minimum wage by replacing the Old Rates with the New Statutory Rates; at 141-1.2 to increase the unit rate for janitors in residential buildings by replacing the Old Rates with Proportionally Increased Rates, at 141-1.6 to increase the allowances for utilities by replacing the Old Rates with Proportionally Increased Rates; at 141-1.8 to increase the uniform allowance by replacing the Old Rates with Proportionally Increased Rates; at 141-2.8) to increase the unit rate limitations by replacing the Old Rates with Proportionally Increased Rates; at 141-3.2(c)(1)(i) to increase the weekly salary thresholds for executive work by replacing the Old Rates with Proportionally Increased Rates; and at 141-3.2(c)(1)(ii)) to increase the weekly salary thresholds for administrative work by replacing the Old Rates with Proportionally Increased Rates.

12 NYCRR Part 142-2 (Minimum Wage Order for Miscellaneous Industries except Nonprofitmaking Institutions) is amended: at 142-2.1 to increase the basic hourly minimum wage by replacing the Old Rates with the New Statutory Rates; at 142-2.5(a) to increase the meal and lodging allowances by replacing the Old Rates with Proportionally Increased Rates; at 142-2.5)(b) to increase the tip allowances by replacing the Old Rates with Proportionally Increased Rates; at 142-2.5(c) to increase the uniform allowance by replacing the Old Rates with Proportionally Increased Rates; at 142-2.14(c)(4)(i) to increase the weekly salary thresholds for executive work by replacing the Old Rates with Proportionally Increased Rates; and at 142-2.14(c)(4)(ii) to increase the weekly salary thresholds for administrative work by replacing the Old Rates with Proportionally Increased Rates.

12 NYCRR Part 142-3 (Minimum Wage Order for Nonprofit Making Institutions that have not Elected to be Exempt from Coverage under a Minimum Wage Order) is amended: at 142-3.1 to increase the basic hourly minimum wage by replacing the Old Rates with the New Statutory Rates; at 142-3.5(a) to increase the meal and lodging allowances by replacing the Old Rates with Proportionally Increased Rates; at 142-3.5)(b) to increase the meal and lodging allowances for employees in children's camps by replacing the Old Rates with Proportionally Increased Rates; at 143-3.5(c) to increase the uniform allowance by replacing the Old Rates with Proportionally Increased Rates; at142-3.12(c)(2)(i) to increase the weekly salary thresholds for executive work by replacing the Old Rates with Proportionally Increased Rates; and at 142-3.12(c)(2)(ii) to increase the weekly salary thresholds for administrative work by replacing the Old Rates with Proportionally Increased Rates.

12 NYCRR Part 143 (Minimum Wage Order for not-for-profit institutions that certifies that it will pay the statutory minimum wage in lieu of being covered under a minimum wage order) is amended: at 143.0(b) to increase the basic hourly minimum wage by replacing the Old Rates with the New Statutory Rates; at 143.1(b)(1), to increase the weekly salary thresholds for executive work by replacing the Old Rates with Proportionally Increased Rates; and at 143.1(b)(2) to increase the weekly salary thresholds for administrative work by replacing the Old Rates with Proportionally Increased Rates.

12 NYCRR Part 146 (Minimum Wage Order for the Hospitality Industry) is amended: at 146-1.2 to increase basic hourly minimum wage by replacing the Old Rates with the New Statutory Rates; at 146-1.3 to increase the tip credits by replacing the Old Rates with the Proportionally Increased Rates and replacing the tip threshold rates for Service Employees from 146-3.3(a) with Proportionally Increased Rates at 146-1.3(a)(1); at 146-1.7 to increase the uniform maintenance pay by replacing the Old Rates with the Proportionally Increased Rates; at 146-1.4 to identify historical rates assumed in examples; at 146-1.9 to increase the meal and lodging credits by replacing the Old Rates with the Proportionally Increased Rates; at 146-2.2 to remove references to historical rates in a sample notice of pay; at 146-3.2 (c)(1)(i) to increase the weekly salary thresholds for executive work by replacing the Old Rates with Proportionally Increased Rates; and at 146-3.2(c)(1)(ii) to increase the weekly salary thresholds for administrative work by replacing the Old Rates with Proportionally Increased Rates.

Text of proposed rule and any required statements and analyses may be obtained from: Michael Paglialonga, New York State Department of Labor, Building 12, Room 509, State Campus, Albany, NY 12240, (518) 457-4380, email: regulations@labor.ny.gov

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

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

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

Regulatory Impact Statement

Statutory Authority: Labor Law § 21 at subdivision (11), which provides that the Commissioner of Labor ("Commissioner") may promulgate regulations related to the Labor Law; and Labor Law § 652, as amended by chapter 54 of the laws of 2016, at subdivision (2), which provides that the Commissioner must increase all monetary amounts set forth in Wage Orders in the same proportion as the increase in the minimum wage.

Legislative Objectives: Chapter 54 of the laws of 2016 provided that the minimum wage will be raised up to $15.00 per hour through phased annual increases ranging from $2.00 per year in New York City to $0.70 per year upstate, on the following schedules: (1) $11.00, $13.00 and $15.00 on December 31 of each year from 2016-18, respectively, for work performed in New York City for large employers of 11 or more employees; (2) $10.50, $12.00, $13.50 and $15.00 on December 31 of 2016-19, respectively, for work performed in New York City for small employers of 10 or less employees; (3) $10.00, $11.00, $12.00, $13,00, $14.00 and $15.00 on December 31 of 2016-21, respectively, for work performed in the counties of Nassau, Suffolk and Westchester; and (4) $9.70, $10.40, $11.10, $11.80 and $12.50 on December 31 of 2016-20 for work performed in the rest of the state, with additional increases for the rest of the state to determined annually starting in 2021 and continuing until the rate reaches $15.00. The above rates are subject to annual administrative reviews, starting on or after January 1, 2019, to determine whether there should be a temporary suspension or delay in any scheduled increases, pursuant to a new subdivision 6 of Labor Law § 652. Labor Law § 652 provides for this rulemaking to amend existing wage orders to: (1) increase all monetary amounts in proportion to the increases in the minimum wage rates set forth in subdivision 1 and summarized above (subdivision 3); (2) set cash wage rates for tipped food service workers at two-thirds of the minimum wage rates, or $7.50, whichever is higher (subdivision 4); and (3) limit increases in meal and lodging allowances to two-thirds of the increase required by subdivision 2 (subdivision 5).

Needs and Benefits: The regulations implement the recent increases in the minimum wage rates enacted by chapter 54 of the laws of 2016 according to the statutory formulas set forth in Labor Law § 652 at subdivisions 2, 4 & (5), as amended. Specifically, the legislation increased the basic hourly minimum wage from its current rate of $9.00 up to $15.00 on the phased-in schedules set forth at subdivision 1 of Labor Law § 652 and summarized above and subdivisions 2, 4 and 5 of Labor Law § 652 specify statutory formulas for increasing various other rates set forth in the regulations by reference to the above-referenced minimum wage increases. The regulations will benefit employers and employees by specifying the exact dollar amounts that result from those statutory formulas to facilitate compliance with statutory increases. Employees will benefit from increases in those rates that specify additional pay required under certain circumstances, while employers will benefit from increases in those rates that specify allowances that employers can use as credits towards partial satisfaction of the minimum wage. The regulations do not establish or eliminate any requirements for additional pay or opportunities for allowances that employers may claim, but simply establish the new dollar amounts that result from the legislation enacted this year.

Costs: The cost of these rules to the regulated community is related to the cost of the increase in the minimum wage enacted by the legislature. There will be costs associated with providing the increase in the minimum wage, including proportional increases in additional pay required in certain circumstances involving uniforms, and proportional savings associated with increases in certain allowances that can be used by employers to partially satisfy their minimum wage requirements and minimal initial additional cost associated with recordkeeping.

Local Government Mandates: None. Federal, state and municipal governments and political subdivisions thereof are excluded from coverage under Parts 141, 142, 143 and 146 by Labor Law Section 651(5)(n) and 651(5) (last paragraph). They are not covered under Part 143 because it covers only certain non-profit organizations, in accordance with Labor Law § 652(3).

Paperwork: None.

Duplication: This rule exceeds the federal minimum wage requirements, but follows the requirements set by the New York State Legislature.

Alternatives: These amendments made are required by law and thus there are no alternatives to amending these regulations.

Federal Standards: This rule implements the minimum wage and requirements set forth in New York law that exceeds the federal minimum wage. There are no other federal standards relating to this rule.

Compliance Schedule: The regulated community will be required to comply with this regulation on and after December 31, 2016.

Regulatory Flexibility Analysis

Effect of Rule: All small businesses, but no local governments, are potentially affected by the changes in the regulations.

Compliance Requirements: There are no changes in the reporting or record-keeping requirements regarding the minimum wage. During the phase-in period, when different minimum wage rates apply in different regions, employers who choose to pay different hourly rates for hours worked in different regions for a given employee during a single payroll period will have to track the hours worked at each rate. The requirement to track hours worked at different rates is not a new requirement imposed by this rulemaking and is based on the employer's decision to pay different rates for different hours. That requirement can be avoided by paying the same hourly rate for work performed in two regions, as long as that hourly rate does not fall below the minimum rate for either region. Small businesses that employ 10 or fewer employees will have a slower phase-in schedule for hours worked in New York City than larger employers: their hourly minimum wage rates will be $0.50 lower during the first year, $1.00 lower during the second year, and $1.50 lower during the third year before equaling the same $15.00 rate in the fourth year.

Professional Services: No professional services would be required to effectuate the purposes of this rule.

Compliance Costs: These rules do not impose any additional costs separate and apart from the costs imposed by the legislature in increasing minimum wage rates and in establishing statutory formulas for adjusting amounts set forth in these rules. Such compliance costs, however characterized, do not exceed the cost of reviewing and increasing pay rates consistent with the statutory increases implemented by this rulemaking.

Economic and Technological Feasibility: Compliance with these regulations will be economically and technologically feasible because these regulations simply adjust existing rates, without imposing new, or altering existing, requirements or procedures for complying with minimum wage requirements.

Minimizing Adverse Impact: The increases to the minimum wage rates are required by law, which minimizes the adverse impact on small businesses by providing a slower phase-in schedule and lower minimum wage rates during that phase-in schedule, as set forth above. In addition, small businesses may choose to take steps to minimize their costs by claiming available allowances for items such as meals and lodging and by avoiding practices that trigger additional pay requirements for certain work shifts and uniform (clothing) practices.

Small Business and Local Government Participation: The increases in minimum wage rates were enacted by the legislature following public hearings held by an administrative wage board across the state in 2015 that resulted in establishment of a $15.00 minimum wage with different phase-in periods for New York City and the rest of the state for fast food chains. At those hearings, some small businesses joined workers, elected officials, public interest groups and academics in calling for a $15.00 minimum wage, and some small businesses joined others in calling for any future increases in the minimum wage to be applied across the board to employers in all industries, and to take into account differences between large and small employers. After administratively adopting a $15.00 minimum wage with different phase-in schedules for New York City and the rest of the state, the administration proposed statutory increases for all industries, with different phase-in schedules for three regions, and different phase-in schedules for work performed in New York City for large and small employers and those proposals were the subject of extensive public dialogue and input leading up to the enactment in 2016. Additional participation will be afforded through the public comment period for these regulations.

Rural Area Flexibility Analysis

1. Types and estimated numbers of rural areas: These rules apply to all private employers in all areas of the state.

2. Reporting, recordkeeping and other compliance requirements; and professional services: There are no changes in the reporting or record-keeping requirements regarding the minimum wage and no professional services will be required to comply with this rule. During the phase-in period, when different minimum wage rates apply in different regions, employers who choose to pay different hourly rates for hours worked in different regions for a given employee during a single payroll period will have to track the hours worked at each rate. The requirement to track hours worked at different rates is not a new requirement imposed by this rulemaking and is based on the employer's decision to pay different rates for different hours. That requirement can be avoided by paying the same hourly rate for work performed in two regions, as long as that hourly rate does not fall below the minimum rate for either region.

3. Costs: These rules do not impose any additional costs separate and

apart from the costs imposed by the legislature in increasing minimum wage rates and in establishing statutory formulas for adjusting amounts set forth in these rules. Such compliance costs, however characterized, do not exceed the cost of reviewing and increasing pay rates consistent with the statutory increases implemented by this rulemaking.

4. Minimizing adverse impact: The increases to the minimum wage rates are required by law, but rural businesses may choose to take steps to minimize their costs by claiming available allowances for items such as meals and lodging and by avoiding practices that trigger additional pay requirements for certain work shifts and uniform (clothing) practices.

5. Rural area participation: The increases in minimum wage rates were enacted by the legislature following public hearings held by an administrative wage board across the state in 2015 that resulted in establishment of a $15.00 minimum wage with different phase-in periods for New York City and the rest of the state for fast food chains. At those hearings, some businesses joined workers, elected officials, public interest groups and academics in calling for a $15.00 minimum wage, and many businesses called for any future increases in the minimum wage to be applied across the board to employers in all industries. After administratively adopting a $15.00 minimum wage with different phase-in schedules for New York City and the rest of the state, the administration proposed statutory increases for all industries, with different phase-in schedules for three regions, and different phase-in schedules for work performed in New York City for large and small employers and those proposals were the subject of extensive public dialogue and input leading up to the enactment in 2016. Additional participation will be afforded through the public comment period for these regulations.

Job Impact Statement

1. Nature of impact: These regulations conform the Wage Orders to the statutory increases in the New York State minimum hourly wage rate that is required by Labor Law § 652 and the amendments thereto made by chapter 54 of the laws of 2016.

2. Categories and numbers affected: These regulations are required by statute or will have no impact on employment within the state.

3. Regions of adverse impact: These regulations will track the regions defined by the statutory increases and will provide the same statutory phase-in schedules that provide additional time for employment in upstate regions, and in downstate regions outside of New York City on the following schedules: (1) $11.00, $13.00 and $15.00 on December 31 of each year from 2016-18, respectively, for work performed in New York City for large employers of 11 or more employees; (2) $10.50, $12.00, $13.50 and $15.00 on December 31 of 2016-19, respectively, for work performed in New York City for small employers of 10 or less employees; (3) $10.00, $11.00, $12.00, $13,00, $14.00 and $15.00 on December 31 of 2016-21, respectively, for work performed in the counties of Nassau, Suffolk and Westchester; and (4) $9.70, $10.40, $11.10, $11.80 and $12.60 on December 31 of 2016-20 for work performed in the rest of the state, with additional increases for the rest of the state to determined annually starting in 2021 and continuing until the rate reaches $15.00.

4. Minimizing adverse impact: The increases to the minimum wage rates are required by law, but employers may minimize their costs and impact on jobs, by claiming available allowances for items such as meals and lodging and by avoiding practices that trigger additional pay requirements for certain work shifts and uniform (clothing) practices.

Public Service Commission

EMERGENCY/PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Appointment of a Temporary Operator for Whitlock Farms Water Company and New Vernon Water Company

I.D. No. PSC-42-16-00005-EP

Filing Date: 2016-09-30

Effective Date: 2016-09-30

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

Proposed Action: The Commission, on September 30, 2016, adopted an order authorizing New York American Water Company, Inc. as temporary operator of the New Vernon Water Company and Whitlock Farms Water Company.

Statutory authority: Public Service Law, sections 89-b, 89-c and 112-a

Finding of necessity for emergency rule: Preservation of public health, public safety and general welfare.

Specific reasons underlying the finding of necessity: New York American Water Company, Inc. (NYAW), pursuant to an agreement with the Estate of Edwin D. Silvers (Phyllis Silvers, Executrix), requests authorization to be appointed as a temporary operator of the New Vernon Water Company (New Vernon) and Whitlock Farms Water Company (Whitlock). The Whitlock water system has been issued multiple citations by the Orange County Department of Health (OCDOH) and has revoked Whitlock's disinfection waiver resulting in the system being placed under a precautionary boil water notice. New Vernon's Infrastructure is also in need of extensive repairs in order to bring the facility to code, as instructed by OCDOH. As the Executrix and interim manager cannot continue to operating the water systems to the standards of the OCDOH, the provision of safe and adequate service is threatened, thus threatening the health and safety of the customers.

Subject: Appointment of a temporary operator for Whitlock Farms Water Company and New Vernon Water Company.

Purpose: To ensure the provision of safe and adequate water service to customers by appointment of a temporary operator.

Substance of emergency/proposed rule: The Public Service Commission adopted an order appointing New York American Water Company, Inc. as a temporary operator of the New Vernon Water Company and Whitlock Farms Water Company pursuant to its authority under Public Service Law § 112-a.

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 December 28, 2016.

Text of rule may be obtained from: 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, Department of Public Service, 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 amended rule is within the definition contained in section 102(2)(a)(ii) of the State Administrative Procedure Act.

(16-W-0550EP1)

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

New Communications Protocols for Interruptible Customers

I.D. No. PSC-42-16-00007-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 the establishment of communications protocols and new requirements for gas interruptible customers.

Statutory authority: Public Service Law, sections 65 and 66

Subject: New communications protocols for interruptible customers.

Purpose: To establish new communications protocols to ensure that interruptible customers have sufficient back-up fuel.

Substance of proposed rule: The Commission is considering a Department of Public Service Staff Straw Proposal For Modifications to Interruptible Communication Protocols Commencing With the 2016-2017 Winter Heating Season For Applicability to Demand Response Customer Classes, filed on May 25, 2016, (Staff Straw Proposal) that would require local distribution companies (LDCs) that serve interruptible customers to file tariffs that implement the following: (1) Commencement of daily LDC communications with all demand response parties as soon as weather forecasts project outside temperatures to be 20 degrees or below for the upcoming three consecutive days or during the times when three days of consecutive customer interruptions occur; (2) Implementation of daily communication with demand response customers during an interruption and, at a minimum at least one time at the end of every interruption to remind customers to replenish alternate fuel inventories as needed to maintain minimum alternate fuel levels; (3) The addition of one unan-

nounced interruption test at the end of the month of January each year; (4) Requiring affidavits from all interruptible customers except those customers who have elected to cease using natural gas when directed to by the LDC in lieu of maintaining an alternate fuel inventory; and (5) Requiring that all demand response customer affidavits include the customer's oil dealer's contact information. A Notice Soliciting Comments Regarding the Events and Impacts Related to the Reported Disruption of Heating Fuel Oil Deliveries to Interruptible Gas Service Customers in February 2015, was issued on July 2, 2015. At this time, the Commission is considering requiring that LDCs implement the new communications protocols listed above to avoid a possible impact on alternative fuel supplies in 2016-2017. The Commission may adopt, reject, or modify, in whole or in part, the Staff Straw Proposal recommendations and may resolve related matters.

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

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

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

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

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

(15-G-0185SP1)

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Annual Reconciliation of Gas Expenses and Gas Cost Recoveries

I.D. No. PSC-42-16-00008-P

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

Proposed Action: The Commission is considering filings made by various local gas distribution companies (LDCs) and municipalities regarding their Annual Reconciliation of Gas Expenses and Gas Cost Recoveries.

Statutory authority: Public Service Law, section 66(12)

Subject: Annual Reconciliation of Gas Expenses and Gas Cost Recoveries.

Purpose: To consider filings of LDCs and municipalities regarding their Annual Reconciliation of Gas Expenses and Gas Cost Recoveries.

Substance of proposed rule: The Commission is considering filings made by various local gas distribution companies and municipalities regarding their Annual Reconciliation of Gas Expenses and Gas Cost Recoveries. 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-0431SP1)

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Petition to Submeter Electricity

I.D. No. PSC-42-16-00009-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 the petition, filed by Parkside Association, Inc., to submeter electricity at 549-561 41st Street, Brooklyn, New York.

Statutory authority: Public Service Law, sections 4, 53, 65 and 66

Subject: Petition to submeter electricity.

Purpose: To consider the petition to submeter electricity at 549-561 41st Street, Brooklyn, New York.

Substance of proposed rule: The Commission is considering the petition, filed by Parkside Association, Inc. on September 8, 2016, to submeter electricity at 549-561 41st Street, Brooklyn, New York, located in the service territory of Consolidated Edison Company of New York, Inc. (Con Edison). The building is self-managed and consists of 41 residential units with 40 being owner occupied and one super apartment. Petitioners indicate that the submetering proposal is intended to allow the building to best utilize a rooftop solar array and to participate in Con Edison's demand response program. 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, NY 12223, (518) 486-2655, email: john.pitucci@dps.ny.gov

Data, views or arguments may be submitted to: Katheen H. Burgess, Secretary, Public Service Commission, 3 Empire State Plaza, Albany, NY 12223, (518) 474-6530, email: kathleen.burgess@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-0503SP1)

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Request for a Limited Waiver of Certain Tariff Provisions

I.D. No. PSC-42-16-00010-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 limited waiver of certain tariff provisions of The Brooklyn Union Gas Company d/b/a National Grid NY for interruptible service to SUNY Downstate Medical Center.

Statutory authority: Public Service Law, sections 65(1) and 66(12)

Subject: Request for a limited waiver of certain tariff provisions.

Purpose: To consider a request for a limited waiver of the tariff's unauthorized gas usage and non-compliance penalty provisions.

Substance of proposed rule: The Public Service Commission is considering a petition filed by The Brooklyn Union Gas Company d/b/a National Grid (KEDNY) requesting a limited waiver of its tariff provisions for interruptible service to SUNY Downstate Medical Center (Medical Center). KEDNY seeks a limited waiver of certain provisions of tariff regarding Service Classification (SC) 18 for interruptible gas service penalty provisions of unauthorized gas usage and non-compliance when the Medical Center failed to switch to its alternate fuel on several occasions during the 2013/14 winter season. The Medical Center contested that an unanticipated equipment failure rendered its alternate heating equipment inoperable and could not switch service because the hospital needed to maintain heat for health and safety of its patients. The Medical Center was assessed approximately $1.65 million in unauthorized use and non-compliance penalty charges. KEDNY and the Medical Center agreed in principle to resolve the non-compliance and unauthorized use charges for $700,000. The requested waiver would allow the parties to proceed with their proposed resolution. 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-0505SP1)

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Petition for Modifications to the New York State Standardized Interconnection Requirements and Application Process

I.D. No. PSC-42-16-00011-P

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

Proposed Action: The Commission is considering a Petition requesting modifications to the Order Modifying Standardized Interconnection Requirements (SIR), filed by the New York Solar Energy Industries Association on September 30, 2016.

Statutory authority: Public Service Law, sections 5(2), 22, 65(1), (2), (3), 66(1), (2), (3), (4), (5), (9), (12), (12-a), 66-c, 66-j and 66-l

Subject: Petition for modifications to the New York State Standardized Interconnection Requirements and Application Process.

Purpose: To update the SIR to clear the backlog, implement cost sharing, and streamline interconnection.

Substance of proposed rule: The Public Service Commission (Commission) is considering a filing made by the New York Solar Energy Industries Association (NYSEIA), on behalf of multiple parties to the Interconnection Policy Working Group, on September 30, 2016, requesting amendments to the Order Modifying Standardized Interconnection Requirements, issued on March 18, 2016 in Case 15-E-0557 (SIR Order). The filing requests that the Commission consider amending the SIR Order to require all applicants prove property owner consent, to implement binding developer decision-making timelines, to provide an extension for projects in localities where there is a permitting moratorium, and to implement a cost sharing mechanism for certain required substation upgrades. The Commission may adopt, reject, or modify, in whole or in part, the relief proposed, 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-E-0560SP1)

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Transfer of Certain Streetlights Located in the Town of Orangetown

I.D. No. PSC-42-16-00012-P

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

Proposed Action: The Commission is considering a petition filed by Orange and Rockland Utilities, Inc. (Orange and Rockland) for authorization to transfer certain streetlights located in the Town of Orangetown, Rockland County, New York to the Town of Orangetown.

Statutory authority: Public Service Law, sections 65, 66 and 70

Subject: Transfer of certain streetlights located in the Town of Orangetown.

Purpose: To consider the transfer of certain streetlights from Orange and Rockland to the Town of Orangetown.

Substance of proposed rule: The Public Service Commission is considering a petition filed on September 1, 2016, by Orange and Rockland Utilities, Inc. (Orange and Rockland) for authorization to transfer certain streetlights to the Town of Orangetown, a New York municipal corporation. Orange and Rockland asserts that the proposed transaction will not impact the reliability, safety, operation, or maintenance of Orange and Rockland's electric distribution 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, 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-0490SP1)

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Annual Reconciliation of Gas Expenses and Gas Cost Recoveries

I.D. No. PSC-42-16-00013-P

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

Proposed Action: The Commission is considering a filing by KEDNY for a waiver of certain tariff provisions and 16 NYCRR section 720-6.5(g), to suspend collection of the annual reconciliation of gas costs.

Statutory authority: Public Service Law, sections 5(1), 65(1) and 66(12)

Subject: Annual Reconciliation of Gas Expenses and Gas Cost Recoveries.

Purpose: To consider a request for a waiver of certain tariff provisions and 16 NYCRR section 720-6.5(g).

Substance of proposed rule: The Public Service Commission is considering a proposal filed by The Brooklyn Union Gas Company d/b/a National Grid NY (KEDNY) for a waiver of certain tariff provisions and Section 720-6.5(g) of 16 NYCRR to allow KEDNY to suspend collection of the annual reconciliation of gas costs mechanism in its Gas Adjustment Clause. 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-0554SP1)

PROPOSED RULE MAKING
NO HEARING(S) SCHEDULED

Proposed Public Policy Transmission Needs/Public Policy Requirements, As Defined Under the NYISO Tariff

I.D. No. PSC-42-16-00014-P

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

Proposed Action: The Commission is considering the proposed Public Policy Transmission Needs/Public Policy Requirements submitted by the New York Independent System Operator, Inc. (NYISO) on October 3, 2016.

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

Subject: Proposed Public Policy Transmission Needs/Public Policy Requirements, as defined under the NYISO tariff.

Purpose: To identify any proposed Public Policy Transmission Needs/Public Policy Requirements for referral to the NYISO.

Substance of proposed rule: The Public Service Commission (Commission) is considering proposed Public Policy Transmission Needs/Public Policy Requirements, as defined in the New York Independent System Operator, Inc.'s (NYISO) Open Access Transmission Tariff (Attachment Y), which were submitted by the NYISO on October 4, 2016. The NYISO submitted twelve proposals, which were provided by: (i) AVANGRID Networks, Inc.; (ii) City of New York, (iii) H.Q. Energy Services (U.S.) Inc., (iv) Invenergy LLC, (v) New York Power Authority ("NYPA"), Niagara Mohawk Power Corporation d/b/a National Grid, and Central Hudson Gas & Electric Corporation ("Central Hudson"), (vi) New York Transco LLC, (vii) NYPA, Central Hudson, Consolidated Edison Company of New York, Inc., New York State Gas & Electric Corporation, Orange and Rockland Utilities, Inc., and Rochester Gas and Electric Corporation, (viii) NextEra Energy Transmission New York, Inc., (ix) North America Transmission, (x) Poseidon Transmission 1, LLC, (xi) PPL Translink, Inc., and (xii) PSEG Long Island. In accordance with its Policy Statement issued in Case 14-E-0068 on August 15, 2014, the Commission seeks comments on whether any of the proposals, which have been posted on the Commission's website in Case 16-E-0558, should be identified as Public Policy Transmission Needs/Public Policy Requirements that may drive the need for transmission and should be referred to the NYISO to solicit and evaluate potential solutions. The Commission may adopt, reject or modify, in whole or in part, the relief proposed and may resolve related matters, including but not limited to, (i) whether the Commission should provide evaluation criteria to the NYISO or require the NYISO to perform specific analyses as part of its project review process, or (ii) whether any proposed Public Policy Transmission Needs/Public Policy Requirements should be addressed by transmission or non-transmission solutions. The Commission may also prescribe a cost allocation methodology associated with any identified Public Policy Transmission Needs/Public Policy Requirements.

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-0558SP1)