

# 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.

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## Department of Environmental Conservation

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### EMERGENCY RULE MAKING

#### Chemical Bulk Storage (CBS)

**I.D. No.** ENV-19-16-00006-E

**Filing No.** 882

**Filing Date:** 2016-09-16

**Effective Date:** 2016-09-16

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

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

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

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

**Specific reasons underlying the finding of necessity:** The New York State Department of Health (NYSDOH) has requested that the New York State Department of Environmental Conservation (DEC) add perfluorooctanoic acid (PFOA-acid, Chemical Abstracts Service (CAS) No. 335-67-1), ammonium perfluorooctanoate (PFOA-salt, CAS No. 3825-26-1), perfluorooctane sulfonic acid (PFOS-acid, CAS No. 1763-23-1), and perfluorooctane sulfonate (PFOS-salt, CAS No. 2795-39-3) to 6 NYCRR Section 597.3, List of Hazardous Substances. DEC has concluded that these four substances meet the definition of a hazardous substance based upon the conclusion of the NYSDOH that prolonged exposure to signifi-

cantly elevated levels of these compounds can affect health and, consequently, pose a threat to public health in New York State when improperly treated, stored, transported, disposed of or otherwise managed. NYSDOH scientists have concluded that it is essential to list these chemicals as hazardous substances. See the Regulatory Impact Statement for additional information, including NYSDOH's letter requesting that these chemicals be added to the List of Hazardous Substances (Section 597.3).

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

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

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

**Text of emergency rule:** 6 NYCRR Part 597 is amended to read as follows:

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

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

(2) Chemical [a]Abstracts [s]Service number or CAS number is the unique identifier for a chemical substance assigned by the CAS division of the American Chemical Society.

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

Existing section 597.3 is amended to read as follows:

597.3 List of hazardous substances

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

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

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

  

Table 2 – CAS Number Order				
CASRN	Substance	RQ Air (pounds)	RQ Land/ Water (pounds)	Notes
335-67-1	Perfluorooctanoic Acid	1	1	
1763-23-1	Perfluorooctane Sulfonic Acid	1	1	

2795-39-3	Perfluorooctane Sulfonate	1	1
3825-26-1	Ammonium Perfluorooctanoate	1	1

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

(a) Prohibition of releases.

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

(1) such release is authorized; [or]

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

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

Existing subdivision 597.4(b) remains unchanged.

**This notice is intended** to serve 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. ENV-19-16-00006-EP, Issue of May 11, 2016. The emergency rule will expire November 14, 2016.

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

**Additional matter required by statute:** Negative Declaration, Coastal Assessment Form, and Short Environmental Assessment Form have been completed for the proposed rule making that was filed on April 25, 2016 with the initial Notice of Emergency Adoption.

#### Summary of Regulatory Impact Statement

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

#### 1. STATUTORY AUTHORITY

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

#### 2. LEGISLATIVE OBJECTIVES

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

#### 3. NEEDS AND BENEFITS

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

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

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

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

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

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

PFOA-acid. The Department decided to allow the January 27, 2016 emergency rule to expire and to undertake the emergency and proposed rule to include all four substances on the list of hazardous substances.

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

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

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

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

#### Need for Correction of the List of Hazardous Substances

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

#### 4. COSTS

##### Costs to Regulated Parties

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

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

may be in possession of fire-fighting foams that contain one of these substances.

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

#### Costs to the Department, State, and Local Government

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

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

#### 5. LOCAL GOVERNMENT MANDATES

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

#### 6. PAPERWORK

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

#### 7. DUPLICATION

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

#### 8. ALTERNATIVES

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

#### 9. FEDERAL STANDARDS

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

#### 10. COMPLIANCE SCHEDULE

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

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

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

#### Summary of Regulatory Flexibility Analysis

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

##### 1. EFFECT OF RULE

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

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

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

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

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

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

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

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

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

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

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

that will be subject to the regulatory requirements of Part 375 because of contamination from these four substances.

## 2. COMPLIANCE REQUIREMENTS

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

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

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

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

## 3. PROFESSIONAL SERVICES

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

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

## 4. COMPLIANCE COSTS

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

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

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

## 5. ECONOMIC AND TECHNOLOGICAL FEASIBILITY

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

tion, and containment of potential spills. No technological feasibility issues will exist, but costs would be incurred commensurate with storage amounts.

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

## 6. MINIMIZING ADVERSE IMPACT

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

## 7. SMALL BUSINESS AND LOCAL GOVERNMENT PARTICIPATION

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

## 8. CURE PERIOD OR OTHER OPPORTUNITY FOR AMELIORATIVE ACTION

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

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

## 9. INITIAL REVIEW OF THE RULE

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

## Rural Area Flexibility Analysis

### 1. TYPES AND ESTIMATED NUMBER OF RURAL AREAS

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

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

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

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

A facility that stores PFOA-acid, PFOA-salt, PFOS-acid, or PFOS-salt that is subject to the CBS registration requirements, as explained above,

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

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

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

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

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

### 3. COSTS

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

The prohibition of releases of hazardous substances is not expected to

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

The costs of complying with the requirements of Part 375 to implement a remedial program where PFOA-acid, PFOA-salt, PFOS-acid, or PFOS-salt are the primary contaminants, will vary widely as the costs depend upon many factors. These include the quantity released to the environment, the media contaminated (e.g., soil, groundwater, surface water, sediment, bedrock), the horizontal and vertical extent of contamination for each medium, the accessibility of the contamination, whether there are human or environmental receptors that must be protected while a remedial program is being undertaken, the difficulty of removing PFOA-acid, PFOA-salt, PFOS-acid and PFOS-salt from the contaminated environmental media, the future anticipated use of the area of contamination, and other factors. Because of the wide variety of scenarios, it is not possible to meaningfully estimate the potential costs to persons managing PFOA-acid, PFOA-salt, PFOS-acid and PFOS-salt in rural areas resulting from the listing of PFOA-acid, PFOA-salt, PFOS-acid and PFOS-salt as hazardous substances other than to note that remedial program costs for other hazardous substances can range from the thousands to millions of dollars on a case-by-case basis.

### 4. MINIMIZING ADVERSE IMPACT

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

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

### 5. RURAL AREA PARTICIPATION

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

### 6. INITIAL REVIEW OF THE RULE

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

### Job Impact Statement

#### 1. NATURE OF IMPACT

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

1. Adds perfluorooctanoic acid (PFOA-acid, Chemical Abstracts Service No. 335-67-1), ammonium perfluorooctanoate (PFOA-salt, CAS No.

3825-26-1), perfluorooctane sulfonic acid (PFOS-acid, CAS No. 1763-23-1), and perfluorooctane sulfonate (PFOS-salt, CAS No. 2795-39-3) to the list of hazardous substances in 6 NYCRR Section 597.3 (Section 597.3);

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

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

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

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

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

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

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

## 2. CATEGORIES AND NUMBERS AFFECTED

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

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

The number of sites that may become remedial sites because of the addition of PFOA-acid, PFOA-salt, PFOS-acid, and PFOS-salt to Section 597.3 is unknown. The Department has placed one site on the Registry of Inactive Hazardous Waste Disposal Sites (Registry) as a result of adding PFOA-acid to Section 597.3 (Site Registry ID No. 442046). The Department expects that other sites that used PFOA-acid, PFOA-salt, PFOS-acid, or PFOS-salt in commercial or industrial processes may have PFOA-acid, PFOA-salt, PFOS-acid, or PFOS-salt environmental contamination.

Locations where PFOA-acid, PFOA-salt, PFOS-acid, or PFOS-salt disposal occurred or where PFOA-acid, PFOA-salt, PFOS-acid, or PFOS-salt were components of materials released to the environment may become remedial sites subject to the requirements of Part 375. Nationally, research by the United States Department of Defense (DoD) found that approximately 600 DoD sites are categorized as fire/crash/training areas and thus have the potential for contamination with perfluoroalkyl compounds (including PFOA-related and PFOS-related substances) due to historical use of aqueous film-forming foams (AFFF) [Strategic Environmental Research and Development Program (SERDP), FY 2014 Statement of Need (SON), Environmental Restoration (ER) Program Area, "In Situ Remediation of Perfluoroalkyl Contaminated Groundwater," SON Number: ERSON-14-02, October 25, 2012]. It is possible that the Department will list additional Registry sites. The work needed to investigate and remediate these sites may be accomplished by existing staff or new jobs may be added depending upon the number and complexity of sites.

## 3. REGIONS OF ADVERSE IMPACT

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

## 4. MINIMIZING ADVERSE IMPACT

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

## 5. SELF-EMPLOYMENT OPPORTUNITIES

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

## 6. INITIAL REVIEW OF RULE

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

## Assessment of Public Comment

Full text of the Assessment of Public Comment is available on the New York State Department of Environmental Conservation's website at [www.dec.ny.gov/regulations/104968.html](http://www.dec.ny.gov/regulations/104968.html)

### Introduction

This summary reflects the responses of the New York State Department of Environmental Conservation (DEC) to the main comments submitted by the public regarding the adoption of amendments to 6 NYCRR Part 597. This rule making was proposed on April 25, 2016 and included a 58 day comment period that ended on July 8, 2016. Public hearings were held in June 2016 in Albany, Rochester and Garden City, for a total of three public hearings, with an information session prior to each hearing. DEC received 40 comments during the hearings and from written submissions. Oral comments were received at the Albany and Garden City hearings, but none were provided during the Rochester hearing.

In this document, 'PFOA/PFOS' collectively means: perfluorooctanoic acid (PFOA-acid, Chemical Abstracts Service (CAS) No. 335-67-1), ammonium perfluorooctanoate (PFOA-salt, CAS No. 3825-26-1), perfluorooctane sulfonic acid (PFOS-acid, CAS No. 1763-23-1), and perfluorooctane sulfonate (PFOS-salt, CAS No. 2795-39-3).

### Main Themes

#### 1. Support of the Listing of PFOA/PFOS as Hazardous Substances

Five commenters indicated their support of listing PFOA/PFOS in Part 597, noting that their assessment of the substances causes them to support the classification as hazardous substances. DEC agrees with these commenters.

#### 2. Challenge of the Listing of PFOA/PFOS as Hazardous Substances

One commenter stated that the information available regarding PFOA/PFOS does not indicate that they meet the regulatory criteria for classification as hazardous substances. The commenter specifically noted the following in support of its position:

a. Human exposures to PFOA and PFOS in the United States are declining and are low compared to historical occupational exposure levels and doses used in laboratory animal studies.

b. Human epidemiologic studies do not demonstrate that occupational or environmental exposures to PFOA or PFOS cause human health effects.

c. Animal toxicology studies conducted at high doses do not prove harm to human health.

d. The New York State Department of Health (DOH) did not conclude that exposure to PFOA or PFOS causes physical injury or illness to humans.

DEC disagrees with the commenter.

With regard to the first point, the issue is not relevant to whether the substances meet the regulatory criteria for including chemicals on the list of hazardous substances.

With regard to the second point, the toxicities of PFOA/PFOS have been reviewed and summarized by numerous authoritative bodies which have determined that there is an association between increased PFOA/PFOS exposure and an increased risk for human health effects.

With regard to the third point, laboratory animal studies support human hazard identification, particularly when health endpoints associated with human exposures in epidemiological studies are also observed in exposed animals.

With regard to the fourth point, DOH concluded that, overall, the combined weight of evidence from human and experimental animal studies indicates that prolonged exposure to significantly elevated levels of PFOA or PFOS can negatively affect human health. Moreover, the United States Environmental Protection Agency (EPA) released updated editions of its Health Effects Support Documents in support of the lifetime health advisories issued by EPA in May 2016 for PFOA and PFOS. All of the summaries identify important studies on the health effects associated with exposure to these chemicals, including studies on chronic, developmental, and reproductive effects observed in humans and animals, and provide additional support for listing PFOA/PFOS as hazardous substances.

A draft report issued by the National Toxicology Program (NTP) provides additional support, concluding that both PFOA and PFOS are presumed to be an immune hazard to humans. Presumed hazards are one step below known hazards and one step above suspected hazardous on the five-step scale NTP uses for hazard identification.

Based on the review of human epidemiology and animal toxicology data for PFOA and PFOS, and DOH's conclusions that significantly elevated exposure to PFOA or PFOS can affect human health, there is sufficient information to conclude that PFOA/PFOS meet the criteria to be listed as hazardous substances.

### 3. Concerns with Firefighting Foam

a. Commenters expressed concern with allowing continued use of foam that may contain PFOA/PFOS through April 25, 2017.

Balancing the risks posed by PFOA/PFOS against the risks posed by fires in support of our mission to protect public health and the environment, DEC is allowing the use of firefighting foams that may contain PFOA/PFOS to fight fires that occur on or before April 25, 2017. DEC recognizes that facilities that possess supplies of firefighting foam need time to determine if their existing supplies of foam contain one or more of these newly listed hazardous substances and to make arrangements to dispose of and replace firefighting foam that contains PFOA/PFOS where the concentration of PFOA/PFOS is such that the foam cannot be used without causing a reportable spill (one pound of PFOA or PFOS). Allowing facilities that possess firefighting foam to continue to use foams that may contain PFOA/PFOS on a limited basis to fight fires furthers protection of public health and safety. DEC is not allowing use of firefighting foam that would result in a reportable spill of PFOA/PFOS for other purposes such as training. If firefighting foam containing PFOA/PFOS is used to fight a fire and there is a release of one pound or more of a hazardous substance, the release needs to be reported to DEC's spill hotline to allow DEC to determine if remediation of the release is necessary. DEC believes this is an appropriate approach that allows for the protection of the public and the environment.

b. A commenter expressed concern about economic and financial impacts on fire departments, fire districts, and municipalities which must determine whether firefighting foams contain PFOA/PFOS and dispose and replace PFOA/PFOS foams.

DEC understands the concern regarding costs to fire departments of determining whether foams contain PFOA/PFOS in concentrations such that the foams cannot be used without causing a reportable spill (one pound of PFOA or PFOS) and the costs of disposing and replacing foams. DEC has been working with the Fire Fighting Foam Coalition and the manufacturers of firefighting foam to make available information on foams that may contain PFOA/PFOS. In addition, DEC has posted a fact sheet on firefighting foam on DEC's website (see [www.dec.ny.gov/regulations/106078.html](http://www.dec.ny.gov/regulations/106078.html)). DEC believes the information in the fact sheet will minimize costs to fire departments in determining whether foams contain PFOA/PFOS and disposing of foams that contain PFOA/PFOS where the concentration of PFOA/PFOS is such that the foam cannot be used without causing a reportable spill (one pound of PFOA or PFOS). DEC is unable to provide assistance with costs associated with replacement of firefighting foam. In addition, the regulation seeks to minimize costs by allowing the use of such foam to fight fires until April 25, 2017, a year after the emergency rule went into effect.

c. The same commenter requested clarification regarding who will be responsible for the cost of the cleanup of any foam used for fire extinguishment.

DEC understands the concern regarding liability for cleanup costs associated with the use of firefighting foam. DEC will evaluate on a case-by-case basis the need for remediation of any release of PFOA/PFOS and who will be liable for cleanup costs.

d. Another commenter, a manufacturer of firefighting foam, noted that fluorine-free foams are now being developed.

### 4. Requests for additional action.

While DEC understands the concerns raised by the commenters below,

each of these additional actions goes beyond the scope of this rule making. Below is a summary of the requested actions and DEC's responses.

Commenters requested that DEC:

- Regulate the disposal of PFOA/PFOS as hazardous wastes.
- Regulate the discharge of PFOA/PFOS under the State Pollutant Discharge Elimination System (SPDES) and set effluent limits to non-detect.
- Regulate the discharge of air emissions of PFOA/PFOS and set the reportable limit to zero pounds.

d. Require manufacturers of PFOA/PFOS to monitor the water, soil, and air within the communities where they do business, regardless of the size of the community.

These requested actions are beyond the scope of the current rulemaking, however, DEC may consider these issues in a future rule making or policy document.

Commenter requested that DEC:

- Set a drinking water maximum contaminant level for PFOA/PFOS.
- Require public water supplies be tested for the presence of PFOA/PFOS.

These requested actions are outside of the scope of DEC authority.

Commenter requested that DEC:

- List all fluorinated chemicals in Part 597.
- Review and list other emerging contaminants.

As DEC becomes aware of unregulated chemicals of concern, DEC will evaluate each such chemical to determine whether it is appropriate to classify it as a hazardous substance.

i. Commenter requested that DEC require remediation of other sites that are contaminated.

As DEC becomes aware of contaminated properties, DEC will evaluate appropriate response and remediation for these properties in the same manner that DEC addresses any other property that is contaminated by a hazardous substance. Companies that contaminate properties are among the parties responsible for costs associated with remediation.

j. Commenter requested that DEC collaborate with DOH, the New York State Department of State, and local governments to conduct communication campaigns to raise awareness about the effects of PFOA/PFOS.

DEC has provided and will continue to provide information to interested parties regarding DEC's efforts to address these issues.

k. Commenter requested that DEC communicate to the public the results of EPA's progress regarding its voluntary PFOA Stewardship Program.

EPA developed and administers the voluntary PFOA Stewardship Program. Information about this program is available on EPA's website at [www.epa.gov/assessing-and-managing-chemicals-under-tsca/and-polyfluoroalkyl-substances-pfass-under-tsca#tab-3](http://www.epa.gov/assessing-and-managing-chemicals-under-tsca/and-polyfluoroalkyl-substances-pfass-under-tsca#tab-3).

l. Commenter requested that DEC hold Legislative Hearings on New York State's water quality.

Legislative hearings have been scheduled to address New York State's water quality.

## NOTICE OF ADOPTION

### Low Emission Vehicle (LEV III) and Zero Emission Vehicle (ZEV) Standards

**I.D. No.** ENV-25-16-00007-A

**Filing No.** 883

**Filing Date:** 2016-09-19

**Effective Date:** 30 days after filing

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

**Action taken:** Amendment of Parts 200 and 218 of Title 6 NYCRR.

**Statutory authority:** Environmental Conservation Law, sections 1-0101, 1-0303, 3-0301, 19-0103, 19-0105, 19-0107, 19-0301, 19-0303, 19-0305, 19-1101, 19-1103, 19-1105, 71-2103, 71-2105 and section 177 of the Federal Clean Air Act (42 USC 7507)

**Subject:** Low emission vehicle (LEV III) and zero emission vehicle (ZEV) standards.

**Purpose:** To incorporate California's most recent LEV III and ZEV program standards adopted in October 2015.

**Text of final rule:** Subpart 218-1 remains the same.

Section 218-2.1(a) is revised to read:

(a) It is unlawful for any person to sell or register, offer for sale or lease, import, deliver, purchase, rent, lease, acquire or receive a 1993, 1994, 1996 or subsequent model-year, new or used motor vehicle, new motor vehicle engine or motor vehicle with a new motor vehicle engine in the State of New York which is not certified to California emission standards and meets all other applicable requirements of California Code of Regulations, title 13, sections 1956.8, 1956.9, 1960.1, 1960.1.5, 1960.5, 1961,

1961.2, 1962, 1962.1, 1964, 1965, 1968.1, 1968.2, 1976, 1978, 2030, 2031, 2047, 2065, 2235, and article 1.5 (see Table 1, section 200.9 of this Title) and is otherwise not in compliance with the Environmental Conservation Law and these departmental regulations, unless the vehicle is sold to another dealer, sold for the purpose of being wrecked or dismantled, sold exclusively for off-highway use, or sold for registration out of state. Vehicles that have been certified to standards promulgated pursuant to the authority contained in 42 USC 7521 (see Table 1, section 200.9 of this Title) and that are in the possession of a rental agency in New York that are next rented with a final destination outside of New York will not be deemed as being in violation of this prohibition.

Sections 218-2.1(b) through 218-12.1 remain the same.

**Final rule as compared with last published rule:** Nonsubstantive changes were made in section 218-2.1(a).

**Text of rule and any required statements and analyses may be obtained from:** Jeff Marshall, P. E., NYSDEC, 625 Broadway, Albany, NY 12233-3255, (518) 402-8292, email: air.regs@dec.ny.gov

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

#### **Summary of Revised Regulatory Impact Statement**

The Department is adopting amendments to Part 218 and the associated provisions in Section 200.9 to incorporate California's latest low emission vehicle (LEV) III and zero emission vehicle (ZEV) standards into New York's existing LEV program.

Part 218 is being revised to update New York's incorporation of California's amendments to the LEV III program initially adopted by New York in 2012. The adopted LEV III revisions to Part 218 apply to all 2017 through 2025 model year vehicles up to 14,000 pounds GVWR and attempt to align LEV III with Tier 3 criteria pollutant standards adopted by the United States Environmental Protection Agency (EPA). EPA's Tier 3 standards generally mirror the structure and requirements of LEV III and were developed in collaboration with the California Air Resources Board (CARB). The adopted LEV III amendments include revisions that provide vehicle manufacturers with additional compliance flexibility while maintaining the stringency of LEV III and modify the California environmental performance label scores to include LEV III emission standards.

CARB initially adopted LEV III standards in 2012, but they were not incorporated in the environmental performance label smog scores. CARB's adopted revisions incorporate LEV III emission standards into the scores and revise the scores annually. Greenhouse gas (GHG) scores will be updated to reflect the current vehicle fleet. Federal labels will continue to be available as a compliance option.

Part 218 is also being revised to incorporate California's amendments to the ZEV program. New York last updated its ZEV requirements in 2015. The adopted ZEV revisions to Part 218 apply to 2018 through 2025 model year passenger cars, light-duty trucks, and medium-duty vehicles. The adopted ZEV amendments include, as explained below, a revised intermediate volume manufacturer (IVM) definition, IVM transition lead time, ZEV percentage requirements, IVM pooling provision, IVM credit deficit provision, and a revision to the fast refueling definition.

Revised IVM definition: As part of the 2012 Advanced Clean Cars (ACC) rulemaking, CARB redefined an IVM as any manufacturer with California sales between 4,501 and 20,000 new light and medium-duty vehicles. Sales are based on the average number of vehicles sold over the previous consecutive 3 year period. CARB determined that the vehicle sales requirement is insufficient to accurately assess a manufacturer's ability to produce advanced technology vehicles such as ZEV and transitional zero emission vehicles (TZEV). TZEVs are advanced technology vehicles such as plug-in hybrid electric vehicles (e.g., Chevrolet Volt), electric vehicles with internal combustion range extenders (e.g., BMW i3 REX), or hydrogen fueled internal combustion engine vehicles which advance the introduction of pure ZEVs. In addition to the sales requirement, therefore, CARB adopted an automotive related global revenue threshold requirement. The automotive related global revenue threshold will only be available to IVMs for the 2018 through 2020 model years. This revenue threshold will be \$40 billion based on the average for the previous 3 consecutive fiscal years. If an IVM's 3 year average global automotive revenue is no greater than \$40 billion, then the 3 model year production average corresponding to that fiscal year will not apply to the 5 consecutive 3 year averages discussed below. Starting with model year 2021, any manufacturer that exceeds the 20,000 vehicle threshold will be required to meet large volume manufacturer (LVM) ZEV requirements regardless of automotive related global revenue.

IVM to LVM transition lead time: The current ZEV regulation provides IVMs as little as 3 years lead time before they are required to meet LVM requirements. CARB extended the lead time provision for IVMs to 5 consecutive 3 year averages beginning when an IVM exceeds the 20,000 ve-

hicle average. This provision will provide IVMs with 5 to 7 years lead time to produce ZEV and TZEV. The first 3 year period covers the 2015 to 2017 model years reported in 2018. For example, if an IVM averages greater than 20,000 vehicles per year for 5 consecutive 3 years averages starting in 2015-2017 it will transition to LVM ZEV requirements starting with model year 2022. The lead time clock will not run when automotive related global revenue is less than, or equal to, \$40 billion.

ZEV percentage requirements: The current ZEV percentage requirements were established in the 2012 ACC rulemaking. CARB determined the ZEV percentage requirements will remain unchanged and will be reexamined as part of the mid-term review in 2016. IVM will be allowed to meet their full ZEV requirement with TZEV.

IVM pooling provision: CARB, with input from Section 177 states, revised the optional Section 177 state compliance path pooling provisions. The optional Section 177 state compliance path is a voluntary compliance mechanism intended to alleviate the compliance burden for manufacturers while ensuring that ZEVs are actually placed in service in Section 177 states prior to model year 2018. Currently, to be eligible for pooling, a manufacturer must voluntarily place a certain percentage of advanced technology vehicles in Section 177 states in model years 2016 and 2017 beyond the base path percentages for those model years. In return, the manufacturer will be granted the ability to pool vehicle sales among states and between regions, and be subject to decreased ZEV and TZEV percentages in later years. Generally, LVMs were the only manufacturers in a position to avail themselves of the optional compliance path. Most IVMs currently do not have ZEV or TZEV models and cannot meet the early placement requirement which enables pooling. Therefore, IVMs will be permitted to place additional advanced technology vehicles 2 years prior to commencing LVM status in order to be eligible for pooling. IVMs will also be allowed to pool TZEV credits, but their overall TZEV obligation will not be reduced by pooling.

IVM ZEV credit deficit: The current ZEV regulation allows manufacturers 1 year to offset a ZEV credit deficit. CARB extended the credit recovery period up to 3 years, consistent with other mobile source programs, but restricted to IVMs only. IVMs with a credit deficit will be required to present a plan to CARB detailing how they intend to achieve compliance. IVMs will be allowed to offset a ZEV deficit with TZEV credits consistent with existing regulations.

Fast refueling: Lastly, CARB revised the fast refueling definition for battery electric vehicles (BEV), also known as battery swapping. Battery swapping for a BEV removes the depleted battery pack with a fully charged replacement battery pack to meet the refueling time and driving range requirements for each ZEV Type. CARB previously revised the fast refueling definition to require a demonstration of battery swapping for in use vehicles within a calendar year. Manufacturers contend this is problematic for vehicles placed in the latter part of a model year. CARB adopted clarifying language that requires the demonstration to occur within 12 months of the vehicle being placed in service.

The Department is adopting LEV III and ZEV standards and credit mechanisms that are identical to those adopted by CARB as required by Section 177 of the Clean Air Act.

The adopted LEV III amendments are expected to have minimal, if any, economic impact on manufacturers. The adopted amendments are intended to minimize manufacturers' compliance costs by aligning the LEV III standards with EPA's Tier 3 standards to the greatest extent possible. Any potential savings are related to certification test procedures. CARB estimated that 2 of 30 manufacturers would save an average of \$76,000 in hybrid electric vehicle certification testing costs over the life of the regulation. New York is preempted from certifying vehicles, so these costs and savings do not apply. CARB also estimated average annual BEV and plug-in hybrid electric vehicle (PHEV) 3 year projection reporting would be \$1,500. New York currently does not require manufacturers to submit a similar report.

The adopted ZEV amendment's economic impact on IVMs is dependent upon their compliance strategy. Compliance scenarios range from, but are not limited to, compliance with only ZEVs to only TZEVs. Compliance with fuel cell vehicles (FCVs), or BEVs earning maximum credit will require fewer vehicles to be delivered to demonstrate compliance. FCVs cost more per vehicle than TZEVs, but the overall number of vehicles required to demonstrate compliance would be less. An IVM demonstrating compliance using solely TZEVs would be required to deliver more vehicles due to the lower ZEV credit per vehicle. The most likely compliance scenario will include a mix of ZEVs and TZEVs to increase compliance flexibility and reduce costs.

The adopted LEV III and ZEV amendments are not expected to have any impact on consumers. There should be no costs associated with the adopted LEV III and ZEV amendments that will be passed along to consumers in the form of higher prices.

Currently there is no automotive manufacturing in New York involving the final assembly of vehicles. Affiliated businesses, such as dealerships

and engineering and design facilities, are local businesses which compete within the State and generally are not subject to competition from out-of-state businesses. New York dealerships will be able to sell California certified vehicles to states bordering New York, as is currently the case. New York residents will not be able to buy noncompliant vehicles out of state since vehicles must be California certified in order to be registered in New York. This is currently the case with the existing LEV program and will not change with the adopted requirements. The adopted amendments apply equally to all manufacturers delivering new vehicles for sale in New York. Several of the surrounding states have adopted, or will adopt, similar requirements. Therefore, the adopted regulation is not expected to impose a competitive disadvantage on dealerships.

There are no costs associated with the adopted amendments that will be passed along to dealerships. The adopted amendments are not expected to cause a noticeable change in New York employment, business creation, elimination, or expansion. The adopted amendments are not expected to result in any additional costs for local and state agencies. No additional paperwork or staffing requirements are expected.

The adopted amendments do not impose a local government mandate. No additional paperwork or staffing requirements are expected. This is not a mandate on local governments pursuant to Executive Order 17. Local governments have no additional compliance obligations as compared to other subject entities.

The adopted amendments should not result in any new significant paperwork requirements for New York vehicle suppliers, dealers or government. New York relies on materials submitted to California for certification, while manufacturers must submit to New York annual sales and corporate fleet average reports to show compliance with the fleet average requirements. The Department believes that most manufacturers currently include provisions in their ordering mechanisms to ensure that only California certified vehicles are shipped to New York dealers. This has been the case since New York first adopted the California LEV program in 1992. Implementation of the adopted LEV III and ZEV regulations is not expected to be burdensome in terms of paperwork to owners/operators of vehicles.

There are no relevant state or federal rules or other legal requirements that would duplicate, overlap or conflict with this adopted regulation. The option of maintaining the current LEV program without adopting CARB's LEV III and ZEV amendments was reviewed and rejected due to the Section 177 identity requirement. New York State must maintain compliance with recent improvements in the California standards in order to achieve the emission reductions necessary for the attainment and maintenance of the ozone and carbon monoxide standards, as well as reductions of GHG emissions.

Federal Tier 3 standards will be available as an alternative for the 2017 through 2025 model years and the adopted LEV III standards attempt to align with them where possible. There are no equivalent federal ZEV standards available as an alternative.

The adopted LEV III regulatory amendment will take effect for 2017 through 2025 model year vehicles up to 14,000 pounds GVWR. The adopted ZEV regulatory amendment will take effect for 2018 through 2025 model year passenger cars, light-duty trucks, and medium-duty vehicles.

#### **Revised Regulatory Flexibility Analysis**

##### **1. Effect of rule:**

The New York State Department of Environmental Conservation (Department) is amending 6 NYCRR Section 200.9 and 6 NYCRR Part 218 to incorporate California's latest low emission vehicle (LEV) III and zero emission vehicle (ZEV) standards, which were adopted by California in October 2015, into New York's existing LEV program. These changes apply to vehicles purchased by consumers, businesses, and government agencies in New York and may impact businesses involved in manufacturing, selling, leasing, or purchasing passenger cars or trucks.

State and local governments are also consumers of vehicles that will be regulated under the amendments. Therefore, local governments who own or operate vehicles in New York State are subject to the same requirements as owners of private vehicles in New York State; i.e., they must purchase California certified vehicles. This rulemaking is not a local government mandate pursuant to Executive Order 17.

The changes are an addition to the current LEV standards. The new motor vehicle emissions program has been in effect in New York State since model year 1993 for passenger cars and light-duty trucks, with the exception of the 1995 model year, and the Department is unaware of any significant adverse impact to small businesses or local governments as a result of previous revisions. Section 177 of the federal Clean Air Act requires New York to maintain standards identical to California's in order to maintain the LEV program.

##### **2. Compliance requirements:**

There are no specific requirements in the regulation which apply exclusively to small businesses or local governments. Reporting, record

keeping and compliance requirements are effective statewide. Automobile dealers (some of which may be small businesses) selling new cars are required to sell or offer for sale only California certified vehicles. These amendments will not result in any additional reporting requirements to dealerships other than the current requirements to maintain records demonstrating that vehicles are California certified. This documentation is the same documentation already required by the New York State Department of Motor Vehicles for vehicle registration. If local governments are buying new fleet vehicles they should make sure that the vehicles are California certified. This has been the case for more than two decades in New York.

##### **3. Professional services:**

There are no professional services needed by small business or local government to comply with the adopted rule.

##### **4. Compliance costs:**

New York State currently maintains personnel and equipment to administer the LEV program. It is expected that these personnel will be retained to administer the revisions to this program. Therefore, no additional costs will be incurred by the State of New York for the administration of this program.

##### **5. Minimizing adverse impact:**

The LEV III and ZEV amendments are not expected to have any impact on automobile dealers. Dealerships will be required to ensure that the vehicles they sell are California certified. Starting with the 1993 model year, most manufacturers have included provisions in their ordering mechanisms to ensure that only California certified vehicles are shipped to New York dealers. Implementation of the LEV III and ZEV regulations is not expected to be burdensome in terms of additional reporting requirements for dealers.

There will be no adverse impact on local governments who own or operate vehicles in the state because they are subject to the same requirements as those imposed on owners of private vehicles. In other words, state and local governments will be required to purchase California certified vehicles. This rulemaking is not a local government mandate pursuant to Executive Order 17.

This regulation contains exemptions for emergency vehicles, and military tactical vehicles and equipment.

##### **6. Small business and local government participation:**

The Department held a public hearing in Albany August 8, 2016 after the amendments were proposed. Small businesses and local governments had the opportunity to attend this public hearing. Additionally, a public comment period was held in which interested parties could submit written comments. Comments were received from five individuals.

##### **7. Economic and technological feasibility:**

The LEV III and ZEV amendments are not expected to have any adverse impacts on automobile dealers. Dealerships will be required to ensure that the vehicles they sell are California certified. Starting with the 1993 model year, most manufacturers have included provisions in their ordering mechanisms to ensure that only California certified vehicles are shipped to New York dealers. Implementation of the regulations is not expected to be burdensome in terms of additional reporting requirements for dealers. As stated previously, there would be no change in the competitive relationship with out-of-state businesses.

The LEV III amendments attempt to minimize adverse impacts on automobile manufacturers by harmonizing standards with Tier 3 standards for the 2017 through 2025 model years which were recently adopted by the United States Environmental Protection Agency. The LEV III revisions to Part 218 will apply to all 2017 through 2025 model year passenger cars, light-duty trucks, and medium-duty vehicles up to 14,000 pounds gross vehicle weight rating (GVWR).

The ZEV amendments include a revised intermediate volume manufacturer (IVM) definition, transition lead time, ZEV percentage requirements, Section 177 State optional pooling provision, credit deficit provision, and a revision to the fast refueling definition. The ZEV revisions to Part 218 will apply to all 2018 through 2025 model year passenger cars, light-duty trucks, and medium-duty vehicles.

##### **8. Cure period:**

In accordance with NYS State Administrative Procedures Act (SAPA) Section 202-b, this rulemaking does not include a cure period because the Department is undertaking this rulemaking to comply with changes California has made to its vehicle emissions program in order to maintain identity with Section 177 of the Clean Air Act.

#### **Revised Rural Area Flexibility Analysis**

##### **1. Types and estimated numbers of rural areas:**

The New York State Department of Environmental Conservation (Department) is amending 6 NYCRR Section 200.9 and 6 NYCRR Part 218 to incorporate California's latest low emission vehicle (LEV) III and zero emission vehicle (ZEV) standards, which were adopted by California in October 2015, into New York's existing LEV program.

There are no requirements in the regulation which apply only to rural

areas. These changes apply to manufacturers' requirements for the manufacture and sale of vehicles sold in New York. The changes to these regulations may impact businesses involved in manufacturing, selling, purchasing, or repairing passenger cars or trucks.

The changes are additions to the current LEV standards. The new motor vehicle emission program has been in effect in New York State since model year 1993 for passenger cars as well as light-duty trucks, with the exception of model year 1995, and the Department is unaware of any adverse impact to rural areas as a result. The beneficial emission reductions from the program accrue to all areas of the state.

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

There are no specific requirements in the regulations which apply exclusively to rural areas. Reporting, recordkeeping and compliance requirements apply primarily to vehicle manufacturers, and to a lesser degree to automobile dealerships. Manufacturers reporting requirements mirror the California requirements, and are thus not expected to be burdensome. Dealerships do not have reporting requirements, but must maintain records to demonstrate that vehicles are California certified. This documentation is the same as documentation already required by the New York State Department of Motor Vehicles for vehicle registration. This has been the case for more than two decades in New York.

Professional services are not anticipated to be necessary to comply with the rules.

3. Costs:

The amendments to the LEV III and ZEV standards are not expected to have any impact on consumers. The LEV III amendments are intended to provide manufacturers with compliance flexibility by harmonizing the LEV III standards with recently adopted federal Tier 3 emission standards for the 2017 through 2025 model years. The standards will apply to passenger cars, light-duty trucks, and medium-duty vehicles up to 14,000 pounds gross vehicle weight rating (GVWR).

The ZEV amendments include a revised intermediate volume manufacturer (IVM) definition, transition lead time, ZEV percentage requirements, Section 177 State optional pooling provision, credit deficit provision, and a revision to the fast refueling definition. The ZEV revisions to Part 218 will apply to all 2018 through 2025 model year passenger cars, light-duty trucks, and medium-duty vehicles.

There are no costs associated with this change that would be passed along to consumers in the form of higher prices.

4. Minimizing adverse impact:

The changes will not adversely impact rural areas.

5. Rural area participation:

The Department held a public hearing in Albany August 8, 2016 after the regulation was proposed. Additionally, a public comment period was held in which interested parties could submit written comments. Comments were received from five individuals.

#### **Revised Job Impact Statement**

1. Nature of impact:

The New York State Department of Environmental Conservation (Department) is amending 6 NYCRR Section 200.9 and 6 NYCRR Part 218 to incorporate California's latest low emission vehicle (LEV) III and zero emission vehicle (ZEV) standards, which were adopted by California in October 2015, into New York's existing LEV program.

The amendments to the regulations are not expected to adversely impact jobs and employment opportunities in New York State. New York State has had a LEV program in effect since model year 1993 for passenger cars and light-duty trucks, with the exception of model year 1995, and the Department is unaware of any significant adverse impact to jobs and employment opportunities as a result of previous revisions.

2. Categories and numbers affected:

The changes to this regulation will not adversely impact businesses involved in manufacturing, selling or purchasing passenger cars or trucks. Automobile manufacturers are not expected to incur costs in order to comply with the regulation. Dealerships will be able to sell California certified vehicles to buyers from states bordering New York. Since vehicles must be California certified in order to be registered in New York, New York residents will not be able to buy non-complying vehicles out-of-state, but may be able to buy complying vehicles out-of-state. These businesses compete within the state and generally are not subject to competition from out-of-state businesses. Therefore, the regulation is not expected to impose a competitive disadvantage on affiliated businesses, and there would be no change from the current relationship with out-of-state businesses.

3. Regions of adverse impact:

None.

4. Minimizing adverse impact:

The regulations are not expected to have adverse impacts on automobile dealers. Dealerships will be required to ensure that the vehicles they sell are California certified. Starting with the 1993 model year, most manufac-

turers have included provisions in their ordering mechanisms to ensure that only California certified vehicles are shipped to New York dealers. The implementation of the regulations is not expected to be burdensome in terms of additional reporting requirements for dealers. There would be no change in the competitive relationship with out-of-state businesses.

The LEV III amendments attempt to minimize adverse impacts on automobile manufacturers by harmonizing standards with Tier 3 standards for the 2017 through 2025 model years which were recently adopted by the United States Environmental Protection Agency. The LEV III revisions to Part 218 will apply to all 2017 through 2025 model year passenger cars, light-duty trucks, and medium-duty vehicles up to 14,000 pounds gross vehicle weight rating (GVWR).

The ZEV amendments include a revised intermediate volume manufacturer (IVM) definition, transition lead time, ZEV percentage requirements, Section 177 State optional pooling provision, credit deficit provision, and a revision to the fast refueling definition. The ZEV revisions to Part 218 will apply to all 2018 through 2025 model year passenger cars, light-duty trucks, and medium-duty vehicles.

5. Self-employment opportunities:

None that the Department is aware of at this time.

#### **Initial Review of Rule**

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

#### **Assessment of Public Comment**

Public Health and Environmental Quality

Comment 1: The People of the State of NY would be better served if ALL motor vehicle emission standards were removed together with the excessive fees that go with them. Commenter 1.

Comment 2: We certainly don't need Californias (sic) standards here. Do you see the smog here that you see in LA? California goes overboard on nearly all environmental issues. Commenter 2.

Response to Comments 1 & 2: The Department strongly disagrees with these comments. Several areas of New York State still do not meet federal health based national ambient air quality standards (NAAQS) for ozone and have been categorized as non-attainment areas. On-road vehicles in New York State emit a substantial portion of ozone precursors. The Department has the obligation to regulate and mitigate vehicle emissions to safeguard the health of State residents and protect the State's environment. Motor vehicle emission standards have been a tremendous and cost effective success in New York State. No "fees" are associated with vehicle emission standards as a result of this rulemaking.

Miscellaneous

Comment 3: Why are the vehicles from model year 1995 seemingly exempt from this change? Possibly a typo or omission? Commenter 4.

Response to Comment 3: New York State was pre-empted by federal law from implementing California emission standards for the 1995 model year as a result of litigation. 1995 model year vehicles delivered for sale in New York State were only required to comply with federal emission standards.

Comment 4: Also, if I own a 1994 Z28, does it comply with the new regs, if enacted? If not, it looks like I would have to junk a perfectly good and almost classic car. This seems over the top to me. I don't agree with retroactively "outlawing" a car that has been legal for... Commenter 4.

Response to Comment 4: The proposed low emission vehicle (LEV) and zero emission vehicle (ZEV) standards apply only to 2017 through 2025 model year vehicles and are not retroactive. The standards do not "outlaw" vehicles currently registered in New York State. You will not have to scrap your vehicle as a result of the proposed regulations.

Comment 5: The term Zero Emission Vehicle Should not be used. There are emissions associated with any vehicle. Even if it is electric-powered. This term suggests to those who do (sic) understand the entire process that such vehicles actually result in zero emissions to the air. That is not true, and is very misleading to the public. The energy used to power the vehicle generates emissions, the production of the materials used to make the vehicle generates emissions. The end-of-service life process for the vehicle and any of its components, whether it be reuse, recycling, or disposal – results in emissions. Please do not mislead the general public. Commenter 5.

Response to Comment 5: The term Zero Emission Vehicle is a term of art used to denote a vehicle that has no tailpipe emissions and to differentiate it from conventional vehicles that have tailpipe emissions. The Department agrees that all vehicles have emissions associated with their production, use, and scrapping. These emissions are referred to as well-to-wheels emissions. Emissions from ZEVs occur upstream of the vehicle and are generally associated with power generation facilities. These facilities are regulated under the Department's stationary source programs and are required to have operating permits and emissions controls in place and operating. Conventional vehicles have emissions associated with fuel pro-

duction, refining, delivery, and vehicle operation. Upstream emissions related to conventional vehicles are also regulated under various stationary source programs. Tailpipe emissions from conventional vehicles are mitigated through certification and in-use emission standards, as well as onboard emissions control technologies.

Beyond the Scope of This Regulation

Comment 6: Please be advised this is not California. Commenter 1.

Response to Comment 6: Thank you for your comment.

Comment 7: When you start cracking down on Semi trucks and buses I'll agree to different standards for personal vehicles. Commenter 2.

Response to Comment 7: This comment is outside the scope of the proposed revisions to Part 218. Emissions from heavy-duty trucks and buses are regulated under Part 218 and these vehicles are also subject to roadside emission inspections and anti-idling restrictions under Part 217.

Comment 8: This sounds like one of the governors (sic) ideas to say he has the most stringent laws etc. etc.. Just another expense do (sic) to some environmentalist wild idea like the one to paint the guard rails brown in the Adirondacks only to find out they rust and are unsafe and cost us millions to replace back. This State is over regulated as it is and one of the most poorly run. In some cases the regulators are now in jail. Don't fall into the political/environmental pit. They want clean air etc. but when it comes to things like windmills, oh no, not around me. I am 73 years of age and have watched this nonsense for some time. You want to make more stringent laws? Go after the big guns, or is that to (sic) difficult? Follow the money. Commenter 2.

Response to Comment 8: Thank you for your comment but it is outside the scope of this rulemaking.

Comment 9: Also some legislation and enforcement for idling vehicles. I am always amazed by the people who leave empty vehicles running with air or heat on so is (sic) comfy when they return from whatever store etc....and the same with a passenger sitting in it. Are we THAT frail? Thanks wendy dwyer ( member PAUSEENERGY.org). Commenter 3.

Response to Comment 9: This comment is outside the scope of this rulemaking. However, please note that New York State has anti-idle regulations incorporated in Part 217-3. The anti-idle regulations apply to all vehicles over 8,500 pounds gross vehicle weight rating and prohibit idling for more than 5 minutes unless specifically exempted.

Comment 10: I am planning to get a Chevy Bolt in 2018! Want to give it a year of "working out any kinks". Commenter 3.

Response to Comment 10: Thank you for your comment but it is outside the scope of this rulemaking.

List of Commenters

1. Robert Folchetti
2. Jim Murray
3. Wendy Dwyer
4. biggeo555@twcny.rr.com
5. Mark G Marsack, PE

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## Department of Financial Services

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### EMERGENCY RULE MAKING

#### Public Retirement Systems

**I.D. No.** DFS-40-16-00002-E

**Filing No.** 888

**Filing Date:** 2016-09-20

**Effective Date:** 2016-09-20

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

**Action taken:** Amendment of Part 136 (Regulation 85) of Title 11 NYCRR.

**Statutory authority:** Financial Services Law, sections 202 and 302; Insurance Law, sections 301, 314, 7401(a) and 7402(n)

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

**Specific reasons underlying the finding of necessity:** The Second Amendment to 11 NYCRR 136 (Insurance Regulation 85), effective November 19, 2008, established new standards of behavior with regard to investment of the assets of the New York State Common Retirement Fund ("Fund"), conflicts of interest, and procurement. In addition, it created new audit and actuarial committees, and greatly strengthened the investment advisory committee. The Second Amendment also set high ethical standards,

strengthened internal controls and governance, enhanced the operational transparency of the Fund, and strengthened supervision by the Department.

Nevertheless, recent events surrounding how placement agents conduct business on behalf of their clients with regard to the Fund compel the Superintendent to conclude that the mere strengthening of the Fund's control environment is insufficient to protect the integrity of the state employees' retirement systems. Rather, only an immediate ban on the use of placement agents will ensure sufficient protection of the Fund's members and beneficiaries and safeguard the integrity of the Fund's investments.

This regulation was previously promulgated on an emergency basis on June 18, 2009, September 16, 2009, January 5, 2010, April 2, 2010, May 28, 2010, July 29, 2010, September 23, 2010, November 19, 2010, January 18, 2011, March 21, 2011, May 19, 2011, August 16, 2011, November 10, 2011, February 7, 2012, May 7, 2012, August 3, 2012, October 31, 2012, January 28, 2013, April 26, 2013, July 24, 2013, October 21, 2013, January 17, 2014, April 16, 2014, July 14, 2014, October 10, 2014, January 7, 2015, April 6, 2015, July 3, 2015, September 30, 2015, December 28, 2015, March 25, 2016, and June 22, 2016.

**Subject:** Public Retirement Systems.

**Purpose:** To ban the use of placement agents by investment advisors engaged by the state employees' retirement systems.

**Text of emergency rule:** Section 136-2.2 is amended to read as follows:

§ 136-2.2 Definitions.

The following words and phrases, as used in this Subpart, unless a different meaning is plainly required by the context, shall have the following meanings:

[(a) Retirement system shall mean the New York State and Local Employees' Retirement System and the New York State and Local Police and Fire Retirement System.]

[(b) Fund shall mean the New York State Common Retirement Fund, a fund in the custody of the Comptroller as trustee, established pursuant to Section 422 of the Retirement and Social Security Law, which holds the assets of the retirement system.]

[(c)](a) Comptroller shall mean the Comptroller of the State of New York in his capacity as administrative head of the Retirement System and the sole trustee of the [fund] *Fund*.

[(d) OSC shall mean the Office of the State Comptroller.]

[(e)](b) Consultant or advisor shall mean any person (other than an OSC employee) or entity retained by the [fund] *Fund* to provide technical or professional services to the [fund] *Fund* relating to investments by the [fund] *Fund*, including outside investment counsel and litigation counsel, custodians, administrators, broker-dealers, and persons or entities that identify investment objectives and risks, assist in the selection of [money] investment managers, securities, or other investments, or monitor investment performance.

(c) *Family member shall mean any person living in the same household as the Comptroller, and any person related to the Comptroller within the third degree of consanguinity or affinity.*

(d) *Fund shall mean the New York State Common Retirement Fund, a fund in the custody of the Comptroller as trustee, established pursuant to Section 422 of the Retirement and Social Security Law ("RSSL"), which holds the assets of the Retirement System.*

[f] (e) Investment manager shall mean any person (other than an OSC employee) or entity engaged by the Fund in the management of part or all of an investment portfolio of the [fund] *Fund*. "Management" shall include, but is not limited to, analysis of portfolio holdings, and the purchase, sale, and lending thereof. For the purposes hereof, any investment made by the Fund pursuant to RSSL § 177(7) shall be deemed to be the investment of the Fund in such investment entity (rather than in the assets of such investment entity).

(f) *Investment policy statement shall mean a written document that, consistent with law, sets forth a framework for the investment program of the Fund.*

(g) *OSC shall mean the Office of the State Comptroller.*

[(g)] (h) Placement agent or intermediary shall mean any person or entity, including registered lobbyists, directly or indirectly engaged and compensated by an investment manager (other than [an] a regular employee of the investment manager) to promote investments to or solicit investment by [assist the investment manager in obtaining investments by the fund, or otherwise doing business with] the [fund] *Fund*, whether compensated on a flat fee, a contingent fee, or any other basis. Regular employees of an investment manager are excluded from this definition unless they are employed principally for the purpose of securing or influencing the decision to secure a particular transaction or investment by the *Fund*. [obtaining investments or providing other intermediary services with respect to the fund.] For purpose of this paragraph, the term "employee" shall include any person who would qualify as an employee under the federal Internal Revenue Code of 1986, as amended, but shall not include a person hired, retained or engaged by an investment manager to

secure or influence the decision to secure a particular transaction or investment by the Fund.

(h) Investment policy statement shall mean a written document that, consistent with law, sets forth a framework for the investment program of the fund.]

(i) Third party administrator shall mean any person or entity that contractually provides administrative services to the retirement system, including receiving and recording employer and employee contributions, maintaining eligibility rosters, verifying eligibility for benefits or paying benefits and maintaining any other retirement system records. Administrative services do not include services provided to the fund relating to fund investments.]

(i) Retirement System shall mean the New York State and Local Employees' Retirement System and the New York State and Local Police and Fire Retirement System.

(j) Third party administrator shall mean any person or entity that contractually provides administrative services to the Retirement System, including receiving and recording employer and employee contributions, maintaining eligibility rosters, verifying eligibility for benefits, paying benefits or maintaining any other Retirement System records. "Administrative services" do not include services provided to the Fund relating to Fund investments.

(j) (k) Unaffiliated Person shall mean any person other than: (1) the Comptroller or a family member of the Comptroller, (2) an officer or employee of OSC, (3) an individual or entity doing business with OSC or the [fund] Fund, or (4) an individual or entity that has a substantial financial interest in an entity doing business with OSC or the [fund] Fund. For the purpose of this paragraph, the term "substantial financial interest" shall mean the control of the entity, whereby "control" means the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of the entity, whether through the ownership of voting securities, by contract (except a commercial contract for goods or non-management services) or otherwise; but no individual shall be deemed to control an entity solely by reason of his being an officer or director of such entity. Control shall be presumed to exist if any individual directly or indirectly owns, controls or holds with the power to vote ten percent or more of the voting securities of such entity.

(k) Family member shall mean any person living in the same household as the Comptroller, and any person related to the Comptroller within the third degree of consanguinity or affinity.]

Section 136-2.4 (d) is amended to read as follows:

(d) Placement agents or intermediaries: In order to preserve the independence and integrity of the [fund] Fund, to [address] preclude potential conflicts of interest, and to assist the Comptroller in fulfilling his or her duties as a fiduciary to the [fund] Fund, [the Comptroller shall maintain a reporting and review system that must be followed whenever the fund] the Fund shall not [engages, hires, invests with, or commits] engage, hire, invest with or commit to[,] an outside investment manager who is using the services of a placement agent or intermediary to assist the investment manager in obtaining investments by the [fund] Fund. [, or otherwise doing business with the fund. The Comptroller shall require investment managers to disclose to the Comptroller and to his or her designee payments made to any such placement agent or intermediary. The reporting and review system shall be set forth in written guidelines and such guidelines shall be published on the OSC public website.]

Section 136-2.5 (g) is amended to read as follows:

(g) The Comptroller shall:

(1) file with the superintendent an annual statement in the format prescribed by Section 307 of the Insurance Law, including the [retirement system's] Retirement System's financial statement, together with an opinion of an independent certified public accountant on the financial statement;

(2) file with the superintendent the Comprehensive Annual Financial Report within the time prescribed by law, but no later than the time it is published on the OSC public website;

(3) disclose on the OSC public website, on at least an annual basis, all fees paid by the [fund] Fund to investment managers, consultants or advisors, and third party administrators;

[(4) disclose on the OSC public website, on at least an annual basis, instances where an investment manager has paid a fee to a placement agent or intermediary;]

[(5)](4) disclose on the OSC public website the [fund's] Fund's investment policies and procedures; and

[(6)](5) require fiduciary and conflict of interest reviews of the [fund] Fund every three years by a qualified unaffiliated person.

**This notice is intended** to serve only as an emergency adoption, to be valid for 90 days or less. This rule expires December 18, 2016.

**Text of rule and any required statements and analyses may be obtained from:** Mark McLeod, New York State Department of Financial Services, One State Street, New York, NY 10004, (212) 480-4937, email: mark.mcleod@dfs.ny.gov

### Regulatory Impact Statement

1. Statutory authority: The Superintendent's authority for the adoption of the rule to 11 NYCRR 136 is derived from sections 202 and 302 of the Financial Services Law ("FSL") and sections 301, 314, 7401(a), and 7402(n) of the Insurance Law.

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

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

Insurance Law section 314 vests the Superintendent with the authority to promulgate standards with respect to administrative efficiency, discharge of fiduciary responsibilities, investment policies and financial soundness of the public retirement and pension systems of the State of New York, and to make an examination into the affairs of every system at least once every five years in accordance with Insurance Law sections 310, 311 and 312. The implementation of the standards is necessarily through the promulgation of regulations.

As confirmed by the Court of Appeals in *Matter of Dinallo v. DiNapoli*, 9 N.Y. 3d 94 (2007), the Superintendent functions in two distinct capacities. The first is as regulator of the insurance industry. The second is as statutory receiver of financially distressed insurance entities. Article 74 of the Insurance Law sets forth the Superintendent's role and responsibilities in this latter capacity.

Insurance Law section 7401(a) sets forth the entities, including the public retirement systems, to which Article 74 applies.

Insurance Law section 7402(n) provides that it is a ground for rehabilitation if an entity subject to Article 74 has failed or refused to take such steps as may be necessary to remove from office any officer or director whom the Superintendent has found, after appropriate notice and hearing, to be a dishonest or untrustworthy person.

2. Legislative objectives: Insurance Law section 314 authorizes the Superintendent to promulgate and amend, after consultation with the respective administrative heads of public retirement and pension systems and after a public hearing, standards with respect to the public retirement and pension systems of the State of New York.

This rule, which in effect bans the use of an investment tool that has been found to be untrustworthy, is consistent with the public policy objectives that the Legislature sought to advance in enacting Insurance Law section 314, which provides the Superintendent with the powers to promulgate standards to protect the New York State Common Retirement Fund (the "Fund").

3. Needs and benefits: The Second Amendment to 11 NYCRR 136 (Regulation 85), effective November 19, 2008, established new standards with regard to investment of the assets of the Fund, conflicts of interest and procurement. In addition, the Second Amendment created new audit and actuarial committees, and greatly strengthened the investment advisory committee. The Second Amendment also set high ethical standards, strengthened internal controls and governance, enhanced the operational transparency of the Fund, and strengthened supervision by the Department.

Nevertheless, recent allegations regarding "pay to play" practices, whereby politically connected individuals reportedly sold access to investment opportunities with the Fund, compel the Superintendent to conclude that the mere strengthening of the Fund's control environment is insufficient to protect the integrity of the state employees' retirement systems. The Third Amendment to Regulation 85 will adopt an immediate ban on the use of placement agents to ensure sufficient protection of the Fund's members and beneficiaries, and safeguard the integrity of the Fund's investments. Further, the rule defines "placement agent or intermediary" in a manner that both thwarts evasion of the ban while ensuring that such ban not extend to persons otherwise acting lawfully on behalf of investment managers.

4. Costs: The rule does not impose any additional requirements on the Comptroller, and no additional costs are expected to result from the implementation of the ban imposed by this rule. There are no costs to the Department or other state government agencies or local governments. Investment managers, consultants and advisors who provide services to the Fund, which are required to discontinue the use of placement agents in connection with investment services they provide to the Fund, may lose opportunities to do business with the Fund.

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

6. Paperwork: No additional paperwork should result from the prohibition imposed by the rule.

7. Duplication: This rule will not duplicate any existing state or federal rule.

8. Alternatives: The Superintendent considered other ways to limit the influence of placement agents, including a partial ban, increased disclosure requirements, and adopting alternative definitions of placement agent or intermediary. The Department considered limiting the ban to include intent on the part of the party using placement agents, or defining “placement agent” in more general terms.

In developing the rule, the Superintendent and State Comptroller not only consulted with one another, but also briefed representatives of: (1) New York State and New York City Public Employee Unions; (2) New York City Retirement and Pension Funds; (3) the Borough Presidents of the five counties of New York City; and (4) officials of the New York City Mayor’s Office, Comptroller’s Office and Finance Department. These entities agreed with the concerns expressed by the Department and intend to explore remedies most appropriate to the pension funds that they represent.

Initially, the Superintendent concluded that only an immediate total ban on the use of placement agents could provide sufficient protection of the Fund’s members and beneficiaries and safeguard the integrity of the Fund’s investments. The proposed rule was published in the State Register on March 17, 2010. A Public Hearing was held on April 28, 2010. The following comments were received:

Blackstone Group, a global investment manager and financial advisor, wrote to oppose the proposed ban on the use of placement agents by investment advisors engaged by the New York State Common Retirement Fund (“The Fund”). It stated that the rule would lessen the number of investment opportunities brought before the Fund, adversely affect small, medium-sized and women-and minority-owned investment firms seeking to do business with the Fund, and adversely affect a number of New York-headquartered financial institutions doing business as placement agents.

Blackstone suggested the inclusion of the following provisions in the rule instead:

- A ban on political contributions by any employee of any placement agent seeking to do business with the Fund;
- A requirement that any placement agent seeking to do business with the Fund be registered as a broker dealer with the SEC and ensure that its professionals have passed the appropriate Series qualifications administered by Financial Industry Regulatory Authority (“FINRA”);
- A requirement that any placement agent seeking to do business in New York register with the Department; and
- A requirement that any placement agent representing an investment manager before the Fund fully disclose the contractual arrangement between it and the manager, including the fee arrangement and the scope of services to be provided.

The Securities Industry and Financial Markets Association (“SIFMA”), representing hundreds of securities firms, banks, and asset managers, commented that the proposed rule (1) inadvertently limits the access of smaller fund managers to the Fund; (2) restricts the number and types of advisers that could be utilized by the Fund; (3) creates an inherent conflict between federal and state law that would make it impossible to do business with the Fund while complying with both; and (4) adds duplicative regulation in an area already substantially regulated at the state level and that is primed for further federal regulation through the imminent imposition of a federal pay-to-play regime on all registered broker-dealers acting as placement agents. In addition, SIFMA provided language that it believes would be consistent with the existing federal requirements on the use of placement agents. SIFMA requested that the Department either exclude from the proposed rule those placement agents who are registered as broker-dealers under the Securities Exchange Act of 1934 or delay the enactment of the proposed rule until the federal and state placement agent initiatives are finalized.

The Superintendent did consider other ways to limit the influence of placement agents, including a partial ban, increased disclosure requirements, and adopting alternative definitions of placement agent or intermediary. The Department considered limiting the ban to include intent on the part of the party using placement agents, or defining “placement agent” in more general terms. At the time, the Superintendent concluded that only an immediate, total ban on the use of placement agents could provide sufficient protection of the Fund’s members and beneficiaries and safeguard the integrity of the Fund’s investments.

9. Federal standards: The Securities and Exchange Commission issued a “Pay-To-Play” regulation for financial advisors on July 1, 2010, which may have an impact on the issues addressed in the proposed rule.

10. Compliance schedule: The emergency adoption of this regulation on June 18, 2009 ensured that the ban would become enforceable immediately. The ban needs to remain in effect on an emergency basis until such time as an amended regulation can be made permanent.

#### **Regulatory Flexibility Analysis**

1. Effect of the rule: This rule strengthens standards for the management of the New York State and Local Employees’ Retirement System and New York State and Local Police and Fire Retirement System (collec-

tively, “the Retirement System”), and the New York State Common Retirement Fund (“the Fund”).

The Second Amendment to 11 NYCRR 136 (Insurance Regulation 85), effective November 19, 2008, established new standards with regard to investment of the assets of the Fund, conflicts of interest and procurement. In addition, the Second Amendment created new audit and actuarial committees, and greatly strengthened the investment advisory committee. The Second Amendment also set high ethical standards, strengthened internal controls and governance, enhanced the operational transparency of the Fund, and strengthened supervision by the Department.

Nevertheless, recent allegations regarding “pay to play” practices, whereby politically connected individuals reportedly sold access to investment opportunities with the Fund, compel the Superintendent to conclude that the mere strengthening of the Fund’s control environment is insufficient to protect the integrity of the state employees’ retirement systems. The Third Amendment to Insurance Regulation 85 will adopt an immediate ban on the use of placement agents to ensure sufficient protection of the Fund’s members and beneficiaries, and safeguard the integrity of the Fund’s investments. Further, the rule defines “placement agent or intermediary” in a manner that both thwarts evasion of the ban while ensuring that such ban not extend to persons otherwise acting lawfully on behalf of investment managers.

These standards are intended to assure that the conduct of the business of the Retirement System and the Fund, and of the State Comptroller (as administrative head of the Retirement System and as sole trustee of the Fund), are consistent with the principles specified in the rule. Most among all affected parties, the State Comptroller, as a fiduciary whose responsibilities are clarified and broadened, is impacted by the rule. The State Comptroller is not a “small business” as defined in section 102(8) of the State Administrative Procedure Act.

This rule will affect investment managers and other intermediaries (other than OSC employees) who provide technical or professional services to the Fund related to Fund investments. The rule will prohibit investment managers from using the services of a placement agent unless such agent is a regular employee of the investment manager and is acting in a broader capacity than just providing specific investment advice to the Fund. In addition, the rule is also directed to placement agents, who as a result of this rule, will no longer be engaged directly or indirectly by investment managers that do business with the Fund. Some investment managers and placement agents may come within the definition of “small business” set forth in section 102(8) of the State Administrative Procedure Act, because they are independently owned and operated, and employ 100 or fewer individuals.

The rule bans the use of placement agents in connection with investments by the Fund. This may adversely affect the business of placement agents, who will lose opportunities to earn profits in connection with investments by the Fund. Nevertheless, as a result of recent allegations regarding “pay to play” practices, whereby politically connected individuals reportedly sold access to investment opportunities with the Fund, the Superintendent has concluded that an immediate ban on the use of placement agents is necessary to protect the Fund’s members and beneficiaries and to safeguard the integrity of the Fund’s investments.

This rule will not impose any adverse compliance requirements or result in any adverse impacts on local governments. The basis for this finding is that this rule is directed at the State Comptroller; employees of the Office of State Comptroller; and investment managers, placement agents, consultant or advisors - none of which are local governments.

2. Compliance requirements: None.

3. Professional services: Investment managers, consultants and advisors who provide services to the Fund, and are required to discontinue the use of placement agents in connection with investment services they provide to the Fund, may need to employ other professional services.

4. Compliance costs: The rule does not impose any additional requirements on the Comptroller, and no additional costs are expected to result from the implementation of the ban imposed by this rule. There are no costs to the Department of Financial Services or other state government agencies or local governments. However, investment managers, consultants and advisors who provide services to the Fund, which are required to discontinue the use of placement agents in connection with investment services they provide to the Fund, may lose opportunities to do business with the Fund.

5. Economic and technological feasibility: The rule does not impose any economic and technological requirements on affected parties, except for placement agents who will lose the opportunity to earn profits in connection with investments by the Fund.

6. Minimizing adverse impact: The costs to placement agents are lost opportunities to earn profits in connection with investments by the Fund. The Superintendent considered other ways to limit the influence of placement agents, including a partial ban, increased disclosure requirements, and adopting alternative definitions of placement agent or intermediary.

But in the end, the Superintendent concluded that only an immediate total ban on the use of placement agents could provide sufficient protection of the Fund's members and beneficiaries and safeguard the integrity of the Fund's investments.

7. Small business and local government participation: In developing the rule, the Superintendent and State Comptroller not only consulted with one another, but also briefed representatives of: (1) New York State and New York City Public Employee Unions; (2) New York City Retirement and Pension Funds; (3) the Borough Presidents of the five counties of New York City; and (4) officials of the New York City Mayor's Office, Comptroller's Office and Finance Department.

A public hearing was held on April 28, 2010. Comments were received from two entities recommending that the total ban on the use of placement agents be modified. The Department will continue to assess the comments that have been received and any others that may be submitted.

#### **Rural Area Flexibility Analysis**

1. Types and estimated numbers of rural areas: Investment managers, placement agents, consultants or advisors that do business in rural areas as defined under State Administrative Procedure Act Section 102(10) will be affected by this rule. The rule bans the use of placement agents in connection with investments by the New York State Common Retirement Fund ("the Fund"), which may adversely affect the business of placement agents and of other entities that utilize placement agents and are involved in Fund investments.

2. Reporting, recordkeeping and other compliance requirements, and professional services: This rule will not impose any reporting, recordkeeping or other compliance requirements on public or private entities in rural areas, with the exception of requiring investment managers, consultants and advisors who provide services to the Fund to discontinue the use of placement agents.

3. Costs: The costs to placement agents are lost opportunities to earn profits in connection with investments by the Fund.

4. Minimizing adverse impact: The rule does not adversely impact rural areas.

5. Rural area participation: A public hearing was held on April 28, 2010. Comments were received from two entities recommending that the total ban on the use of placement agents be modified. The Department will continue to assess the comments that have been received and any others that may be submitted.

#### **Job Impact Statement**

The Department of Financial Services finds that this rule will have little or no impact on jobs and employment opportunities. The rule bans investment managers from using placement agents in connection with investments by the New York State Common Retirement Fund ("the Fund"). The rule may adversely affect the business of placement agents, who could lose the opportunity to earn profits in connection with investments by the Fund. Nevertheless, in view of recent events about how placement agents conduct business on behalf of their clients with regard to the Fund, the Superintendent has concluded that an immediate ban on the use of placement agents is necessary to protect the Fund's members and beneficiaries, and to safeguard the integrity of the Fund's investments.

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## Office of General Services

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### NOTICE OF ADOPTION

#### **Outdoor Lighting Standards**

**I.D. No.** GNS-07-16-00013-A

**Filing No.** 881

**Filing Date:** 2016-09-15

**Effective Date:** 2016-10-05

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

**Action taken:** Addition of Part 312 to Title 9 NYCRR.

**Statutory authority:** Executive Law, sections 102 and 200; Public Buildings Law, section 143(4)

**Subject:** Outdoor Lighting Standards.

**Purpose:** To provide lighting standards that will help state agencies comply with Public Buildings Law section 143.

**Text or summary was published** in the February 17, 2016 issue of the Register, I.D. No. GNS-07-16-00013-P.

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

**Text of rule and any required statements and analyses may be obtained from:** Paula B Hanlon, New York State Office of General Services, 41st Floor, Corning Tower, Empire State Plaza, Albany, New York 12242, (518) 474-5607, email: RegsReceipt@ogs.ny.gov

#### **Assessment of Public Comment**

The agency received no public comment.

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## Department of Health

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

#### **Transgender Related Care and Services**

**I.D. No.** HLT-40-16-00030-P

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

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

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

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

**Purpose:** To amend provisions regarding Medicaid coverage of transition-related transgender care and services.

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

(l) Gender dysphoria treatment.

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

(2)(i) Hormone therapy, whether or not in preparation for gender reassignment surgery, [may] shall be covered [for individuals 18 years of age or older.] as follows:

(a) treatment with gonadotropin-releasing hormone agents (pubertal suppressants), based upon a determination by a qualified medical professional that an individual is eligible and ready for such treatment, i.e., that the individual:

(1) meets the criteria for a diagnosis of gender dysphoria;

(2) has experienced puberty to at least Tanner stage 2, and pubertal changes have resulted in an increase in gender dysphoria;

(3) does not suffer from psychiatric comorbidity that interferes with the diagnostic work-up or treatment;

(4) has adequate psychological and social support during treatment; and

(5) demonstrates knowledge and understanding of the expected outcomes of treatment with pubertal suppressants and cross-sex hormones, as well as the medical and social risks and benefits of sex reassignment;

(b) treatment with cross-sex hormones for patients who are sixteen years of age and older, based upon a determination of medical necessity made by a qualified medical professional; patients who are under eighteen years of age must meet the applicable criteria set forth in clause (a).

(ii) Notwithstanding the requirement in clause (b) of subparagraph (i) of this paragraph that an individual be sixteen years of age or older, payment for cross-sex hormones for patients under sixteen years of age who otherwise meet the requirements of clause (b) of subparagraph (i) of this paragraph shall be made in specific cases if medical necessity is demonstrated and prior approval is received.

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

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

[(ii)] (b) has received hormone therapy appropriate to the indi-

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

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

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

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

(ii) *Notwithstanding subparagraph (i) of this paragraph, payment for gender reassignment surgery, services, and procedures for patients under eighteen years of age may be made in specific cases if medical necessity is demonstrated and prior approval is received.*

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

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

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

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

(iv) reversal of any procedure resulting in sterilization.

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

(i) abdominoplasty, blepharoplasty, neck tightening, or removal of redundant skin;

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

(iii) breast, brow, face, or forehead lifts;

(iv) calf, cheek, chin, nose, or pectoral implants;

(v) collagen injections;

(vi) drugs to promote hair growth or loss;

(vii) electrolysis, unless required for vaginoplasty or phalloplasty;

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

(ix) hair transplantation;

(x) lip reduction;

(xi) liposuction;

(xii) thyroid chondroplasty; and

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

(4) *For individuals meeting the requirements of subdivision (3) of this section, Medicaid coverage will be available for the following gender reassignment surgeries, services, and procedures, based upon a determination of medical necessity made by a qualified medical professional:*

(i) *mastectomy, hysterectomy, salpingectomy, oophorectomy, vaginectomy, urethroplasty, metoidioplasty, phalloplasty, scrotoplasty, penectomy, orchiectomy, vaginoplasty, labiaplasty, clitoroplasty, and/or placement of a testicular prosthesis and penile prosthesis;*

(ii) *breast augmentation, provided that: the patient has completed a minimum of 24 months of hormone therapy, during which time breast growth has been negligible; or hormone therapy is medically contraindicated; or the patient is otherwise unable to take hormones;*

(iii) *electrolysis when required for vaginoplasty or phalloplasty;*

and (iv) *such other surgeries, services, and procedures as may be specified by the Department in billing guidance to providers.*

[(6)] (5) [For purposes of this subdivision, cosmetic surgery, services, and procedures refers to anything solely directed at improving an individual's appearance.] *For individuals meeting the requirements of subdivision (3) of this section, surgeries, services, and procedures in connection with gender reassignment not specified in subdivision (4) of this section, or to be performed in situations other than those described in such subdivision, including those done to change the patient's physical appearance to more closely conform secondary sex characteristics to those of the patient's identified gender, shall be covered if it is demonstrated that such surgery, service, or procedure is medically necessary to treat a particular patient's gender dysphoria, and prior approval is received. Coverage is not available for surgeries, services, or procedures that are purely cosmetic, i.e., that enhance a patient's appearance but are not medically necessary to treat the patient's underlying gender dysphoria.*

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

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

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

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

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

#### **Regulatory Impact Statement**

Statutory Authority:

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

Legislative Objective:

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

Needs and Benefits:

The proposed amendments would revise the Department's existing regulations providing for Medicaid coverage of medically necessary treatments to address gender dysphoria (GD) to: provide coverage of such treatments for individuals under 18 years of age; specify gender reassignment surgeries, services, and procedures that the Medicaid program will cover without the need for the practitioner to obtain prior approval; reiterate that Medicaid will cover other surgeries, services, and procedures, including those done to change an individual's physical appearance to more closely conform secondary sex characteristics to those of the patient's identified gender, if it is demonstrated that such surgery, service, or procedure is medically necessary to treat a particular patient's GD, and prior approval is received; and remove language in the regulation specifying certain coverage limitations, in favor of including that information in other Medicaid policy materials.

The existing regulation provides coverage for hormone therapy only for individuals 18 years of age or older. When the Department proposed the original regulation providing for Medicaid coverage of transgender care and services, it had reservations about the safety and efficacy, and thus the medical necessity, of hormone therapy for individuals under 18 with GD. For one thing, the use of hormone therapy to treat GD in individuals under the age of 18 is not approved by the federal Food and Drug Administration (FDA), nor is it indicated as an accepted off-label use by any of the pharmaceutical compendia relied on by the Medicaid program; this may be due to the apparent dearth of quality, longitudinal studies on the long term effects of providing such treatments to the under 18 population. In addition, at the time of the original regulation, virtually no other health care payer provided coverage of hormone therapy for individuals under age 18; this may have been due, in part, to the lack of FDA approval or pharmaceutical compendia support.

Since then, the Department has observed the beginning of a shift in payer policies with respect to treatment for the under 18 population, and has had the opportunity to talk to a number of practitioners who treat minors with GD, to benefit from their clinical experiences and to solicit their understanding of the current consensus in the medical profession, if any, with respect to such treatment.

All of these practitioners were of the opinion that the use of pubertal suppressants and cross-sex hormone therapy could be medically necessary in the treatment of GD in individuals under age 18. They acknowledged that it would be ideal if more high quality studies were available on the long-term effects of the treatments, but all believed that the positive effects they have observed in the short term in improving the mental health of minors with GD outweigh the potential long-term risks. The practitioners were in agreement that pubertal suppressants do not need to be prescribed before an individual reaches Tanner stage 2 in pubertal development. With respect to the current standard of care for treating minors with GD, the practitioners were also generally consistent in stating that cross-sex hormone treatment typically is not started until the individual reaches 16 years of age, and surgical interventions to treat GD typically are not recommended before the individual reaches 18 years of age, although exceptions might be appropriate in particular cases. This is consistent with existing guidelines issued by the Endocrine Society with re-

spect to the use of pubertal suppressants and cross-sex hormone therapy to treat GD in individuals under 18 years of age, and suggests that the Endocrine Society guidelines are reflective of a generally accepted standard of care for treating GD in this age group.

Therefore, the Department is proposing to amend the regulations to adopt criteria for Medicaid payment for pubertal suppressants and cross-sex hormones for individuals under age 18. These criteria are modeled closely after those set forth in the current Endocrine Society guidelines.

The proposed amendments would provide for coverage of pubertal suppressants in the treatment of GD based on the determination of a qualified medical professional that an individual is eligible and ready for the treatment. An individual would be considered eligible and ready for treatment with pubertal suppressants if the individual: meets the criteria for a diagnosis of GD; has experienced puberty to at least Tanner stage 2, and pubertal changes have resulted in an increase in gender dysphoria; does not suffer from psychiatric comorbidity that interferes with the diagnostic work-up or treatment; has adequate psychological and social support during treatment; and demonstrates knowledge and understanding of the expected outcomes of treatment with pubertal suppressants and cross-sex hormones, as well as the medical and social risks and benefits of sex reassignment.

The proposed amendments would provide for coverage of treatment with cross-sex hormones for individuals who are 16 years of age or older, based on a determination of medical necessity by a qualified medical professional. An individual under 18 years of age would have to meet the same criteria as for treatment with pubertal suppressants, as applicable.

The proposed amendments would also provide for coverage of cross-sex hormones for individuals under age 16, and for coverage of gender reassignment surgeries, services, and procedures for individuals under age 18, in individual cases if medical necessity is demonstrated and prior approval is received.

The proposed changes therefore would make Medicaid coverage of transgender care and services available, regardless of an individual's age, when such care and services are medically necessary to treat the individual's gender dysphoria.

Commenters on the current regulation have objected to the designation of certain surgeries, services, and procedures as presumptively cosmetic, and to the inclusion in the regulation of information about coverage limitations related to cryopreservation of reproductive tissue and reversal of gender reassignment surgeries. The commenters contended that such provisions have the effect of treating individuals with GD differently than other Medicaid recipients, and imposing stricter prior approval standards on individuals with GD than are applied to individuals with other conditions or diagnoses. The Department does not agree with the commenters on these points, but is proposing changes to the regulation in order to be sensitive to their concerns and to try to avoid any misconceptions about Medicaid's policy.

First, the proposed amendments would remove the list of presumptively cosmetic surgeries, services, and procedures from the regulation. Instead, the proposed amendments would specifically list gender reassignment surgeries, services, and procedures that Medicaid will cover without the need for prior approval. The proposed amendments would further provide that any surgeries, services, and procedures not on this list or otherwise specified by the Department in billing guidance to Medicaid providers, would be subject to prior approval and covered if medically necessary to treat the individual's gender dysphoria. This would include surgeries, services, and procedures for the purpose of changing an individual's appearance to more closely conform secondary sex characteristics to those of the patient's identified gender. The regulation would continue to provide that Medicaid coverage is not available for surgeries, services, and procedures that are purely cosmetic, i.e., that enhance an individual's appearance but are not medically necessary to treat the individual's underlying gender dysphoria.

Second, the proposed amendments would remove the language regarding cryopreservation of reproductive tissue and the reversal of gender reassignment surgeries; instead, the Department will provide this information in billing guidance to Medicaid providers or other policy materials.

Commenters had also requested that licensed clinical social workers be added to the list of licensed New York State health professionals, with whom an individual has an established and ongoing relationship, who can provide a letter referring the individual for gender reassignment surgery. Because licensed clinical social workers in New York State are qualified to diagnose GD, the Department is comfortable adding them to this list. The proposed amendments would make this change.

Finally, the proposed amendments would make a number of minor, nonsubstantive changes to clarify existing regulatory language.

Costs:

Costs to Regulated Parties:

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

Costs to State Government:

There may be costs to the Medicaid program associated with increased use of pubertal suppressants. Generally, however, the proposed amendments do not expand the Medicaid benefit package, but simply allow Medicaid recipients to receive covered transition-related transgender care and services at a younger age, and thus should not generate significant additional costs to the program.

Costs to Local Governments:

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

Costs to the Department of Health:

There will be no additional costs to the Department.

Local Government Mandates:

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

Paperwork:

The proposed amendments would not increase paperwork requirements.

Duplication:

There are no duplicative or conflicting rules identified.

Alternatives:

Given the Department's current understanding that the use of pubertal suppressants and cross-sex hormone therapy may be medically necessary in the treatment of GD in individuals under age 18, it has concluded that there is no alternative to changing its coverage policy and making necessary conforming amendments to the existing regulation.

Federal Standards:

The proposed regulations do not exceed any minimum federal standards.

Compliance Schedule:

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

#### **Regulatory Flexibility Analysis**

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

#### **Rural Area Flexibility Analysis**

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

#### **Job Impact Statement**

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

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## Public Service Commission

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EMERGENCY/PROPOSED

RULE MAKING

NO HEARING(S) SCHEDULED

### **Prohibition on Enrollments, and De-Enrollment Requirements, on Energy Service Companies (ESCOs) Regarding Low-Income Customers**

**I.D. No.** PSC-40-16-00001-EP

**Filing Date:** 2016-09-19

**Effective Date:** 2016-09-19

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

**Proposed Action:** The Commission, on September 15, 2016, adopted an order approving a temporary moratorium on new enrollments by energy service companies (ESCOs) of residential electricity and/or natural gas

customers who are utility low-income assistance program participants (APPs); and requirements that ESCOs de-enroll all APP customers and move them to utility full service.

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

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

**Specific reasons underlying the finding of necessity:** This rule adopts a temporary prohibition or moratorium on new enrollments by energy service companies (ESCOs) of residential electricity and/or natural gas customers who are participants in utility low-income assistance programs (APPs) and requirements that ESCOs de-enroll all existing or future APP customers and move them to utility full service, either at the end of the billing period for month-to-month customers or upon the expiration of an agreement if the APP has a longer-term contract with the ESCO. The Public Service Commission (Commission) has determined that residential electricity and natural gas customers typically pay more for energy commodity service from ESCOs than they would have paid for the same commodity if purchased from the utility that serves their residences. Evidence also exists that APPs are more likely to obtain energy commodity service from ESCOs than are non-APPs. The overcharging of APP customers is detrimental not only to the vulnerable, APP customers, but to the general public. Assistance programs are funded by taxpayers and utility ratepayers. Thus, funds which are intended to assist APPs are instead being diverted to ESCOs for unnecessarily higher-priced electricity and gas. The Commission's previous efforts to address this inefficient use of APP funds have been unsuccessful. ESCOs have been directed, as a condition of serving APPs, to either guarantee lower prices to such customers than they would have paid as utility commodity customers, or to offer value-added services that would reduce those customers' overall energy bills. Collaborative efforts to implement that directive established that few, if any, ESCOs intend to guarantee prices equal to or less than utility commodity prices. Further, no value-added product or service that ESCOs currently provide, or that ESCOs could provide, that would preserve the value of financial assistance programs or would help APPs reduce their energy expenses have been identified. The purported value-added services currently provided by ESCOs are not helping APPs to reduce their energy expenditures. It is necessary to act immediately to protect APP customers and these public funds. Compliance with the requirements of the State Administrative Procedure Act for adoption of this rule on a non-emergency basis, including the mandatory time period for public comment, would be contrary to the public interest because it would be detrimental to the general welfare of APPs, and would cause further erosion and waste of public funds intended for their assistance. The diminution of the value of public assistance dollars, in relation to utility bills, is exacerbating APPs' difficulties in paying their bills, potentially leading to increasing arrearages and service terminations. Accordingly, it is essential that the moratorium commence immediately, so that it can be fully implemented before the start of the 2016-17 heating season when the bills of APP customers will reflect greater percentages of commodity costs.

**Subject:** Prohibition on enrollments, and de-enrollment requirements, of energy service companies (ESCOs) regarding low-income customers.

**Purpose:** To protect low-income residential customers from unnecessary costs and to conserve low-income assistance program funds.

**Substance of emergency/proposed rule:** The Public Service Commission (Commission) has adopted, on an emergency basis for the protection of the general welfare of vulnerable customers and all ratepayers, a temporary prohibition or moratorium on new enrollments by energy service companies (ESCOs) of residential electricity and/or natural gas customers who are utility low-income assistance program participants (APPs); and requirements that ESCOs de-enroll all APP customers and move them to utility full service. The de-enrollment requirement applies to all ESCO customers that are or become APPs regardless of the customer's status when enrollment with the ESCO occurred. For ESCO APP customers that are enrolled with an ESCO on a month-to-month basis, they are to be de-enrolled at the end of the existing billing period during which the de-enrollment requirement took effect. For ESCO APP customers that are enrolled with an ESCO on a contract term period that is greater than a month, they are to be de-enrolled at the end of the existing contract term period during which the de-enrollment requirement took effect without any renewal of the contract term period. For all de-enrollments, the ESCO must comply with the customer notice requirements of the Uniform Business Practices (UBP). For ESCOs that participate in the ESCO Consolidated Billing Model in National Fuel Distribution Corporation's (National Fuel) service territory, the de-enrollment requirements also apply to any customer accounts on whose behalf the ESCO receives a Home Energy Assistance Program (HEAP) benefit. As a requirement of the rule that was adopted, electric and gas distribution utilities that have tariffed provisions providing for retail access are required to place a block on all APP accounts, preventing those accounts from being enrolled with an ESCO; to

communicate to each ESCO serving APPs which accounts the ESCO is not eligible to serve; and to continue such communications on a rolling basis. In addition, ESCOs that participate in the ESCO Consolidated Billing Model in National Fuel's service territory are required to communicate to National Fuel which accounts on which the ESCO is receiving a HEAP payment on the customer's behalf, and to continue such communications on a rolling basis. As an additional requirement of the rule that was adopted, electric and gas distribution utilities that have tariffed provisions providing for retail access (and ESCOs that participate in the ESCO Consolidated Billing Model in National Fuel's service territory) are required to file with the Secretary, for Department of Public Service Staff review, drafts of letters to be sent to ESCO APP customers informing them: (1) that they are enrolled in the utility's low-income program; (2) of the enrollment prohibition and de-enrollment requirements; (3) the reason for and protections provided under the enrollment prohibition and de-enrollment requirements; and, (4) that they will be returned to utility full service at the expiration of their existing ESCO billing period or contract term, as applicable. After Staff review, electric and gas distribution utilities that have tariffed provisions providing for retail access (and ESCOs that participate in the ESCO Consolidated Billing Model in National Fuel's service territory) are required to send the letters developed as described above to the ESCO APP customers, and to continue to send such letters on a rolling basis to ESCO customers that subsequently become ESCO APP customers. The Commission is considering whether to continue the prohibition on new enrollments and the de-enrollment requirements, either on a continued temporary or moratorium basis, on a fixed-term basis, or on a permanent basis, with or without modification; or to discontinue the prohibition on new enrollments and/or the de-enrollment requirements. The Commission may adopt, reject or modify, in whole or in part, the proposed rule described and may address and resolve other related matters.

**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 17, 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, 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 amended rule is within the definition contained in section 102(2)(a)(ii) of the State Administrative Procedure Act.

(12-M-0476EP14)

## NOTICE OF ADOPTION

### Request for Lightened Regulation

**I.D. No.** PSC-40-15-00012-A

**Filing Date:** 2016-09-16

**Effective Date:** 2016-09-16

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

**Action taken:** On 9/15/16, the PSC adopted an order approving Greenidge Generation, LLC's (Generation) petition for lightened regulation in connection with its electric generating facility in the Town of Torrey, Yates County.

**Statutory authority:** Public Service Law, sections 2(2-a), (13), 5(1)(b), 18-a, 19, 64-69, 69-a, 70-72, 72-a, 75, 105-114, 114-a, 115, 117, 118, 119-a, 119-b and 119-c

**Subject:** Request for lightened regulation.

**Purpose:** To approve Generation's petition for lightened regulation.

**Substance of final rule:** The Commission, on September 15, 2016, adopted an order approving Greenidge Generation, LLC's petition for lightened regulation, in connection with its 106 MW electric generating facility in the Town of Torrey, Yates County, subject to the terms and conditions set forth in the order.

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

**Text of rule may be obtained from:** John Pitucci, Public Service Commission, Three Empire State Plaza, Albany, New York, 12223, (518) 486-

2655, email: john.pitucci@dps.ny.gov An IRS employer ID no. or social security no. is required from firms or persons to be billed 25 cents per page. Please use tracking number found on last line of notice in requests.

**Assessment of Public Comment**

An assessment of public comment is not submitted with this notice because the rule is within the definition contained in section 102(2)(a)(ii) of the State Administrative Procedure Act.  
(15-E-0516SA1)

**NOTICE OF ADOPTION**

**Request for Lightened and Incidental Regulation**

**I.D. No.** PSC-42-15-00012-A

**Filing Date:** 2016-09-16

**Effective Date:** 2016-09-16

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

**Action taken:** On 9/15/16, the PSC adopted an order approving Greenidge Pipeline, LLC et. al.'s (Pipeline) request for lightened and incidental regulation in connection with its natural gas pipeline in Yates County.

**Statutory authority:** Public Service Law, sections 2(2-a), (13), 5(1)(b), 18-a, 19, 64-69, 69-a, 70-72, 72-a, 75, 105-114, 114-a, 115, 117, 118, 119-a, 119-b and 119-c

**Subject:** Request for lightened and incidental regulation.

**Purpose:** To approve Pipeline's request for lightened and incidental regulation.

**Substance of final rule:** The Commission, on September 15, 2016, adopted an order approving Greenidge Pipeline, LLC and Greenidge Pipeline Properties Corporation's request for lightened and incidental regulation, in connection with its natural gas pipeline in Yates County, subject to the terms and conditions set forth in the order.

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

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

**Assessment of Public Comment**

An assessment of public comment is not submitted with this notice because the rule is within the definition contained in section 102(2)(a)(ii) of the State Administrative Procedure Act.  
(15-G-0571SA1)

**NOTICE OF ADOPTION**

**Submetering of Electricity**

**I.D. No.** PSC-03-16-00008-A

**Filing Date:** 2016-09-16

**Effective Date:** 2016-09-16

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

**Action taken:** On 9/15/16, the PSC adopted an order approving 910 Fifth Avenue Corporation's petition (910 Fifth Avenue) to submeter electricity at 910 Fifth Avenue, New York, New York.

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

**Subject:** Submetering of electricity.

**Purpose:** To approve 910 Fifth Avenue's petition to submeter electricity at 910 Fifth Avenue, New York, New York.

**Substance of final rule:** The Commission, on September 15, 2016, adopted an order approving 910 Fifth Avenue Corporation's petition to submeter electricity at 910 Fifth Avenue, New York, New York, subject to the terms and conditions set forth in the order.

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

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

**Assessment of Public Comment**

An assessment of public comment is not submitted with this notice because the rule is within the definition contained in section 102(2)(a)(ii) of the State Administrative Procedure Act.  
(15-E-0695SA1)

**NOTICE OF ADOPTION**

**Codes of Conduct**

**I.D. No.** PSC-16-16-00004-A

**Filing Date:** 2016-09-15

**Effective Date:** 2016-09-15

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

**Action taken:** On 9/15/16, the PSC adopted an order regarding the electric utilities' codes of conduct.

**Statutory authority:** Public Service Law, sections 2, 3, 8, 65, 66, 69, 69-a and 70

**Subject:** Codes of conduct.

**Purpose:** To adopt an order regarding the electric utilities' codes of conduct.

**Substance of final rule:** The Commission, on September 15, 2016, adopted an order directing Central Hudson Gas and Electric Corporation, Consolidated Edison Company of New York, Inc., New York State Electric and Gas Corporation, Niagara Mohawk Power Corporation (d/b/a National Grid), Orange and Rockland Utilities, Inc. and Rochester Gas and Electric Corporation to file revised codes of conduct, and to jointly develop procedures, guidelines and training material to ensure employee compliance with the new codes of conduct, subject to the terms and conditions set forth in the order.

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

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

**Assessment of Public Comment**

An assessment of public comment is not submitted with this notice because the rule is within the definition contained in section 102(2)(a)(ii) of the State Administrative Procedure Act.  
(15-M-0501SA1)

**NOTICE OF ADOPTION**

**Area Code Overlay**

**I.D. No.** PSC-23-16-00012-A

**Filing Date:** 2016-09-15

**Effective Date:** 2016-09-15

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

**Action taken:** On 9/15/16, the PSC adopted an order approving North American Numbering Plan Administrator's (NANPA) petition for an all services overlay for the 518 area code.

**Statutory authority:** Public Service Law, section 97(2)

**Subject:** Area code overlay.

**Purpose:** To approve NANPA's petition for an all services overlay for the 518 area code.

**Substance of final rule:** The Commission, on September 15, 2016, adopted an order approving North American Numbering Plan Administrator's petition for an all services overlay for the 518 area code, subject to the terms and conditions set forth in the order.

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

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

**Assessment of Public Comment**

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

(16-C-0297SA1)

**NOTICE OF ADOPTION****Modifications for Inclusion in the IPEC Reliability Contingency Plan****I.D. No.** PSC-24-16-00010-A**Filing Date:** 2016-09-15**Effective Date:** 2016-09-15

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

**Action taken:** On 9/15/16, the PSC adopted an order approving Consolidated Edison Company of New York Inc. (Con Ed) et. al.'s petition to make modifications for inclusion in the Indian Point Energy Center (IPEC) Reliability Contingency Plan.

**Statutory authority:** Public Service Law, sections 4(1), 5(1)(b), (2), 65(1), 66(1), (2), (4), (5), (9) and (12)

**Subject:** Modifications for inclusion in the IPEC Reliability Contingency Plan.

**Purpose:** To approve Con Ed et. al.'s petition for modifications for inclusion in the IPEC Reliability Contingency Plan.

**Substance of final rule:** The Commission, on September 15, 2016, adopted an order approving Consolidated Edison Company of New York Inc. and New York State Energy Research and Development Authority's petition to make modifications to the 125 MW Revised Energy Efficiency/Demand Reduction/Combined Heat and Power Program for inclusion in the Indian Point Energy Center Reliability Contingency Plan, subject to the terms and conditions set forth in the order.

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

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

**Assessment of Public Comment**

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

(12-E-0503SA7)

**NOTICE OF ADOPTION****Continuation of the SUSF****I.D. No.** PSC-27-16-00006-A**Filing Date:** 2016-09-16**Effective Date:** 2016-09-16

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

**Action taken:** On 9/15/16, the PSC adopted an order approving a joint proposal executed by the signatory parties for a four-year continuation of the State Universal Service Fund (SUSF), through December 31, 2020.

**Statutory authority:** Public Service Law, sections 4, 5, 90, 91, 92, 94 and 97

**Subject:** Continuation of the SUSF.

**Purpose:** To approve a joint proposal for a four-year continuation of the SUSF.

**Substance of final rule:** The Commission, on September 15, 2016, adopted an order approving a joint proposal executed by the Department of Public Service Staff, the Utility Intervention Unit of the Department of State, the NYSTA Smaller ILECs, Verizon New York Inc., Frontier Communications and the Cable Telecommunication Association of New York, Inc., with the exception of the Recital Paragraphs and Paragraph 10 of the joint petition, subject to the terms and conditions set forth in the order.

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

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

**Assessment of Public Comment**

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

(15-M-0742SA1)

**PROPOSED RULE MAKING  
HEARING(S) SCHEDULED****Major Gas Rate Filing****I.D. No.** PSC-40-16-00023-P

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

**Proposed Action:** The Commission is considering a proposal filed by Corning Natural Gas Corporation (Corning) to make various changes in the rates, charges, rules and regulations contained in its Schedule, P.S.C. No. 7—Gas.

**Statutory authority:** Public Service Law, sections 5, 65 and 66

**Subject:** Major gas rate filing.

**Purpose:** To consider an increase in Corning's gas delivery revenues of approximately \$5.9 million or 44.7%.

**Public hearing(s) will be held at:** 10:00 a.m., Dec. 5, 2016 and daily on succeeding business days as needed at Department of Public Service, Agency Bldg. Three, 3rd Fl. Hearing Rm., Albany, NY. (Evidentiary Hearing)\*

\*On occasion, there are requests to reschedule or postpone evidentiary hearing dates. If such a request is granted, notification of any subsequent scheduling changes will be available at the DPS website ([www.dps.ny.gov](http://www.dps.ny.gov)) under Case 16-G-0369.

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

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

**Substance of proposed rule:** The Commission is considering a proposal filed by Corning Natural Gas Corporation (Corning) to increase its gas delivery revenues for the rate year ending March 31, 2018, by approximately \$5.9 million or 44.7% (or a 24.6% increase in total revenues). The proposed revenue requirement includes the transfer to base rates of approximately \$2.6 million of costs (property tax and other deferrals, plus carrying charges on certain plant additions) which are currently being recovered through customer surcharges. Corning also proposed a three year case with supporting increases of approximately \$1.2 million and \$0.7 million for the rate years ending May 31, 2019 and May 31, 2020, respectively. Corning proposes a levelized approach that would increase revenues by approximately \$3.5 million in the rate year and each of the two subsequent years. Using its levelized approach, Corning estimates an increase of about \$98.60 (8.7% on the total bill) for an average residential heating customer. The initial suspension period for the proposed filing runs through and including November 13, 2016. The Commission may adopt, reject or modify, in whole or in part, the relief proposed and may resolve related matters.

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

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

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

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

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

(16-G-0369SP1)

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

**Low Income Program Implementation Plan Filed by New York State Electric and Gas Corp. and Rochester Gas & Electric Corp.**

**I.D. No.** PSC-40-16-00003-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 low income program implementation plan filed by New York State Electric & Gas Corp. and Rochester Gas and Electric Corp. on September 15, 2016, in compliance with the Commission's May 20, 2016 order in Case 14-M-0565.

**Statutory authority:** Public Service Law, sections 4(1), 5(1), 65(1), (2), (3), 66(1), (2), (3), (5), (8), (9) and (12)

**Subject:** Low income program implementation plan filed by New York State Electric and Gas Corp. and Rochester Gas & Electric Corp.

**Purpose:** To establish rates, terms, and conditions for the Companies' low income utility programs.

**Substance of proposed rule:** The Public Service Commission is considering the low income program implementation plan filed by New York State Electric and Gas Corporation and Rochester Gas & Electric Corporation on September 15, 2016, in compliance with the Commission's May 20, 2016 order in Case 14-M-0565. The plan addresses, among other things, low income program eligibility requirements and enrollment procedures, data sharing, benefit levels, customer education, program budgets and cost recovery, and program reporting. 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](mailto: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](mailto: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.

(14-M-0565SP3)

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

**Low Income Program Implementation Plan Filed by KeySpan Gas East Corp. d/b/a National Grid**

**I.D. No.** PSC-40-16-00004-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 low income program implementation plan filed by KeySpan Gas East Corp. d/b/a National Grid on September 16, 2016, in compliance with the Commission's May 20, 2016 order in Case 14-M-0565.

**Statutory authority:** Public Service Law, sections 4(1), 5(1), 65(1), (2), (3), 66(1), (2), (3), (5), (8), (9) and (12)

**Subject:** Low income program implementation plan filed by KeySpan Gas East Corp. d/b/a National Grid.

**Purpose:** To establish rates, terms, and conditions for the Company's low income utility programs.

**Substance of proposed rule:** The Public Service Commission is considering the low income program implementation plan filed by KeySpan Gas East Corporation d/b/a National Grid on September 16, 2016, in compliance with the Commission's May 20, 2016 order in Case 14-M-0565. The plan addresses, among other things, low income program eligibility requirements and enrollment procedures, data sharing, benefit levels, customer education, program budgets and cost recovery, and program

reporting. 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](mailto: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](mailto: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.

(14-M-0565SP7)

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

**Cost Recovery for Non-Wire Alternative (NWA) Project**

**I.D. No.** PSC-40-16-00005-P

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

**Proposed Action:** The Commission is considering a proposal filed by Central Hudson Gas and Electric Corporation made pursuant to Commission Order issued July 15, 2016 in Case 14-E-0318 regarding the cost recovery for the Non-Wire Alternative Project.

**Statutory authority:** Public Service Law, sections 5, 65 and 66

**Subject:** Cost recovery for Non-Wire Alternative (NWA) Project.

**Purpose:** To consider Central Hudson's proposed revisions regarding the recovery of costs and incentives associated with NWA Project.

**Substance of proposed rule:** The Public Service Commission is considering a proposal filed by Central Hudson Gas and Electric Corporation (Central Hudson) regarding the recovery of costs and incentives associated with the Non-Wire Alternative (NWA) Project. Central Hudson's filing is made pursuant to Commission Order Implementing with Modification the Proposal for Cost Recovery and Incentive Mechanism for Non-Wire Alternative Project, issued July 15, 2016 in Case 14-E-0318. The proposed filing has an effective date January 1, 2017. The Commission may adopt, reject, or modify, in whole or in part, the relief proposed and may resolve related matters.

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

(14-E-0318SP7)

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

**Petition to Waive the ECAM Proration Billing Method for SC No. 5 Customers**

**I.D. No.** PSC-40-16-00006-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

Central Hudson Gas and Electric Corporation to waive the proration billing method for the Energy Cost Adjustment Mechanism (ECAM) surcharge for Service Classification (SC) No. 5 — Area Lighting customers.

**Statutory authority:** Public Service Law, sections 5, 65 and 66

**Subject:** Petition to waive the ECAM proration billing method for SC No. 5 customers.

**Purpose:** To consider the request of Central Hudson to waive the ECAM proration billing method for SC No. 5 customers.

**Substance of proposed rule:** The Public Service Commission is considering a proposal filed by Central Hudson Gas and Electric Corporation (Central Hudson) to waive the proration billing method for the Energy Cost Adjustment Mechanism (ECAM) surcharges for Service Classification (SC) No. 5 – Area Lighting customers. The ECAM proration billing method was adopted in the Commission’s Order Approving Petition To Waive Monthly Billing For Net-Metered Customers, issued February 26, 2016 in Case 14-E-0318. By this Order, the ECAM is prorated based on the number of days each ECAM is in effect during the customer’s billing period. Central Hudson contends that it is unable to prorate bills for SC No. 5 area lighting customers under the newly approved method because SC No. 5 customers are billed prior to the beginning of the month, rather than at the end of a billing period like other customer classifications which are subject to ECAM proration. 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.

(14-E-0318SP6)

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

**Low Income Program Implementation Plan Filed by National Fuel Gas Distribution Corporation**

**I.D. No.** PSC-40-16-00007-P

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

**Proposed Action:** The Commission is considering a low income program implementation plan filed by National Fuel Gas Distribution Corporation on September 16, 2016, in compliance with the Commission’s May 20, 2016 order in Case 14-M-0565.

**Statutory authority:** Public Service Law, sections 4(1), 5(1), 65(1), (2), (3), 66(1), (2), (3), (5), (8), (9) and (12)

**Subject:** Low income program implementation plan filed by National Fuel Gas Distribution Corporation.

**Purpose:** To establish rates, terms, and conditions for the Company’s low income utility programs.

**Substance of proposed rule:** The Public Service Commission is considering the low income program implementation plan filed by National Fuel Gas Distribution Corporation on September 16, 2016, in compliance with the Commission’s May 20, 2016 order in Case 14-M-0565. The plan addresses, among other things, low income program eligibility requirements and enrollment procedures, data sharing, benefit levels, customer education, program budgets and cost recovery, and program reporting. 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.

(14-M-0565SP4)

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

**Low Income Program Implementation Plan Filed by Consolidated Edison Company of New York, Inc.**

**I.D. No.** PSC-40-16-00008-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 a low income program implementation plan filed by Consolidated Edison Company of New York, Inc. on September 16, 2016, in compliance with the Commission’s May 20, 2016 order in Case 14-M-0565.

**Statutory authority:** Public Service Law, sections 4(1), 5(1), 65(1), (2), (3), 66(1), (2), (3), (5), (8), (9) and (12)

**Subject:** Low income program implementation plan filed by Consolidated Edison Company of New York, Inc.

**Purpose:** To establish rates, terms, and conditions for the Company’s low income utility programs.

**Substance of proposed rule:** The Public Service Commission is considering the low income program implementation plan filed by Consolidated Edison Company of New York, Inc. on September 16, 2016, in compliance with the Commission’s May 20, 2016 order in Case 14-M-0565. The plan addresses, among other things, low income program eligibility requirements and enrollment procedures, data sharing, benefit levels, customer education, program budgets and cost recovery, and program reporting. 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.

(14-M-0565SP10)

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

**Low Income Program Implementation Plan Filed by Niagara Mohawk Power Corporation**

**I.D. No.** PSC-40-16-00009-P

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

**Proposed Action:** The Commission is considering a low income program implementation plan filed by Niagara Mohawk Power Corporation on September 16, 2016, in compliance with the Commission’s May 20, 2016 order in Case 14-M-0565.

**Statutory authority:** Public Service Law, sections 4(1), 5(1), 65(1), (2), (3), 66(1), (2), (3), (5), (8), (9) and (12)

**Subject:** Low income program implementation plan filed by Niagara Mohawk Power Corporation.

**Purpose:** To establish rates, terms, and conditions for the Company's low income utility programs.

**Substance of proposed rule:** The Public Service Commission is considering the low income program implementation plan filed by Niagara Mohawk Power Corporation on September 16, 2016, in compliance with the Commission's May 20, 2016 order in Case 14-M-0565. The plan addresses, among other things, low income program eligibility requirements and enrollment procedures, data sharing, benefit levels, customer education, program budgets and cost recovery, and program reporting. 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.

(14-M-0565SP9)

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

**Low Income Program Implementation Plan Filed by Orange and Rockland Utilities, Inc.**

**I.D. No.** PSC-40-16-00010-P

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

**Proposed Action:** The Commission is considering a low income program implementation plan filed by Orange and Rockland Utilities, Inc. on September 16, 2016, in compliance with the Commission's May 20, 2016 order in Case 14-M-0565.

**Statutory authority:** Public Service Law, sections 4(1), 5(1), 65(1), (2), (3), 66(1), (2), (3), (5), (8), (9) and (12)

**Subject:** Low income program implementation plan filed by Orange and Rockland Utilities, Inc.

**Purpose:** To establish rates, terms, and conditions for the Company's low income utility programs.

**Substance of proposed rule:** The Public Service Commission is considering the low income program implementation plan filed by Orange and Rockland Utilities, Inc. on September 16, 2016, in compliance with the Commission's May 20, 2016 order in Case 14-M-0565. The plan addresses, among other things, low income program eligibility requirements and enrollment procedures, data sharing, benefit levels, customer education, program budgets and cost recovery, and program reporting. 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.

(14-M-0565SP6)

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

**Low Income Program Implementation Plan Filed by the Brooklyn Union Gas Company d/b/a National Grid NY**

**I.D. No.** PSC-40-16-00011-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 low income program implementation plan filed by the Brooklyn Union Gas Company d/b/a National Grid NY on September 16, 2016, in compliance with the Commission's May 20, 2016 order in Case 14-M-0565.

**Statutory authority:** Public Service Law, sections 4(1), 5(1), 65(1), (2), (3), 66(1), (2), (3), (5), (8), (9) and (12)

**Subject:** Low income program implementation plan filed by the Brooklyn Union Gas Company d/b/a National Grid NY.

**Purpose:** To establish rates, terms, and conditions for the Company's low income utility programs.

**Substance of proposed rule:** The Public Service Commission is considering the low income program implementation plan filed by the Brooklyn Union Gas Company d/b/a National Grid NY on September 16, 2016, in compliance with the Commission's May 20, 2016 order in Case 14-M-0565. The plan addresses, among other things, low income program eligibility requirements and enrollment procedures, data sharing, benefit levels, customer education, program budgets and cost recovery, and program reporting. 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.

(14-M-0565SP8)

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

**Low Income Program Implementation Plan Filed by Central Hudson Gas & Electric Corporation**

**I.D. No.** PSC-40-16-00012-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 low income program implementation plan filed by Central Hudson Gas & Electric Corporation on September 16, 2016, in compliance with the Commission's May 20, 2016 order in Case 14-M-0565.

**Statutory authority:** Public Service Law, sections 4(1), 5(1), 65(1), (2), (3), 66(1), (2), (3), (5), (8), (9) and (12)

**Subject:** Low income program implementation plan filed by Central Hudson Gas & Electric Corporation.

**Purpose:** To establish rates, terms, and conditions for the Company's low income utility programs.

**Substance of proposed rule:** The Public Service Commission is considering the low income program implementation plan filed by Central Hudson Gas & Electric Corporation on September 16, 2016, in compliance with the Commission's May 20, 2016 order in Case 14-M-0565. The plan addresses, among other things, low income program eligibility requirements and enrollment procedures, data sharing, benefit levels, customer education, program budgets and cost recovery, and program reporting. 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](mailto: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](mailto: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.

(14-M-0565SP5)

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

**Surcharge to Recover Costs of Dynamic Load Management Programs**

**I.D. No.** PSC-40-16-00013-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 petition by Orange and Rockland Utilities, Inc. to establish a surcharge mechanism to recover costs of Dynamic Load Management Programs in compliance with the Commission's May 23, 2016 Order in Case 14-E-0423, et al.

*Statutory authority:* Public Service Law, sections 5(1), (2), 65(1), (5), 66(1), (12) and (14)

*Subject:* Surcharge to recover costs of Dynamic Load Management Programs.

*Purpose:* To consider a surcharge to recover costs of the Dynamic Load Management Programs.

*Substance of proposed rule:* The Public Service Commission is considering a petition by Orange and Rockland Utilities, Inc. (O&R) in compliance with the Commission's Order Adopting Dynamic Load Management Program Changes with Modifications issued May 23, 2016 in Case 14-E-0423, et al. O&R proposes to establish a Dynamic Load Management (DLM) Surcharge mechanism to allocate costs of DLM Programs to individual service classifications on a transmission demand basis, and recover such costs from customers on a dollar per kilowatt-hour basis for non-demand billed customers, and on a dollar per kilowatt basis for demand billed customers. 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](mailto: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](mailto:secretary@dps.ny.gov)

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

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

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

(15-E-0191SP3)

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

**Surcharge to Recover Costs of Dynamic Load Management Programs**

**I.D. No.** PSC-40-16-00014-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 petitions by Central Hudson Gas & Electric Corporation to establish a surcharge mechanism for Dynamic Load Management Programs in compliance with the Commission's June 18, 2015 and May 23, 2016 Orders in Case 14-E-0423, et al.

*Statutory authority:* Public Service Law, sections 5(1), (2), 65(1), (5), 66(1), (12) and (14)

*Subject:* Surcharge to recover costs of Dynamic Load Management Programs.

*Purpose:* To consider a surcharge to recover costs of the Dynamic Load Management Programs.

*Substance of proposed rule:* The Public Service Commission is considering petitions by Central Hudson Gas & Electric Corporation (Central Hudson) in compliance with the Commission's Order Adopting Dynamic Load Management Programs with Modifications issued June 18, 2015, as well as with the Commission's Order Adopting Dynamic Load Management Program Changes with Modifications issued May 23, 2016, both in Case 14-E-0423, et al. Central Hudson proposes to establish a System Alternative Infrastructure (SAI) surcharge mechanism to allocate costs of Dynamic Load Management (DLM) Programs to individual service classifications on a transmission demand basis, and recover such costs from customers on a dollar per kilowatt-hour basis for non-demand billed customers, and on a dollar per kilowatt basis for demand billed customers. 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](mailto: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](mailto:secretary@dps.ny.gov)

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

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

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

(15-E-0186SP3)

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

**Notice of Intent to Submeter Electricity**

**I.D. No.** PSC-40-16-00015-P

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

*Proposed Action:* The Public Service Commission is considering the Notice of Intent, filed by Trump Plaza New Rochelle Condominium, to submeter electricity at 175 Huguenot Street, New Rochelle, New York.

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

*Subject:* Notice of Intent to submeter electricity.

*Purpose:* To consider the Notice of Intent to submeter electricity at 175 Huguenot Street, New Rochelle, New York.

*Substance of proposed rule:* The Commission is considering the Notice of Intent, filed by Trump Plaza New Rochelle Condominium on May 12, 2016, to submeter electricity at 175 Huguenot Street, New Rochelle, New York, located in the service territory of Consolidated Edison Company of New York, Inc. The Commission may adopt, reject or modify, in whole or in part, the relief proposed and may resolve related matters.

*Text of proposed rule and any required statements and analyses may be obtained by filing a Document Request Form (F-96) located on our website <http://www.dps.ny.gov/f96dir.htm>. For questions, contact:* John Pitucci, Public Service Commission, 3 Empire State Plaza, Albany, New York 12223-1350, (518) 486-2655, email: [john.pitucci@dps.ny.gov](mailto: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](mailto: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-0292SP1)

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

**Notice of Intent to Submeter Electricity**

I.D. No. PSC-40-16-00016-P

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

**Proposed Action:** The Public Service Commission is considering the Notice of Intent, filed by 301 East 50th Street Condominium, to submeter electricity at 301 East 50th Street, New York, New York.

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

**Subject:** Notice of Intent to submeter electricity.

**Purpose:** To consider the Notice of Intent to submeter electricity at 301 East 50th Street, New York, New York.

**Substance of proposed rule:** The Commission is considering the Notice of Intent, filed by 301 East 50th Street Condominium on August 23, 2016, to submeter electricity at 301 East 50th Street, New York, New York, located in the service territory of Consolidated Edison Company of New York, Inc. The Commission may adopt, reject or modify, in whole or in part, the relief proposed and may resolve related matters.

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

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

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

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

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

(16-E-0476SP1)

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

**Request for Waiver of 16 NYCRR Sections 96.5(a) and 96.6(b)**

I.D. No. PSC-40-16-00017-P

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

**Proposed Action:** The Public Service Commission is considering a petition filed by The Residential Section of 140 West Street Condominium for waiver of the individual service termination requirements of 16 NYCRR section 96.5(a) and 16 NYCRR section 96.6(b).

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

**Subject:** Request for waiver of 16 NYCRR sections 96.5(a) and 96.6(b).

**Purpose:** To consider the request for waiver of 16 NYCRR sections 96.5(a) and 96.6(b).

**Substance of proposed rule:** The Public Service Commission is considering the request filed August 29, 2016, by The Residential Section of 140 West Street Condominium for a waiver of the individual service termination requirements of 16 NYCRR § 96.5(a) and 16 NYCRR § 96.6(b). The Commission may adopt, reject, or modify, in whole or in part, the relief proposed and may resolve related matters.

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

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

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

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

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

(16-E-0077SP2)

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

**Petition for Commercial Electric Meter**

I.D. No. PSC-40-16-00018-P

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

**Proposed Action:** The Public Service Commission is considering a petition filed by Itron, Inc. on August 22, 2016, to use the Itron OpenWay Riva Centron Commercial meter with wireless or power line carrier communications in electric metering applications.

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

**Subject:** Petition for commercial electric meter.

**Purpose:** To consider the petition to use the Itron OpenWay Riva commercial meter in electric metering applications.

**Substance of proposed rule:** The Public Service Commission is considering a petition filed by Itron Inc., on August 22, 2016, to use the Itron OpenWay Riva Centron Commercial Meter with wireless or power line carrier communications in commercial electric metering applications. The Commission may adopt, reject or modify, in whole or in part, the relief proposed and may resolve related matters.

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

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

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

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

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

(16-E-0479SP1)

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

**Surcharge to Recover Costs of Dynamic Load Management Programs**

I.D. No. PSC-40-16-00019-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 by Rochester Gas and Electric Corporation to establish a surcharge mechanism to recover costs of Dynamic Load Management Programs in compliance with the Commission's May 23, 2016 Order in Case 14-E-0423, et al.

**Statutory authority:** Public Service Law, sections 5(1), (2), 65(1), (5), 66(1), (12) and (14)

**Subject:** Surcharge to recover costs of Dynamic Load Management Programs.

**Purpose:** To consider a surcharge to recover costs of the Dynamic Load Management Programs.

**Substance of proposed rule:** The Public Service Commission is considering a petition by Rochester Gas and Electric Corporation (RG&E) in

compliance with the Commission's Order Adopting Dynamic Load Management Program Changes with Modifications issued May 23, 2016 in Case 14-E-0423, et al. RG&E proposes to establish a Dynamic Load Management (DLM) Surcharge mechanism to allocate costs of DLM Programs to individual service classifications on a transmission demand basis, and recover such costs from customers on a dollar per kilowatt-hour basis for non-demand billed customers, and on a dollar per kilowatt basis for demand billed customers. The Commission may adopt, reject or modify, in whole or in part, the relief proposed and may resolve related matters.

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

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

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

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

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

(15-E-0190SP3)

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

**Notice of Intent to Submeter Electricity**

**I.D. No.** PSC-40-16-00020-P

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

**Proposed Action:** The Public Service Commission is considering the Notice of Intent, filed by 501 Broadway Troy, LLC, to submeter electricity at 501 Broadway, Troy, New York.

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

**Subject:** Notice of Intent to submeter electricity.

**Purpose:** To consider the Notice of Intent of 501 Broadway Troy, LLC to submeter electricity at 501 Broadway, Troy, New York.

**Substance of proposed rule:** The Commission is considering the Notice of Intent, filed by 501 Broadway Troy, LLC on August 24, 2016, to submeter electricity at 501 Broadway, Troy, New York, located in the service territory of Niagara Mohawk Power Corporation d/b/a National Grid. The Commission may adopt, reject or modify, in whole or in part, the relief proposed and may resolve related matters.

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

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

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

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

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

(16-E-0482SP1)

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

**Surcharge to Recover Costs of Dynamic Load Management Programs**

**I.D. No.** PSC-40-16-00021-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 by New York State Electric & Gas Corporation to establish a surcharge mechanism to recover costs of Dynamic Load Management Programs in compliance with the Commission's May 23, 2016 Order in Case 14-E-0423, et al.

**Statutory authority:** Public Service Law, sections 5(1), (2), 65(1), (5), 66(1), (12) and (14)

**Subject:** Surcharge to recover costs of Dynamic Load Management Programs.

**Purpose:** To consider a surcharge to recover costs of the Dynamic Load Management Programs.

**Substance of proposed rule:** The Public Service Commission is considering a petition filed by New York State Electric & Gas Corporation (NYSEG) in compliance with the Commission's Order Adopting Dynamic Load Management Program Changes with Modifications issued May 23, 2016 in Case 14-E-0423, et al. NYSEG proposes to establish a Dynamic Load Management (DLM) Surcharge mechanism to allocate costs of DLM Programs to individual service classifications on a transmission demand basis, and recover such costs from customers on a dollar per kilowatt-hour basis for non-demand billed customers, and on a dollar per kilowatt basis for demand billed customers. The Commission may adopt, reject or modify, in whole or in part, the relief proposed and may resolve related matters.

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

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

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

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

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

(15-E-0188SP3)

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

**Addition of LED Lighting Options to SC No. 4—Off-Street Lighting and SC No. 5—Municipal Street Lighting Service**

**I.D. No.** PSC-40-16-00022-P

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

**Proposed Action:** The Commission is considering a proposal filed by the City of Jamestown Board of Public Utilities to incorporate LED options in its street and off-street service classifications in its electric tariff schedule, P.S.C. No. 7—Electricity.

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

**Subject:** Addition of LED lighting options to SC No. 4—Off-Street Lighting and SC No. 5—Municipal Street Lighting Service.

**Purpose:** To consider the addition of LED lighting options for Jamestown's street and off-street lighting service classifications.

**Substance of proposed rule:** The Public Service Commission is considering a proposal filed by the City of Jamestown Board of Public Utilities (Jamestown) to update its electric tariff schedule, P.S.C. No. 7, to incorporate Light Emitting Diode (LED) options to Service Classification No. 4 – Off-Street and Service Classification No. 5 – Municipal Street lighting services. Jamestown proposes to offer 11 LED lighting options for new or replacement installations. For normal fixture replacements, a fully depreciated light will be replaced with a new LED fixture. For any requested larger volume change-outs from municipal customers, Jamestown will provide a stranded cost recovery estimate prior to initiating the replacements. The municipality will need to agree, in advance, to pay the stranded cost amount before the project begins. The proposed amendments have an effective date of February 1, 2017. The Commission may adopt, reject, or modify, in whole or in part, the relief proposed and may resolve related matters.

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

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

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

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

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

(16-E-0523SP1)

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

**Tariff Revisions Regarding National Grid's LED Lighting Option Wattages**

**I.D. No.** PSC-40-16-00024-P

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

**Proposed Action:** The Commission is considering a proposal filed by Niagara Mohawk Power Corporation d/b/a National Grid (National Grid) to update its LED lighting option wattages in its street lighting tariff schedule, P.S.C. No. 214—Electricity.

**Statutory authority:** Public Service Law, sections 5, 65 and 66

**Subject:** Tariff revisions regarding National Grid's LED lighting option wattages.

**Purpose:** To consider National Grid's proposed revisions updating its LED lighting option wattages in its street lighting tariff.

**Substance of proposed rule:** The Public Service Commission is considering a proposal filed by Niagara Mohawk Power Corporation d/b/a National Grid (National Grid) updating Service Classification No. 2—Street Lighting, Unmetered Company Owned/Company Maintained contained in its street lighting schedule, P.S.C. No. 214—Electricity. In Case 15-E-0645, which established LED lighting options for National Grid, the wattages for the proposed LED options were estimated. National Grid has now selected the LED Roadway luminaire options that will be installed and the wattages are lower than originally filed in Case 15-E-0645. National Grid also proposes to re-reference the LED options in its tariff to B, C, D and F to maintain consistency with the other National Grid companies. The proposed filing has an effective date January 1, 2017. The Commission may adopt, reject, or modify, in whole or in part, the relief proposed and may resolve related matters.

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

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

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

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

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

(16-E-0537SP1)

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

**Consequences Pursuant to the Commission's Uniform Business Practices (UBP)**

**I.D. No.** PSC-40-16-00025-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 whether to impose consequences on an energy services company (ESCO), Smart

One Energy, LLC (Smart One), for apparent non-compliance with Commission requirements.

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

**Subject:** Consequences pursuant to the Commission's Uniform Business Practices (UBP).

**Purpose:** To consider whether to impose consequences on Smart One for its apparent non-compliance with Commission requirements.

**Substance of proposed rule:** The Public Service Commission (Commission) is considering whether to impose consequences, pursuant to section two of the Commission's Uniform Business Practices (UBP), on Smart One Energy, LLC (Smart One), an energy services company (ESCO). On September 15, 2016, the Commission issued an Order Instituting Proceeding and to Show Cause (Show Cause Order), which explained the results of an investigation showing a number of apparent failures on the part of Smart One to comply with Commission requirements. The Show Cause Order stated that the Commission may revoke Smart One's eligibility to operate in New York, or may impose any of the consequences set forth in the UBP section 2.D.6.b. The Show Cause Order required Smart One to respond explaining why (1) its ability to enroll new residential and non-residential customers should not be suspended until the Commission orders otherwise; and (2) its eligibility to operate in New York should not be revoked or why other consequences should not be imposed. The Commission may adopt, reject or modify, in whole or in part, the relief proposed and may resolve related matters.

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

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

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

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

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

(16-M-0407SP1)

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

**Compliance Filing Establishing an Interruptible Gas Service Sales Rate**

**I.D. No.** PSC-40-16-00026-P

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

**Proposed Action:** The Commission is considering a proposal filed by Rochester Gas and Electric Corporation (RG&E) made pursuant to Commission Order issued June 15, 2016 in Case 15-G-0286 to implement a gas interruptible sales rate.

**Statutory authority:** Public Service Law, sections 5, 65 and 66

**Subject:** Compliance filing establishing an interruptible gas service sales rate.

**Purpose:** To consider RG&E's proposed revisions to establish an interruptible gas service sales rate.

**Substance of proposed rule:** The Public Service Commission is considering a proposal filed by Rochester Gas and Electric Corporation (RG&E or the Company) to implement an interruptible gas service sales rate contained in its gas tariff schedule, P.S.C. No. 16 – Gas. The Company proposes to add Service Classification (SC) No. 15 – Interruptible Sales Service, and SC No. 16 – Interruptible Transportation Service to provide large non-residential customers the option to select interruptible service. These proposed service classifications are similar to those currently offered by New York State Electric & Gas Corporation under SC No. 3 – Interruptible Sales Service in P.S.C. No. 87 – Gas and SC No. 2 – Interruptible Transportation Service in P.S.C. No. 88 – Gas. RG&E's filing is made pursuant to Commission Order Approving Electric and Gas Rate Plans in Accord with Joint Proposal, issued June 15, 2016, in Case 15-G-0286. The proposed filing has an effective date May 1, 2017. The Commission may adopt, reject, or modify, in whole or in part, the relief proposed and may resolve related matters.

*Text of proposed rule and any required statements and analyses may be obtained by filing a Document Request Form (F-96) located on our website <http://www.dps.ny.gov/f96dir.htm>. For questions, contact: John Pitucci, Public Service Commission, 3 Empire State Plaza, Albany, New York 12223-1350, (518) 486-2655, email: [john.pitucci@dps.ny.gov](mailto: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](mailto: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-0533SP1)

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

**Consequences Pursuant to the Commission's Uniform Business Practices (UBP)**

**I.D. No.** PSC-40-16-00027-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 whether to impose consequences on an energy services company (ESCO), Marathon Energy Corporation (Marathon), for apparent non-compliance with Commission requirements.

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

**Subject:** Consequences pursuant to the Commission's Uniform Business Practices (UBP).

**Purpose:** To consider whether to impose consequences on Marathon for its apparent non-compliance with Commission requirements.

**Substance of proposed rule:** The Public Service Commission (Commission) is considering whether to impose consequences, pursuant to section two of the Commission's Uniform Business Practices (UBP), on Marathon Energy Corporation (Marathon), an energy services company (ESCO). On September 15, 2016, the Commission issued an Order Instituting Proceeding and to Show Cause (Show Cause Order), which explained the results of an investigation showing a number of apparent failures on the part of Marathon to comply with Commission requirements. The Show Cause Order stated that the Commission may revoke Marathon's eligibility to operate in New York, or may impose any of the consequences set forth in the UBP section 2.D.6.b. The Show Cause Order required Marathon to respond explaining why (1) its ability to enroll new residential and non-residential customers should not be suspended until the Commission orders otherwise; and (2) its eligibility to operate in New York should not be revoked or why other consequences should not be imposed. 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](mailto: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](mailto:secretary@dps.ny.gov)

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

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

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

(16-M-0434SP1)

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

**Consequences Pursuant to the Commission's Uniform Business Practices (UBP)**

**I.D. No.** PSC-40-16-00028-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 whether to impose consequences on an energy services company (ESCO), ABC Energy, LLC (ABC), for apparent non-compliance with Commission requirements.

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

**Subject:** Consequences pursuant to the Commission's Uniform Business Practices (UBP).

**Purpose:** To consider whether to impose consequences on ABC for its apparent non-compliance with Commission requirements.

**Substance of proposed rule:** The Public Service Commission (Commission) is considering whether to impose consequences, pursuant to section two of the Commission's Uniform Business Practices (UBP), on ABC Energy, LLC (ABC), an energy services company (ESCO). On September 15, 2016, the Commission issued an Order Instituting Proceeding and to Show Cause (Show Cause Order), which explained the results of an investigation showing a number of apparent failures on the part of ABC to comply with Commission requirements. The Show Cause Order stated that the Commission may revoke ABC's eligibility to operate in New York, or may impose any of the consequences set forth in the UBP section 2.D.6.b. The Show Cause Order required ABC to respond explaining why (1) its ability to enroll new residential and non-residential customers should not be suspended until the Commission orders otherwise; and (2) its eligibility to operate in New York should not be revoked or why other consequences should not be imposed. 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](mailto: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](mailto:secretary@dps.ny.gov)

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

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

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

(16-M-0433SP1)

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**Department of State**

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

**Signs on Buildings Utilizing Truss Type, Pre-Engineered Wood or Timber Construction**

**I.D. No.** DOS-40-16-00029-EP

**Filing No.** 889

**Filing Date:** 2016-09-20

**Effective Date:** 2016-10-03

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

**Proposed Action:** Amendment of sections 1264.4(b), (e), 1265.3(c), (d), (h), (j), (k), 1265.5(e)(3)(i) and (ii) of Title 19 NYCRR.

**Statutory authority:** Executive Law, sections 382-a and 382-b

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

**Specific reasons underlying the finding of necessity:** This rule is adopted by the State Fire Prevention and Building Code Council (the "Code Council") as an emergency measure to preserve public safety and general welfare and because time is of the essence.

19 NYCRR Part 1264 ("Part 1264") and 19 NYCRR Part 1265 ("Part 1265") implement Executive Law § 382-a and Executive Law § 382-b, respectively. Part 1264 requires placement of a sign or symbol on commercial structures that utilize truss-type construction. Part 1265 requires placement of a sign or symbol on residential structures that utilize truss-type, pre-engineered wood or timber construction.

Parts 1264 and 1265 currently include references to provisions in the current version of the State Uniform Fire Prevention and Building Code (the "Uniform Code"). The Code Council recently approved a rule that amends and updates the Uniform Code. The amended and updated Uniform Code will become effective on October 3, 2016.

This rule amends Parts 1264 and 1265. Under this rule, existing references in Parts 1264 and 1265 to provisions in the current version of the Uniform Code will be changed to references to the corresponding provisions in the amended and updated version of the Uniform Code that will become effective on October 3, 2016. This rule makes no substantive changes to Part 1264 or Part 1265.

Adoption of this rule on an emergency basis is necessary to preserve public safety because (1) in the absence of this rule, the existing references in Parts 1264 and 1265 to provisions in the current version of the Uniform Code will become obsolete on October 3, 2016, when the amended and updated version of the Uniform Code becomes effective, and (2) a non-emergency rule cannot be proposed and adopted prior to October 3, 2016. Amending Parts 1264 and 1265 in the manner contemplated by this rule prior to October 3, 2016 is necessary to minimize confusion on the part of regulated parties who need to comply with Parts 1264 and 1265 and the authorities having jurisdiction responsible for enforcing Parts 1264 and 1265.

**Subject:** Signs on buildings utilizing truss type, pre-engineered wood or timber construction.

**Purpose:** The purpose of this rule is to amend Parts 1264 and 1265 of Title 19 NYCRR in the manner required to reflect the recently approved rule that amends and updates the State Uniform Fire Prevention and Building Code (the Uniform Code). The amended and updated version of the Uniform Code will become effective on October 3, 2016. Under this rule, existing references in Parts 1264 and 1265 to provisions in the current version of the Uniform Code will be changed to references to the corresponding provisions in the amended and updated version of the Uniform Code.

**Public hearing(s) will be held at:** 10:00 a.m., November 21, 2016 at Department of State, 99 Washington Ave., Rm. 505, Albany, NY.

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

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

**Text of emergency/proposed rule:** Subdivision (b) of section 1264.4 of Title 19 NYCRR is amended to read as follows:

(b) Signs shall be affixed where a building or a portion thereof is classified as Group A, B, E, F, H, I, M or S occupancy, and in hotels and motels classified as Group R-1 or R-2 occupancy, in accordance with the provisions for the classification of buildings set forth in chapter 3 of the [Building Code of New York State (see Part 1221 of this Title)] *2015 International Building Code, as amended by the 2016 Uniform Code Supplement (said publications being incorporated by reference in Part 1221 of this Title)*.

Subdivision (e) of section 1264.4 of Title 19 NYCRR is amended to read as follows:

(e) Signs identifying the existence of truss construction shall contain the roman alphanumeric designation of the construction type of the building, in accordance with the provisions for the classification of types of construction set forth in section 602 of the [Building Code of New York State (see Part 1221 of this Title)] *2015 International Building Code, as amended by the 2016 Uniform Code Supplement (said publications being incorporated by reference in Part 1221 of this Title)*, and an alphabetic designation for the structural components that are of truss construction, as follows:

"F" shall mean floor framing, including girders and beams

"R" shall mean roof framing

"FR" shall mean floor and roof framing

The construction type designation shall be placed at the 12 o'clock position over the structural component designation, which shall be placed at the six o'clock position.

Subdivisions (c), (d), (h), (j), and (k) of section 1265.3 of Title 19 NYCRR are amended to read as follows:

(c) [BCNYS] *IBC*. The term [BCNYS] *IBC* shall mean the [publication which is entitled Building Code of New York State and which is incorporated by reference in Part 1221 of this Title] *2015 International Building Code, as amended by the 2016 Uniform Code Supplement (said publications being incorporated by reference in Part 1221 of this Title)*.

(d) Electric box. The term electric box shall mean the box, if any, mounted on the exterior of the residential structure at the [service point (as that term is defined in section E3401 of the RCNYS)] *point of connection between the facilities of the serving utility and the premises wiring*.

(h) [RCNYS] *IRC*. The term [RCNYS] *IRC* shall mean the [publication which is entitled Residential Code of New York State and which is incorporated by reference in Part 1220 of this Title] *2015 International Residential Code, as amended by the 2016 Uniform Code Supplement (said publications being incorporated by reference in Part 1220 of this Title)*.

(j) Residential structure. The term residential structure shall include one-family dwellings, two-family dwellings, and townhouses (as those terms are defined in the [publication entitled RCNYS] *IRC*) and structures or portions of structures classified as residential group R in accordance with chapter 3 of the [BCNYS] *IBC* (excluding, however, hotels and motels which are classified as group R-1 or R-2 occupancy in accordance with chapter 3 of the [BCNYS] *IBC* and which are subject to the provisions of Part 1264 of this Title).

(k) Timber construction. The term timber construction shall mean construction that uses, for any load-supporting purpose(s), solid or laminated wood having the minimum dimensions required for structures built using type IV construction (HT) in accordance section 602.4 of the [BCNYS] *IBC*.

Subparagraphs (i) and (ii) of paragraph (3) of subdivision (e) of section 1265.5 of Title 19 NYCRR are amended to read as follows:

(i) if the residential structure is subject to the provisions of the [RCNYS] *IRC*, the construction type designation shall be "V"; and

(ii) if the residential structure is subject to the provisions of the [BCNYS] *IBC*, the construction type designation shall be "I", "II", "III", "IV" or "V" to indicate the construction classification of the structure under section 602 of the [BCNYS] *IBC*.

**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 18, 2016.

**Text of rule and any required statements and analyses may be obtained from:** Joseph Ball, Department of State, 99 Washington Ave., Suite 1120, Albany, NY 12231-0001, (518) 474-6740, email: joseph.ball@dos.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

##### 1. STATUTORY AUTHORITY AND LEGISLATIVE OBJECTIVES

19 NYCRR Part 1264 ("Part 1264") and 19 NYCRR Part 1265 ("Part 1265") implement Executive Law § 382-a and Executive Law § 382-b, respectively. Part 1264 requires placement of a sign or symbol on commercial structures that utilize truss-type construction. Part 1265 requires placement of a sign or symbol on residential structures that utilize truss-type, pre-engineered wood or timber construction.

The Legislative objectives of Executive Law § 382-a include providing for the placement and maintenance of a sign or symbol on the exterior of commercial structures that utilize truss-type construction to provide notice to firefighters and other first responders of the existence of truss construction in the structure. The Legislative objectives of Executive Law § 382-b include (1) providing a means of notifying a local code enforcement official when truss type, pre-engineered wood or timber construction is to be utilized in the construction of a new residential structure or in the addition to or rehabilitation of an existing residential structure; (2) providing for the placement and maintenance of a sign or symbol on the exterior of such residential structures to provide notice to firefighters and other first responders that one or more of those construction types have been used; and (3) providing for communication and coordination between and among code enforcement officials, fire departments, and emergency dispatch personnel for the purpose of providing warning to firefighters and other first responders that one or more of those construction types have been used.

Part 1264 and Part 1265 include references to certain provisions in the State Uniform Fire Prevention and Building Code (the "Uniform Code").

The State Fire Prevention and Building Code Council (the "Code Council") recently approved a rule amending and updating the Uniform Code. That rule will become effective on October 3, 2016.

This rule amends Parts 1264 and Part 1265. Under this rule, references in Parts 1264 and 1265 to provisions in the current version of the Uniform Code will be changed to references to the corresponding provisions in the updated version of the Uniform Code that will take effect on October 3, 2016. This rule makes no substantive changes to Part 1264 or Part 1265.

This rule will assure that the Legislative objectives of Executive Law §§ 382-a and 382-b will continue to be achieved after the effective date of the updated version of the Uniform Code.

## 2. NEEDS AND BENEFITS

Under this rule, references in Parts 1264 and 1265 to provisions in the current version of the Uniform Code will be changed to references to the corresponding provisions in the updated version of the Uniform Code that will take effect on October 3, 2016. In the absence of this rule, the references in Parts 1264 and 1265 to provisions in the current version of the Uniform Code will become obsolete on October 3, 2016, when the amended and updated version of the Uniform Code becomes effective. This rule will minimize confusion on the part of regulated parties who must comply with Parts 1264 and 1265 and on the part of local governments that must enforce Parts 1264 and 1265. This rule will assure that the Legislative objectives of Executive Law §§ 382-a and 382-b will continue to be achieved after the effective date of the updated version of the Uniform Code.

## 3. COSTS

### A. Regulated Parties

Under the current version of Part 1264, a regulated party who chooses to use truss-type construction in a commercial building is required to affix a sign or symbol of the type prescribed by Part 1264 on the building and to pay a \$50 fee to the authority having jurisdiction. This rule makes no changes to these requirements. This rule imposes no new requirements and imposes no new costs.

Under the current version of Part 1265, a regulated party who chooses to use truss type, pre-engineered wood or timber construction in the construction of a new residential structure or the addition to or rehabilitation of an existing residential structure is required to file a form of the type prescribed by Part 1265 with the local code enforcement official notifying that official of the use of truss type, pre-engineered wood or timber construction in the structure; to pay any fee charged by the authority having jurisdiction for processing that form; to affix a sign or symbol of the type prescribed by Part 1265 on the structure; and to maintain that sign or symbol. This rule makes no changes to these requirements. This rule imposes no new requirements and imposes no new costs.

### B. Department of State, the State, and Local Governments

This rule will impose no new requirements on the Department of State ("DOS"), the State of New York, or local governments in the State. DOS does not anticipate that DOS, the State of New York, or local governments in this State will incur any additional costs for the implementation of, and continued administration of, this rule.

## 4. PAPERWORK

This rule imposes no new paperwork requirements.

## 5. LOCAL GOVERNMENT MANDATES

This rule imposes no new mandates on local government.

## 6. DUPLICATION

This rule does not duplicate any rule or other legal requirement of the State or Federal government known to DOS.

## 7. ALTERNATIVES

No significant alternatives to this rule were considered by DOS. DOS believes that the provisions of this rule are necessary to assure that Parts 1264 and 1265 will continue to achieve the Legislative objectives of Executive Law §§ 382-a and 382-b after the effective date of the updated version of the Uniform Code.

## 8. FEDERAL STANDARDS

This rule does not exceed any minimum standards of the Federal government for the same or similar subject areas known to DOS.

## 9. COMPLIANCE SCHEDULE

DOS anticipates that regulated parties will be able to comply with this rule immediately.

### *Regulatory Flexibility Analysis*

#### 1. TYPES AND NUMBER OF SMALL BUSINESSES AND LOCAL GOVERNMENTS TO WHICH THE RULE WILL APPLY:

19 NYCRR Part 1264 ("Part 1264") and 19 NYCRR Part 1265 ("Part 1265") implement Executive Law § 382-a and Executive Law § 382-b, respectively. Part 1264 requires placement of a sign or symbol on commercial structures that utilize truss-type construction. Part 1265 requires placement of a sign or symbol on residential structures that utilize truss-type, pre-engineered wood or timber construction.

Parts 1264 and 1265 apply in all parts of the State except New York City. Therefore, Parts 1264 and 1265 currently apply to all small busi-

nesses and all local governments that construct commercial structures that utilize truss-type construction in any part of the State except New York City, and to all small businesses and all local governments that utilize truss-type, pre-engineered wood or timber construction in the construction of new residential buildings, or the addition to or rehabilitation of existing residential structures, in any part of the State except New York City.

In addition, local governments are required to enforce Part 1264 and Part 1265. Therefore, Parts 1264 and 1265 currently apply to all or most of the local governments in the State other than New York City.

Parts 1264 and 1265 currently include references to provisions in the current version of the State Uniform Fire Prevention and Building Code (the "Uniform Code"). The State Fire Prevention and Building Code Council (the "Code Council") recently approved a rule that amends and updates the Uniform Code. The amended and updated Uniform Code will become effective on October 3, 2016.

This rule amends Parts 1264 and 1265. Under this rule, existing references in Parts 1264 and 1265 to provisions in the current version of the Uniform Code will be changed to references to the corresponding provisions in the amended and updated version of the Uniform Code that will become effective on October 3, 2016. This rule makes no substantive changes to Part 1264 or Part 1265.

Small businesses and local governments that are currently subject to Part 1264 and Part 1265 will continue to be subject to Part 1264 and Part 1265 as amended by this rule.

This rule will apply to all small businesses and local governments that are currently subject to Part 1264 and Part 1265.

## 2. REPORTING, RECORDKEEPING, AND OTHER COMPLIANCE REQUIREMENTS:

Under this rule, existing references in Parts 1264 and 1265 to provisions in the current version of the Uniform Code will be changed to references to the corresponding provisions in the amended and updated version of the Uniform Code that will become effective on October 3, 2016.

This rule makes no substantive changes to Part 1264 or Part 1265.

This rule imposes no new reporting, recordkeeping or other compliance requirement on small businesses or local governments.

## 3. PROFESSIONAL SERVICES:

Under this rule, existing references in Parts 1264 and 1265 to provisions in the current version of the Uniform Code will be changed to references to the corresponding provisions in the amended and updated version of the Uniform Code that will become effective on October 3, 2016.

This rule makes no substantive changes to Part 1264 or Part 1265.

This rule creates no new need for professional services.

## 4. COMPLIANCE COSTS:

Under this rule, existing references in Parts 1264 and 1265 to provisions in the current version of the Uniform Code will be changed to references to the corresponding provisions in the amended and updated version of the Uniform Code that will become effective on October 3, 2016.

This rule makes no substantive changes to Part 1264 or Part 1265.

This rule imposes no new initial capital costs of complying with Parts 1264 and 1265. This rule will not result in any variation in initial capital costs of complying with Parts 1264 and 1265 for small businesses or local governments of different types and/or of differing sizes.

This rule imposes no new annual costs of complying with Parts 1264 and 1265 on small businesses or local governments. This rule will not result in any variation in annual costs of complying with Parts 1264 and 1265 for small businesses or local governments of different types and/or of differing sizes.

## 5. ECONOMIC AND TECHNOLOGICAL FEASIBILITY:

The Department of State believes that it has been economically and technologically feasible for regulated parties to comply with the existing Parts 1264 and 1265, that no substantial capital expenditures have imposed by existing Parts 1264 and 1265, and that it has not been necessary to develop new technology for compliance with existing Parts 1264 and 1265.

Under this rule, existing references in Parts 1264 and 1265 to provisions in the current version of the Uniform Code will be changed to references to the corresponding provisions in the amended and updated version of the Uniform Code that will become effective on October 3, 2016. This rule makes no substantive changes to Part 1264 or Part 1265.

Therefore, the Department of State believes that it will continue to be economically and technologically feasible for regulated parties to comply with Parts 1264 and 1265 as amended by this rule, that no substantial capital expenditures are imposed by Parts 1264 and 1265 as amended by this rule, and that it will not be necessary to develop new technology for compliance with Parts 1264 and 1265 as amended by this rule.

## 6. MINIMIZING ADVERSE IMPACT:

Under this rule, existing references in Parts 1264 and 1265 to provisions in the current version of the Uniform Code will be changed to references to the corresponding provisions in the amended and updated version of the Uniform Code that will become effective on October 3, 2016.

This rule makes no substantive changes to Part 1264 or Part 1265. This rule will have no adverse impact on small businesses and local governments.

Approaches such as establishing differing compliance or reporting requirements or timetables that take into account the resources available to small businesses and local governments and/or providing exemptions from coverage by the rule, or by any part thereof, for small businesses and local governments were not considered because doing so (1) is not authorized by Executive Law § 382-a or by Executive Law § 382-b and (2) would endanger the public safety and general welfare.

#### 7. SMALL BUSINESS AND LOCAL GOVERNMENT PARTICIPATION:

The Department of State gave small business and local governments an opportunity to participate in this rule making by publishing a notice regarding this rule in Building New York, a monthly electronic news bulletin covering topics related to the Uniform Code and the construction industry which is prepared by the Department of State and which is currently distributed to approximately 10,000 subscribers, including local governments, design professionals and others involved in all aspects of the construction industry.

##### *Rural Area Flexibility Analysis*

#### 1. TYPES AND ESTIMATED NUMBERS OF RURAL AREAS.

19 NYCRR Part 1264 ("Part 1264") and 19 NYCRR Part 1265 ("Part 1265") implement Executive Law § 382-a and Executive Law § 382-b, respectively. Part 1264 requires placement of a sign or symbol on commercial structures that utilize truss-type construction. Part 1265 requires placement of a sign or symbol on residential structures that utilize truss-type, pre-engineered wood or timber construction.

Parts 1264 and 1265 apply in all parts of the State except New York City. Therefore, Parts 1264 and 1265 apply in all rural areas of the State.

Parts 1264 and 1265 currently include references to provisions in the current version of the State Uniform Fire Prevention and Building Code (the "Uniform Code"). The State Fire Prevention and Building Code Council (the "Code Council") recently approved a rule that amends and updates the Uniform Code. The amended and updated Uniform Code will become effective on October 3, 2016.

This rule amends Parts 1264 and 1265. Under this rule, existing references in Parts 1264 and 1265 to provisions in the current version of the Uniform Code will be changed to references to the corresponding provisions in the amended and updated version of the Uniform Code that will become effective on October 3, 2016. This rule makes no substantive changes to Part 1264 or Part 1265.

Since Parts 1264 and 1265 apply in all rural areas of the State, and since this rule amends Parts 1264 and 1265, this rule will apply in all rural areas of the State.

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

Under this rule, existing references in Parts 1264 and 1265 to provisions in the current version of the Uniform Code will be changed to references to the corresponding provisions in the amended and updated version of the Uniform Code that will become effective on October 3, 2016.

This rule makes no substantive changes to Part 1264 or Part 1265.

This rule imposes no new reporting, recordkeeping or other compliance requirement.

This rule creates no new need for professional services in any rural area.

#### 3. COSTS.

Under this rule, existing references in Parts 1264 and 1265 to provisions in the current version of the Uniform Code will be changed to references to the corresponding provisions in the amended and updated version of the Uniform Code that will become effective on October 3, 2016.

This rule makes no substantive changes to Part 1264 or Part 1265.

This rule imposes no new initial capital costs of complying with Parts 1264 and 1265. This rule will not result in any variation in initial capital costs of complying with Parts 1264 and 1265 for different types of public and private entities in rural areas.

This rule imposes no new annual costs of complying with Parts 1264 and 1265. This rule will not result in any variation in annual costs of complying with Parts 1264 and 1265 for different types of public and private entities in rural areas.

#### 4. MINIMIZING ADVERSE IMPACT.

Under this rule, existing references in Parts 1264 and 1265 to provisions in the current version of the Uniform Code will be changed to references to the corresponding provisions in the amended and updated version of the Uniform Code that will become effective on October 3, 2016.

This rule makes no substantive changes to Part 1264 or Part 1265. This rule will have no adverse impact on rural areas or on any other area in the State.

Establishing different compliance requirements for public and private sector interests in rural areas and/or providing exemptions from coverage

by the rule for public and private sector interests in rural areas was not considered because doing so (1) is not authorized by Executive Law § 382-a and Executive Law § 382-b and (2) would endanger the public safety and general welfare.

#### 5. RURAL AREA PARTICIPATION.

The Department of State notified interested parties throughout the State, including interested parties in rural areas, of the proposed adoption of this rule by means of a notice published in Building New York, a monthly electronic news bulletin covering topics related to the Uniform Code and the construction industry which is prepared by the Department of State and which is currently distributed to approximately 10,000 subscribers, including local governments, design professionals and others involved in all aspects of the construction industry.

##### *Job Impact Statement*

The Department of State has concluded after reviewing the nature and purpose of the rule that it will not have a "substantial adverse impact on jobs and employment opportunities" (as that term is defined in section 201-a of the State Administrative Procedures Act) in New York.

This rule amends Parts 1264 and 1265 of Title 19 of the NYCRR. Parts 1264 and 1265 implement Executive Law § 382-a and Executive Law § 382-b, respectively. Part 1264 requires placement of a sign or symbol on commercial structures that utilize truss-type construction. Part 1265 requires placement of a sign or symbol on residential structures that utilize truss-type, pre-engineered wood or timber construction.

Parts 1264 and 1265 currently include references to provisions in the current version of the State Uniform Fire Prevention and Building Code (the "Uniform Code"). The State Fire Prevention and Building Code Council (the "Code Council") recently approved a rule that amends and updates the Uniform Code. The amended and updated Uniform Code will become effective on October 3, 2016.

Under this rule, existing references in Parts 1264 and 1265 to provisions in the current version of the Uniform Code will be changed to references to the corresponding provisions in the amended and updated version of the Uniform Code that will become effective on October 3, 2016.

This rule makes no substantive changes to Part 1264 or Part 1265. This rule imposes no new reporting, recordkeeping or other compliance requirement on regulated parties, the State or local governments. This rule creates no new need for professional services. This rule imposes no new initial capital costs of complying with Parts 1264 and 1265. This rule imposes no new annual costs of complying with Parts 1264 and 1265. The Department of State believes that it will continue to be economically and technologically feasible for regulated parties to comply with Parts 1264 and 1265 as amended by this rule, that no substantial capital expenditures are imposed by Parts 1264 and 1265 as amended by this rule, and that it will not be necessary to develop new technology for compliance with Parts 1264 and 1265 as amended by this rule.

Therefore, this rule should have no substantial adverse impact on the cost of obtaining a building permit, constructing a new commercial structure, constructing a new residential structure, adding to or rehabilitating an existing residential structure, or obtaining a certificate of occupancy or a certificate of compliance. Consequently, this rule should have no substantial adverse impact on jobs and employment opportunities related to construction of new commercial structures utilizing truss type construction; construction of new residential structures utilizing truss type construction, pre-engineered wood construction and/or timber construction; or additions to or rehabilitations of existing residential structures utilizing truss type construction, pre-engineered wood construction and/or timber construction.

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## State University of New York

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### NOTICE OF ADOPTION

#### State University of New York Tuition and Fees Schedule

**I.D. No.** SUN-30-16-00003-A

**Filing No.** 884

**Filing Date:** 2016-09-19

**Effective Date:** 2016-10-05

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

**Action taken:** Amendment of section 302.1(b) of Title 8 NYCRR.

**Statutory authority:** Education Law, section 355(2)(b) and (h)

**Subject:** State University of New York Tuition and Fees Schedule.

**Purpose:** To amend the Tuition and Fees Schedule to increase tuition for students in all programs of the State University of New York.

**Text or summary was published** in the July 27, 2016 issue of the Register, I.D. No. SUN-30-16-00003-EP.

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

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

**Assessment of Public Comment**

The agency received no public comment.

### NOTICE OF ADOPTION

#### College Tuition and Fees and Definition of a Nonresident Student

**I.D. No.** SUN-30-16-00004-A

**Filing No.** 885

**Filing Date:** 2016-09-19

**Effective Date:** 2016-10-05

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

**Action taken:** Amendment of sections 602.10(c)(10) and 602.12 of Title 8 NYCRR.

**Statutory authority:** Education Law, section 6305(1) and (8)

**Subject:** College tuition and fees and definition of a nonresident student.

**Purpose:** To provide flexibility in establishing community college tuition rates for students from outside the state.

**Text or summary was published** in the July 27, 2016 issue of the Register, I.D. No. SUN-30-16-00004-EP.

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

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

**Assessment of Public Comment**

The agency received no public comment.

### NOTICE OF ADOPTION

#### State Basic Financial Assistance for Operating Expenses of Community Colleges Under the Program of SUNY and CUNY

**I.D. No.** SUN-30-16-00009-A

**Filing No.** 886

**Filing Date:** 2016-09-19

**Effective Date:** 2016-10-05

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

**Action taken:** Amendment of section 602.8(c) of Title 8 NYCRR.

**Statutory authority:** Education Law, sections 355(1)(c) and 6304(1)(b); L. 2016, ch. 53

**Subject:** State basic financial assistance for operating expenses of community colleges under the program of SUNY and CUNY.

**Purpose:** To modify limitations formula for basic State Financial assistance and conform to the Education Law and the 2016-17 Budget Bill.

**Text or summary was published** in the July 27, 2016 issue of the Register, I.D. No. SUN-30-16-00009-P.

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

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

**Assessment of Public Comment**

The agency received no public comment.

## Susquehanna River Basin Commission

### INFORMATION NOTICE

#### Susquehanna River Basin Commission

18 CFR Parts 806 and 808

Review and Approval of Projects

**SUMMARY:** This document contains proposed rules that would amend the regulations of the Susquehanna River Basin Commission (Commission) to clarify application requirements and standards for review of projects, amend the rules dealing with the mitigation of consumptive uses, add a subpart to provide for registration of grandfathered projects, and revise requirements dealing with hearings and enforcement actions. These rules are designed to enhance the Commission's existing authorities to manage the water resources of the basin and add regulatory clarity.

**DATES:** In addition, the Commission will be holding two informational webinars explaining the proposed rulemaking on October 11, 2016, and October 17, 2016. Instructions for registration for the webinars will be posted on the Commission's website.

Comments on the proposed rulemaking may be submitted to the Commission on or before January 30, 2017. The Commission has scheduled four public hearings on the proposed rulemaking:

1. November 3, 2016, 2 p.m. to 5 p.m. or at the conclusion of public testimony, whichever is sooner; Harrisburg, PA.
2. November 9, 2016, 7 p.m. to 9 p.m. or at the conclusion of public testimony, whichever is sooner; Binghamton, NY.
3. November 10, 2016, 7 p.m. to 9 p.m. or at the conclusion of public testimony, whichever is sooner; Williamsport, PA.
4. December 8, 2016, 1 p.m. to 3 p.m. or at the conclusion of public testimony, whichever is sooner; Annapolis, MD.

The locations of the public hearings are listed in the ADDRESSES section of this document.

**ADDRESSES:** Comments may be mailed to: Jason E. Oyler, Esq., General Counsel, Susquehanna River Basin Commission, 4423 N. Front Street, Harrisburg, PA 17110-1788, or by e-mail to [regcomments@srbc.net](mailto:regcomments@srbc.net). The public hearings locations are:

1. Harrisburg – Pennsylvania State Capitol (East Wing, Room 8E-B), Commonwealth Avenue, Harrisburg, PA 17120.
2. Binghamton – DoubleTree by Hilton Hotel Binghamton (South Riverside Room), 225 Water Street, Binghamton, NY 13901.
3. Williamsport – Holiday Inn Williamsport (Gallery Room), 100 Pine Street, Williamsport, PA 17701.
4. Annapolis – Loews Annapolis Hotel (Powerhouse-Point Lookout), 126 West Street, Annapolis, MD 21401.

Those wishing to testify are asked to notify the Commission in advance, if possible, at the regular or electronic addresses given below.

**FOR FURTHER INFORMATION CONTACT:** Jason E. Oyler, Esq., General Counsel, telephone: 717-238-0423, ext. 1312; fax: 717-238-2436; e-mail: [joyler@srbc.net](mailto:joyler@srbc.net). Also, for further information on the proposed rulemaking, visit the Commission's website at <http://www.srbc.net>.

#### SUPPLEMENTARY INFORMATION:

The Commission's regulations have not undergone a thorough review since the last comprehensive rulemaking in 2006. Many of these regulations remain unchanged. However, since initial implementation, the Commission recognizes the need for clarity in some sections and statement of procedure in others. These changes are designed to bring clarity and certainty to the regulated community. This rulemaking reflects the efforts of a comprehensive internal review by the Commission staff and review by the Commission's member jurisdictions. The rulemaking centers on a few key areas of the regulations: project review, consumptive use mitigation, registration of grandfathered projects, and administrative procedures. The Commission proposed this rulemaking to clarify application requirements and standards for review of projects, amend the rules dealing with the mitigation of consumptive uses, add a subpart to provide for registration of grandfathered projects, and revise requirements dealing with hearings and enforcement actions. Because the concept is a new addition to the regulations, the Commission believes that an explanation for the rationale for the proposed rules relating to the registration of grandfathered projects would be helpful for the public.

#### Sources and Activities That Predate Regulations

The Commission's regulations provide that certain withdrawals and

pre-compact consumptive uses that are in excess of the Commission's regulatory thresholds do not require Commission approval under § 806.4(a) if those sources predated regulations, provided there is no environmental harm. This exemption from review and approval is commonly referred to as "grandfathering." Generally, pre-compact consumptive uses initiated prior to January 23, 1971, groundwater withdrawals initiated prior to July 13, 1978, and surface water withdrawals initiated prior to November 11, 1995, are considered "grandfathered" and do not need to apply for a regulatory approval by the Commission. The Commission's current regulations provide several mechanisms by which a grandfathered project must apply for regulatory approval, including a change in the nature of the use, change of ownership, an increase in the quantity of the withdrawal or use, or adding a new source.

However, in enacting the Compact that created the Commission, Congress and the participating states declared that...

the conservation, utilization, development, management and control of the water resources of the Susquehanna River Basin under comprehensive multiple purpose planning will produce the greatest benefits and produce the most efficient service in the public interest. Compact Preamble Sect 1 – emphasis added.

The Commission's "Comprehensive Plan for the Water Resources of the Susquehanna Basin" contains an objective to wisely manage the water resources of the Basin to assure short-term resource availability and long-term balance between healthy ecosystems and economic viability (SRBC Comprehensive Plan, 2013). The desired result of one of the key water resource needs, identified as Sustainable Water Development, is to regulate and plan for water resources development in a manner that maintains economic viability, protects instream users, and ensures ecological diversity; and meets immediate and future needs of the people of the basin for domestic, municipal, commercial, agricultural and industrial water supply and recreational activities.

As part of this objective, the Commission recently completed a major effort to characterize water use and availability for the Susquehanna River Basin. The Cumulative Water Use and Availability Study (CWUAS) represents the most comprehensive analysis to date regarding water availability. The Commission is increasingly concerned about the availability of water to meet immediate and future needs as water is needed to satisfy the continuing prospect of growing population and increasing demands for drinking water, freshwater inflow to the Chesapeake Bay, power generation, industrial activity, commercial uses, recreation and ecological diversity. Water resources are neither limitless nor equally distributed across the basin, and in some areas the demand for and use of water resources may be approaching or exceeding the sustainable limit.

As part of the CWUAS, the Commission developed a comprehensive water use database by integrating water use records from the Commission, and its member jurisdictions of New York, Pennsylvania, and Maryland in an unprecedented compilation effort. Compiling accurate water use data is a common challenge for water resource agencies, even recognizing advances in accessing data records through electronic reporting for both the Commission and our member states. The study shows water availability in nearly 1 in 10 watersheds is sufficiently compromised to warrant additional analysis and improved knowledge of patterns of withdrawal and use.

The CWUAS also reveals the limitations of the currently available water use data. While these data include records of regulated public water supply withdrawals for all states, withdrawals for the remaining variety of self-supplied uses are commonly lacking with the exception of those projects regulated by the Commission. Coverage for unregulated withdrawals, including grandfathered projects, is provided through state registration programs and varies widely in data quality and completeness among the member jurisdictions. For the most part, data for consumptive use not regulated by the Commission are absent altogether.

At the time of its formation and adoption of its initial regulations, neither the Commission nor its member jurisdictions conducted any inventory of existing water users, their sources or the quantity of existing water use. Grandfathered water withdrawals and use are clearly factors in the determination of sustainable water availability. The Commission's analysis estimates a total of 760 grandfathered projects with an estimated water use of 970 million gallons per day, which is approximately equal to the total existing regulated consumptive use approved by the Commission. With such large water quantities in question, it is obvious that some of the grandfathered projects are among the largest users of basin waters. Therefore, appropriate regulation and comprehensive planning for the use of the water resources are seriously hampered without accurate and reliable data regarding the quantity of the grandfathered uses and withdrawals. This is even more critical for areas identified as potentially stressed, water challenged or otherwise having limited water availability.

While our member jurisdictions have made efforts to collect water withdrawal data, and the Commission uses that data as available, our member jurisdictions do not comprehensively register consumptive water use. In addition, they do not have comprehensive historic data for legacy water users to effectively determine the quantity of water withdrawn prior to 1995 or the water consumptively used prior to 1971. This lack of comprehensive and reliable data hampers the Commission by creating significant gaps in our knowledge and data of water withdrawals and water use in the basin, which in turn hinders our ability to comprehensively manage the water resources of the basin and fulfill our regulatory and planning functions.

It is, therefore, appropriate for the Commission to act to address this knowledge gap as no other jurisdiction is solely capable of insuring the effectuation of the comprehensive plan. In these regulations the Commission is proposing a mechanism for acquiring accurate water use and withdrawal information for grandfathered projects through a required registration program. It is imperative that we have no misrepresentations about the sustainability of our water supply so that sound water resource decisions can be made for the benefit of all the basin's users. Grandfathered uses and withdrawals represent a longstanding gap in knowledge and, as such, have increasingly become a water management issue in the Commission's regulation and planning for water resources development.

Registration of grandfathered uses and withdrawals will definitively answer questions about the number of grandfathered projects, the locations of their sources, how much water they are withdrawing and from which water bodies and aquifers, and how much of that water they are using consumptively. In short, it will allow water resource decisions to be made with more certainty and confidence. The registration requirements proposed do not require review and approval of dockets under § 806.4 and do not add any new pathways for a grandfathered project to be subject to review and approval if it registers in accordance with the proposed regulation.

The Commission expects the registration of grandfathered uses will achieve a number of crucial goals to allow better management of basin resources. The Commission will receive more consistent and complete data than what can be obtained through voluntary registration programs, such as peak quantities, patterns of usage and accurate locational data for withdrawals and uses. The data required for registration is more easily attainable data from the most recent five years, as opposed to historical data. This data will be more recent and based on more accurate and reliable metering and measurement devices. Registration will eliminate legacy issues by closing the knowledge gap about grandfathered withdrawals from and usage of the water resources of the basin. The information obtained through the registration will allow the Commission staff to conduct thorough water availability analyses.

Registration will also provide more direct benefits to the grandfathered projects by providing the Commission with complete, contemporary withdrawal and usage data that can be utilized by the Commission in evaluating new withdrawals or consumptive uses in the watersheds where the grandfathered projects operate and allow the Commission to better prevent impacts and interference to the operations of grandfathered projects by newer projects. Registration will also provide unambiguous determinations concerning pre-regulation quantities of withdrawals and consumptive uses in the basin for both project sponsors and the Commission, providing much more certainty with regards to how a grandfathered project may operate and retain their existing exempt status and avoid the full project review and approval process. As such, project sponsors can plan and anticipate when they might fall under the Commission's jurisdiction and avoid situations where they unknowingly could fall into noncompliance, as currently happens.

Registration also should provide for ongoing information concerning contemporary water withdrawals and uses at grandfathered projects, to meet Commission management goals of the Comprehensive Plan, including:

- Supporting water conservation measures through monitoring and reporting data;
- Making informed regulatory decisions about cumulative effect on other uses/withdrawals, including analyses for low flow protection (passby flows) and consumptive use mitigation;
- Projecting future water availability to support and inform development decisions, including siting of new facilities critical for water supply, energy development and industrial needs; and
- Identifying critical water planning areas where potential shortages due to drought are projected or intense competition among water users exists.

Registration of grandfathered projects allows the Commission to continue to allow those projects to receive the exemption from the Commission's review and approval under § 806.4 but also fulfills the

Commission's need to have accurate, current and reliable data on the amount of the water withdrawals and consumptive use of grandfathered projects to use in the Commission's management decisions for the water resources of the basin. Registration is a one-time event that allows a grandfathered project to continue to operate under the exemption from the Commission's regulations for review and approval of projects, and the only ongoing obligation of project registration is to periodically report withdrawal and usage data. Registration is not review and approval of the project and the proposed rulemaking does not eliminate the grandfathering exemption for projects that register. This means a grandfathered project will not need to meet the requirements and standards set forth in part 806, subparts A through D, which include making an application to Commission, conducting an aquifer test for groundwater withdrawals, evaluation for the sustainability of water withdrawals, evaluation of impact on surface water features, wetlands, other water supplies and wells, establishment of passby flows to protect surface waters, imposition of mitigation for withdrawals or consumptive use, or imposition of conditions or limits on the grandfathered withdrawal or consumptive use. In addition, the Commission has designed the registration to be as simple and accessible as possible to greatly minimize costs, and/or eliminate the need for a grandfathered project to engage a consultant to complete the registration process.

New subpart E and revisions to 18 CFR § 806.4 –Registration of Grandfathered Projects.

New subpart E sets forth the rules related to registration of grandfathered projects.

Section 806.40 defines the grandfathered projects within the scope of the regulations and registration requirement.

Section 806.41 provides that grandfathered projects must register within a two-year window or they become subject to review and approval by the Commission in accordance with the Commission's project review regulations and standards. The proposal also contains corresponding changes in § 806.4(a)(1)(iii) and (a)(2)(iv) to clearly provide when a project with some grandfathered aspect or element is subject to review and approval.

The proposed regulations in §§ 806.40(b) and 806.41(c) do not protect grandfathered projects that can be shown to have clearly lost grandfathered status under the regulations in effect at the time the relevant action took place. For example, a grandfathered project that underwent a change of ownership, but did not seek review and approval as required by the §§ 806.4 and 806.6, is not eligible to register and will be required to submit an application for review and approval of the project.

Other projects that have a grandfathered aspect, but that do not withdraw or use water at a jurisdictional threshold to qualify as a grandfathered project under § 806.40, are not eligible to register and will be subject to review and approval if those projects ever withdraw or consumptively use water above the jurisdictional thresholds, pursuant to §§ 806.4(a)(1)(iii)(B), 806.4(a)(2)(iv)(B), and 806.40(c).

Paragraph 806.41(e) provides that the Commission may establish fees in accordance with § 806.35. The Commission will establish any registration fee simultaneously at the time of the adoption of a final rule. Because the amount of any fee will likely be of interest to the public, the Commission, in conjunction with this proposed rulemaking, is proposing a staggered fee for registration. Section 806.41(a) establishes a two-year window during which grandfathered projects must register. The Commission proposes that project sponsors that submit their registration within the first 6 months of that two-year registration period will pay no fee. During the next 6 months of the registration period, the fee will be \$500. During the last year of the registration period, the fee will be \$1,000. The registration fee is a one-time fee. By providing a no fee option during the first six months of the registration period, the Commission intends to provide relief for project sponsors that may be concerned about payment of a registration fee and to incentivize project sponsors to register sooner which will lead to an earlier submission of the data that the Commission is seeking through the registration process.

Section 806.42 outlines the primary information needs of the Commission for registration of withdrawals and consumptive uses. Because of the problems frequently encountered with producing reliable historical data, paragraph 806.42(a)(6) requests the most recent five years of quantity data for a project's withdrawals and consumptive use for at least the past five calendar years.

Section 806.43 provides that the Commission shall review the project's current metering and monitoring for its grandfathered withdrawals and consumptive uses. The Commission may require the project to follow a metering and monitoring plan to ensure that withdrawal and use quantities are accurate and reliable. This section also provides for ongoing reporting of quantities for grandfathered withdrawals and consumptive uses. The Commission may accept quantities reported under

the requirements of the applicable member jurisdiction in lieu of additional monitoring data. This information is vital to the Commission in its ongoing evaluation of the water resources of the basin and will be used in revising the Commission's Comprehensive Plan, in its ongoing evaluation of cumulative water use in the basin and to provide data to assess and evaluate impacts of new projects seeking review and approval by the Commission.

Sections 806.44 and 806.45 provide a process for the determination of grandfathered quantities for withdrawals and consumptive uses. This determination will be made by the Executive Director taking into account the most reliable data. An increase above this amount would require review and approval under §§ 806.4(a)(1)(iii)(A) and 806.4(a)(2)(iv)(A). A project will be able to appeal this determination to the Commission. Any hearing conducted will be done in accordance with the Commission's appeal procedures in Part 808.

Project Review Application Procedures—18 CFR Subpart B

Section 806.11 is revised to include a specific reference to § 801.12(c)(2), noting that preliminary consultations, or pre-application meetings, are encouraged but not mandatory except for electric power generation projects.

Section 806.12 is revised to clarify when project sponsors will perform a constant-rate aquifer test and to clarify that reviews of aquifer test plan submittals are subject to termination of review under § 806.16.

Section 806.14 detailing the contents of applications to the Commission is rewritten. The new section as proposed better aligns to the actual items sought in the Commission's applications, as well as provides required items specific to each type of approval (i.e., groundwater withdrawal, surface water withdrawal, consumptive use). The proposed regulation includes new requirements specific to projects such as mine and construction dewatering, water resources remediation, and gravity-drained acid mine drainage (AMD) remediation facilities to align with the newly proposed standards for these types of projects under § 806.23(b)(5). The proposal also includes specific requirements for renewal applications.

This section as rewritten retains the requirement for an alternatives analysis for new projects, if prompted by a request from the Commission. However, for new surface water withdrawal projects, an alternatives analysis must be performed in settings with a drainage area of 50 miles square or less, or in a waterway with exceptional water quality.

Section 806.15 regarding notice requirements for applications is revised to provide notice to appropriate county agencies, removing the specific reference to county planning agencies. Appropriate county agencies include the county governing body, county planning agencies and county conservation districts. Section 806.15(b)(3) is added to allow the Commission or Executive Director to allow notification of property owners by other means where the property is served by a public water supply.

Standards for Review and Approval—18 CFR Subpart C

Section 806.21 is revised to mention that a project must be "feasible" to align it with the standard presently used for projects during review to determine that they are feasible from both a financial and engineering perspective.

Section 806.22 regarding standards for the consumptive use of water is revised. The proposed revisions lower the 90-day standard for consumptive use mitigation to 45 days and require a mitigation plan that can have several elements and encourages blended mitigation options. The purpose of these changes is to reduce the barriers to project sponsors finding their own mitigation and to correspondingly reduce the number of projects paying the consumptive use mitigation fee. Analysis of the past 100 plus years of river flow records show that the overwhelming majority of low flow/drought events in the Basin are adequately covered by a 45-day consumptive use mitigation standard.

Section 806.22(b) is also revised to clarify that when a project is subject to review and approval and also has an element of pre-compact consumptive use, the project sponsor will be required to provide mitigation going forward for this consumptive use if the project is located in a water critical area. The location of a project in a water critical area will also be a factor used by the Commission in determining the manner of acceptable mitigation under paragraph (c). A definition of water critical area is included in § 806.3 that will rely on both the existing member jurisdiction designations and the ongoing efforts by the Commission to identify areas where water resources are limited or the demand for water has exceeded or is close to exceeding the sustainable supply. Any action to identify a water critical area will be taken by a separate action of the Commission and may be subject to a public hearing under the revisions to § 808.1(b)(4).

Paragraph 806.22(e)(1) is amended to allow a project sourced by more than one public water supply to be eligible for an Approval by Rule for consumptive use as long as the public water supplies are the sole source

of water for the project. New § 806.22(e)(2) and (3) were added so both the Approvals by Rule in paragraph (e) and (f) had matching procedures. The time frame for making notice was extended to 20 days in § 806.22(f)(3) to match the changes previously made to § 806.15, related to notice, during the last Commission rulemaking.

Section 806.23 related to standards for withdrawals is amended to include elements that presently form the basis of conditions to approvals for withdrawals. The proposal clarifies that the Commission can establish conditions based on the project's effect on groundwater and surface water availability, including cumulative uses and effects on wetlands. This section is clarified to expressly include the Commission's practice of establishing and requiring a total system limit on projects.

A new § 806.23(b)(5) is added to provide special review provisions for projects consisting of mine dewatering, water resources remediation, and gravity-drained AMD facilities. Because the nature of these types of facilities is fundamentally different from the other withdrawal projects that come before the Commission and because they are heavily regulated by our member jurisdictions, the Commission may appropriately limit consideration of adverse impacts of these projects on groundwater availability, causing permanent loss of aquifer storage and lowering of groundwater levels.

#### Hearings and Enforcement Actions—Part 808

Section 808.1 is revised. The revised section in paragraph (a) identifies those actions that must have a public hearing pursuant to the Susquehanna River Basin Compact. Paragraph (b) outlines all other instances when the Commission may hold a hearing. No changes are contemplated to how the Commission currently conducts its hearings. Paragraphs (c) through (h) are revised to both update the regulations and also to reflect the Commission's current public hearing procedures.

Section 808.2 is revised to amend the scope and procedure for administrative appeals to the Commission. The non-mandatory appeal language is removed and paragraph (a) is revised to provide a mandatory appeal to the Commission of a final action or decision made by the Executive Director, including a non-exclusive list of appealable actions. Where the Commission itself takes a final action, including actions or decisions it makes on appeal of Executive Director actions, those decisions must be appealed to the appropriate federal district court in accordance with the provisions of section 3.10 of the Compact. This section also clarifies that the Commission will determine the manner in which it will hear an appeal, including whether a hearing is granted or whether the issue will be decided through submission of briefs.

Section 808.11 is revised to expressly recognize directives issued from Commission staff.

Section 808.14 is revised to provide the Executive Director broader authority to issue compliance orders. These orders would be appealable to the Commission. Paragraph (e) is added to expressly recognize Consent Orders and Agreements in the regulations. These agreements are vital to the Commission in fulfilling its compliance and enforcement obligations under the Compact and allow for a constructive resolution of most enforcement actions.

Section 808.15 is revised to allow the Executive Director to determine the appropriateness of a civil penalty in the first instance in a show cause proceeding. Any decision of the Executive Director is appealable to the Commission. Paragraph (c) is added to reflect the Commission's intent that any finding regarding the imposition of a civil penalty by the Executive Director shall be based on the relevant policies and guidelines adopted by the Commission, as well as the relevant law and facts and information presented as a part of the show cause proceeding.

Section 808.16 regarding civil penalty criteria is revised to be consistent with other changes in this proposed rulemaking, as well as add a new factor regarding the punitive effect of a civil penalty on a violator.

Section 808.17 is revised to be consistent with other changes in the proposed rulemaking.

Section 808.18 is revised to allow the Executive Director to enter into settlement agreements to resolve enforcement actions. Currently all settlement agreements must be brought to the Commission for approval at the Commission's quarterly meeting with the exception of settlements under \$10,000 pursuant to Commission Resolution 2014-15. The revision provides greater authority for the Executive Director to approve settlement agreements, but retains the ability of the Commission to require certain types of settlements to be submitted for the Commission's approval through adoption of a Resolution.

#### Miscellaneous Changes

Section 806.1 is revised to include diversions within the scope of Part 806, which was an omission. The address of the Commission is also updated.

Section 806.3 related to definitions is revised. The definition of facility is revised to include consumptive use, which was an omission. The

definition of production fluids is revised to include other fluids associated with the development of natural gas resources. The Commission routinely receives questions regarding other fluids, such as stormwater captured and stored in a drilling rig apparatus, and what rules apply to such water. The Commission is electing to treat all such water as a production fluid to ensure it is accounted for. A definition of wetland is added that mirrors the definition used by the U.S. Army Corps of Engineers for its regulatory program.

Section 806.4 related to projects requiring review and approval is revised, in addition to the changes discussed regarding new subpart E. Paragraph (a) is revised to clarify that aquifer testing pursuant to § 806.12 is not a project governed by § 806.4. Paragraph (a)(2), related to the regulation of withdrawals, is revised to clarify that a project includes all of its sources and to include a reference to the general project review standards in § 806.21.

A new paragraph (a)(3)(vii) is added to allow flowback and production fluids into the basin for in-basin treatment or disposal. The Commission does not want its regulations to be a disincentive to treatment of flowback where the activity is conducted in accordance with the environmental standards and requirements of its member jurisdictions.

Section 806.30 related to monitoring is revised and clarified. The revisions provide that measuring, metering or monitoring devices must be installed per the specifications and recommendations of the device's manufacturer. The revisions clarify that the Commission may require measurement of groundwater levels in wells other than production wells and may require other monitoring for environmental impacts.

Section 806.31 related to the term of approvals is revised to provide that if a project sponsor submits an application one month prior to the expiration of an ABR or NOI approval, the project sponsor may continue to operate under the expired approval while the Commission reviews the application. In the Commission's experience, the six month time frame currently in the regulation and still applicable to existing Commission docket approvals is longer than necessary for ABR approvals.

#### Transition Issues

The Commission is contemplating that all changes proposed in this rulemaking will take effect immediately upon publication in the Federal Register, with the exception of the adoption of Subpart E (related to registration of grandfathered projects) and the corresponding changes to § 806.4(a)(1)(iii) and (a)(2)(iv), which would be effective six months after the date of publication in the Federal Register.

#### List of Subjects in 18 CFR Parts 806 and 808

Administrative practice and procedure, Water resources.

Accordingly, for the reasons set forth in the preamble, the Susquehanna River Basin Commission proposes to amend 18 CFR parts 806 and 808 as follows:

#### PART 806—REVIEW AND APPROVAL OF PROJECTS

1. The authority citation for part 806 continues to read as follows:

Authority: Secs. 3.4, 3.5(5), 3.8, 3.10 and 15.2, Pub. L. 91-575, 84 Stat. 1509 et seq.

2. Amend § 806.1 by revising paragraphs (a) and (f) to read as follows:  
§ 806.1 Scope.

(a) This part establishes the scope and procedures for review and approval of projects under section 3.10 of the Susquehanna River Basin Compact, Public Law 91-575, 84 Stat. 1509 et seq., (the compact) and establishes special standards under section 3.4(2) of the compact governing water withdrawals, the consumptive use of water, and diversions. The special standards established pursuant to section 3.4(2) shall be applicable to all water withdrawals and consumptive uses in accordance with the terms of those standards, irrespective of whether such withdrawals and uses are also subject to project review under section 3.10. This part, and every other part of 18 CFR chapter VIII, shall also be incorporated into and made a part of the comprehensive plan.

\* \* \* \* \*

(f) Any Commission forms or documents referenced in this part may be obtained from the Commission at 4423 North Front Street, Harrisburg, PA 17110, or from the Commission's website at <http://www.srbcc.net>.

3. In § 806.3:

a. Revise the definitions for "Facility" and "Production fluids"; and  
b. Add, in alphabetical order, definitions for "Water critical area" and "Wetland".

The revisions and additions read as follows:

#### § 806.3 Definitions.

\* \* \* \* \*

Facility. Any real or personal property, within or without the basin, and improvements thereof or thereon, and any and all rights of way, water, water rights, plants, structures, machinery, and equipment acquired, constructed, operated, or maintained for the beneficial use of water

resources or related land uses or otherwise including, without limiting the generality of the foregoing, any and all things and appurtenances necessary, useful, or convenient for the control, collection, storage, withdrawal, diversion, consumptive use, release, treatment, transmission, sale, or exchange of water; or for navigation thereon, or the development and use of hydroelectric energy and power, and public recreational facilities; of the propagation of fish and wildlife; or to conserve and protect the water resources of the basin or any existing or future water supply source, or to facilitate any other uses of any of them.

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Production fluids. Water or formation fluids recovered at the wellhead of a producing hydrocarbon well as a byproduct of the production activity or other fluids associated with the development of natural gas resources.

\*\*\*\*\*

Water critical area. A watershed or sub-watershed identified by the Commission where there are significantly limited water resources, where existing or future demand for water exceeds or has the potential to exceed the safe yield of available surface water and/or groundwater resources, or where the area has been identified or designated by a member jurisdiction as requiring more intensive water planning.

\*\*\*\*\*

Wetlands. Those areas that are inundated or saturated by surface or groundwater at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions. Wetlands generally include swamps, marshes, bogs, and similar areas.

\*\*\*\*\*

4. Amend § 806.4 by revising paragraphs (a) introductory text, paragraph (a)(1)(iii), (a)(2) introductory text, and paragraph (a)(2)(iv), and adding paragraph (a)(3)(vii) to read as follows:

§ 806.4 Projects requiring review and approval.

(a) Except for activities relating to site evaluation, to aquifer testing under § 806.12 or to those activities authorized under § 806.34, no person shall undertake any of the following projects without prior review and approval by the Commission. The project sponsor shall submit an application in accordance with subpart B of this part and shall be subject to the applicable standards in subpart C of this part.

(1) \*\*\*

(iii) With respect to projects that existed prior to January 23, 1971, any project:

(A) Registered in accordance with subpart E of this part that increases its consumptive use by any amount over the quantity determined under § 806.44;

(B) Increasing its consumptive use to an average of 20,000 gpd or more in any consecutive 30-day period; or

(C) That fails to register its consumptive use in accordance with subpart E of this part.

\*\*\*\*\*

(2) Withdrawals. Any project, including all of its sources, described below shall require an application to be submitted in accordance with § 806.13, and shall be subject to the standards set forth in §§ 806.21 and 806.23. Hydroelectric projects, except to the extent that such projects involve a withdrawal, shall be exempt from the requirements of this section regarding withdrawals; provided, however, that nothing in this paragraph shall be construed as exempting hydroelectric projects from review and approval under any other category of project requiring review and approval as set forth in this section, § 806.5, or part 801 of this chapter. The taking or removal of water by a public water supplier indirectly through another public water supply system or another water user's facilities shall constitute a withdrawal hereunder.

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(iv) With respect to groundwater projects that existed prior to July 13, 1978, surface water projects that existed prior to November 11, 1995, or projects that existed prior to January 1, 2007, with multiple sources involving a withdrawal of a consecutive 30-day average of 100,000 gpd or more that did not require Commission review and approval, any project:

(A) Registered in accordance with Subpart E that increases its withdrawal by any amount over the quantity determined under § 806.44;

(B) Increasing its withdrawal individually or cumulatively from all sources to an average of 100,000 gpd or more in any consecutive 30-day period; or

(C) That fails to register its withdrawals in accordance with subpart E.

\*\*\*\*\*

(3) \*\*\*

(vii) *The diversion of any flowback or production fluids from*

*hydrocarbon development projects located outside the basin to an in-basin treatment or disposal facility authorized under separate government approval to accept flowback or production fluids, shall not be subject to separate review and approval as a diversion under this paragraph, provided the fluids are handled, transported and stored in compliance with all standards and requirements of the applicable member jurisdiction.*

\*\*\*\*\*

5. Amend § 806.11 by revising paragraph (b) to read as follows:

§ 806.11 Preliminary consultations.

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(b) Except for project sponsors of electric power generation projects under § 801.12(c)(2) of this chapter, preliminary consultation is optional for the project sponsor (except with respect to aquifer test plans under § 806.12) but shall not relieve the sponsor from complying with the requirements of the compact or with this part.

6. Amend § 806.12 by revising paragraph (a) and adding paragraph (f) to read as follows:

§ 806.12 Constant-rate aquifer testing.

(a) Prior to submission of an application pursuant to § 806.13, a project sponsor seeking approval for a new groundwater withdrawal, a renewal of an expiring groundwater withdrawal, or an increase of a groundwater withdrawal shall perform a constant-rate aquifer test in accordance with this section.

\*\*\*\*\*

(f) *Review of submittals under § 806.12 may be terminated by the Commission in accordance with the procedures set forth in § 806.16.*

7. Revise § 806.14 to read as follows:

§ 806.14 Contents of application.

(a) Applications for a new project or a major modification to an existing approved project shall include, but not be limited to, the following information and, where applicable, shall be subject to the requirements in paragraph (b) of this section and submitted on forms and in the manner prescribed by the Commission.

(1) Identification of project sponsor including any and all proprietors, corporate officers or partners, the mailing address of the same, and the name of the individual authorized to act for the sponsor.

(2) Project location, including latitude and longitude coordinates in decimal degrees accurate to within 10 meters, the project location displayed on a map with a 7.5-minute USGS topographic base, and evidence of legal access to the property upon which the project is proposed.

(3) Project description, including: purpose, proposed quantity to be withdrawn or consumed, if applicable, and identification of all water sources related to the project including location and date of initiation of each source.

(4) Anticipated impact of the project, including impacts on existing water withdrawals, nearby surface waters, and threatened or endangered species and its habitats.

(5) The reasonably foreseeable need for the proposed quantity of water to be withdrawn or consumed, including supporting calculations, and the projected demand for the term of the approval.

(6) A metering plan that adheres to § 806.30.

(7) Evidence of coordination and compliance with member jurisdictions regarding all necessary permits or approvals required for the project from other federal, state or local government agencies having jurisdiction over the project.

(8) Project estimated completion date and estimated construction schedule.

(9) Draft notices required by § 806.15.

(10) The Commission may also require the following information as deemed necessary:

(i) Engineering feasibility;

(ii) Ability of the project sponsor to fund the project.

(b) Additional information is required for a new project or a major modification to an existing approved project as follows.

(1) Surface water. (i) Water use and availability.

(ii) Project setting, including surface water characteristics, identification of wetlands, and site development considerations.

(iii) Description and design of intake structure.

(iv) Anticipated impact of the proposed project on local flood risk, recreational uses, fish and wildlife and natural environment features.

(v) Alternatives analysis for a withdrawal proposed in settings with a drainage area of 50 miles square or less, or in a waterway with exceptional water quality, or as required by the Commission.

(2) Groundwater. (i) Constant-rate aquifer tests. With the

exception of mining related withdrawals solely for the purpose of dewatering; construction dewatering withdrawals and withdrawals for the sole purpose of groundwater or below water table remediation generally which are addressed in paragraph (b)(6) of this section, the project sponsor shall provide an interpretative report that includes all monitoring and results of a constant-rate aquifer test consistent with § 806.12 and an updated groundwater availability estimate if changed from the aquifer test plan. The project sponsor shall obtain Commission approval of the test procedures prior to initiation of the constant-rate aquifer test.

(ii) Water use and availability.  
 (iii) Project setting, including nearby surface water features.  
 (iv) Groundwater elevation monitoring plan for all production wells.

(v) Alternatives analysis as required by the Commission.  
 (3) Consumptive use. (i) Consumptive use calculations, and a mitigation plan consistent with § 806.22(b).

(ii) Water conservation methods, design or technology proposed or considered.

(iii) Alternatives analysis as required by the Commission.  
 (4) Into basin diversions. (i) Provide the necessary information to demonstrate that the proposed project will meet the standards in § 806.24(c).

(ii) Identification of the source and water quality characteristics of the water to be diverted.

(5) Out of basin diversions. (i) Provide the necessary information to demonstrate that the proposed project will meet the standards in § 806.24(b).

(ii) Project setting.  
 (6) Other projects, including without limitation, mine dewatering, construction dewatering, water resources remediation projects, and gravity-drained AMD remediation facilities.

(i) In lieu of aquifer testing, report(s) prepared for any other purpose or as required by other governmental regulatory agencies that provides a demonstration of the hydrogeologic and/or hydrologic effects and limits of said effects due to operation of the proposed project and effects on local water availability.

(c) All applications for renewal of expiring approved projects shall include, but not be limited to, the following information, and, where applicable, shall be subject to the requirements in paragraph (d) of this section and submitted on forms and in the manner prescribed by the Commission.

(1) Identification of project sponsor including any and all proprietors, corporate officers or partners, the mailing address of the same, and the name of the individual authorized to act for the sponsor.

(2) Project location, including latitude and longitude coordinates in decimal degrees accurate to within 10 meters, the project location displayed on map with a 7.5-minute USGS topographic base, and evidence of legal access to the property upon which the project is located.

(3) Project description, to include, but not be limited to: purpose, proposed quantity to be withdrawn or consumed if applicable, identification of all water sources related to the project including location and date of initiation of each source, and any proposed project modifications.

(4) The reasonably foreseeable need for the requested renewal of the quantity of water to be withdrawn or consumed, including supporting calculations, and the projected demand for the term of the approval.

(5) An as-built and approved metering plan.

(6) Copies of permits from member jurisdictions regarding all necessary permits or approvals obtained for the project from other federal, state or local government agencies having jurisdiction over the project.

(7) Copy of any approved mitigation or monitoring plan and any related as-built for the expiring project.

(8) Demonstration of registration of all withdrawals or consumptive uses in accordance with the applicable state requirements.

(9) Draft notices required by § 806.15.

(d) Additional information is required for the following applications for renewal of expiring approved projects.

(1) Surface water. (i) Historic water use quantities and timing of use.

(ii) Changes to stream flow or quality during the term of the expiring approval.

(iii) Changes to the facility design.

(iv) Any proposed changes to the previously authorized purpose.

(2) Groundwater. (i) Constant-rate aquifer tests. The project sponsor shall provide an interpretative report that includes all monitoring and results of any constant-rate aquifer testing previously completed or

submitted to support the original approval. In lieu of a testing report, historic operational data pumping and elevation data may be considered. Those projects that did not have constant-rate aquifer testing completed for the original approval that was consistent with § 806.12 or sufficient historic operational pumping and groundwater elevation data may be required to complete constant-rate aquifer testing consistent with § 806.12, prepare and submit an interpretative report that includes all monitoring and results of any constant-rate aquifer test.

(ii) An interpretative report providing analysis and comparison of current and historic water withdrawal and groundwater elevation data with previously completed hydro report.

(iii) Current groundwater availability analysis assessing the availability of water during a 1-in-10 year recurrence interval under the existing conditions within the recharge area and predicted for term of renewal (i.e., other users, discharges, and land development within the groundwater recharge area).

(iv) Groundwater elevation monitoring plan for all production wells.

(3) Consumptive use. (i) Consumptive use calculations, and a copy of the approved plan or method for mitigation consistent with § 806.22.

(ii) Changes to the facility design;

(iii) Any proposed changes to the previously authorized purpose;

(4) Into basin diversion. (i) Provide the necessary information to demonstrate that the proposed project will meet the standards in § 806.24(c).

(ii) Identification of the source and water quality characteristics of the water to be diverted.

(5) Out of basin diversion. (i) Historic water use quantities and timing of use;

(ii) Changes to stream flow or quality during the term of the expiring approval;

(iii) Changes to the facility design;

(iv) Any proposed changes to the previously authorized purpose;

(6) Other projects, including without limitation, mine dewatering, water resources remediation projects, and gravity-drained AMD facilities.

(i) Copy of approved report(s) prepared for any other purpose or as required by other governmental regulatory agencies that provides a demonstration of the hydrogeologic and/or hydrologic effects and limits of said effects due to operation of the project and effects on local water availability.

(ii) Any data or reports that demonstrate effects of the project are consistent with those reports provided in paragraph (d)(6)(i).

(iii) Demonstration of continued need for expiring approved water source and quantity.

(e) A report about the project prepared for any other purpose, or an application for approval prepared for submission to a member jurisdiction, may be accepted by the Commission provided the said report or application addresses all necessary items on the Commission's form or listed in this section, as appropriate.

(f) Applications for minor modifications must be complete and will be on a form and in a manner prescribed by the Commission. Applications for minor modifications must contain the following:

(1) Description of the project;

(2) Description of all sources, consumptive uses and diversions related to the project;

(3) Description of the requested modification;

(4) Statement of the need for the requested modification; and

(5) Demonstration that the anticipated impact of the requested modification will not adversely impact the water resources of the basin;

(g) For any applications, the Executive Director or Commission may require other information not otherwise listed in this section.

8. Amend § 806.15 by revising paragraph (a), adding paragraph (b)(3) and revising paragraph (g) to read as follows:

§ 806.15 Notice of application.

(a) Except with respect to paragraphs (h) and (i) of this section, any project sponsor submitting an application to the Commission shall provide notice thereof to the appropriate agency of the member State, each municipality in which the project is located, and the county and the appropriate county agencies in which the project is located. The project sponsor shall also publish notice of submission of the application at least once in a newspaper of general circulation serving the area in which the project is located. The project sponsor shall also meet any of the notice requirements set forth in paragraphs (b) through (f) of this section, if applicable. All notices required under this section shall be provided or published no later than 20 days after submission of the application to the Commission and shall contain a description of the project, its purpose, the

requested quantity of water to be withdrawn, obtained from sources other than withdrawals, or consumptively used, and the address, electronic mail address, and phone number of the project sponsor and the Commission. All such notices shall be in a form and manner as prescribed by the Commission

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(b) \*\*\*

(3) For groundwater withdrawal applications, the Commission or Executive Director may allow notification of property owners through alternate methods where the property is served by a public water supply.

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(g) The project sponsor shall provide the Commission with a copy of the United States Postal Service return receipt for the notifications to agencies of member States, municipalities and appropriate county agencies required under paragraph (a) of this section. The project sponsor shall also provide certification on a form provided by the Commission that it has published the newspaper notice(s) required by this section and made the landowner notifications as required under paragraph (b) of this section, if applicable. Until these items are provided to the Commission, processing of the application will not proceed. The project sponsor shall maintain all proofs of publication and records of notices sent under this section for the duration of the approval related to such notices.

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9. Amend § 806.21 by revising paragraphs (a) and (c)(1) to read as follows:

§ 806.21 General standards.

(a) A project shall be feasible and not be detrimental to the proper conservation, development, management, or control of the water resources of the basin.

\*\*\*\*\*

(c) \*\*\*

(1) The Commission may suspend the review of any application under this part if the project is subject to the lawful jurisdiction of any member jurisdiction or any political subdivision thereof, and such member jurisdiction or political subdivision has disapproved or denied the project. Where such disapproval or denial is reversed on appeal, the appeal is final, and the project sponsor provides the Commission with a certified copy of the decision, the Commission shall resume its review of the application. Where, however, an application has been suspended hereunder for a period greater than three years, the Commission may terminate its review. Thereupon, the Commission shall notify the project sponsor of such termination and that the application fee paid by the project sponsor is forfeited. The project sponsor may reactivate the terminated application by reapplying to the Commission, providing evidence of its receipt of all necessary governmental approvals and, at the discretion of the Commission, submitting new or updated information.

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10. Revise § 806.22 to read as follows:

§ 806.22 Standards for consumptive use of water.

(a) The project sponsors of all consumptive water uses subject to review and approval under § 806.4, § 806.5, or § 806.6 of this part shall comply with this section.

(b) Mitigation. All project sponsors whose consumptive use of water is subject to review and approval under § 806.4, § 806.5, § 806.6, or § 806.17 of this part shall mitigate such consumptive use, including any pre-compact consumptive use if located in a water critical area. Except to the extent that the project involves the diversion of the waters out of the basin, public water supplies shall be exempt from the requirements of this section regarding consumptive use; provided, however, that nothing in this section shall be construed to exempt individual consumptive users connected to any such public water supply from the requirements of this section. The Commission shall require mitigation in accordance with an approved mitigation plan. The proposed mitigation plan shall include the method or combination of the following methods of mitigation:

(1) During low flow periods as may be designated by the Commission for consumptive use mitigation.

(i) Reduce withdrawal from the approved source(s), in an amount equal to the project's total consumptive use, and withdraw water from alternative surface water storage or aquifers or other underground storage chambers or facilities approved by the Commission, from which water can be withdrawn for a period of 45 days without impact.

(ii) Release water for flow augmentation, in an amount equal to the project's total consumptive use, from surface water storage or aquifers, or other underground storage chambers or facilities approved by the Commission, from which water can be withdrawn for a period of 45 days without impact.

(iii) Discontinue the project's consumptive use, except that

reduction of project sponsor's consumptive use to less than 20,000 gpd during periods of low flow shall not constitute discontinuance.

(2) Use, as a source of consumptive use water, surface storage that is subject to maintenance of a conservation release acceptable to the Commission. In any case of failure to provide the specified conservation release, such project shall provide mitigation in accordance with paragraph (b)(3) of this section for the calendar year in which such failure occurs, and the Commission will reevaluate the continued acceptability of the conservation release.

(3) Provide monetary payment to the Commission, for all water consumptively used over the course of a year, in an amount and manner prescribed by the Commission.

(4) Implement other alternatives approved by the Commission.

(c) Determination of manner of mitigation. The Commission will, in its sole discretion, determine the acceptable manner of mitigation to be provided by project sponsors whose consumptive use of water is subject to review and approval. Such a determination will be made after considering the project's location, including whether the project is located in a water critical area, source characteristics, anticipated amount of consumptive use, proposed method of mitigation and their effects on the purposes set forth in § 806.2 of this part, and any other pertinent factors. The Commission may modify, as appropriate, the manner of mitigation, including the magnitude and timing of any mitigating releases, required in a project approval.

(d) Quality of water released for mitigation. The physical, chemical and biological quality of water released for mitigation shall at all times meet the quality required for the purposes listed in § 806.2, as applicable.

(e) Approval by rule for consumptive uses. (1) Except with respect to projects involving hydrocarbon development subject to the provisions of paragraph (f) of this section, any project who is solely supplied water for consumptive use by public water supply may be approved by the Executive Director under this paragraph (e) in accordance with the following, unless the Executive Director determines that the project cannot be adequately regulated under this approval by rule.

(2) Notification of intent. Prior to undertaking a project or increasing a previously approved quantity of consumptive use, the project sponsor shall submit a notice of intent (NOI) on forms prescribed by the Commission, and the appropriate application fee, along with any required attachments.

(3) Within 20 days after submittal of an NOI under paragraph (f)(2) of this section, the project sponsor shall satisfy the notice requirements set forth in § 806.15.

(4) Metering, daily use monitoring, and quarterly reporting. The project sponsor shall comply with metering, daily use monitoring, and quarterly reporting as specified in § 806.30.

(5) Standard conditions. The standard conditions set forth in § 806.21 shall apply to projects approved by rule.

(6) Mitigation. The project sponsor shall comply with mitigation in accordance with § 806.22 (b)(2) or (3).

(7) Compliance with other laws. The project sponsor shall obtain all necessary permits or approvals required for the project from other federal, state or local government agencies having jurisdiction over the project. The Commission reserves the right to modify, suspend or revoke any approval under this paragraph (e) if the project sponsor fails to obtain or maintain such approvals.

(8) The Executive Director may grant, deny, suspend, revoke, modify or condition an approval to operate under this approval by rule, or renew an existing approval by rule previously granted hereunder, and will notify the project sponsor of such determination, including the quantity of consumptive use approved.

(9) Approval by rule shall be effective upon written notification from the Executive Director to the project sponsor, shall expire 15 years from the date of such notification, and shall be deemed to rescind any previous consumptive use approvals.

(f) Approval by rule for consumptive use related to unconventional natural gas and other hydrocarbon development. (1) Any unconventional natural gas development project, or any hydrocarbon development project subject to review and approval under § 806.4, 806.5, or 806.6, shall be subject to review and approval by the Executive Director under this paragraph (f) regardless of the source or sources of water being used consumptively.

(2) Notification of intent. Prior to undertaking a project or increasing a previously approved quantity of consumptive use, the project sponsor shall submit a notice of intent (NOI) on forms prescribed by the Commission, and the appropriate application fee, along with any required attachments.

(3) Within 20 days after submittal of an NOI under paragraph (f)(2) of this section, the project sponsor shall satisfy the notice requirements set forth in § 806.15.

(4) The project sponsor shall comply with metering, daily use monitoring and quarterly reporting as specified in § 806.30, or as otherwise required by the approval by rule. Daily use monitoring shall include amounts delivered or withdrawn per source, per day, and amounts used per gas well, per day, for well drilling, hydrofracture stimulation, hydrostatic testing, and dust control. The foregoing shall apply to all water, including stimulation additives, flowback, drilling fluids, formation fluids and production fluids, utilized by the project. The project sponsor shall also submit a post-hydrofracture report in a form and manner as prescribed by the Commission.

(5) The project sponsor shall comply with the mitigation requirements set forth in § 806.22(b).

(6) Any flowback or production fluids utilized by the project sponsor for hydrofracture stimulation undertaken at the project shall be separately accounted for, but shall not be included in the daily consumptive use amount calculated for the project, or be subject to the mitigation requirements of § 806.22(b).

(7) The project sponsor shall obtain all necessary permits or approvals required for the project from other federal, state, or local government agencies having jurisdiction over the project. The Executive Director reserves the right to modify, suspend or revoke any approval under this paragraph (f) if the project sponsor fails to obtain or maintain such approvals.

(8) The project sponsor shall certify to the Commission that all flowback and production fluids have been re-used or treated and disposed of in accordance with applicable state and federal law.

(9) The Executive Director may grant, deny, suspend, revoke, modify or condition an approval to operate under this approval by rule, or renew an existing approval by rule granted hereunder, and will notify the project sponsor of such determination, including the sources and quantity of consumptive use approved. The issuance of any approval hereunder shall not be construed to waive or exempt the project sponsor from obtaining Commission approval for any water withdrawals or diversions subject to review pursuant to § 806.4(a). Any sources of water approved pursuant to this section shall be further subject to any approval or authorization required by the member jurisdiction.

(10) Approval by rule shall be effective upon written notification from the Executive Director to the project sponsor, shall expire five years from the date of such notification, and supersede any previous consumptive use approvals to the extent applicable to the project.

(11) In addition to water sources approved for use by the project sponsor pursuant to § 806.4 or this section, for unconventional natural gas development or hydrocarbon development, whichever is applicable, a project sponsor issued an approval by rule pursuant to paragraph (f)(9) of this section may utilize any of the following water sources at the drilling pad site, subject to such monitoring and reporting requirements as the Commission may prescribe:

(i) Tophole water encountered during the drilling process, provided it is used only for drilling or hydrofracture stimulation.

(ii) Precipitation or stormwater collected on the drilling pad site, provided it is used only for drilling or hydrofracture stimulation.

(iii) Drilling fluids, formation fluids, flowback or production fluids obtained from a drilling pad site, production well site or hydrocarbon water storage facility, provided it is used only for hydrofracture stimulation, and is handled, transported and stored in compliance with all standards and requirements of the applicable member jurisdiction.

(iv) Water obtained from a hydrocarbon water storage facility associated with an approval issued by the Commission pursuant to § 806.4(a) or by the Executive Director pursuant to this section, provided it is used only for the purposes authorized therein, and in compliance with all standards and requirements of the applicable member jurisdiction.

(12) A project sponsor issued an approval by rule pursuant to paragraph (f)(9) of this section may utilize a source of water approved by the Commission pursuant to § 806.4(a), or by the Executive Director pursuant to paragraph (f)(14) of this section, and issued to persons other than the project sponsor, provided any such source is approved for use in unconventional natural gas development, or hydrocarbon development, whichever is applicable, the project sponsor has an agreement for its use, and at least 10 days prior to use, the project sponsor registers such source with the Commission on a form and in the manner prescribed by the Commission.

(13) A project sponsor issued an approval by rule pursuant to paragraph (f)(9) of this section may also utilize other sources of water, including but not limited to, public water supply or wastewater discharge not otherwise associated with an approval issued by the Commission pursuant to § 806.4(a) or an approval by rule issued pursuant to paragraph (f)(9) of this section, provided such sources are first approved by the

Executive Director. Any request for approval shall be submitted on a form and in the manner prescribed by the Commission, shall satisfy the notice requirements set forth in § 806.15, and shall be subject to review pursuant to the standards set forth in subpart C of this part.

(14) A project sponsor issued an approval by rule pursuant to paragraph (f)(9) of this section may utilize water obtained from a hydrocarbon water storage facility that is not otherwise associated with an approval issued by the Commission pursuant to § 806.4(a), or an approval by rule issued pursuant to paragraph (f)(9) of this section, provided such sources are first approved by the Executive Director and are constructed and maintained in compliance with all standards and requirements of the applicable member jurisdiction. The owner or operator of any such facility shall submit a request for approval on a form and in the manner prescribed by the Commission, shall satisfy the notice requirements set forth in § 806.15, and shall be subject to review pursuant to the standards set forth in subpart C of this part.

(15) The project sponsor shall provide a copy of any registration or source approval issued pursuant to this section to the appropriate agency of the applicable member jurisdiction. The project sponsor shall record on a daily basis, and report quarterly on a form and in a manner prescribed by the Commission, the quantity of water obtained from any source registered or approved hereunder. Any source approval issued hereunder shall also be subject to such monitoring and reporting requirements as may be contained in such approval or otherwise required by this part.

11. Amend § 806.23 by revising paragraphs (b)(2) and (b)(3)(i) and adding paragraph (b)(5) to read as follows:

§ 806.23 Standards for water withdrawals.

\* \* \* \* \*

(b) \* \* \*

(2) The Commission may deny an application, limit or condition an approval to ensure that the withdrawal will not cause significant adverse impacts to the water resources of the basin. The Commission may consider, without limitation, the following in its consideration of adverse impacts: Lowering of groundwater or stream flow levels; groundwater and surface water availability, including cumulative uses; rendering competing supplies unreliable; affecting other water uses; causing water quality degradation that may be injurious to any existing or potential water use; affecting fish, wildlife or other living resources or their habitat; causing permanent loss of aquifer storage capacity; affecting wetlands; or affecting low flow of perennial or intermittent streams.

(3) \* \* \*

(i) Limit the quantity, timing or rate of withdrawal or level of drawdown, including requiring a total system limit.

\* \* \* \* \*

(5) *For projects consisting of mine dewatering, water resources remediation, and gravity-drained AMD facilities, review of adverse impacts will have limited consideration of groundwater availability, causing permanent loss of aquifer storage and lowering of groundwater levels provided these projects are operated in accordance with the laws and regulations of the member jurisdictions.*

12. Amend § 806.30 by revising the introductory text and revising paragraph (a)(4) and adding paragraph (a)(8) to read as follows:

§ 806.30 Monitoring.

The Commission, as part of the project review, shall evaluate the proposed methodology for monitoring consumptive uses, water withdrawals and mitigating flows, including flow metering devices, stream gages, and other facilities used to measure the withdrawals or consumptive use of the project or the rate of stream flow. If the Commission determines that additional flow measuring, metering or monitoring devices are required, these shall be provided at the expense of the project sponsor, installed in accordance with a schedule set by the Commission, and installed per the specifications and recommendations of the manufacturer of the device, and shall be subject to inspection by the Commission at any time.

(a) \* \* \*

(4) Measure groundwater levels in all approved production and other wells, as specified by the Commission.

\* \* \* \* \*

(8) *Perform other monitoring for impacts to water quantity, water quality and aquatic biological communities, as specified by the Commission.*

\* \* \* \* \*

13. Amend § 806.31 by revising paragraphs (d) and (e) to read as follows:

§ 806.31 Term of approvals.

\* \* \* \* \*

(d) If the Commission determines that a project has been abandoned,

by evidence of nonuse for a period of time and under such circumstances that an abandonment may be inferred, the Commission may revoke the approval for such withdrawal, diversion or consumptive use.

(e) If a project sponsor submits an application to the Commission no later than six months prior to the expiration of its existing Commission docket approval or no later than one month prior to the expiration of its existing ABR or NOI approval, the existing approval will be deemed extended until such time as the Commission renders a decision on the application, unless the existing approval or a notification in writing from the Commission provides otherwise.

14. Add subpart E to read as follows:

*Subpart E- Registration of Grandfathered Projects*  
Sec.

806.40 Applicability.

806.41 Registration and eligibility.

806.42 Registration requirements.

806.43 Metering and monitoring requirements.

806.44 Determination of grandfathered quantities.

806.45 Appeal of determination.

§ 806.40 Applicability.

(a) This subpart is applicable to the following projects, which shall be known as grandfathered projects:

(1) The project has an associated average consumptive use of 20,000 gpd or more in any consecutive 30-day period all or part of which is a pre-compact consumptive use that has not been approved by the Commission pursuant to § 806.4.

(2) The project has an associated groundwater withdrawal average of 100,000 gpd or more in any consecutive 30-day period all or part of which was initiated prior to July 13, 1978, that has not been approved by the Commission pursuant to § 806.4.

(3) The project has an associated surface water withdrawal average of 100,000 gpd or more in any consecutive 30-day period all or part of which was initiated prior to November 11, 1995, that has not been approved by the Commission pursuant to § 806.4.

(4) The project (or an element of the project) has been approved by the Commission but has an associated consumptive use or water withdrawal that has not been approved by the Commission pursuant to § 806.4.

(5) Any project not included in paragraphs (a)(2) through (4) of this section that has a total withdrawal average of 100,000 gpd or more in any consecutive 30-day average from any combination of sources which was initiated prior to January 1, 2007, that has not been approved by the Commission pursuant to § 806.4.

(6) Any source associated with a project included in paragraphs (a)(2) through (5) of this section regardless of quantity.

(b) A project, including any source of the project, that can be determined to have been required to seek Commission review and approval under the pertinent regulations in place at the time is not eligible for registration as a grandfathered project.

§ 806.41 Registration and eligibility.

(a) Projects sponsors of grandfathered projects identified in § 806.40 shall submit a registration to the Commission, on a form and in a manner prescribed by the Commission, within two years of the effective date of this regulation.

(b) Any grandfathered project that fails to register under paragraph (a) of this section shall be subject to Commission's review and approval under § 806.4.

(c) Any project that is not eligible to register under paragraph (a) of this section shall be subject to Commission's review and approval under § 806.4.

(d) The Commission may establish fees for obtaining and maintaining registration in accordance with § 806.35.

(e) A registration under this subpart may be transferred pursuant to § 806.6.

§ 806.42 Registration requirements.

(a) Registrations shall include the following information:

(1) Identification of project sponsor including any and all proprietors, corporate officers or partners, the mailing address of the same, and the name of the individual authorized to act for the sponsor.

(2) Description of the project and site in terms of:

(i) Project location, including latitude and longitude coordinates in decimal degrees accurate to within 10 meters.

(ii) Project purpose.

(3) Identification of all sources of water, including the date the source was put into service, each source location (including latitude and longitude coordinates in decimal degrees accurate to within 10 meters), and if applicable, any approved docket numbers.

(4) Identification of current metering and monitoring methods for water withdrawal and consumptive use.

(5) Identification of current groundwater level or elevation monitoring methods at groundwater sources.

(6) All quantity data for water withdrawals and consumptive use for a minimum of the previous five calendar years. If quantity data are not available, any information available upon which a determination of quantity could be made.

(7) For consumptive use, description of processes that use water, identification of water returned to the Basin, history of the use, including process changes, expansions and other actions that would have an impact on the amount of water consumptively used during the past five calendar years.

(8) Based on the data provided, the quantity of withdrawal for each individual source and consumptive use the project sponsor requests to be grandfathered by the Commission.

(9) Any ownership or name changes to the project since January 1, 2007.

(b) The Commission may require any other information it deems necessary for the registration process.

§ 806.43 Metering and monitoring requirements.

(a) As a part of the registration process, the Commission shall review the current metering and monitoring for grandfathered withdrawals and consumptive uses.

(b) The Commission may require a metering and monitoring plan for the project sponsor to follow.

(c) Project sponsors, as an ongoing obligation of their registration, shall report to the Commission all information specified in the grandfathering determination under § 806.44 in a form and manner determined by the Commission. If quantity reporting is required by the member jurisdiction where the project is located, the Commission may accept that reported quantity to satisfy the requirements of this paragraph.

§ 806.44 Determination of grandfathered quantities.

(a) For each registration submitted, the Executive Director shall determine the grandfathered quantity for each withdrawal source and consumptive use.

(b) In making a determination, the following factors should be considered:

(1) The most recent withdrawal and use data;

(2) The reliability and accuracy of the data and/or the meters or measuring devices;

(3) Determination of reasonable and genuine usage of the project, including any anomalies in the usage; and

(4) Other relevant factors.

§ 806.45 Appeal of determination.

(a) A final determination of the grandfathered quantity by the Executive Director must be appealed to the Commission within 30 days from actual notice of the determination.

(b) The Commission shall appoint a hearing officer to preside over appeals under this section. Hearings shall be governed by the procedures set forth in part 808 of this chapter.

#### PART 808—HEARINGS AND ENFORCEMENT ACTIONS

15. The authority citation for part 808 continues to read as follows:

Authority: Secs. 3.4, 3.5(5), 3.8, 3.10 and 15.2, Pub. L. 91-575, 84 Stat. 1509 et seq.

16. Revise § 808.1 to read as follows:

§ 808.1 Public hearings.

(a) A public hearing shall be conducted in the following instances:

(1) Addition of projects or adoption of amendments to the comprehensive plan, except as otherwise provided by section 14.1 of the compact.

(2) Review and approval of diversions.

(3) Imposition or modification of rates and charges.

(4) Determination of protected areas.

(5) Drought emergency declarations.

(6) Hearing requested by a member jurisdiction.

(7) As otherwise required by sections 3.5(4), 4.4, 5.2(e), 6.2(a), 8.4, and 10.4 of the compact.

(b) A public hearing may be conducted by the Commission or the Executive Director in any form or style chosen by the Commission or Executive Director in the following instances:

(1) Proposed rulemaking.

(2) Consideration of projects, except projects approved pursuant to memoranda of understanding with member jurisdictions.

(3) Adoption of policies and technical guidance documents.

(4) Identification of a water critical area.

(5) When it is determined that a hearing is necessary to give adequate consideration to issues related to public health, safety and welfare, or protection of the environment, or to gather additional information for the record or consider new information on a matter before the Commission.

(c) Notice of public hearing. At least 20 days before any public hearing required by the compact, notices stating the date, time, place and purpose of the hearing including issues of interest to the Commission shall be published at least once in a newspaper of general circulation in the area affected. In all other cases, at least 20 days prior to the hearing, notice shall be posted on the Commission Web site, sent to the parties who, to the Commission's knowledge, will participate in the hearing, and sent to persons, organizations and news media who have made requests to the Commission for notices of hearings or of a particular hearing. With regard to rulemaking, hearing notices need only be forwarded to the directors of the New York Register, the Pennsylvania Bulletin, the Maryland Register and the Federal Register, and it is sufficient that this notice appear in the Federal Register at least 20 days prior to the hearing and in each individual state publication at least 10 days prior to any hearing scheduled in that state.

(d) Standard public hearing procedure. (1) Hearings shall be open to the public. Participants may be any person, including a project sponsor, wishing to appear at the hearing and make an oral or written statement. Statements shall be made a part of the record of the hearing, and written statements may be received up to and including the last day on which the hearing is held, or within 10 days or a reasonable time thereafter as may be specified by the presiding officer.

(2) Participants are encouraged to file with the Commission at its headquarters written notice of their intention to appear at the hearing. The notice should be filed at least three days prior to the opening of the hearing.

(e) Representative capacity. Participants wishing to be heard at a public hearing may appear in person or be represented by an attorney or other representative. A governmental authority may be represented by one of its officers, employees or by a designee of the governmental authority.

(f) Description of project. When notice of a public hearing is issued, there shall be available for inspection, consistent with the Commission's Access to Records Policy, all plans, summaries, maps, statements, orders or other supporting documents which explain, detail, amplify, or otherwise describe the project the Commission is considering. Instructions on where and how the documents may be obtained will be included in the notice.

(g) Presiding officer. A public hearing shall be presided over by the Commission chair, the Executive Director, or any member or designee of the Commission or Executive Director. The presiding officer shall have full authority to control the conduct of the hearing and make a record of the same.

(h) Transcript. Whenever a project involving a diversion of water is the subject of a public hearing, and at all other times deemed necessary by the Commission or the Executive Director, a written transcript of the hearing shall be made. A certified copy of the transcript and exhibits shall be available for review during business hours at the Commission's headquarters to anyone wishing to examine them. Persons wishing to obtain a copy of the transcript of any hearing shall make arrangements to obtain it directly from the recording stenographer at their expense.

(i) The Commission may conduct any public hearings in concert with any other agency of a member jurisdiction.

17. Revise § 808.2 to read as follows:

§ 808.2 Administrative appeals.

(a) A project sponsor or other person aggrieved by a final action or decision of the Executive Director shall file a written appeal with the Commission within 30 days of the receipt of actual notice by the project sponsor or within 30 days of publication of the action on the Commission's website or in the Federal Register. Appeals shall be filed on a form and in a manner prescribed by the Commission and the petitioner shall have 20 days from the date of filing to amend the appeal. The following is a non-exclusive list of actions by the Executive Director that are subject to an appeal to the Commission:

(1) A determination that a project requires review and approval under § 806.5 of this chapter;

(2) An approval or denial of an application for transfer under § 806.6 of this chapter;

(3) An approval of a Notice of Intent under a general permit under § 806.17 of this chapter.

(4) An approval of a minor modification under § 806.18 of this chapter; and

(5) A determination regarding an approval by rule under § 806.22(e) or (f) of this chapter;

(6) A determination regarding an emergency certificate under § 806.34 of this chapter;

(7) Enforcement orders issued under § 808.14;

(8) A finding regarding a civil penalty under § 808.15(c);

(9) A determination of grandfathered quantity under § 806.44 of this chapter;

(10) A decision to modify, suspend or revoke a previously granted approval;

(11) A records access determination made pursuant to Commission policy;

(b) The appeal shall identify the specific action or decision being appealed, the date of the action or decision, the interest of the person requesting the hearing in the subject matter of the appeal, and a statement setting forth the basis for objecting to or seeking review of the action or decision.

(c) Any request not filed on or before the applicable deadline established in paragraph (a) of this section hereof will be deemed untimely and such request for a hearing shall be considered denied unless the Commission, upon written request and for good cause shown, grants leave to make such filing nunc pro tunc; the standard applicable to what constitutes good cause shown being the standard applicable in analogous cases under Federal law. Receipt of requests for hearings pursuant to this section, whether timely filed or not, shall be submitted by the Executive Director to the commissioners for their information.

(d) Petitioners shall be limited to a single filing that shall set forth all matters and arguments in support thereof, including any ancillary motions or requests for relief. Issues not raised in this single filing shall be considered waived for purposes of the instant proceeding. Where the petitioner is appealing a final determination on a project application and is not the project sponsor, the petitioner shall serve a copy of the appeal upon the project sponsor within five days of its filing.

(e) The Commission will determine the manner in which it will hear the appeal. If a hearing is granted, the Commission shall serve notice thereof upon the petitioner and project sponsor and shall publish such notice in the Federal Register. The hearing shall not be held less than 20 days after publication of such notice. Hearings may be conducted by one or more members of the Commission, or by such other hearing officer as the Commission may designate.

(1) The petitioner may also request a stay of the action or decision giving rise to the appeal pending final disposition of the appeal, which stay may be granted or denied by the Executive Director after consultation with the Commission chair and the member from the affected member State. The decision of the Executive Director on the request for stay shall not be appealable to the Commission under this section and shall remain in full force and effect until the Commission acts on the appeal.

(2) In addition to the contents of the request itself, the Executive Director, in granting or denying the request for stay, will consider the following factors:

(i) Irreparable harm to the petitioner.

(ii) The likelihood that the petitioner will prevail.

(f) The Commission shall grant the hearing request pursuant to this section if it determines that an adequate record with regard to the action or decision is not available, or that the Commission has found that an administrative review is necessary or desirable. If the Commission denies any request for a hearing, the party seeking such hearing shall be limited to such remedies as may be provided by the compact or other applicable law or court rule. If a hearing is granted, the Commission shall refer the matter for hearing to be held in accordance with § 808.3, and appoint a hearing officer.

(g) If a hearing is not granted, the Commission may set a briefing schedule and decide the appeal based on the record before it. The Commission may, in its discretion, schedule and hear oral argument on an appeal.

(h) Intervention. (1) A request for intervention may be filed with the Commission by persons other than the petitioner within 20 days of the publication of a notice of the granting of such hearing in the Federal Register. The request for intervention shall state the interest of the person filing such notice, and the specific grounds of objection to the action or decision or other grounds for appearance. The hearing officer(s) shall determine whether the person requesting intervention has standing in the matter that would justify their admission as an intervener to the proceedings in accordance with Federal case law.

(2) Interveners shall have the right to be represented by counsel, to present evidence and to examine and cross-examine witnesses.

(i) Where a request for an appeal is made, the 90-day appeal period set forth in section 3.10 (6) and Federal reservation (o) of the compact shall not commence until the Commission has either denied the request for or taken final action on an administrative appeal.

18. Revise § 808.11 to read as follows:  
 § 808.11 Duty to comply.  
 It shall be the duty of any person to comply with any provision of the compact, or the Commission's rules, regulations, orders, approvals, docket conditions, staff directives or any other requirement of the Commission.

19. Revise § 808.14 to read as follows:  
 § 808.14 Orders.  
 (a) Whether or not an NOV has been issued, the Executive Director may issue an order directing an alleged violator to cease and desist any action or activity to the extent such action or activity constitutes an alleged violation, or may issue any other order related to the prevention of further violations, or the abatement or remediation of harm caused by the action or activity.

(b) If the project sponsor fails to comply with any term or condition of a docket or other approval, the commissioners or Executive Director may issue an order suspending, modifying or revoking approval of the docket. The commissioners may also, in their discretion, suspend, modify or revoke a docket approval if the project sponsor fails to obtain or maintain other federal, state or local approvals.

(c) The commissioners or Executive Director may issue such other orders as may be necessary to enforce any provision of the compact, the Commission's rules or regulations, orders, approvals, docket conditions, or any other requirements of the Commission.

(d) It shall be the duty of any person to proceed diligently to comply with any order issued pursuant to this section.

(e) The Commission or Executive Director may enter into a Consent Order and Agreement with an alleged violator to resolve non-compliant operations and enforcement proceedings in conjunction with or separately from settlement agreements under § 808.18.

20. Revise § 808.15 to read as follows:  
 § 808.15 Show cause proceeding.  
 (a) The Executive Director may issue an order requiring an alleged violator to show cause why a penalty should not be assessed in accordance with the provisions of this chapter and section 15.17 of the compact. The order to the alleged violator shall:

(1) Specify the nature and duration of violation(s) that is alleged to have occurred.

(2) Set forth the date by which the alleged violator must provide a written response to the order.

(3) Identify the civil penalty recommended by Commission staff.

(b) The written response by the project sponsor should include the following:

(1) A statement whether the project sponsor contests that the violations outlined in the Order occurred;

(2) If the project sponsor contests the violations, then a statement of the relevant facts and/or law providing the basis for the project sponsor's position;

(3) Any mitigating factors or explanation regarding the violations outlined in the Order;

(4) A statement explaining what the appropriate civil penalty, if any, should be utilizing the factors at § 808.16.

(c) Based on the information presented and any relevant policies, guidelines or law, the Executive Director shall make a written finding affirming or modifying the civil penalty recommended by Commission staff.

21. Amend § 808.16 by revising paragraph (a) introductory text and paragraph (a)(7), adding paragraph (a)(8), and revising paragraph (b) to read as follows:

§ 808.16 Civil penalty criteria.  
 (a) In determining the amount of any civil penalty or any settlement of a violation, the Commission and Executive Director shall consider:  
 \* \* \* \* \*

(7) The length of time over which the violation occurred and the amount of water used, diverted or withdrawn during that time period.

(8) *The punitive effect of a civil penalty.*

(b) The Commission and/or Executive Director retains the right to waive any penalty or reduce the amount of the penalty recommended by the Commission staff under § 808.15(a)(3) should it be determined, after consideration of the factors in paragraph (a) of this section, that extenuating circumstances justify such action.

22. Revise § 808.17 to read as follows:  
 § 808.17 Enforcement of penalties, abatement or remedial orders.  
 Any penalty imposed or abatement or remedial action ordered by the Commission or the Executive Director shall be paid or completed within such time period as shall be specified in the civil penalty assessment or

order. The Executive Director and Commission counsel are authorized to take such additional action as may be necessary to assure compliance with this subpart. If a proceeding before a court becomes necessary, the penalty amount determined in accordance with this part shall constitute the penalty amount recommended by the Commission to be fixed by the court pursuant to section 15.17 of the compact.

23. Revise § 808.18 to read as follows:  
 § 808.18 Settlement by agreement.

(a) An alleged violator may offer to settle an enforcement action by agreement. The Executive Director may enter into settlement agreements to resolve an enforcement action. The Commission may, by Resolution, require certain types of enforcement actions or settlements to be submitted to the Commission for action or approval.

(b) In the event the violator fails to carry out any of the terms of the settlement agreement, the Commission or Executive Director may reinstitute a civil penalty action and any other applicable enforcement action against the alleged violator.

Dated: September 19, 2016.  
 Stephanie L. Richardson  
 Secretary to the Commission.

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## Department of Transportation

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### NOTICE OF ADOPTION

#### Various Regulations Addressing Accident Reporting, Record Retention, Insurance, Vehicle Inspection and Equipment Identification

**I.D. No.** TRN-47-15-00002-A  
**Filing No.** 887  
**Filing Date:** 2016-09-19  
**Effective Date:** 2016-10-05

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

**Action taken:** Amendment of section 720.11; repeal of Parts 557, 566, 568, 701, 723, 741, 760-765, 800, 810, 840, 850, sections 700.3, 700.4, 722.1, 722.2, 722.3, 742.1, 742.2, 781.3, 841.1, 841.2; addition of sections 722.1, 742.0, 750.3, 781.3 and 841.1 to Title 17 NYCRR.

**Statutory authority:** Transportation Law, sections 14(18), 138, 140, 142 and art. 6

**Subject:** Various regulations addressing accident reporting, record retention, insurance, vehicle inspection and equipment identification.

**Purpose:** Updates to regulations addressing accident reporting, record retention, insurance, vehicle inspection, equipment identification.

**Text or summary was published** in the November 25, 2015 issue of the Register, I.D. No. TRN-47-15-00002-P.

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

**Text of rule and any required statements and analyses may be obtained from:** Alan Black, Legal Assistant 2, New York State Department of Transportation, 50 Wolf Road, 6th floor, Albany, NY 12232, (518) 457-2411, email: alan.black@dot.ny.gov

**Assessment of Public Comment**  
 The agency received no public comment.