RULE MAKING ACTIVITIES

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

AAM -the abbreviation to identify the adopting agency

01 -the *State Register* issue number

96 -the year

00001 -the Department of State number, assigned upon receipt of notice.

E -Emergency Rule Making—permanent action not intended (This character could also be: A for Adoption; P for Proposed Rule Making; RP for Revised Rule Making; EP for a combined Emergency and Proposed Rule Making; EA for an Emergency Rule Making that is permanent and does not expire 90 days after filing.)

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

Department of Agriculture and Markets

NOTICE OF WITHDRAWAL

Gasoline and Gasoline Alcohol Blends

I.D. No. AAM-34-16-00002-W

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

Action taken: Notice of proposed rule making, I.D. No. AAM-34-16-00002-P, has been withdrawn from consideration. The notice of proposed rule making was published in the *State Register* on August 24, 2016.

Subject: Gasoline and gasoline alcohol blends.

Reason(s) for withdrawal of the proposed rule: Several objections were received to the express terms of the proposed rule.

New York State Athletic Commission

EMERGENCY RULE MAKING

Conduct and Regulation of Authorized Combative Sports

I.D. No. ATH-28-16-00018-E
Filing No. 826
Filing Date: 2016-08-31
Effective Date: 2016-09-01

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

Action taken: Repeal of Parts 205 through 217; and addition of new Parts 206 through 214 to Title 19 NYCRR.

Statutory authority: L. 2016, ch. 32, sections 2 and 11

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

Specific reasons underlying the finding of necessity: The State Athletic Commission finds that immediate adoption of the regulation is necessary for the preservation of the public health, public safety, and general welfare and, specifically, to ensure appropriate protections for the health and safety of combative sports athletes, to ensure integrity in athletic competition, to prevent abuses in the business practices within the covered industries, and to provide reasonable requirements for the licensure of professional boxing and mixed martial arts promoters, ringside personnel and combatants.

Chapter 912 of the Laws of 1920, as amended, and the regulations promulgated pursuant thereto vests in the Commission regulatory authority for the conduct of "boxing, sparring and professional wrestling." As of September 1, 2016, the effective date of Chapter 32 of the laws of 2016, such authority is repealed and replaced with Article 41 of the General Business Law, which provides a more inclusive scheme for the regulation of professional wrestling and authorized combative sports, comprised of "amateur and professional boxing, wrestling, sparring, kick boxing, single discipline martial arts and mixed martial arts." (GBL § 1001). In addition to newly authorizing and providing for the regulation of mixed martial arts, the legislation provides explicit requirements related to the protection of combatants with respect to their physical safety and economic needs in the event of an injury sustained while engaged in combat. This emergency rule is necessary to effectuate the regulation of combative sports and professional wrestling regulation so that they may be safely conducted while contributing to the economy and general prosperity of New York State.

Subject: Conduct and regulation of authorized combative sports.

Purpose: To implement the provision of ch. 32 of the Laws of 2016, effective September 1, 2016, authorizing certain combative sports.

Substance of emergency rule: Chapter 32 of the laws of 2016, establishing a new Article 41 in the General Business Law entitled "Combative Sports," effective September 1, 2016, provides that combative sports legally undertaken in this state are subject to the licensing and regulatory authority of the State Athletic Commission. Additionally within the purview of the Commission is professional wrestling. Section 11 of chapter authorizes the Commission to promulgate rules "necessary for the implementation of this act. . . to be made on or before" the September 1 effective date.

In providing a framework for the licensure and regulation of authorized combative sports and professional wrestling, the legislature repealed the existing statutory structure related to "boxing, sparring and wrestling" and replaced it with a more comprehensive scheme for the regulation of those endeavors as well as, among others, professional and amateur mixed martial arts, kickboxing, and other combative sports. Additionally, the legislation seeks to protect combatants in all combative endeavors by establishing insurance minimums for some and vesting in the Commission the discretion to establish them for others. This proposal would effectuate such statutory scheme by providing rules intended to ensure appropriate protections for the health and safety of combative sports athletes, to ensure integrity in athletic competition, to prevent abuses in the business practices within the covered industries, and to provide reasonable requirements for the licensure of professional boxing and mixed martial arts promoters, ringside personnel and combatants. Additionally, it provides for the authorization of third party entities to oversee the conduct of certain authorized combative sports including, kickboxing, wrestling (which is distinguished from "professional wrestling" as defined in section 1017 of Article 41 of the General Business Law), amateur mixed martial arts, and the martial arts of Judo, Tae Kwon Do, Karate and Kempo.

These rules are necessary to effectuate the regulation of combative sports and professional wrestling so that they may be safely conducted while contributing to the economy and general prosperity of New York State.

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. ATH-28-16-00018-P, Issue of July 13, 2016. The emergency rule will expire November 28, 2016.

Text of rule and any required statements and analyses may be obtained from: James Leary, Esq., Department of State, Office of Counsel, One Commerce Plaza, Albany, NY 12231, (518) 474-6740, email: dos.sm.Legal.InetLegl@dos.ny.gov

Regulatory Impact Statement

A regulatory impact statement is not submitted with this notice because this rule is subject to a consolidated regulatory impact statement that was previously printed under a notice of emergency rule making, I.D. No. ATH-26-16-00018-P, Issue of July 13, 2016.

Regulatory Flexibility Analysis

A regulatory flexibility analysis is not submitted with this notice because this rule is subject to a consolidated regulatory flexibility analysis that was previously printed under a notice of emergency rule making, I.D. No. ATH-28-16-00018-P, Issue of July 13, 2016.

Rural Area Flexibility Analysis

A rural area flexibility analysis is not submitted with this notice because this rule is subject to a consolidated rural area flexibility analysis that was previously printed under a notice of emergency rule making, I.D. No. ATH-28-16-00018-P, Issue of July 13, 2016.

Job Impact Statement

A job impact statement is not submitted with this notice because this rule is subject to a consolidated job impact statement that was previously printed under a notice of emergency rule making, I.D. No. ATH-28-16-00018-P, Issue of July 13, 2016.

NOTICE OF ADOPTION

Conduct and Regulation of Authorized Combative Sports

I.D. No. ATH-28-16-00018-A

Filing No. 827

Filing Date: 2016-08-31

Effective Date: 2016-09-21

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

Action taken: Repeal of Parts 205 through 217; and addition of new Parts 206 through 214 to Title 19 NYCRR.

Statutory authority: L. 2016, ch. 32, sections 2 and 11

Subject: Conduct and regulation of authorized combative sports.

Purpose: To implement the provisions of Ch. 32 of the Laws of 2016, effective September 1, 2016, authorizing certain combative sports.

Substance of final rule: Chapter 32 of the laws of 2016, establishing a new Article 41 in the General Business Law entitled "Combative Sports," effective September 1, 2016, provides that combative sports legally undertaken in this state are subject to the licensing and regulatory authority of the State Athletic Commission. Additionally within the purview of the Commission is professional wrestling. Section 11 of chapter authorizes the Commission to promulgate rules "necessary for the implementation of this act. . . to be made on or before" the September 1 effective date.

In providing a framework for the licensure and regulation of authorized combative sports and professional wrestling, the legislature repealed the existing statutory structure related to "boxing, sparring and wrestling" and replaced it with a more comprehensive scheme for the regulation of those endeavors as well as, among others, professional and amateur mixed martial arts, kickboxing, and other combative sports. Additionally, the legislation seeks to protect combatants in all combative endeavors by establishing insurance minimums for some and vesting in the Commission the discretion to establish them for others. This proposal would effectuate such statutory scheme by providing rules intended to ensure appropriate protections for the health and safety of combative sports athletes, to ensure integrity in athletic competition, to prevent abuses in the business practices within the covered industries, and to provide reasonable requirements for the licensure of professional boxing and mixed martial arts promoters, ringside personnel and combatants. Additionally, it provides for the authorization of third party entities to oversee the conduct of certain authorized combative sports including, kickboxing, wrestling (which is distinguished from "professional wrestling" as defined in section 1017 of Article 41 of the General Business Law), amateur mixed martial arts, and the martial arts of Judo, Tae Kwon Do, Karate and Kempo.

These rules are necessary to effectuate the regulation of combative sports and professional wrestling so that they may be safely conducted while contributing to the economy and general prosperity of New York State.

Final rule as compared with last published rule: Nonsubstantive changes were made in sections 206.5(d)(7), (9), 206.12, 206.18, 207.1(d), (e), 207.8, 207.10, 207.11, 207.12(a), 207.17, 208.4-208.6, 208.8, 208.10, 208.11(c), (d), 208.12-208.14, 208.15(d), (f)(4), 208.16(a), (c), (d)(1), (3)(ii), (e), 208.18-208.23, 208.24(a), 208.28, 208.29, 209.1, 209.2(a), (c), (d), 209.4-209.16, 210.5(e), 210.8, 210.12, 210.14, 210.25(c), 210.27(c), 211.6(c), 211.17, 211.35, 211.38, 211.39(a), (b), 211.42, 211.43, 211.46, 211.50(a)(3), (b)(1), 212.1, 212.3(b), 212.5(b), 212.7(f), 212.8(c)-(f), (j), (l), 212.10(a), (b)(13), (17), (c), (d), 212.11(e), 212.12(b)-(f), 212.13(a)(2)-(4), 213.2(e), 213.5(a)(5), (6), (9), 213.6, 213.7(c), 214.2(b), (5), (d) and 214.11(a)-(d).

Text of rule and any required statements and analyses may be obtained from: James Leary, Esq., NYS Department of State, One Commerce Plaza, 99 Washington Ave., 11th fl., Albany, NY 12231-0001, (518) 474-6740

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

The amendments to the rule have been made to clarify meaning, improve syntax, and to correct non-substantive drafting errors. As such the amendments are "technical" and non-substantive, and it is thus unnecessary to revise the previously noticed Regulatory Impact Statement, Regulatory Flexibility Analysis, Rural Area Flexibility Analysis, and Job Impact Statement.

Initial Review of Rule

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

Assessment of Public Comment

The Department received several comments to this rulemaking. Some identified purely technical issues such as numbering errors. These were adopted. Others provided detailed and technical suggestions to amend proposed language in order to clarify intent and meaning. Many such suggestions were accepted and have been incorporated into the text. Examples include, among many others: making internally consistent and appropriate the use of the terms "match," "bout" and "contest"; clarifying the scope and application of particular rules, and clarifying that an auditory device other than a bell may be used to mark rounds in matches. Yet others raised issues of a more substantive nature.

A number of comments were directed towards the insurance requirements. Many opined that while they "recognize and agree with Commission's goal of protecting participants in New York," the minimum insurance coverage requirements of $50,000 for medical, surgical and hospital care and a $50,000 death benefit as applied to professional kickboxing and other single discipline martial arts is too costly. The Department estimated the cost of acquiring such a policy to range between $3,000 and $6,000 per event. The commenters, citing the upper limit of such estimate, found it economically infeasible for "small to mid-sized events." They urged the adoption of the current common industry practice in the New York area of acquiring insurance coverage of $20,000 for medical, surgical and hospital care and a $20,000 death benefit. The commenters stated that such a policy is available at a cost premium of approximately

$1,400 for an event with up to ten matches. The Commission understands that the proposed requirement represents an increase in the cost of doing business, but weighed such fiscal impact against the apparent legislative intent to afford $50,000 in insurance protection to professional combatants engaging in combative sports matches within the State of New York. It is also of note that several other major market states require coverage requirements of $50,000 for medical, surgical and hospital care and a $50,000 death benefit, such as California and Nevada. In addition, as proposed for New York, the states of California, Nevada and New Jersey apply the same general medical and death benefit insurance coverage requirements to professional boxing, professional mixed martial arts and professional kickboxing. Moreover, the Department is not persuaded that the cost of acquiring such insurance cannot be absorbed within an event's pricing structure. This requirement is unchanged.

Also recommended was "provision for event liability insurance. . . for all sports, whether amateur or professional, with a minimum of $1 million per occurrence and $2 million general aggregate." Generally in New York State, the provision of general liability insurance is within the discretion of the venue and is set as a term of the agreement between the venue and the promoter. Thus, the Commission has not previously prescribed a minimum event insurance and does not find it necessary to do so, herein.

The Commission's proposal to implement the statutory requirement that promoters of professional boxing and professional mixed martial arts provide an insurance policy guaranteeing a minimum of one million dollars in coverage for the medical, surgical and hospital care of any combatant sustaining a life-threatening brain injury during a promoted event in New York State was criticized as "arbitrary" in imposing an increased promotional cost which will drive business to other states and "killing boxing in New York". The Commission has engaged in extensive conversation with insurance providers and underwriters and, as was represented in the Regulatory Impact Statement appurtenant to this rulemaking, has been advised that the cost of acquisition, inclusive of the insurance coverage requirements of $50,000 for medical, surgical and hospital care and a $50,000 death benefit, will range between approximately $7,500 and $10,000 per event. While, as previously noted in the RIS for this rulemaking, the cost of this requirement may present a challenge for small to mid-size promoters, the industry on the whole should be able to absorb such cost without significant long-term disruption. The Commission has also been apprised that a policy of such insurance should be available to the market for purchase within the State in time to meet projected and anticipated industry needs. It is noted that even a $10,000 potential cost increase in this regard may represent less than a one dollar per ticket price increase in a 10,000 – 25,000 seat venue (such as Madison Square Garden, Barclays Center, Nassau Veterans Memorial Coliseum, The Times Union Center, The Carrier Dome, or The First Niagara Center) and may prevent the financial destitution of an otherwise uninsured fighter and his or her family in the event of a life-threatening brain injury. Having found that the unambiguous legislative intent to require such coverage may be practicably implemented, the statutory insurance mandate cannot be said to warrant its evisceration by vote of the Commission at this time. It should also be pointed out that, in lieu of purchasing the $1 million dollar "life threatening brain injury" specialty insurance coverage, section 208.15 of these regulations allows a promoter to provide proof to the Commission that all participants on the card are covered by health insurance inclusive of accidental injury coverage with a benefit of at least $1 million dollars per person in the event of a life threatening brain injury.

Comments were also received with respect to the Commission's proposed language to more clearly define the statutory term, "life threatening brain injury," and to provide clarity with respect to the circumstances that trigger coverage. Such language was criticized as an attempt to "inappropriately limit insurance coverage." One commenter fundamentally objected to any clarification of the term or causality, arguing that "the language instead should reflect the uncertainty found in the medical literature and apply to any traumatic brain injury. . . that could result in mortality" and that "the regulations should clarify that any. . . life-threatening brain injury that develops as the result of cumulative blows to the head is covered." Another commenter echoed such objection in opposing any time limits for the diagnosis of a life threatening brain injury. The Commission's action was taken after extensive consultation with insurance industry representatives who advised that clarifying definitions of key terms was essential to their ability to draft and file policies providing for the newly required coverage, and in consultation with the Department of Financial Services and the Commission's Chief Medical Officer. Moreover, the objections run counter to the import of the statutory language, which provides that insurance is to be provided for a specific condition, i.e., a "life threatening brain injury," conditioned on the existence of an "identifiable, causal link" between "a program operated under the control of. . . [a] licensed promoter" and the professional licensee's "participation in such program." Should the legislature have wished to expand coverage to any brain injury, it would not have used the modifier "life threatening." Additionally, the statute links such injury to a singular program operated under the control of a promoter, indicating that the intent of the Legislature was to provide coverage for an injury sustained at a single event and not to provide coverage for cumulative injuries arguably sustained over years of combat. Such intent is made crystal clear by juxtaposition with Section 10 of the Act's charge to the Department of State to "carefully consider potential mechanisms to provide financial resources for the payment of expenses related to medical and rehabilitative care. . . [for combatants] who experience debilitating brain injuries associated with repetitive head injuries sustained through their participation in combative sports" and to report its findings 2018. No change in response to this comment have been made.

Some comments questioned the lack of regulatory guidance with respect to the licensure of gyms and training facilities. In fact, the responsibilities and proper conduct of such entities is fully set forth in the Act itself. Licensure is conditioned on the demonstration of a capacity to meet certain health and safety standards, including, among other things: the availability "of a person trained and certified in the use of. . . first aid materials and procedures for cardio-pulmonary resuscitation." The Commission does not perceive a need to promulgate additional regulations in addition to such statutory guidance. The Commission notes that its application forms and onsite audits of each facility are the mechanisms through which it ensures compliance with the requirements of State law in this area.

One commenter recommended that the Commission not embrace all of the recent changes to the Unified Rules of Mixed Martial Arts voted on and approved by the Association of Boxing Commissions in August of 2016. Section 212.10 of the rules is intended to generally accord with the accepted standards for the conduct of mixed martial arts and therefore tracks the Unified Rules with regard to fouls. Of note is that the ABC's Unified Rules changes are not effective until January 1, 2017 and the relevant provisions of these rules provide the same.

Two comments were received taking issue with the requirement that an ambulance be present at all professional wrestling events. The Commission is aware that the current practice of some wrestling promoters is to maintain an ambulance at an event at a cost of approximately $350 to $500 per event. When weighed against the potential need for quick hospital transport to best ensure the health and safety of professional wrestlers, the Commission has deemed the cost associated therewith to be justified.

Several comments were received regarding the requirement that a combative sports participant "rest" a minimum of 7 days between a match or exhibition. Commenters requested clarification regarding the scope of that rule. Such requirement, if applied to kickboxing, would disallow the current practice of tournament combat. The commenters note that protocols assuring the safety of the combatants, including the approval of the ringside physician, are observed. The rule has been clarified.

A single commenter urged the prohibition of "mixed sex matches" for both boxing and professional wrestling. With respect to boxing, the matter is dealt with through the rules requiring commission review and approval of any and all proposed matches, which requires consideration of health, safety, competitive fairness, common industry practice and the best interests of the sport. For wrestling, which was significantly deregulated by State law in 2002 when it was defined as not comprising bona fide athletic competition, commission match review and approval has not been a part of the regulatory framework. The law being implemented by these rules continues this restrained posture for professional wrestling exhibitions.

A comment suggesting that the Commission adopt by reference the World Anti-Doping Agency (WADA) list of prohibited substances in addition to promulgating its own is, at this time, rejected. However, the matter will be considered for potential future action by the Medical Advisory Board and the Commission.

Two comments suggested that the Commission's authority to "modify" a bout contract should be clarified, and that without such clarity it appeared overly broad. This provision, which tracks the existing section 206.14, is meant to provide authority to strike a contractual provision in a bout contract for a match to take place within the State which is contrary to applicable laws and rules of the State of New York. It has been amended to clarify such intent.

One commenter generally urged the harmonization of provisions which are perceived as "both duplicative and arguably contradictory" and "narrowing the proffered regulations." Duplicative provisions have been harmonized and clarified, throughout the regulations. Specific issues of concern with respect to jurisdiction and prescribed practice and the Commission's response thereto are as follows:

- Oversight and filing of promoter/fighter contracts should be limited to those regarding matches or exhibitions held in New York State: Such clarification has been adopted.

- Jurisdiction to "invalidate, enforce, mediate, arbitrate or modify" contracts related to the conduct of authorized combative sports in New York State should be limited to "agreements that bear directly on the State's regulation of the event and income resulting therefrom: Such clarification has been adopted.

- It should be clarified that broadcast agreements should not require the prior approval of the Commission: Such clarification has been adopted.

- Commission jurisdiction over contracts may extend to those executed prior to the effective date of the legislation: The Commission will exercise its jurisdiction only with respect to events held on or after the effective date of the legislation, i.e., September 1, 2016. No additional regulatory clarification is necessary, as no retroactivity provision is included within the rules.

- Commission jurisdiction to generally inquire into "any matter which may affect combative sports in New York is overbroad: The Commission disagrees. Statute provides the Commission with broad authority to "act in the best interests of sports. . . to protect the health, safety and general welfare of all participants in combative sports and spectators thereof, to preserve the integrity of combative sports through means of licensing, oversight, enforcement and the authorization of sanctioning entities, and to facilitate the development and responsible conduct of combative sports throughout the entire state." The power to conduct inquiry and investigation is critical to the effectuation of such responsibilities and will not be diminished.

- The general requirement to retain "records relating to licensed activities" should be clarified: The Commission has amended this language to clarify that records may not be destroyed for the purpose of obstructing a Commission inquiry or review.

- The regulations relating to the financial fitness of a promoter are duplicative and potentially confusing: The Commission has reviewed the cited regulations and finds them appropriate.

- The provisions on deductions to a fighter's purse are confusing and arguably contradictory. The Commission does not agree. The two regulations at issue should be read together. Section 209.16 provides for a minimum purse of $150, whereas section 209.10 provides that a combatant should receive at least 50% of a contracted purse amount after deductions. Moreover, through the bout contract filing process the Commission accepts and authorizes circumstances where specific payment arrangements have been agreed upon by promoters and combatants that may vary from the specified amount and percentage, as provided for in the text of both rules.

- The bond required for the promoter's performance of its responsibilities should not extend to "the legitimate expenses of printing tickets and all advertising material" as "outside our dealing with the Commission": The statute requires that as a condition of licensure, a promoter post a bond for the "the legitimate expenses of printing tickets and all advertising material" (NY General Business Law 1015[10]).

- Event date reservation should be limited and on a first come, first serve basis: The Commission finds that such guidance is more appropriately provided in policy and practice, and does not require a rule change at this time.

- Section 201.7 could be read to provide that an entire event could be stopped merely because an individual participating therein is unlicensed: While an event could be halted if a key individual is unlicensed, the intent of the rule is simple to assure that only licensed individuals may undertake activities which require licensure. The Commission does not agree that the section requires additional clarification.

- Section 210.12's prohibition on the presence of a suspended or revoked licensee at an event is excessive: The intent of the rule is to provide authority in the Commission to deny attendance to suspended or revoked individuals who have been explicitly found guilty of "conduct detrimental to the best interests of boxing or mixed martial arts". The rule has been clarified to so state.

- Commission authority over ticket issuance is unnecessary: The Commission disagrees. Such rules are intricately tied to tax requirements and appropriate labelling. The Commission's rules in this regard have been in practice for decades in the sport of boxing and have not been found to be detrimental or unduly burdensome.

- The refund and posting provisions with regard to card changes are "contrary to the very nature of combat sports" and should be stricken: The Commission disagrees. The regulation is in the consumer interest and assures that a ticket purchaser may be made whole in the event that the fight he or she wanted to view is cancelled or a combatant substitution is made. Moreover, the rule only pertains to a substitution or cancellation of a main event. Thus, this provision is unlikely to have a significant impact on the conduct of an event.

- More clarity is needed with respect to the requirements for weigh-in locations: The Commission recognizes that there may be many and varied venues appropriate for weigh-ins and the specific and sometimes unique circumstances attendant to each event. Such variety makes problematic explicit rules with respect to facility attributes. In exercising its approval authority, the Commission will seek to ensure the safety and well-being of the professional licensees and all attendees.

- With regard to the confidentiality of certain documents, the Commission should limit the scope of items it can request and provide that documents submitted in the course of a disciplinary proceeding be deemed confidential: The Commission does not agree. As previously noted, the Commission must retain authority to conduct the inquiries and investigations it deems appropriate to fulfill its statutory mission. The documents it retains will be afforded confidentiality or not in accord with law and regulation. With respect to its quasi-judicial disciplinary actions, the documents presented therein, and the determinations and record, are generally a matter of administrative and public record. Except for private information and other matter required to be withheld at law, it is not in the public interest to withhold them.

Several commenters representing the interests of boxing promoters within the State were concerned that the rule's requirements regarding contract oversight and information disclosure between boxing promoters and boxers, as carried over from prior law, are "arbitrary and unfairly singled out boxing" because they were not also applied to the mixed martial arts industry. The rules at issue were developed over years of experience with the boxing industry in New York and have been continued, unchanged, for the economic protection of fighters in light of the well documented, exploitive practices which have plagued the boxing industry for decades. The commenters acknowledge the requirements of the federal Muhammad Ali Boxing Reform Act, which require certain protections and are tracked in the regulations, and that the Commission's legitimate interest in continuing to regulate in the interests of the fighters is present and necessary. While consistency of approach between boxing and MMA may appear "fair," the activities are not the same, have independent and unique histories, and have been treated differently in this respect by law. For instance, the federal Muhammad Ali Boxing Reform Act, did not apply enhanced contract and financial disclosure requirements beyond the boxing industry, even though it was enacted in 2000, at a time when MMA already existed as a new but rapidly growing sport and industry. In enacting the Ali Act, Congress found "repeated occurrences of disreputable and coercive business practices in the boxing industry, to the detriment of professional boxers nationwide." To date, federal lawmakers have not found it necessary to expand the Ali Act requirements to the mixed martial arts industry or to scale back those requirements for the boxing industry, despite the additional fifteen years of experience with both industries. The State of New York's experience with the professional mixed martial arts industry is just beginning, and the basis for such a protective approach does not appear to exist in MMA at this time. The Commission intends to observe and learn from its oversight of both industries' activities within the State in the coming years, and will respond appropriately based on the circumstances and facts presented. As such, the application of rules uniquely designed to deter such practices in the boxing industry need not be altered at this time.

Another commenter took issue with several rules as applied to the conduct of boxing. Specifically:

- The Commission omitted crucial requirements with respect to the reporting of illnesses of licensed combatants: The Commission did not omit such crucial requirements. The duty to report information concerning an illness or injury is now covered by sections 208.4, 208.9, and 213.8. The duty of all licensees to carry out their contractual obligations is now provided for at section 209.3. No changes are required.

- In prohibiting the throwing in of a towel, the Commission inappropriately rescinded a corner's ability to stop a fight: A participant's seconds and managers are instructed to notify the Commission Inspector assigned to their corner, or, if in between rounds the referee directly, if they wish to stop a fight. The rule about throwing in the towel is not a figurative prohibition on ability of a corner to stop a fight, but rather a literal prohibition on the act of throwing a towel into the ring in the midst of the bout. No changes are required.

- The rules should detail more particularly the "details as to what the elements of dehydration mean to protect. . . athletes": The weight loss and dehydration rules prohibit the loss of one-percent or more of the fighter's body weight within the 24 hours prior to the match, and provide that a combatant may be disapproved for participation in a match or exhibition if, in the professional medical opinion of the reviewing physician, it would be unsafe for the combatant to compete in the match or exhibition due to a finding of dehydration or extreme weight loss. The rules also require monitoring of all combatants during a fight, and require a post-bout examination of each combatant by a physician. The discharge instructions provided by the physician are intended to address injuries and adverse findings made in the professional medical opinion of the evaluating physician. Further, the rules require the provision of a minimum of $50,000 in medical, surgical and hospital care coverage for any injury sustained as a result of a professional boxing or professional mixed martial arts program, which in

itself matches the highest levels required by any other state in the nation. No changes will be made at the present time. However, should the Commission find additional protections necessary, it will certainly consider additional regulatory action.

Finally, some commenters expressed concern that authorized sanctioning entities currently doing business will be forced to temporarily stop doing business while their applications are pending with the Commission. It is anticipated that upon receipt of a complete and competent application for licensure, the Commission will expeditiously process an application and disruptions to the industry are not anticipated. While some commenters urged authorization for pre-existing sanctioning entities operating in New York State (i.e., "grandfathering"), it should be noted that Chapter 32 of the Laws of 2016 did not carry over authorization of any entity previously listed in NY Unconsolidated Laws section 8905-a and requires the Commission to license and authorize any such entities before they are legally approved to oversee the conduct of combative sports after September 1, 2016.

Department of Corrections and Community Supervision

NOTICE OF EXPIRATION

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

Applicability of Title and Definitions

I.D. No.	Proposed	Expiration Date
CCS-35-15-00018-P	September 2, 2015	September 1, 2016

Department of Economic Development

EMERGENCY RULE MAKING

Empire Zones Reform

I.D. No. EDV-38-16-00003-E
Filing No. 833
Filing Date: 2016-09-02
Effective Date: 2016-09-02

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

Action taken: Amendment of Parts 10 and 11; renumbering and amendment of Parts 12 through 14 to Parts 13, 15 and 16; and addition of new Parts 12 and 14 to Title 5 NYCRR.

Statutory authority: General Municipal Law, art. 18-B, section 959; L. 2000, ch. 63; L. 2005, ch. 63; L. 2009, ch. 57

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

Specific reasons underlying the finding of necessity: Regulatory action is needed immediately to implement the statutory changes contained in Chapter 57 of the Laws of 2009. The emergency rule also clarifies the administrative procedures of the program, improves efficiency and helps make it more cost-effective and accountable to the State's taxpayers, particularly in light of New York's current fiscal climate. It bears noting that General Municipal Law section 959(a), as amended by Chapter 57 of the Laws of 2009, expressly authorizes the Commissioner of Economic Development to adopt emergency regulations to govern the program.

Subject: Empire Zones reform.

Purpose: Allow department to continue implementing Zones reforms and adopt changes that would enhance program's strategic focus.

Substance of emergency rule: The emergency rule is the result of changes to Article 18-B of the General Municipal Law pursuant to Chapter 63 of the Laws of 2000, Chapter 63 of the Laws of 2005, and Chapter 57 of the Laws of 2009. These laws, which authorize the empire zones program, were changed to make the program more effective and less costly through higher standards for entry into the program and for continued eligibility to remain in the program. Existing regulations fail to address these requirements and the existing regulations contain several outdated references. The emergency rule will correct these items.

The rule contained in 5 NYCRR Parts 10 through 14 (now Parts 10-16 as amended), which governs the empire zones program, is amended as follows:

1. The emergency rule, tracking the requirements of Chapter 63 of the Laws of 2005, requires placement of zone acreage into "distinct and separate contiguous areas."

2. The emergency rule updates several outdated references, including: the name change of the program from Economic Development Zones to Empire Zones, the replacement of Standard Industrial Codes with the North American Industrial Codes, the renaming of census-tract zones as investment zones, the renaming of county-created zones as development zones, and the replacement of the Job Training Partnership Act (and private industry councils) with the Workforce Investment Act (and local workforce investment boards).

3. The emergency rule adds the statutory definition of "cost-benefit analysis" and provides for its use and applicability.

4. The emergency rule also adds several other definitions (such as applicant municipality, chief executive, concurring municipality, empire zone capital tax credits or zone capital tax credits, clean energy research and development enterprise, change of ownership, benefit-cost ratio, capital investments, single business enterprise and regionally significant project) and conforms several existing regulatory definitions to statutory definitions, including zone equivalent areas, women-owned business enterprise, minority-owned business enterprise, qualified investment project, zone development plans, and significant capital investment projects. The emergency rule also clarifies regionally significant project eligibility. Additionally, the emergency rule makes reference to the following tax credits and exemptions: the Qualified Empire Zone Enterprise ("QEZE") Real Property Tax Credit, QEZE Tax Reduction Credit, and the QEZE Sales and Use Tax Exemption. The emergency rule also reflects the eligibility of agricultural cooperatives for Empire Zone tax credits and the QEZE Real Property Tax Credit.

5. The emergency rule requires additional statements to be included in an application for empire zone designation, including (i) a statement from the applicant and local economic development entities pertaining to the integration and cooperation of resources and services for the purpose of providing support for the zone administrator, and (ii) a statement from the applicant that there is no viable alternative area available that has existing public sewer or water infrastructure other than the proposed zone.

6. The emergency rule amends the existing rule in a manner that allows for the designation of nearby lands in investment zones to exceed 320 acres, upon the determination by the Department of Economic Development that certain conditions have been satisfied.

7. The emergency rule provides a description of the elements to be included in a zone development plan and requires that the plan be resubmitted by the local zone administrative board as economic conditions change within the zone. Changes to the zone development plan must be approved by the Commissioner of Economic Development ("the Commissioner"). Also, the rule adds additional situations under which a business enterprise may be granted a shift resolution.

8. The emergency rule grants discretion to the Commissioner to determine the contents of an empire zone application form.

9. The emergency rule tracks the amended statute's deletion of the category of contributions to a qualified Empire Zone Capital Corporation from those businesses eligible for the Zone Capital Credit.

10. The emergency rule reflects statutory changes to the process to revise a zone's boundaries. The primary effect of this is to limit the number of boundary revisions to one per year.

11. The emergency rule describes the amended certification and decertification processes. The authority to certify and decertify now rests solely with the Commissioner with reduced roles for the Department of Labor and the local zone. Local zone boards must recommend projects to the State for approval. The labor commissioner must determine whether an applicant firm has been engaged in substantial violations, or pattern of violations of laws regulating unemployment insurance, workers' compensation, public work, child labor, employment of minorities and women, safety and health, or other laws for the protection of workers as determined by final judgment of a judicial or administrative proceeding. If such applicant firm has been found in a criminal proceeding to have committed any such violations, the Commissioner may not certify that firm.

12. The emergency rule describes new eligibility standards for certification. The new factors which may be considered by the Commissioner when deciding whether to certify a firm is (i) whether a non-manufacturing applicant firm projects a benefit-cost ratio of at least 20:1 for the first three years of certification, (ii) whether a manufacturing ap-

plicant firm projects a benefit-cost ratio of at least 10:1 for the first three years of certification, and (iii) whether the business enterprise conforms with the zone development plan.

13. The emergency rule adds the following new justifications for decertification of firms: (a) the business enterprise, that has submitted at least three years of business annual reports, has failed to provide economic returns to the State in the form of total remuneration to its employees (i.e. wages and benefits) and investments in its facility greater in value to the tax benefits the business enterprise used and had refunded to it; (b) the business enterprise, if first certified prior to August 1, 2002, caused individuals to transfer from existing employment with another business enterprise with similar ownership and located in New York state to similar employment with the certified business enterprise or if the enterprise acquired, purchased, leased, or had transferred to it real property previously owned by an entity with similar ownership, regardless of form of incorporation or organization; (c) change of ownership or moving out of the Zone, (d) failure to pay wages and benefits or make capital investments as represented on the firm's application, (e) the business enterprise makes a material misrepresentation of fact in any of its business annual reports, and (f) the business enterprise fails to invest in its facility substantially in accordance with the representations contained in its application. In addition, the regulations track the statute in permitting the decertification of a business enterprise if it failed to create new employment or prevent a loss of employment in the zone or zone equivalent area, and deletes the condition that such failure was not due to economic circumstances or conditions which such business could not anticipate or which were beyond its control. The emergency rule provides that the Commissioner shall revoke the certification of a firm if the firm fails the standard set forth in (a) above, or if the Commissioner makes the finding in (b) above, unless the Commissioner determines in his or her discretion, after consultation with the Director of the Budget, that other economic, social and environmental factors warrant continued certification of the firm. The emergency rule further provides for a process to appeal revocations of certifications based on (a) or (b) above to the Empire Zones Designation Board. The emergency rule also provides that the Commissioner may revoke the certification of a firm upon a finding of any one of the other criteria for revocation of certification set forth in the rule.

14. The emergency rule adds a new Part 12 implementing record-keeping requirements. Any firm choosing to participate in the empire zones program must maintain and have available, for a period of six years, all information related to the application and business annual reports.

15. The emergency rule clarifies the statutory requirement from Chapter 63 of the Laws of 2005 that development zones (formerly county zones) create up to three areas within their reconfigured zones as investment (formerly census tract) zones. The rule would require that 75% of the acreage used to define these investment zones be included within an eligible or contiguous census tract. Furthermore, the rule would not require a development zone to place investment zone acreage within a municipality in that county if that particular municipality already contained an investment zone, and the only eligible census tracts were contained within that municipality.

16. The emergency rule tracks the statutory requirements that zones reconfigure their existing acreage in up to three (for investment zones) or six (for development zones) distinct and separate contiguous areas, and that zones can allocate up to their total allotted acreage at the time of designation. These reconfigured zones must be presented to the Empire Zones Designation Board for unanimous approval. The emergency rule makes clear that zones may not necessarily designate all of their acreage into three or six areas or use all of their allotted acreage; the rule removes the requirement that any subsequent additions after their official redesignation by the Designation Board will still require unanimous approval by that Board.

17. The emergency rule clarifies the statutory requirement that certain defined "regionally significant" projects can be located outside of the distinct and separate contiguous areas. There are four categories of projects: (i) a manufacturer projecting the creation of fifty or more net new jobs in the State of New York; (ii) an agri-business or high tech or biotech business making a capital investment of ten million dollars and creating twenty or more net new jobs in the State of New York, (iii) a financial or insurance services or distribution center creating three hundred or more net new jobs in the State of New York, and (iv) a clean energy research and development enterprise. Other projects may be considered by the empire zone designation board. Only one category of projects, manufacturers projecting the creation of 50 or more net new jobs, are allowed to progress before the identification of the distinct and separate contiguous areas and/or the approval of certain regulations by the Empire Zones Designation Board. Regionally significant projects that fall within the four categories listed above must be projects that are exporting 60% of their goods or services outside the region and export a substantial amount of goods or services beyond the State.

18. The emergency rule clarifies the status of community development projects as a result of the statutory reconfiguration of the zones.

19. The emergency rule clarifies the provisions under Chapter 63 of the Laws of 2005 that allow for zone-certified businesses which will be located outside of the distinct and separate contiguous areas to receive zone benefits until decertified. The area which will be "grandfathered" shall be limited to the expansion of the certified business within the parcel or portion thereof that was originally located in the zone before redesignation. Each zone must identify any such business by December 30, 2005.

20. The emergency rule elaborates on the "demonstration of need" requirement mentioned in Chapter 63 of the Laws of 2005 for the addition (for both investment and development zones) of an additional distinct and separate contiguous area. A zone can demonstrate the need for a fourth or, as the case may be, a seventh distinct and separate contiguous area if (1) there is insufficient existing or planned infrastructure within the three (or six) distinct and separate contiguous areas to (a) accommodate business development and there are other areas of the applicant municipality that can be characterized as economically distressed and/or (b) accommodate development of strategic businesses as defined in the local development plan, or (2) placing all acreage in the other three or six distinct and separate contiguous areas would be inconsistent with open space and wetland protection, or (3) there are insufficient lands available for further business development within the other distinct and separate contiguous areas.

The full text of the emergency rule is available at www.empire.state.ny.us

This notice is intended to serve only as an emergency adoption, to be valid for 90 days or less. This rule expires November 30, 2016.

Text of rule and any required statements and analyses may be obtained from: Thomas P Regan, NYS Department of Economic Development, 625 Broadway, Albany NY 12245, (518) 292-5123, email: tregan@esd.ny.gov

Regulatory Impact Statement

STATUTORY AUTHORITY:

Section 959(a) of the General Municipal Law authorizes the Commissioner of Economic Development to adopt on an emergency basis rules and regulations governing the criteria of eligibility for empire zone designation, the application process, the certification of a business enterprises as to eligibility of benefits under the program and the decertification of a business enterprise so as to revoke the certification of business enterprises for benefits under the program.

LEGISLATIVE OBJECTIVES:

The rulemaking accords with the public policy objectives the Legislature sought to advance because the majority of such revisions are in direct response to statutory amendments and the remaining revisions either conform the regulations to existing statute or clarify administrative procedures of the program. These amendments further the Legislative goals and objectives of the Empire Zones program, particularly as they relate to regionally significant projects, the cost-benefit analysis, and the process for certification and decertification of business enterprises. The proposed amendments to the rule will facilitate the administration of this program in a more efficient, effective, and accountable manner.

NEEDS AND BENEFITS:

The emergency rule is required in order to implement the statutory changes contained in Chapter 57 of the Laws of 2009. The emergency rule also clarifies the administrative procedures of the program, improves efficiency and helps make it more cost-effective and accountable to the State's taxpayers, particularly in light of New York's current fiscal climate.

COSTS:

A. Costs to private regulated parties: None. There are no regulated parties in the Empire Zones program, only voluntary participants.

B. Costs to the agency, the state, and local governments: There will be additional costs to the Department of Economic Development associated with the emergency rule making. These costs pertain to the addition of personnel that may need to be hired to implement the Empire Zones program reforms. There may be savings for the Department of Labor associated with the streamlining of the State's administration and concentration of authority within the Department of Economic Development. There is no additional cost to local governments.

C. Costs to the State government: None. There will be no additional costs to New York State as a result of the emergency rule making.

LOCAL GOVERNMENT MANDATES:

None. Local governments are not mandated to participate in the Empire Zones program. If a local government chooses to participate, there is a cost associated with local administration that local government officials agreed to bear at the time of application for designation as an Empire Zone. One of the requirements for designation was a commitment to local administration and an identification of local resources that would be dedicated to local administration.

This emergency rule does not impose any additional costs to the local governments for administration of the Empire Zones program.

PAPERWORK:
The emergency rule imposes new record-keeping requirements on businesses choosing to participate in the Empire Zones program. The emergency rule requires all businesses that participate in the program to establish and maintain complete and accurate books relating to their participation in the Empire Zones program for a period of six years.
DUPLICATION:
The emergency rule conforms to provisions of Article 18-B of the General Municipal Law and does not otherwise duplicate any state or federal statutes or regulations.
ALTERNATIVES:
No alternatives were considered with regard to amending the regulations in response to statutory revisions.
FEDERAL STANDARDS:
There are no federal standards in regard to the Empire Zones program. Therefore, the emergency rule does not exceed any Federal standard.
COMPLIANCE SCHEDULE:
The period of time the state needs to assure compliance is negligible, and the Department of Economic Development expects to be compliant immediately.

Regulatory Flexibility Analysis

1. Effect of rule
The emergency rule imposes new record-keeping requirements on small businesses and large businesses choosing to participate in the Empire Zones program. The emergency rule requires all businesses that participate in the program to establish and maintain complete and accurate books relating to their participation in the Empire Zones program for a period of six years. Local governments are unaffected by this rule.
2. Compliance requirements
Each small business and large business choosing to participate in the Empire Zones program must establish and maintain complete and accurate books, records, documents, accounts, and other evidence relating to such business's application for entry into the Empire Zone program and relating to existing annual reporting requirements. Local governments are unaffected by this rule.
3. Professional services
No professional services are likely to be needed by small and large businesses in order to establish and maintain the required records. Local governments are unaffected by this rule.
4. Compliance costs
No initial capital costs are likely to be incurred by small and large businesses choosing to participate in the Empire Zones program. Annual compliance costs are estimated to be negligible for both small and large businesses. Local governments are unaffected by this rule.
5. Economic and technological feasibility
The Department of Economic Development ("DED") estimates that complying with this record-keeping is both economically and technologically feasible. Local governments are unaffected by this rule.
6. Minimizing adverse impact
DED finds no adverse economic impact on small or large businesses with respect to this rule. Local governments are unaffected by this rule.
7. Small business and local government participation
DED is in full compliance with SAPA Section 202-b(6), which ensures that small businesses and local governments have an opportunity to participate in the rule-making process. DED has conducted outreach within the small and large business communities and maintains continuous contact with small businesses and large businesses with regard to their participation in this program. Local governments are unaffected by this rule.

Rural Area Flexibility Analysis

The Empire Zones program is a statewide program. Although there are municipalities and businesses in rural areas of New York State that are eligible to participate in the program, participation by the municipalities and businesses is entirely at their discretion. The emergency rule imposes no additional reporting, record keeping or other compliance requirements on public or private entities in rural areas. Therefore, the emergency rule will not have a substantial adverse economic impact on rural areas or reporting, record keeping or other compliance requirements on public or private entities in such rural areas. Accordingly, a rural area flexibility analysis is not required and one has not been prepared.

Job Impact Statement

The emergency rule relates to the Empire Zones program. The Empire Zones program itself is a job creation incentive, and will not have a substantial adverse impact on jobs and employment opportunities. In fact, the emergency rule, which is being promulgated as a result of statutory reforms, will enable the program to continue to fulfill its mission of job creation and investment for economically distressed areas. Because it is evident from its nature that this emergency rule will have either no impact or a positive impact on job and employment opportunities, no further affirmative steps were needed to ascertain that fact and none were taken. Accordingly, a job impact statement is not required and one has not been prepared.

Department of Environmental Conservation

NOTICE OF ADOPTION

Regulations Governing the Recreational Harvest of Black Sea Bass

I.D. No. ENV-28-16-00002-A
Filing No. 834
Filing Date: 2016-09-02
Effective Date: 2016-09-21

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

Action taken: Amendment of Part 40 of Title 6 NYCRR.

Statutory authority: Environmental Conservation Law, sections 11-0303, 13-0105 and 13-0340-f

Subject: Regulations governing the recreational harvest of black sea bass.

Purpose: To reduce recreational black sea bass harvest in New York State.

Text or summary was published in the July 13, 2016 issue of the Register, I.D. No. ENV-28-16-00002-EP.

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

Text of rule and any required statements and analyses may be obtained from: Stephen Heins, New York State Department of Environmental Conservation, 205 North Belle Mead Road, Suite 1, East Setauket, NY 11733, (631) 444-0435, email: steve.heins@dec.ny.gov

Additional matter required by statute: The action is subject to SEQR as an Unlisted action and a Short EAF was completed. The Department has determined that an EIS need not be prepared and has issued a negative declaration. The EAF and negative declaration are available upon request.

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

DEC received two comments from a single individual regarding the proposed rulemaking.

Comment: The disparity in regulations, particularly the minimum size limit, between New York's commercial (11 inches) and recreational (15 inches) black sea bass fisheries is not equitable.

DEC Response: The fishery data systems accounting for how many black sea bass are taken by commercial harvesters and by recreational harvesters are very different. Commercial harvesters and the dealers that buy their catch are both required to report their landings and purchases, respectively. This allows for careful monitoring of commercial harvest. There are also only approximately 1,000 food fish license holders in New York. Lastly, the commercial minimum size limit for most species is set by the federal government.

In contrast, there are hundreds of thousands of marine recreational anglers who may choose to fish for black sea bass. Controlling and monitoring the harvest of this many anglers is very difficult. States are given some individual flexibility with respect to how they constrain recreational harvest to satisfy federally mandated limits. In New York, the much larger recreational minimum size is a result of state managers working with marine recreational fishing interests to optimize the minimum size, season, and possession limit to suit New York's fishery while constraining harvest.

Comment: Black sea bass are locally overabundant. More restrictions on recreational harvest are unnecessary.

DEC Response: Recreational harvest over the past few years and regional surveys do suggest that the black sea bass population in New York is healthy and abundant. However, the coast-wide catch limits are set by the federal government which takes into account the abundance of black sea bass from North Carolina to Massachusetts. New York State must abide by the federal limits and adopt measures that constrain harvest. If New York were to not adopt these regulations that reduce the recreational black sea bass harvest in 2016, the State would be out of compli-

ance with ASMFC and NMFS requirements and subject to a federal closure of the recreational and commercial black sea bass fisheries. A new population assessment for black sea bass is scheduled to be completed for the end of 2016. If this assessment confirms the great abundance of this species, it will allow for greater harvest and a smaller minimum size in the near future.

Department of Financial Services

EMERGENCY RULE MAKING

Assessment of Entities Regulated by the Banking Division of the Department of Financial Services

I.D. No. DFS-38-16-00002-E
Filing No. 832
Filing Date: 2016-09-01
Effective Date: 2016-09-05

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

Action taken: Addition of Part 501 to Title 3 NYCRR.

Statutory authority: Banking Law, section 17; Financial Services Law, section 206

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

Specific reasons underlying the finding of necessity: Pursuant to the Financial Services Law ("FSL"), the New York State Banking Department ("Banking Department") and the New York State Insurance Department were consolidated, effective October 3, 2011, into the Department of Financial Services ("Department").

Prior to the consolidation, assessments of institutions subject to the Banking Law ("BL") were governed by Section 17 of the BL; effective on October 3, 2011, assessments are governed by Section 206 of the Financial Services Law, provided that Section 17 continues to apply to assessments for the fiscal year which commenced April 1, 2011.

Both Section 17 of the Banking Law and Section 206 of the Financial Services Law provide that all expenses (compensation, lease costs and other overhead) of the Department in connection with the regulation and supervision (including examination) of any person or entity licensed, registered, incorporated or otherwise formed pursuant to the BL are to be charged to, and paid by, the regulated institutions subject to the supervision of in the Banking Division of the Department (the "Banking Division"). Under both statutes, the Superintendent is authorized to assess regulated institutions in the Banking Division in such proportions as the Superintendent shall deem just and reasonable.

Litigation commenced in June, 2011 challenged the methodology used by the Banking Department to assess mortgage bankers. On May 3, 2012, the Appellate Division invalidated this methodology for the 2010 State Fiscal Year, finding that the former Banking Department had not followed the requirements of the State Administrative Procedures Act.

In response to this ruling, the Department has determined to adopt this new rule setting forth the assessment methodology applicable to all entities regulated by the Banking Division for fiscal years beginning with fiscal year 2011.

The emergency adoption of this regulation is necessary to implement the requirements of Section 17 of the Banking Law and Section 206 of the Financial Services Law in light of the determination of the Court and the ongoing need to fund the operations of the Department without interruption.

Subject: Assessment of entities regulated by the Banking Division of the Department of Financial Services.

Purpose: New Part 501 implements Section 17 of the Banking Law and Section 206 of the Financial Services Law and sets forth the basis for allocating all costs and expenses attributable to the operation of the Banking Division of the Department of Financial Services among and between any person or entity licensed, registered, incorporated or otherwise formed pursuant the Banking Law.

Text of emergency rule: *Superintendent's Regulations*

Part 501

(BANKING DIVISION ASSESSMENTS)

Pursuant to the Financial Services Law ("FSL"), the New York State Banking Department ("Banking Department") and the New York State Insurance Department were consolidated on October 3, 2011 into the Department of Financial Services ("Department").

Prior to the consolidation, assessments of institutions subject to the Banking Law ("BL") were governed by Section 17 of the BL. Effective October 3, 2011, assessments are governed by Section 206 of the FSL, provided that Section 17 of the BL continues to apply to assessments for the fiscal year commencing on April 1, 2011.

Both Section 17 of the BL and Section 206 of the FSL provide that all expenses (including, but not limited to, compensation, lease costs and other overhead costs) of the Department attributable to institutions subject to the BL are to be charged to, and paid by, such regulated institutions. These institutions ("Regulated Entities") are now regulated by the Banking Division of the Department. Under both Section 17 of the BL and Section 206 of the FSL, the Superintendent is authorized to assess Regulated Entities for its total costs in such proportions as the Superintendent shall deem just and reasonable.

The Banking Department has historically funded itself entirely from industry assessments of Regulated Entities. These assessments have covered all direct and indirect expenses of the Banking Department, which are activities that relate to the conduct of banking business and the regulatory concerns of the Department, including all salary expenses, fringe benefits, rental and other office expenses and all miscellaneous and overhead costs such as human resource operations, legal and technology costs.

This regulation sets forth the basis for allocating such expenses among Regulated Entities and the process for making such assessments.

§ 501.2 Definitions.

The following definitions apply in this Part:

(a) "Total Operating Cost" means for the fiscal year beginning on April 1, 2011, the total direct and indirect costs of operating the Banking Division. For fiscal years beginning on April 1, 2012, "Total Operating Cost" means (1) the sum of the total operating expenses of the Department that are solely attributable to regulated persons under the Banking Law and (2) the proportion deemed just and reasonable by the Superintendent of the other operating expenses of the Department which under Section 206(a) of the Financial Services Law may be assessed against persons regulated under the Banking Law and other persons regulated by the Department.

(b) "Industry Group" means the grouping to which a business entity regulated by the Banking Division is assigned. There are three Industry Groups in the Banking Division:

(1) The Depository Institutions Group, which consists of all banking organizations and foreign banking corporations licensed by the Department to maintain a branch, agency or representative office in this state;

(2) The Mortgage-Related Entities Group, which consists of all mortgage brokers, mortgage bankers and mortgage loan servicers; and

(3) The Licensed Financial Services Providers Group, which consists of all check cashers, budget planners, licensed lenders, sales finance companies, premium finance companies and money transmitters.

(c) "Industry Group Operating Cost" means the amount of the Total Operating Cost to be assessed to a particular Industry Group. The amount is derived from the percentage of the total expenses for salaries and fringe benefits for the examining, specialist and related personnel represented by such costs for the particular Industry Group.

(d) "Industry Group Supervisory Component" means the total of the Supervisory Components for all institutions in that Industry Group.

(e) "Supervisory Component" for an individual institution means the product of the average number of hours attributed to supervisory oversight by examiners and specialists of all institutions of a similar size and type, as determined by the Superintendent, in the applicable Industry Group, or the applicable sub-group, and the average hourly cost of the examiners and specialists assigned to the applicable Industry Group or sub-group.

(f) "Industry Group Regulatory Component" means the Industry Group Operating Cost for that group minus the Industry Group Supervisory Component and certain miscellaneous fees such as application fees.

(g) "Industry Financial Basis" means the measurement tool used to distribute the Industry Group Regulatory Component among individual institutions in an Industry Group.

The Industry Financial Basis used for each Industry Group is as follows:

(1) For the Depository Institutions Group: total assets of all institutions in the group;

(2) For the Mortgage-Related Entities Group: total gross revenues from New York State operations, including servicing and secondary market revenues, for all institutions in the group; and

(3) For the Licensed Financial Services Providers Group: (i.) for budget planners, the number of New York customers; (ii.) for licensed lenders, the dollar amount of New York assets; (iii.) for check cashers, the dollar amount of checks cashed in New York; (iv.) for money transmitters, the dollar value of all New York transactions; (v.) for premium finance companies, the dollar value of loans originated in New York; and (vi.) for sales finance companies, the dollar value of credit extensions in New York.

(h) "Financial Basis" for an individual institution is that institution's portion of the measurement tool used in Section 501.2(g) to develop the Industry Financial Basis. (For example, in the case of the Depository Institutions Group, an entity's Financial Basis would be its total assets.)

(i) "Industry Group Regulatory Rate" means the result of dividing the Industry Group Regulatory Component by the Industry Financial Basis.

(j) "Regulatory Component" for an individual institution is the product of the Financial Basis for the individual institution multiplied by the Industry Group Regulatory Rate for that institution.

§ 501.3 Billing and Assessment Process.

The New York State fiscal year begins April 1 and ends March 31 of the following calendar year. Each institution subject to assessment pursuant to this Part is billed five times for a fiscal year: four quarterly assessments (each approximately 25% of the anticipated annual amount) based on the Banking Division's estimated annual budget at the time of the billing, and a final assessment (or "true-up"), based on the Banking Division's actual expenses for the fiscal year. Any institution that is a Regulated Entity for any part of a quarter shall be assessed for the full quarter.

§ 501.4 Computation of Assessment.

The total annual assessment for an institution shall be the sum of its Supervisory Component and its Regulatory Component.

§ 501.5 Penalties/Enforcement Actions.

All Regulated Entities shall be subject to all applicable penalties, including late fees and interest, provided for by the BL, the FSL, the State Finance law or other applicable laws. Enforcement actions for nonpayment could include suspension, revocation, termination or other actions.

§ 501.6 Effective Date.

This Part shall be effective immediately. It shall apply to all State Fiscal Years beginning with the Fiscal Year starting on April 1, 2011.

This notice is intended to serve only as a notice of emergency adoption. This agency intends to adopt this emergency rule as a permanent rule and will publish a notice of proposed rule making in the *State Register* at some future date. The emergency rule will expire November 29, 2016.

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

Regulatory Impact Statement

1. Statutory Authority

Pursuant to the Financial Services Law ("FSL"), the New York State Banking Department (the "Banking Department") and the New York State Insurance Department were consolidated, effective October 3, 2011, into the Department of Financial Services (the "Department").

Prior to the consolidation, assessments of institutions subject to the Banking Law ("BL") were governed by Section 17 of the BL; effective on October 3, 2011, assessments are governed by Section 206 of the Financial Services Law, provided that Section 17 continues to apply to assessments for the fiscal year which commenced April 1, 2011.

Both Section 17 of the BL and Section 206 of the FSL provide that all expenses (compensation, lease costs and other overhead) of the Department in connection with the regulation and supervision of any person or entity licensed, registered, incorporated or otherwise formed pursuant to the BL are to be charged to, and paid by, the regulated institutions subject to the supervision of the Banking Division of the Department (the "Banking Division"). Under both statutes, the Superintendent is authorized to assess regulated institutions in the Banking Division in such proportions as the Superintendent shall deem just and reasonable.

In response to a court ruling, In the Matter of Homestead Funding Corporation v. State of New York Banking Department et al., 944 N.Y.S. 2d 649 (2012) ("Homestead"), that held that the Department should adopt changes to its assessment methodology for mortgage bankers through a formal assessment rule pursuant to the requirements of the State Administrative Procedures Act ("SAPA"), the Department has determined to adopt this new regulation setting forth the assessment methodology applicable to all entities regulated by the Banking Division for fiscal years beginning with fiscal year 2011.

2. Legislative Objectives

The BL and the FSL make the industries regulated by the former Banking Department (and now by the Banking Division of the new Department) responsible for all the costs and expenses of their regulation by the State. The assessments have covered all direct and indirect expenses of the Banking Department, which are activities that relate to the conduct of banking business and the regulatory concerns of the Department, including all salary expenses, fringe benefits, rental and other office expenses and all miscellaneous and overhead costs such as human resource operations, legal and technology costs.

This reflects a long-standing State policy that the regulated industries are the appropriate parties to pay for their supervision in light of the financial benefits it provides to them to engage in banking and other regulated businesses in New York. The statute specifically provides that these costs are to be allocated among such institutions in the proportions deemed just and reasonable by the Superintendent.

While this type of allocation had been the practice of the former Banking Department for many decades, Homestead found that a change to the methodology for mortgage bankers to include secondary market and servicing income should be accomplished through formal regulations subject to the SAPA process. Given the nature of the Banking Division's assessment methodology - - the calculation and payment of the assessment is ongoing throughout the year and any period of uncertainty as to the applicable rule would be extremely disruptive - - the Department has determined that it is necessary to adopt the rule on an emergency basis so as to avoid any possibility of disrupting the funding of its operations.

3. Needs and Benefits

The Banking Division regulates more than 250 state chartered banks and licensed foreign bank branches and agencies in New York with total assets of over $2 trillion. In addition, it regulates a variety of other entities engaged in delivering financial services to the residents of New York State. These entities include: licensed check cashers; licensed money transmitters; sales finance companies; licensed lenders; premium finance companies; budget planners; mortgage bankers and brokers; mortgage loan servicers; and mortgage loan originators.

Collectively, the regulated entities represent a spectrum, from some of the largest financial institutions in the country to the smallest, neighborhood-based financial services providers. Their services are vital to the economic health of New York, and their supervision is critical to ensuring that these services are provided in a fair, economical and safe manner.

This supervision requires that the Banking Division maintain a core of trained examiners, plus facilities and systems. As noted above, these costs are by statute to be paid by all regulated entities in the proportions deemed just and reasonable by the Superintendent. The new regulation is intended to formally set forth the methodology utilized by the Banking Division for allocating these costs.

4. Costs

The new regulation does not increase the total costs assessed to the regulated industries or alter the allocation of regulatory costs between the various industries regulated by the Banking Division. Indeed, the only change from the allocation methodology used by the Banking Department in the previous state fiscal years is that the regulatory costs assessed to the mortgage banking industry will be divided among the entities in that group on a basis which includes income derived from secondary market and servicing activities. The Department believes that this is a more appropriate basis for allocating the costs associated with supervising mortgage banking entities.

5. Local Government Mandates

None.

6. Paperwork

The regulation does not change the process utilized by the Banking Division to determine and collect assessments.

7. Duplication

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

8. Alternatives

The purpose of the regulation is to formally set forth the process employed by the Department to carry out the statutory mandate to assess and collect the operating costs of the Banking Division from regulated entities. In light of Homestead, the Department believes that promulgating this formal regulation is necessary in order to allow it to continue to assess all of its regulated institutions in the manner deemed most appropriate by the Superintendent. Failing to formalize the Banking Division's allocation methodology would potentially leave the assessment process open to further judicial challenges.

9. Federal Standards

Not applicable.

10. Compliance Schedule

The emergency regulations are effective immediately. Regulated institutions will be expected to comply with the regulation for the fiscal year beginning on April 1, 2011 and thereafter.

Regulatory Flexibility Analysis

1. Effect of the Rule:

The regulation does not have any impact on local governments.

The regulation simply codifies the methodology used by the Banking Division of the Department of Financial Services (the "Department") to assess all entities regulated by it, including those which are small businesses. The regulation does not increase the total costs assessed to the regulated industries or alter the allocation of regulatory costs between the various industries regulated by the Banking Division.

Indeed, the only change from the allocation methodology used by the Banking Department in the previous state fiscal years is that the regulatory

costs assessed to the mortgage banking industry will be divided among the entities in that group on a basis which includes income derived from secondary market and servicing activities. The Department believes that this is a more appropriate basis for allocating the costs associated with supervising mortgage banking entities. It is expected that the effect of this change will be that larger members of the mortgage banking industry will pay an increased proportion of the total cost of regulating that industry, while the relative assessments paid by smaller industry members will be reduced.

2. Compliance Requirements:

The regulation does not change existing compliance requirements. Both Section 17 of the Banking Law and Section 206 of the Financial Services Law provide that all expenses (compensation, lease costs and other overhead) of the Department in connection with the regulation and supervision of any person or entity licensed, registered, incorporated or otherwise formed pursuant to the Banking Law are to be charged to, and paid by, the regulated institutions subject to the supervision of the Banking Division. Under both statutes, the Superintendent is authorized to assess regulated institutions in the Banking Division in such proportions as the Superintendent shall deem just and reasonable.

3. Professional Services:

None.

4. Compliance Costs:

All regulated institutions are currently subject to assessment by the Banking Division. The regulation simply formalizes the Banking Division's assessment methodology. It makes only one change from the allocation methodology used by the Banking Department in the previous state fiscal years. That change affects only one of the industry groups regulated by the Banking Division. Regulatory costs assessed to the mortgage banking industry are now divided among the entities in that group on a basis which includes income derived from secondary market and servicing activities. Even within the one industry group affected by the change, additional compliance costs, if any, are expected to be minimal.

5. Economic and Technological Feasibility:

All regulated institutions are currently subject to the Banking Division's assessment requirements. The formalization of the Banking Division's assessment methodology in a regulation will not impose any additional economic or technological burden on regulated entities which are small businesses.

6. Minimizing Adverse Impacts:

Even within the mortgage banking industry, which is the one industry group affected by the change in assessment methodology, the change will not affect the total amount of the assessment. Indeed, it is anticipated that this change may slightly reduce the proportion of mortgage banking industry assessments that is paid by entities that are small businesses.

7. Small Business and Local Government Participation:

This regulation does not impact local governments.

This regulation simply codifies the methodology which the Banking Division uses for determining the just and reasonable proportion of the Banking Division's costs to be charged to and paid by each regulated institution, including regulated institutions which are small businesses. The overall methodology was adopted in 2005 after extensive discussion with regulated entities and industry associations representing groups of regulated institutions, including those that are small businesses.

Thereafter, the Banking Department applied assessments against all entities subject to its regulation. In addition, for fiscal 2010, the Banking Department changed its overall methodology slightly with respect to assessments against the mortgage banking industry to include income derived from secondary market and servicing activities. Litigation was commenced challenging this latter change, and in a recent decision, In the Matter of Homestead Funding Corporation v. State of New York Banking Department et al., 944 N.Y.S. 2d 649 (2012), the court determined that the Department should adopt a change to its assessment methodology for mortgage bankers through a formal assessment rule promulgated pursuant to the requirements of the State Administrative Procedures Act. The challenged change in methodology had the effect of increasing the proportion of assessments against the mortgage banking industry paid by its larger members, while reducing the assessments paid by smaller participants, including those which are small businesses.

Rural Area Flexibility Analysis

Types and Estimated Numbers. There are entities regulated by the New York State Department of Financial Services (formerly the Banking Department) located in all areas of the State, including rural areas. However, this rule simply codifies the methodology currently used by the Department to assess all entities regulated by it. The regulation does not alter that methodology, and thus it does not change the cost of assessments on regulated entities, including regulated entities located in rural areas.

Compliance Requirements. The regulation would not change the current compliance requirements associated with the assessment process.

Costs. While the regulation formalizes the assessment process, it does not change the amounts assessed to regulated entities, including those located in rural areas.

Minimizing Adverse Impacts. The regulation does not increase the total amount assessed to regulated entities by the Department. It simply codifies the methodology which the Superintendent has chosen for determining the just and reasonable proportion of the Department's costs to be charged to and paid by each regulated institution.

Rural Area Participation. This rule simply codifies the methodology which the Department currently uses for determining the just and reasonable proportion of the Department's costs to be charged to and paid by each regulated institution, including regulated institutions located in rural areas. The overall methodology was adopted in 2005 after extensive discussion with regulated entities and industry associations representing groups of regulated institutions, including those located in rural areas. It followed the loss of several major banking institutions that had paid significant portions of the former Banking Department's assessments.

Thereafter, the Department applied assessments against all entities subject to its regulation. In addition, for fiscal 2010, the Department changed this overall methodology slightly with respect to assessments against the mortgage banking industry to include income derived from secondary market income and servicing income. This latter change was challenged by a mortgage banker, and in early May, the Appellate Division determined that the latter change should have been made in conformity with the State Administrative Procedures Act. The challenged part of the methodology had the effect of increasing the proportion of assessments against the mortgage banking industry paid by its larger members, while reducing the assessments paid by smaller participants.

Job Impact Statement

The regulation is not expected to have an adverse effect on employment.

All institutions regulated by the Banking Division (the "Banking Division") of the Department of Financial Services are currently subject to assessment by the Department. The regulation simply formalizes the assessment methodology used by the Banking Division. It makes only one change from the allocation methodology used by the former Banking Department in the previous state fiscal years.

That change affects only one of the industry groups regulated by the Banking Division. It somewhat alters the way in which the Banking Division's costs of regulating mortgage banking industry are allocated among entities within that industry. In any case, the total amount assessed against regulated entities within that industry will remain the same.

New York State Gaming Commission

NOTICE OF ADOPTION

Repeal of Obsolete Thoroughbred Rule Giving Extra Weight Allowance for Apprentice Jockey Riding for "Original Contract Employer"

I.D. No. SGC-24-16-00007-A

Filing No. 825

Filing Date: 2016-08-31

Effective Date: 2016-09-21

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

Action taken: Repeal of section 4032.1(e) of Title 9 NYCRR.

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

Subject: Repeal of obsolete thoroughbred rule giving extra weight allowance for apprentice jockey riding for "original contract employer".

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

Text of final rule: Subdivisions (c) and (d) of section 4032.1 of 9 NYCRR are amended and subdivision (e) of section 4032.1 of 9 NYCRR is deleted as follows:

§ 4032.1. Apprentice weight allowances.

An apprentice jockey licensed in accordance with section 4002.26 of this Article may claim the following weight allowances in all overnight races except stakes and handicaps:

* * *

(c) if an apprentice has ridden a total of 40 winners prior to the end of a period of one year from the date of riding his or her fifth winner, he or she shall have an allowance of five pounds until one year from the date of the fifth winning mount; *and*

(d) if after one year from the date of the fifth winning mount the apprentice jockey has not ridden 40 winners, the applicable weight allowance shall continue for one more year from the date of the fifth winning mount, or until the 40th winner, whichever comes first. In no event may a weight allowance be claimed for more than two years from the date of the fifth winning mount, unless an extension has been granted under this rule[; and

(e) a contracted apprentice may claim an allowance of three pounds for an additional one year while riding horses owned or trained by the original contract employee].

Final rule as compared with last published rule: Nonsubstantial changes were made in section 4032.1(c) and (d).

Text of rule and any required statements and analyses may be obtained from: Kristen Buckley, New York State Gaming Commission, One Broadway Center, P.O. Box 7500, Schenectady, New York 12301, (518) 388-3407, email: gamingrules@gaming.ny.gov

Revised Regulatory Impact Statement

A revised Regulatory Impact Statement is not required because the non-substantive changes to Section 4032.1(c) and Section 4032.1(d) involve corrections in numbering, grammar and punctuation. With the deletion of Section 4032.1(e), 4032.1(d) is the now the closing paragraph and the word "and" needs to be moved 4032.1(c) for proper grammar.

As is apparent from the revision, the non-substantive change will not have an impact beyond those stated in the RIS of the Notice of Proposed Rulemaking.

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

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

The amendment, as proposed, is a technical revision to the Commission's thoroughbred rules to omit weight allowances for jockeys racing for their "original contract employer." This is an obsolete provision. Jockeys no longer participate in an apprentice system as a pre-requisite to obtaining a jockey license.

The amendment, as adopted, also includes non-substantive changes to the language of the preceding sub-sections as a matter of grammar and punctuation.

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

Initial Review of Rule

As a rule that does not require a RFA, RAFA or JIS, this rule will be initially reviewed in the calendar year 2021, which is no later than the 5th year after the year in which this rule is being adopted

Assessment of Public Comment

The agency received no public comment.

NOTICE OF ADOPTION

Criteria and Procedures for Patron Exclusion at a Gaming Facility

I.D. No. SGC-28-16-00006-A

Filing No. 843

Filing Date: 2016-09-06

Effective Date: 2016-09-21

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

Action taken: Addition of Part 5327 to Title 9 NYCRR.

Statutory authority: Racing, Pari-Mutuel Wagering and Breeding Law, sections 104(19), 1307(1), 1342(1), (3) and (4)

Subject: Criteria and procedures for patron exclusion at a gaming facility.

Purpose: To establish criteria and procedures for patron exclusion at a gaming facility.

Text or summary was published in the July 13, 2016 issue of the Register, I.D. No. SGC-28-16-00006-P.

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

Text of rule and any required statements and analyses may be obtained from: Kristen Buckley, New York State Gaming Commission, One Broadway Center, P.O. Box 7500, Schenectady, New York 12301, (518) 388-3407, email: gamingrules@gaming.ny.gov

Initial Review of Rule

As a rule that does not require a RFA, RAFA or JIS, this rule will be initially reviewed in the calendar year 2021, which is no later than the 5th year after the year in which this rule is being adopted.

Assessment of Public Comment

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

1. Proposed Rule 5327.2. The commentator requested the word "shall" be changed to "may" in the context of who should be placed on the excluded persons list. The Commission conducted a thorough review of those jurisdictions that regulate excluded persons and believes that the rule is consistent with those jurisdictions.

NOTICE OF ADOPTION

Definitions of Terms Used Throughout Subchapter B, Casino Gaming

I.D. No. SGC-28-16-00007-A

Filing No. 836

Filing Date: 2016-09-06

Effective Date: 2016-09-21

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

Action taken: Amendment of section 5300.1 of Title 9 NYCRR.

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

Subject: Definitions of terms used throughout Subchapter B, Casino Gaming.

Purpose: To define terms applicable to Subchapter B, Casino Gaming.

Text or summary was published in the July 13, 2016 issue of the Register, I.D. No. SGC-28-16-00007-P.

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

Text of rule and any required statements and analyses may be obtained from: Kristen Buckley, New York State Gaming Commission, One Broadway Center, P.O. Box 7500, Schenectady, New York 12301, (518) 388-3407, email: gamingrules@gaming.ny.gov

Initial Review of Rule

As a rule that does not require a RFA, RAFA or JIS, this rule will be initially reviewed in the calendar year 2021, which is no later than the 5th year after the year in which this rule is being adopted.

Assessment of Public Comment

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

1. Proposed Rule 5300.1(f). The commentator requested the word "bankroll" be replaced with "fill bank." The Commission reviewed the American Institute of Certified Public Accountants' Gaming Audit and Accounting guide. The Guide uses the word bankroll in this context.

NOTICE OF ADOPTION

Regulation of Table Game Equipment

I.D. No. SGC-28-16-00008-A

Filing No. 837

Filing Date: 2016-09-06

Effective Date: 2016-09-21

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

Action taken: Addition of Part 5322 to Title 9 NYCRR.

Statutory authority: Racing, Pari-Mutuel Wagering and Breeding Law, sections 104(19), 1307(1), (2)(g), 1335(4) and (11)

Subject: Regulation of table game equipment.

Purpose: To set forth the physical characteristics, inspection, use, storage and destruction of table game equipment.

Substance of final rule: The addition of Part 5322 of Subtitle T of Title 9 NYCRR will allow the New York State Gaming Commission ("Commission") to prescribe requirements for the inspection, use, storage and destruction of table game equipment. The rule also prescribes the physical characteristics for certain table game equipment.

Section 5322.1 sets forth the definitions applicable to the Part. Section 5322.2 establishes the physical characteristics of gaming chips. Section 5322.3 establishes the procedure for reserve gaming chip use. Section 5322.4 sets forth the procedure for the exchange and redemption of gaming chips and table game promotional coupons. Section 5322.5 sets forth the procedure for the receipt, security, storage and destruction of gaming chips. Sections 5322.6 and 5322.7 set forth the physical characteristics and use of tournament chips and plaques. Sections 5322.8 and 5322.9 set forth the physical characteristics of big wheels and roulette equipment. Section 5322.10 establishes the inspection and storage requirements for manual or automated shakers. Sections 5322.11 through 5322.13 set forth the physical characteristics, use, storage, inspection and destruction requirements for dice and pai gow tiles. Sections 5322.14 and 5322.15 set forth the physical characteristics, use, storage, inspection and destruction requirements for playing cards. Section 5322.16 establishes procedures for the pre-shuffle and pre-inspection of playing cards. Sections 5322.17 through 5322.19 establish requirements for the use of card readers, dealing shoes, automated dealing devices and automated card shuffling devices.

Final rule as compared with last published rule: Nonsubstantive changes were made in sections 5322.2(e) and 5322.4(g).

Text of rule and any required statements and analyses may be obtained from: Kristen Buckley, New York State Gaming Commission, One Broadway Center, P.O. Box 7500, Schenectady, New York 12301, (518) 388-3407, email: gamingrules@gaming.ny.gov

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

The Commission made nonsubstantive changes to sections 5322.2 and 5322.4 in Part 5322 Table Game Equipment. The changes do not necessitate a revision to the previously published RIS and consolidated RFA, RAFA and JIS statement.

Initial Review of Rule

As a rule that does not require a RFA, RAFA or JIS, this rule will be initially reviewed in the calendar year 2021, which is no later than the 5th year after the year in which this rule is being adopted.

Assessment of Public Comment

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

1. Proposed Rule 5322.2(b)(8). The commentator requested that each value chip with a denomination of $25 or more only be required to contain at least two anti-counterfeiting measures. The Commission disagrees and believes that imposing a minimum of at least three anti-counterfeiting measures is not overly burdensome and consistent with other gaming jurisdictions.

2. Proposed Rule 5322.2(d)(4) and (e)(4). The commentator requested that the descriptive requirements for a promotional gaming chip be removed. The Commission reviewed other gaming jurisdictions and believes these requirements provide an additional measure of security.

3. Proposed Rule 5322.4(c). The commentator requested that patrons be allowed to use value chips for payment of food, beverage or related serves. The Commission conducted a thorough review of those jurisdictions that regulate the use of value chips and believes that the proposed rule is consistent with those jurisdictions.

4. Proposed Rule 5322.18(b). The commentator requested that an automatic card shuffling device not be stored in a locked compartment when it is not in use. The Commission disagrees and believes a locked compartment is necessary to protect against automatic card shuffling device tampering.

NOTICE OF ADOPTION

Licensing and Registration of Junkets and Junket Enterprises

I.D. No. SGC-28-16-00009-A
Filing No. 838
Filing Date: 2016-09-06
Effective Date: 2016-09-21

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

Action taken: Addition of Part 5308 to Title 9 NYCRR.

Statutory authority: Racing, Pari-Mutuel Wagering and Breeding Law, sections 104(19), 1307(1), 1328(2), (3) and (11)

Subject: Licensing and registration of junkets and junket enterprises.

Purpose: To govern the licensing and registration of junkets and junket enterprises.

Text or summary was published in the July 13, 2016 issue of the Register, I.D. No. SGC-28-16-00009-P.

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

Text of rule and any required statements and analyses may be obtained from: Kristen Buckley, New York State Gaming Commission, One Broadway Center, P.O. Box 7500, Schenectady, New York 12301, (518) 388-3407, email: gamingrules@gaming.ny.gov

Initial Review of Rule

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

Assessment of Public Comment

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

1. Proposed Rule 5308.1: The commentator requested confirmation that a chartered bus tour would not be considered a junket. The Commission believes that a chartered bus tour is not a junket under Racing, Pari-Mutuel Wagering and Breeding Law section 1301(29).

2. Proposed Rule 5308.2(a): The commentator believes the language "affiliate of a gaming facility licensee" is overly broad. The Commission disagrees as the language contained in the proposed rule mirrors Racing, Pari-Mutuel Wagering and Breeding Law section 1328(2).

NOTICE OF ADOPTION

Registration of Labor Organizations

I.D. No. SGC-28-16-00010-A
Filing No. 839
Filing Date: 2016-09-06
Effective Date: 2016-09-21

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

Action taken: Addition of Part 5310 to Title 9 NYCRR.

Statutory authority: Racing, Pari-Mutuel Wagering and Breeding Law, sections 104(19), 1307(1), 1330(1) and (2)

Subject: Registration of labor organizations.

Purpose: To govern the registration of labor organizations.

Text or summary was published in the July 13, 2016 issue of the Register, I.D. No. SGC-28-16-00010-P.

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

Text of rule and any required statements and analyses may be obtained from: Kristen Buckley, New York State Gaming Commission, One Broadway Center, P.O. Box 7500, Schenectady, New York 12301, (518) 388-3407, email: gamingrules@gaming.ny.gov

Initial Review of Rule

As a rule that does not require a RFA, RAFA or JIS, this rule will be initially reviewed in the calendar year 2021, which is no later than the 5th year after the year in which this rule is being adopted.

Assessment of Public Comment

The agency received no public comment.

NOTICE OF ADOPTION

To Set Forth the Practices and Procedures for the Conduct and Operation of Table Games

I.D. No. SGC-28-16-00011-A
Filing No. 840
Filing Date: 2016-09-06
Effective Date: 2016-09-21

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

Action taken: Addition of Part 5323 to Title 9 NYCRR.

Statutory authority: Racing, Pari-Mutuel Wagering and Breeding Law, sections 104(19), 1307(1), (2)(g), 1335(4) and (6)

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

Purpose: To regulate the conduct and operation of gaming tables.

Substance of final rule: The addition of Part 5323 of Subtitle T of Title 9 NYCRR will allow the New York State Gaming Commission ("Commission") to prescribe requirements for the conduct and operation of table games.

Section 5323.1 sets forth the definitions applicable to the Part. Section 5323.2 sets forth the requirement for table game staffing plans, table game equipment schematics and table game layouts to be submitted to the Commission for approval. Section 5323.3 requires a gaming facility licensee to establish a dealer training program as part of its system of internal controls. Sections 5323.4 through 5323.7 set forth the table inventory, opening, shift change and closing requirements for table games. Sections 5323.8 and 5323.9 establish requirements for the distribution and removal of chips and coins. Section 5323.10 sets forth the requirements for the acceptance and exchange of cash and coupons for gaming chips or plaques. Section 5323.11 requires a gaming facility licensee to receive commission approval for minimum and maximum table game wagers. Sections 5323.12 and 5323.13 require a gaming facility licensee to post payout odds and table game rules at a table game. Section 5323.14 requires gaming facility licensees to maintain and make available the complete text of authorized table game rules. Sections 5323.15 and 5323.16 set for the requirements for a progressive table game system and payment of progressive wagers. Section 5323.17 sets forth the requirements for the conduct of table game tournaments. Section 5323.18 requires a gaming facility licensee to submit new table games or new features to the Commission for approval. Section 5323.19 authorizes the temporary operation of a new table game or table game feature.

Final rule as compared with last published rule: Nonsubstantive changes were made in section 5323.13(a).

Text of rule and any required statements and analyses may be obtained from: Kristen Buckley, New York State Gaming Commission, One Broadway Center, P.O. Box 7500, Schenectady, New York 12301, (518) 388-3407, email: gamingrules@gaming.ny.gov

Revised Regulatory Impact Statement, Regulatory Flexibility Analysis, Rural Area Flexibility Analysis and Job Impact Statement
The Commission made a nonsubstantive change to section 5323.13 in Part 5323 Table Game Standards. The change does not necessitate a revision to the previously published RIS and consolidated RFA, RAFA and JIS statement.

Initial Review of Rule
As a rule that does not require a RFA, RAFA or JIS, this rule will be initially reviewed in the calendar year 2021, which is no later than the 5th year after the year in which this rule is being adopted.

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

1. Proposed Rule 5323.2(c) through (e). The commentator requested the 30-day review period be shortened to seven days. The Commission disagrees and reserves the right to the 30-day review for more complex matters.

2. Proposed Rule 5323.5(d). The commentator requested that only discrepancies of $25 or more should be reported to the Commission. The Commission disagrees and believes it is prudent to be notified of all discrepancies.

3. Proposed Rule 5323.10(a)(3). The commentator requested that supervisor approval not be required before a dealer or boxperson distributes chips to a player. The Commission disagrees because the proposed rule does not prescribe the method of obtaining approval.

4. Proposed Rule 5323.17. The commentator suggested that gaming facilities should be allowed to offer tournaments without providing notice to the Commission. The Commission believes that ongoing and/or recurring tournaments do not require notice to the Commission.

5. Proposed Rule 5323.17(a)(3). The commentator requested that the disclosure requirement should be limited to instances where the number of patrons is known in advance of the tournament. The Commission disagrees and believes that the proposed rule should apply in all circumstances.

NOTICE OF ADOPTION

Registration of Lobbyists

I.D. No. SGC-28-16-00012-A
Filing No. 841
Filing Date: 2016-09-06
Effective Date: 2016-09-21

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

Action taken: Addition of Part 5309 to Title 9 NYCRR.

Statutory authority: Racing, Pari-Mutuel Wagering and Breeding Law, sections 104(19), 1307(1) and 1329

Subject: Registration of lobbyists.

Purpose: To govern the registration of lobbyists.

Text or summary was published in the July 13, 2016 issue of the Register, I.D. No. SGC-28-16-00012-P.

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

Text of rule and any required statements and analyses may be obtained from: Kristen Buckley, New York State Gaming Commission, One Broadway Center, P.O. Box 7500, Schenectady, New York 12301, (518) 388-3407, email: gamingrules@gaming.ny.gov

Initial Review of Rule
As a rule that does not require a RFA, RAFA or JIS, this rule will be initially reviewed in the calendar year 2021, which is no later than the 5th year after the year in which this rule is being adopted.

Assessment of Public Comment
The agency received no public comment.

PROPOSED RULE MAKING
NO HEARING(S) SCHEDULED

Definition of the "Wire" at the Finish of a Harness Race

I.D. No. SGC-38-16-00004-P

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

Proposed Action: Amendment of section 4100.1 of Title 9 NYCRR.

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

Subject: Definition of the "wire" at the finish of a harness race.

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

Text of proposed rule: Paragraph 48 of subdivision (a) of section 4100.1 of 9 NYCRR would be amended as follows:

§ 4100.1. Definitions.
(a) As used in this Subchapter, the following definitions are applicable:
* * *

(48) Wire means a real or imaginary *finish* line *across the track* from the [center of the judge's stand] *photo-finish camera* to a point immediately across[,] *from the camera* and at right angles to[,] the track.

Text of proposed rule and any required statements and analyses may be obtained from: Kristen M. Buckley, New York State Gaming Commission, 1 Broadway Center, P.O. Box 7500, Schenectady, New York 12301, (518) 388-3407, email: gamingrules@gaming.ny.gov

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

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

Regulatory Impact Statement
1. Statutory authority: The New York State Gaming Commission ("Commission") is authorized to promulgate these rules pursuant to Rac-

ing Pari-Mutuel Wagering and Breeding Law ("Racing Law") Sections 103(2), 104(1, 19), and 301(1). Under Section 103(2), the Commission is responsible for supervising, regulating and administering all horse racing and pari-mutuel wagering activities in the State. Subdivision (1) of Section 104 confers upon the Commission general jurisdiction over all such gaming activities within the State and over the corporations, associations and persons engaged in such activities. Subdivision (19) of Section 104 authorizes the Commission to promulgate any rules and regulations that it deems necessary to carry out its responsibilities. Under Section 301(1), the Commission is authorized to supervise generally all harness race meetings and to adopt rules to prevent the circumvention or evasion of its regulatory purposes and provisions.

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

3. Needs and benefits: This rule making is needed to make a technical correction to the definition of "wire" in the harness racing rules.

The current definition of "wire," at 9 NYCRR § 4000.1(a)(48), includes an unnecessary reference to a structure, the judges' stand. As a result, in cases of temporary and unavoidable relocation of such stand, the definition is needlessly inaccurate. The proposal would amend such rule to delete this reference. The definition of "wire" will continue to include the location of the photo-finish camera and to designate the finish line of the race.

4. Costs:

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

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

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

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

6. Paperwork: There will be no additional paperwork.

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

8. Alternatives: The Commission considered not changing this rule, but decided to propose making the definition of "wire" more accurate.

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

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

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

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

The proposed amendment is a technical revision to the Commission's standardbred racing rules' current definition of the term "wire" to omit an unneeded reference to a structure.

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

Department of Health

EMERGENCY RULE MAKING

Lead Testing in School Drinking Water

I.D. No. HLT-38-16-00007-E
Filing No. 842
Filing Date: 2016-09-06
Effective Date: 2016-09-06

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

Action taken: Addition of Subpart 67-4 to Title 10 NYCRR.

Statutory authority: Public Health Law, sections 1370-a and 1110

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

Specific reasons underlying the finding of necessity: Lead exposure is associated with impaired cognitive development in children. The known adverse health effects for children from lead exposure include reduced IQ and attention span, learning disabilities, poor classroom performance, hyperactivity, behavioral problems, and impaired growth. Although measures can be taken to help children overcome any potential impairments on cognition, the effects are considered irreversible.

Lead can enter drinking water from the corrosion of plumbing materials. Facilities such as schools, which have intermittent water use patterns, may have elevated lead concentration due to prolonged water contact with plumbing material. This source is increasingly being recognized as an important relative contribution to a child's overall lead exposure. Recent voluntary testing by school districts in New York State and other jurisdictions demonstrate the need to provide clear direction to schools on the requirements and procedures to sample drinking water for lead.

Every school should supply drinking water to students that meets or exceeds federal and state standards and guidelines. Although the federal Environmental Protection Agency ("EPA") has established a voluntary testing program—known as the "3Ts for Reducing Lead in Drinking Water in Schools"—there is no federal law that requires schools to test their drinking water for lead or that requires an appropriate response, if lead is determined to be present in school drinking water.

To help ensure that children are protected from lead exposure while in school, the Commissioner of Health has determined it necessary to file these regulations on an emergency basis. State Administrative Procedure Act § 202(6) empowers the Commissioner to adopt emergency regulations when necessary for the preservation of the public health, safety or general welfare and that compliance with routine administrative procedures would be contrary to the public interest.

Subject: Lead testing in school drinking water.

Purpose: Requires lead testing and remediation of potable drinking water in schools.

Text of emergency rule: Pursuant to the authority vested in the Commissioner of Health by Public Health Law sections 1370-a and 1110, Subpart 67-4 of Title 10 (Health) of the Official Compilation of Codes, Rules and Regulations of the State of New York is added, to be effective upon filing with the Secretary of State, to read as follows:

SUBPART 67-4: Lead Testing in School Drinking Water

Section 67-4.1 Purpose.

This Subpart requires all school districts and boards of cooperative educational services, including those already classified as a public water system under 10 NYCRR Subpart 5-1, to test potable water for lead contamination and to develop and implement a lead remediation plan, where applicable.

Section 67-4.2 Definitions.

As used in this Subpart, the following terms shall have the stated meanings:

(a) Action level means 15 micrograms per liter (µg/L) or parts per billion (ppb). Exceedance of the action level requires a response, as set forth in this Subpart.

(b) Building means any structure, facility, addition, or wing of a school that may be occupied by children or students. The terms shall not include any structure, facility, addition, or wing of a school that is lead-free, as defined in section 1417 of the Federal Safe Drinking Water Act.

(c) Commissioner means the State Commissioner of Health.

(d) Department means the New York State Department of Health.

(e) Outlet means a potable water fixture currently or potentially used for drinking or cooking purposes, including but not limited to a bubbler, drinking fountain, or faucets.

(f) Potable water means water that meets the requirements of 10 NYCRR Subpart 5-1.

(g) School means any school district or board of cooperative educational services (BOCES).

Section 67-4.3 Monitoring.

(a) All schools shall test potable water for lead contamination as required in this Subpart.

(b) First-draw samples shall be collected from all outlets, as defined in this Subpart. A first-draw sample volume shall be 250 milliliters (mL), collected from a cold water outlet before any water is used. The water shall be motionless in the pipes for a minimum of 8 hours, but not more than 18 hours, before sample collection. First-draw samples shall be collected pursuant to such other specifications as the Department may determine appropriate.

(c) Initial first-draw samples.

(1) For existing buildings in service as of the effective date of this

regulation, schools shall complete collection of initial first-draw samples according to the following schedule:

(i) for any school serving children in any of the levels prekindergarten through grade five, collection of samples is to be completed by September 30, 2016;

(ii) for any school serving children in any of the levels grades six through twelve that are not also serving students in any of the levels prekindergarten through grade five, and all other applicable buildings, collection of samples is to be completed by October 31, 2016.

(2) For buildings put into service after the effective date of this regulation, initial first-draw samples shall be performed prior to occupancy; provided that if the building is put into service between the effective date of this regulation but before October 31, 2016, the school shall have 30 days to perform first-draw sampling.

(3) Any first-draw sampling conducted consistent with this Subpart that occurred after January 1, 2015 shall satisfy the initial first-draw sampling requirement.

(d) Continued monitoring. Schools shall collect first-draw samples in accordance with subdivision (b) of this section again in 2020 or at an earlier time as determined by the commissioner. Schools shall continue to collect first-draw samples at least every 5 years thereafter or at an earlier time as determined by the commissioner.

(e) All first-draw samples shall be analyzed by a laboratory approved to perform such analyses by the Department's Environmental Laboratory Approval Program (ELAP).

Section 67-4.4 Response.

If the lead concentration of water at an outlet exceeds the action level, the school shall:

(a) prohibit use of the outlet until:

(1) a lead remediation plan is implemented to mitigate the lead level of such outlet; and

(2) test results indicate that the lead levels are at or below the action level;

(b) provide building occupants with an adequate supply of potable water for drinking and cooking until remediation is performed;

(c) report the test results to the local health department as soon as practicable, but no more than 1 business day after the school received the laboratory report; and

(d) notify all staff and all persons in parental relation to students of the test results, in writing, as soon as practicable but no more than 10 business days after the school received the laboratory report; and, for results of tests performed prior to the effective date of this Subpart, within 10 business days of this regulation's effective date, unless such written notification has already occurred.

Section 67-4.5 Public Notification.

(a) List of lead-free buildings. By October 31, 2016, the school shall make available on its website a list of all buildings that are determined to be lead-free, as defined in section 1417 of the Federal Safe Drinking Water Act.

(b) Public notification of testing results and remediation plans.

(1) The school shall make available, on the school's website, the results of all lead testing performed and lead remediation plans implemented pursuant to this Subpart, as soon as practicable, but no more than 6 weeks after the school received the laboratory reports.

(2) For schools that received lead testing results and implemented lead remediation plans in a manner consistent with this Subpart, but prior to the effective date of this Subpart, the school shall make available such information, on the school's website, as soon as practicable, but no more than 6 weeks after the effective date of this Subpart.

Section 67-4.6 Reporting.

(a) As soon as practicable but no later than November 11, 2016, the school shall report to the Department, local health department, and State Education Department, through the Department's designated statewide electronic reporting system:

(1) completion of all required first-draw sampling;

(2) for any outlets that were tested prior to the effective date of this regulation, and for which the school wishes to assert that such testing was in substantial compliance with this Subpart, an attestation that:

(i) the school conducted testing that substantially complied with the testing requirements of this Subpart, consistent with guidance issued by the Department;

(ii) any needed remediation, including re-testing, has been performed;

(iii) the lead level in the potable water of the applicable building(s) is currently below the action level; and

(iv) the school has submitted a waiver request to the local health department, in accordance with Section 67-4.8 of this Subpart; and

(3) a list of all buildings that are determined to be lead-free, as defined in section 1417 of the Federal Safe Drinking Water Act.

(b) As soon as practicable, but no more than 10 business days after the school received the laboratory reports, the school shall report data relating to test results to the Department, local health department, and State Education Department, through the Department's designated statewide electronic reporting system.

Section 67-4.7 Recordkeeping.

The school shall retain all records of test results, lead remediation plans, determinations that a building is lead-free, and waiver requests, for ten years following the creation of such documentation. Copies of such documentation shall be immediately provided to the Department, local health department, or State Education Department, upon request.

Section 67-4.8 Waivers.

(a) A school may apply to the local health department for a waiver from the testing requirements of this Subpart, for a specific school, building, or buildings, by demonstrating in a manner and pursuant to standards determined by the Department, that:

(1) prior to the publication date of these regulations, the school conducted testing that substantially complied with the testing requirements of this Subpart;

(2) any needed remediation, including re-testing, has been performed; and

(3) the lead level in the potable water of the applicable building(s) is currently below the action level.

(b) Local health departments shall review applications for waivers for compliance with the standards determined by the Department. If the local health department recommends approval of the waiver, the local health department shall send its recommendation to the Department, and the Department shall determine whether the waiver shall be issued.

Section 67-4.9 Enforcement.

(a) Upon reasonable notice to the school, an officer or employee of the Department or local health department may enter any building for the purposes of determining compliance with this Subpart.

(b) Where a school does not comply with the requirements of this Subpart, the Department or local health department may take any action authorized by law, including but not limited to assessment of civil penalties as provided by law.

This notice is intended to serve only as a notice of emergency adoption. This agency intends to adopt this emergency rule as a permanent rule and will publish a notice of proposed rule making in the *State Register* at some future date. The emergency rule will expire December 4, 2016.

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

Regulatory Impact Statement

Statutory Authority:

The statutory authorities for the proposed regulation are set forth in Public Health Law §§ 1110 and 1370-a. Section 1110 of the PHL directs the Department of Health (Department) to promulgate regulations regarding the testing of potable water provided by school districts and boards of cooperative education services (BOCES) (collectively, "schools") for lead contamination. Section 1370-a of the PHL authorizes the Department to establish programs and coordinate activities to prevent lead poisoning and to minimize the risk of exposure to lead.

Legislative Objective:

The legislative objective of PHL § 1110 is to protect children by requiring schools to test their potable water systems for lead contamination. Similarly, PHL § 1370-a authorizes the Department to establish programs and coordinate activities to prevent lead poisoning and to minimize the risk of exposure to lead. Consistent with these objectives, this regulation adds a new Subpart 67-4 to title 10 of the New York Codes, Rules, and Regulations, establishing requirements for schools to test their potable water outlets for lead contamination.

Needs and Benefits:

Lead is a toxic material that is harmful to human health if ingested or inhaled.

Children and pregnant women are at the greatest risk from lead exposure. Scientists have linked lead exposure with lowered IQ and behavior problems in children. It is also possible for lead to be stored in bones and it can be released into the bloodstream later in life, including during pregnancy. Further, during pregnancy, lead in the mother's bloodstream can cross the placenta, which can result in premature birth and low birth weight, as well as problems with brain, kidney, or nervous system development, and learning and behavior problems. Studies have also shown that low levels of lead can negatively affect adults, leading to heart and kidney problems, as well as high blood pressure and nervous system disorders.

Lead is a common metal found in the environment. The primary source of lead exposure for most children is lead-based paint. However, drinking water is another source of lead exposure due to the lead content of certain plumbing materials and source water.

Laws now limit the amount of lead in new plumbing materials. However, plumbing materials installed prior to 1986 may contain significant amounts of lead. In 1986, the federal government required that only "lead-free" materials be used in new plumbing and plumbing fixtures. Although this was a vast improvement, the law still allowed certain fixtures with up to 8 percent lead to be labeled as "lead free." In 2011, amendments to the Safe Drinking Water Act appropriately re-defined the definition of "lead-free." Although federal law now appropriately defines "lead-free," some older fixtures can still leach lead into drinking water.

Elevated lead levels are commonly found in the drinking water of school buildings, due to older plumbing and fixtures and intermittent water use patterns. Currently, only schools that have their own public water systems are required to test for lead contamination in drinking water.

In the absence of federal regulations governing all schools, the Department's regulations require all schools to monitor their potable drinking water for lead. The new regulations: establish an action level of 15 micrograms per liter (equivalent to parts per billion, or ppb) for lead in the drinking water of school buildings; establish initial and future monitoring requirements; require schools to develop remedial action plans if the action level is exceeded at any potable water outlet; conduct public notification of results to the school community; and report results to the Department. The Environmental Protection Agency's "3Ts for Reducing Lead in Drinking Water in Schools, Revised Technical Guidance" will be used as a technical reference for implementation of the regulation.

Costs:

Costs to Private Regulated Parties:

These regulations only applies to public schools. No private schools are affected.

Costs to State Government and Local Government:

These regulations applies to schools, which are a form of local government. There are approximately 733 school districts and 37 BOCES in New York State, which include over 5,000 school buildings that will be subject to this regulation.

The regulations require schools to test each potable water outlet for lead, in each school building occupied by children, unless the building is determined to be lead-free pursuant to federal standards. The cost for a single lead analysis ranges from $20 - $75 per sample. Initial monitoring requires one sample per outlet. The number of outlets will vary from building to building.

If lead is detected above 15 ppb at any potable water outlet, the outlet must be taken out of service and a remedial action plan must be developed to mitigate the lead contamination, at the school's initial expense. Remediation costs can vary significantly depending on the plumbing configuration and source of lead. The school will also incur minor costs for notification of the school community and local health department, posting the information on their website, and reporting electronically to the Department. Recently enacted legislation authorizes schools to receive State Aid through the State Education Department ("SED") to defray these costs.

Local health departments will also incur some administrative costs related to tracking local implementation, reviewing waiver applications, and compliance oversight. These activities will be eligible for State Aid through the Department's General Public Health Work program.

Local Government Mandates:

Schools, as a form of local government, are required to comply with the regulations, as detailed above.

Paperwork:

The regulation imposes recordkeeping requirements related to: monitoring of potable water outlets; notifications to the public and local health department; and electronic reporting to the Department.

Duplication:

There will be no duplication of existing State or Federal regulations.

Alternatives:

There are no significant alternatives to these regulations, which are being promulgated pursuant to recent legislation.

Federal Standards:

There are no federal statutes or regulations pertaining to this matter. However, the Department's regulations are consistent with the Unites States Environmental Protection Agency's guidance document titled 3Ts for Reducing Lead in Drinking Water in Schools, Revised Technical Guidance (available at: https://www.epa.gov/sites/production/files/2015-09/documents/toolkit__leadschools__guide__3ts__ leadschools.pdf). EPA's document will serve as guidance to schools for implementing the program.

Compliance Schedule:

For existing buildings put into service as of the effective date of this regulation, all sampling shall be performed according to the following schedule:

(i) for any school serving children in any of the levels prekindergarten through grade five, collection of samples is to be completed by September 30, 2016;

(ii) for any school serving children in any of the levels grades six through twelve that are not also serving students in any of the levels prekindergarten through grade five, and all other applicable buildings, collection of samples is to be completed by October 31, 2016.

For buildings put into service after the effective date of this regulation, sampling shall be performed prior to occupancy.

Regulatory Flexibility Analysis

Effect on Small Business and Local Governments:

This regulation applies to schools, which are a form of local government. As explained in the Regulatory Impact Statement, the new regulations: establish an action level of 15 micrograms per liter (equivalent to parts per billion, or ppb) for lead in the drinking water of school buildings; establish initial and future monitoring requirements; require schools to develop remedial action plans if the action level is exceeded at any potable water outlet; conduct public notification of results to the school community; and report results to the Department. The Environmental Protection Agency's 3Ts for Reducing Lead in Drinking Water in Schools, Revised Technical Guidance will be used as a technical reference for implementation of the regulation. Local health departments will also incur some administrative costs related to tracking local implementation and oversight of the regulation.

Additionally, the regulations require the services of a laboratory certified by the Department under its Environmental Laboratory Approval Program (ELAP). Some schools may also wish to hire environmental consultants to assist with compliance. Some labs and environmental consultants qualify as small businesses and, at least initially, their services will be in greater demand due to the new regulation.

Compliance Requirements:

As noted above, the new regulations: establish an action level of 15 micrograms per liter (equivalent to parts per billion, or ppb) for lead in the drinking water in school buildings; establish initial and future monitoring requirements; require schools to develop remedial action plans if the action level is exceeded at any potable water outlet; conduct public notification of results to the school community; and requiring reporting of results to the Department.

Reporting and Recordkeeping:

The regulation will impose new monitoring, reporting, and public notification requirements for schools.

Professional Services:

As noted above, the regulations require the services of a laboratory certified by the Department under its Environmental Laboratory Approval Program (ELAP). Some schools may also wish to hire environmental consultants to assist with compliance.

Compliance Costs:

The regulation will require schools to test each potable water outlet for lead, in each school building occupied by children. The cost for a single lead analysis ranges from $20 - $75 per sample. Initial monitoring requires one sample per outlet. The number of outlets will vary from building to building.

If lead is detected above 15 ppb at any potable water outlet, the outlet must be taken out of service and a remedial action plan must be developed to mitigate the lead contamination, at the school's expense. Remediation costs can vary significantly depending on the plumbing configuration and source of lead. The school will also incur minor costs for notification of the school community and local health department, posting the information on their website, and reporting electronically to the Department. Recently enacted legislation authorizes schools to receive State Aid through the State Education Department ("SED") to defray these costs.

Local health departments will also incur some administrative costs related to tracking local implementation, reviewing waiver applications, and compliance oversight. These activities will be eligible for State Aid through the Department's General Public Health Work program.

Cost to Private Parties:

There are no costs to private parties.

Economic and Technological Feasibility:

The technology for lead testing of drinking water is well-established. With respect to schools' costs of compliance, State Aid will be available through the State Education Department to ensure that compliance is feasible. Local health department activities will be eligible for State Aid through the Department's General Public Health Work program.

Minimizing Adverse Impact:

Any school that has already performed testing in compliance with these regulations, as far back as January 1, 2015, does not need to perform sampling again. Further, consistent with the requirements of PHL § 1110, if a school has performed testing that substantially complies with the regulations, the school may apply to the Department for a waiver, so that additional testing is not required. In either case, the requirement to report sample results, and other requirements, remain in place.

School buildings that are determined to be "lead-free," as defined in section 1417 of the Federal Safe Drinking Water Act, do not need to test

their outlets. School will be required to make available on their website a list of all buildings that are determined to be lead-free.

Small Business and Local Government Participation:

Although small businesses were not consulted on these specific regulations, the dangers of lead in school drinking water has garnered significant local, state, and national attention. The New York State School Board Association (NYSSBA) requested a meeting with the Department to discuss the impacts of the enabling legislation. NYSSBA provided feedback on testing, prior monitoring, and other matters. The Department took this feedback into consideration when drafting the regulation. The Department will also conduct public outreach, and there will be an opportunity to comment on the proposed permanent regulations. The Department will review all public comments received.

Rural Area Flexibility Analysis

Pursuant to Section 202-bb of the State Administrative Procedure Act (SAPA), a rural area flexibility analysis is not required. These provisions apply uniformly throughout New York State, including all rural areas. The proposed rule will not impose an adverse economic impact on rural areas, nor will it impose any disproportionate reporting, recordkeeping or other compliance requirements on the regulated entities in rural areas.

Job Impact Statement

The Department expects there to be a positive impact on jobs or employment opportunities. Some school districts will likely hire firms or individuals to assist with regulatory compliance. Schools impacted by this amendment will require the professional services of a certified laboratory to perform the analyses for lead, which will create a need for additional laboratory capacity.

Categories and Numbers Affected:

The Department anticipates no negative impact on jobs or employment opportunities as a result of the proposed regulations.

Regions of Adverse Impact:

The Department anticipates no negative impact on jobs or employment opportunities in any particular region of the state.

Minimizing Adverse Impact:

Not applicable.

Higher Education Services Corporation

EMERGENCY RULE MAKING

New York State Science, Technology, Engineering and Mathematics Incentive Program

I.D. No. ESC-38-16-00001-E

Filing No. 830

Filing Date: 2016-09-01

Effective Date: 2016-09-01

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

Action taken: Addition of section 2201.13 to Title 8 NYCRR.

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

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

Specific reasons underlying the finding of necessity: This statement is being submitted pursuant to subdivision (6) of section 202 of the State Administrative Procedure Act and in support of the New York State Higher Education Services Corporation's ("HESC") Emergency Rule Making seeking to add a new section 2201.13 to Title 8 of the Official Compilation of Codes, Rules and Regulations of the State of New York.

This regulation implements a statutory student financial aid program providing for awards to be made to students beginning with the fall 2014 term. Emergency adoption is necessary to avoid an adverse impact on the processing of awards to eligible scholarship applicants. The statute provides for tuition benefits to college-going students who, beginning August 2014, pursue an undergraduate program of study in science, technology, engineering, or mathematics at a New York State public institution of higher education. High school students entering college in August must inform the institution of their intent to enroll no later than May 1. Therefore, it is critical that the terms of the program as provided in the regulation be available immediately in order for HESC to process scholarship applications so that students can make informed choices. To accomplish this mandate, the statute further provides for HESC to promulgate emergency regulations to implement the program. For these reasons, compliance with section 202(1) of the State Administrative Procedure Act would be contrary to the public interest.

Subject: New York State Science, Technology, Engineering and Mathematics Incentive Program.

Purpose: To implement the New York State Science, Technology, Engineering and Mathematics Incentive Program.

Text of emergency rule: New section 2201.13 is added to Title 8 of the New York Code, Rules and Regulations to read as follows:

Section 2201.13 New York State Science, Technology, Engineering and Mathematics Incentive Program.

(a) Definitions. The following definitions apply to this section:

(1) "Award" shall mean a New York State Science, Technology, Engineering and Mathematics Incentive Program award pursuant to section 669-e of the New York State education law.

(2) "Employment" shall mean continuous employment for at least thirty-five hours per week in the science, technology, engineering or mathematics field, as published on the corporation's web site, for a public or private entity located in New York State for five years after the completion of the undergraduate degree program and, if applicable, a higher degree program or professional licensure degree program and a grace period as authorized by section 669-e(4) of the education law.

(3) "Grace period" shall mean a six month period following a recipient's date of graduation from a public institution of higher education and, if applicable, a higher degree program or professional licensure degree program as authorized by section 669-e(4) of the education law.

(4) "High school class" shall mean the total number of students eligible to graduate from a high school in the applicable school year.

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

(6) "Program" shall mean the New York State Science, Technology, Engineering and Mathematics Incentive Program codified in section 669-e of the education law.

(7) "Public institution of higher education" shall mean the state university of New York, as defined in subdivision 3 of section 352 of the education law, a community college as defined in subdivision 2 of section 6301 of the education law, or the city university of New York as defined in subdivision 2 of section 6202 of the education law.

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

(9) "Science, technology, engineering and mathematics" programs shall mean those undergraduate degree programs designated by the corporation on an annual basis and published on the corporation's web site.

(10) "Successful completion of a term" shall mean that at the end of any academic term, the recipient: (i) met the eligibility requirements for the award pursuant to sections 661 and 669-e of the education law; (ii) completed at least 12 credit hours or its equivalent in a course of study leading to an approved undergraduate degree in the field of science, technology, engineering, or mathematics; and (iii) possessed a cumulative grade point average (GPA) of 2.5 as of the date of the certification by the institution. Notwithstanding, the GPA requirement is preliminarily waived for the first academic term for programs whose terms are organized in semesters, and for the first two academic terms for programs whose terms are organized on a trimester basis. In the event the recipient's cumulative GPA is less than a 2.5 at the end of his or her first academic year, the recipient will not be eligible for an award for the second academic term for programs whose terms are organized in semesters or for the third academic term for programs whose terms are organized on a trimester basis. In such case, the award received for the first academic term for programs whose terms are organized in semesters and for the first two academic terms for programs whose terms are organized on a trimester basis must be returned to the corporation and the institution may reconcile the student's account, making allowances for any other federal, state, or institutional aid the student is eligible to receive for such terms unless: (A) the recipient's GPA in his or her first academic term for programs whose terms are organized in semesters was a 2.5 or above, or (B) the recipient's GPA in his or her first two academic terms for programs whose terms are organized on a trimester basis was a 2.5 or above, in which case the institution may retain the award received and only reconcile the student's account for the second academic term for programs whose terms are organized in semesters or for the third academic term for programs whose terms are organized on a trimester basis. The corporation shall issue a guidance document, which will be published on its web site.

(b) Eligibility. An applicant for an award under this program pursuant

to section 669-e of the education law must also satisfy the general eligibility requirements provided in section 661 of the education law.

(c) Class rank or placement. As a condition of an applicant's eligibility, the applicant's high school shall provide the corporation:

(1) official documentation from the high school either (i) showing the applicant's class rank together with the total number of students in such applicant's high school class or (ii) certifying that the applicant is in the top 10 percent of such applicant's high school class; and

(2) the applicant's most current high school transcript; and

(3) an explanation of how the size of the high school class, as defined in subdivision (a), was determined and the total number of students in such class using such methodology. If the high school does not rank the students in such high school class, the high school shall also provide the corporation with an explanation of the method used to calculate the top 10 percent of students in the high school class, and the number of students in the top 10 percent, as calculated. Each methodology must comply with the terms of this program as well as be rational and reasonable. In the event the corporation determines that the methodology used by the high school fails to comply with the term of the program, or is irrational or unreasonable, the applicant will be denied the award for failure to satisfy the eligibility requirements; and

(4) any additional information the corporation deems necessary to determine that the applicant has graduated within the top 10 percent of his or her high school class.

(d) Administration.

(1) Applicants for an award shall:

(i) apply for program eligibility on forms and in a manner prescribed by the corporation. The corporation may require applicants to provide additional documentation evidencing eligibility; and

(ii) postmark or electronically transmit applications for program eligibility to the corporation on or before the date prescribed by the corporation for the applicable academic year. Notwithstanding any other rule or regulation to the contrary, such applications shall be received by the corporation no later than August 15th of the applicant's year of graduation from high school.

(2) Recipients of an award shall:

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

(ii) apply for payment annually on forms specified by the corporation;

(iii) confirm annually their enrollment in an approved undergraduate program in science, technology, engineering, or mathematics;

(iv) receive such awards for not more than four academic years of full-time undergraduate study or five academic years if the program of study normally requires five years, as defined by the commissioner pursuant to article thirteen of the education law, excluding any allowable interruption of study; and

(v) respond to the corporation's requests for a letter from their employer attesting to the employee's job title, the employee's number of hours per work week, and any other information necessary for the corporation to determine compliance with the program's employment requirements.

(e) Amounts.

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

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

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

(f) Failure to comply.

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

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

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

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

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

This notice is intended to serve only as a notice of emergency adoption. This agency intends to adopt this emergency rule as a permanent rule and will publish a notice of proposed rule making in the *State Register* at some future date. The emergency rule will expire November 29, 2016.

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

Regulatory Impact Statement

Statutory authority:

The New York State Higher Education Services Corporation's ("HESC") statutory authority to promulgate regulations and administer the New York State Science, Technology, Engineering and Mathematics Incentive Program ("Program") is codified within Article 14 of the Education Law. In particular, Part G of Chapter 56 of the Laws of 2014 created the Program by adding a new section 669-e to the Education Law. Subdivision 5 of section 669-e of the Education Law authorizes HESC to promulgate emergency regulations for the purpose of administering this Program.

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

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

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

Legislative objectives:

The Education Law was amended to add a new section 669-e to create the "New York State Science, Technology, Engineering and Mathematics Incentive Program" (Program). This Program is aimed at increasing the number of individuals working in the fields of science, technology, engineering and mathematics (STEM) in New York State to meet the increasingly critical need for those skills in the State's economy.

Needs and benefits:

According to a February 2012 report by President Obama's Council of Advisors on Science and Technology, there is a need to add to the American workforce over the next decade approximately one million more science, technology, engineering and mathematics (STEM) professionals than the United States will produce at current rates in order for the country to stay competitive. To meet this goal, the United States will need to increase the number of students who receive undergraduate STEM degrees by about 34% annually over current rates. The report also stated that fewer than 40% of students who enter college intending to major in a STEM field complete a STEM degree. Further, a recent Wall Street Journal article reported that New York state suffers from a shortage of graduates in STEM fields to fill the influx of high-tech jobs that occurred five years ago. At a plant in Malta, about half the jobs were filled by people brought in from outside New York and 11 percent were foreigners. According to the article, Bayer Corp. is due to release a report showing that half of the recruiters from large U.S. companies surveyed couldn't find enough job candidates with four-year STEM degrees in a timely manner; some said that had led to more recruitment of foreigners. About two-thirds of the recruiters surveyed said that their companies were creating more STEM positions than other types of jobs. There are also many jobs requiring a two-year degree. In an effort to deal with this shortage, companies are using more internships, grants and scholarships.

The Program is aimed at increasing the number New York graduates with two and four year degrees in STEM who will be working in STEM fields across New York state. Eligible recipients may receive annual awards for not more than four academic years of undergraduate full-time

study (or five years if enrolled in a five-year program) while matriculated in an approved program leading to a career in STEM.

The maximum amount of the award is equal to the annual tuition charged to New York State resident students attending an undergraduate program at the State University of New York (SUNY), including state operated institutions, or City University of New York (CUNY). The current maximum annual award for the 2014-15 academic year is $6,170. Payments will be made directly to schools on behalf of students upon certification of their successful completion of the academic term.

Students receiving a New York State Science, Technology, Engineering and Mathematics Incentive Program award must sign a service agreement and agree to work in New York state for five years in a STEM field and reside in the State during those five years. Recipients who do not fulfill their service obligation will have the value of their awards converted to a student loan and be responsible for interest.

Costs:

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

b. The maximum cost of the program to the State is $8 million in the first year based upon budget estimates.

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

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

Local government mandates:

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

Paperwork:

This proposal will require applicants to file an electronic application for each year they wish to receive an award up to and including five years of eligibility. Recipients are required to sign a contract for services in exchange for an award. Recipients must submit annual status reports until a final disposition is reached in accordance with the written contract.

Duplication:

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

Alternatives:

The proposed regulation is the result of HESC's outreach efforts to financial aid professionals with regard to this Program. Several alternatives were considered in the drafting of this regulation. For example, several alternatives were considered in defining terms/phrases used in the regulation as well as the academic progress requirement. Given the statutory language as set forth in section 669-e of the Education Law, a "no action" alternative was not an option.

Federal standards:

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

Compliance schedule:

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

Regulatory Flexibility Analysis

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

Rural Area Flexibility Analysis

It is apparent from the nature and purpose of this rule that it will not impose an adverse impact on rural areas. Rather, it has potential positive impacts inasmuch as it implements a statutory student financial aid program that provides tuition benefits to college students who pursue their undergraduate studies in the fields of science, technology, engineering, or mathematics at a New York State public institution of higher education. Students will be rewarded for remaining and working in New York, which will benefit rural areas around the State as well.

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

Job Impact Statement

It is apparent from the nature and purpose of this rule that it will not have any negative impact on jobs or employment opportunities. Rather, it has potential positive impacts inasmuch as it implements a statutory student financial aid program that provides tuition benefits to college students who pursue their undergraduate studies in the fields of science, technology, engineering, or mathematics at New York State public institution of higher education. Students will be rewarded for remaining and working in New York, which will benefit the State as well.

Department of Motor Vehicles

NOTICE OF ADOPTION

Fees Charged for the Impaired Driving Program Course

I.D. No. MTV-28-16-00003-A

Filing No. 831

Filing Date: 2016-09-01

Effective Date: 2016-09-21

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

Action taken: Amendment of section 134.14 of Title 15 NYCRR.

Statutory authority: Vehicle and Traffic Law, sections 215(a), 1196(1) and (6)

Subject: Fees charged for the Impaired Driving Program course.

Purpose: To increase the fee for the Impaired Driving Program course, so that $20 may be directed to curriculum development.

Text or summary was published in the July 13, 2016 issue of the Register, I.D. No. MTV-28-16-00003-P.

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

Text of rule and any required statements and analyses may be obtained from: Heidi Bazicki, Department of Motor Vehicles, 6 Empire State Plaza, Rm. 522A, Albany, NY 12228, (518) 474-0871, email: heidi.bazicki@dmv.ny.gov

Initial Review of Rule

As a rule that does not require a RFA, RAFA or JIS, this rule will be initially reviewed in the calendar year 2021, which is no later than the 5th year after the year in which this rule is being adopted.

Assessment of Public Comment

The Department of Motor Vehicles received eight comments in response to its proposed amendment to Part 134.14. The comments were submitted by the New York State Impaired Driver Program Director's Association, the Ulster County Community College IDP, the Driver Safety Institute, the Dutchess County DWI Monitor, the Fulton-Montgomery County IDP, the St. Lawrence County Impaired Driver Program, the Rockland Education Center, and the Stonybrook Impaired Driving Program. The DMV appreciates all of the comments submitted.

Comment: All of the commenters stated that the fee collected by Impaired Driving Program (IDP) providers should be increased, in addition to the proposed increase of the fee to be paid to the curriculum provider. The commenters maintain that the cost of running the IDP, since the last increase in 2004, has significantly increased.

Response: The Department appreciates the detailed justification, related to a proposed fee increase, set forth by the various commenters. In order to give justice to their extensive comments, the Department would like to thoroughly evaluate their recommendation. However, in order to insure that the Department has a highly qualified curriculum provider in place when the current contract expires, we will defer our review until after the proposed rule is adopted.

Comment: Five of the commenters suggest that the Department's proposed increased curriculum fee is intended to secure the services of the current provider, Prime for Life (PRI).

Response: No person or entity has been identified to provide an IDP curriculum beyond the expiration of the current contract with PRI. The process to identify such a curriculum provider shall be open and competitive in accordance with the State's procurement laws.

Office for People with Developmental Disabilities

NOTICE OF ADOPTION

Agency Name Change and Terminology Updates

I.D. No. PDD-48-15-00003-A
Filing No. 835
Filing Date: 2016-09-06
Effective Date: 2016-09-21

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

Action taken: Amendment of Parts 602-606, 620-622, 633, 635, 643, 671, 676, 679-681, 686, 687 and 690 of Title 14 NYCRR.

Statutory authority: Mental Hygiene Law, section 13.09

Subject: Agency Name Change and Terminology Updates.

Purpose: To update the agency name and other terminology updates in the Title 14 NYCRR Part 600 series.

Text or summary was published in the December 2, 2015 issue of the Register, I.D. No. PDD-48-15-00003-P.

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

Text of rule and any required statements and analyses may be obtained from: Office of Counsel, OPWDD, 44 Holland Avenue, 3rd Floor, Albany, NY 12229, (518) 474-7700, email: rau.unit@opwdd.ny.gov

Additional matter required by statute: Pursuant to the requirements of the State Environmental Quality Review Act, OPWDD, as lead agency, has determined that the action described herein will have no effect on the environment, and an E.I.S. is not needed.

Assessment of Public Comment
The agency received no public comment.

Public Service Commission

PROPOSED RULE MAKING HEARING(S) SCHEDULED

Disposition of Tax Refunds and Other Related Matters

I.D. No. PSC-38-16-00005-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 request by Consolidated Edison of New York, Inc. and Orange & Rockland Utilities, Inc. proposing the disposition of certain property tax refunds.

Statutory authority: Public Service Law, section 113(2)

Subject: Disposition of tax refunds and other related matters.

Purpose: To consider the disposition of tax refunds and other related matters.

Public hearing(s) will be held at: 10:30 a.m., Nov. 16, 2016 and continuing as needed at Department of Public Service, Three Empire State Plaza, 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) under Case 16-M-0300.

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 Public Service Commission is considering a May 1, 2016 Petition by Consolidated Edison Company of New York, Inc. and Orange & Rockland Utilities, Inc. (Utilities) for the disposition, pursuant to PSL Section 113(2), of a property tax refund. The refund will be paid to the Utilities pursuant to a settlement agreement that has resolved a series of lawsuits against the Town of Ramapo challenging the property tax assessments made against certain electric properties of Con Edison and certain electric and natural gas properties of Orange & Rockland in the Town of Ramapo. The petition seeks a reimbursement to the Utilities of the costs incurred to achieve these refunds and, thereafter, a sharing of the net benefits from the settlement between the Utilities and their 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.
(16-M-0300SP1)

PROPOSED RULE MAKING HEARING(S) SCHEDULED

Disposition of Tax Refunds and Other Related Matters

I.D. No. PSC-38-16-00009-P

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

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

Statutory authority: Public Service Law, section 113(2)

Subject: Disposition of tax refunds and other related matters.

Purpose: To consider the disposition of tax refunds and other related matters.

Public hearing(s) will be held at: 10:30 a.m., Nov. 16, 2016 and continuing as needed at Department of Public Service, Three Empire State Plaza, 3rd Fl. Hearing Rm. Albany, NY. (Evidentiary Hearing)*

* On occasion there are requests to reschedule or postpone evidentiary hearing dates. If such request is granted, notification of any subsequent scheduling changes will be available at the DPS website (www.dps.ny.gov) under Case 16-M-0362.

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 Public Service Commission is considering a May 1, 2016 Petition by Orange & Rockland Utilities, Inc. (Utility) for the disposition, pursuant to PSL Section 113(2), of a property tax refund. The refund will be paid to the Utility pursuant to a settlement agreement that has resolved a series of lawsuits against the Towns of Clarkstown and Orangetown challenging the property tax valuations for Orange & Rockland's property inventory located in these towns. The petition seeks a reimbursement to the Utility of the costs incurred to achieve these tax benefits and, thereafter, a sharing of the net benefits from the settlement between the Utility and its 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.

(16-M-0362SP1)

PROPOSED RULE MAKING
NO HEARING(S) SCHEDULED

Request for Waiver of the Individual Metering Requirements of Opinion 76-17 and 16 NYCRR Part 96

I.D. No. PSC-38-16-00006-P

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

Proposed Action: The Public Service Commission is considering a petition filed by Community Counseling and Mediation for waiver of the individual metering requirements of Opinion 76-17 and 16 NYCRR Part 96.

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 the individual metering requirements of Opinion 76-17 and 16 NYCRR Part 96.

Purpose: To consider the request for waiver of the individual metering requirements of Opinion 76-17 and 16 NYCRR Part 96.

Substance of proposed rule: The Public Service Commission is considering a petition filed on August 10, 2016, by Community Counseling and Mediation for waiver of the individual metering requirements contained in Opinion 76-17 and 16 NYCRR Part 96. 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-0249SP2)

PROPOSED RULE MAKING
NO HEARING(S) SCHEDULED

Capacity Limit for Net Energy Metering of Farm Waste Electric Generating Equipment

I.D. No. PSC-38-16-00008-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 amendments to utility tariffs and interconnection requirements to implement a change to Public Service Law Section 66-j, related to an increased capacity limit for net energy metering for farm waste electric generation.

Statutory authority: Public Service Law, sections 5(1)(b), 64, 65(1), 66(1), (5), (9), (10), (12) and 66-j

Subject: Capacity limit for net energy metering of farm waste electric generating equipment.

Purpose: Increase in the capacity threshold, from 1 MW to 2 MW, for net energy metering of farm waste electric generation.

Substance of proposed rule: The Public Service Commission (Commission) is considering directing Central Hudson Gas & Electric Corporation (Central Hudson), Consolidated Edison Company of New York, Inc. (Con Edison), New York State Electric & Gas Corporation (NYSEG), Niagara Mohawk Power Corporation d/b/a National Grid (Niagara Mohawk), Rochester Gas and Electric Corporation (RG&E), and Orange and Rockland Utilities, Inc. (O&R) (collectively, the Utilities) to file tariff leaf amendments necessary to implement a statutory change to the net energy metering rules under Public Service Law (PSL) § 66-j. Pursuant to Chapter 58 of the Laws of 2016, Part Z, which became effective on April 12, 2016, PSL § 66-j was amended to increase the MW threshold from 1 MW to 2 MW (two thousand kilowatts) for net energy metering of farm waste electric generating equipment. In order to implement the statutory change noted above, the Commission is considering directing the Utilities to amend certain tariff leaves to reflect the increase in the rated capacity to no more than two thousand kilowatts. In particular, the Commission is considering directing Central Hudson to amend tariff Leaf No. 163.5.15, and associated Leaves and Riders; Niagara Mohawk to amend Leaf No. 197 and associated Leaves and Riders; Con Edison to amend Leaves Nos. 244, 247, 249.1, 383, and associated Leaves and Riders; RG&E to amend Leaf No. 160.39.3.2 and associated Leaves and Riders; O&R to amend Leaves Nos. 115, 118, Rider N, 179, 181, 187, 324, and associated Leaves and Riders; and, NYSEG to amend Leaves Nos. 116, 294.1, and associated Leaves and Riders. The Commission is also considering conforming the Standardized Interconnection Requirements (SIR) to incorporate this increase in the capacity threshold for net energy metering. The Commission may adopt, reject, or modify, in whole or in part, the contemplated amendments to the tariffs and the SIR to conform to the statutory change, 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-0497SP1)

Department of State

AMENDED
NOTICE OF ADOPTION

State Energy Conservation Construction Code (the Energy Code)

I.D. No. DOS-47-15-00016-AA

Filing No. 829

Filing Date: 2016-09-01

Effective Date: 2016-10-03

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

Action taken: Repeal of Part 1240; and addition of new Part 1240 to Title 19 NYCRR.

Amended action: This action amends the rule that was filed with the Secretary of State on March 22, 2016, to be effective October 3, 2016, File No. 00345. The notice of adoption, I.D. No. DOS-47-15-00016-A, was published in the April 6, 2016 issue of the *State Register*.

Statutory authority: Energy Law, section 11-103(2)

Subject: State Energy Conservation Construction Code (the Energy Code).

Purpose: To repeal the existing Energy Code and to adopt a new, updated Energy Code.

Substance of amended rule: This rule repeals the current version of Part 1240 of Title 19 of the NYCRR and adds a new version of Part 1240

(entitled "State Energy Conservation Construction Code") in its place. The new version of Part 1240 is summarized below.

Section 1240.1 ("State Energy Conservation Construction Code") provides that Part 1240 and the publications incorporated by reference in Part 1240 constitute the State Energy Conservation Construction Code (the "Energy Code") promulgated pursuant to Article 11 of the Energy Law.

Section 1240.2 ("Definitions") defines certain terms used in Part 1240, including:

"2016 Energy Code Supplement" (the publication entitled "2016 Supplement to the New York State Energy Conservation Construction Code," published by the New York State Department of State, publication date August, 2016);

"2015 IECC" (the publication entitled "2015 International Energy Conservation Code," published by the International Code Council, Inc. [Second Printing: May, 2015]);

"2015 IECC Commercial Provisions" (that part of the 2015 IECC that is designated as the "IECC - Commercial Provisions");

"2015 IECC Commercial Provisions (as amended)" (the 2015 IECC Commercial Provisions, as said provisions are deemed to be amended by Part 1 of the 2016 Energy Code Supplement);

"2015 IECC Residential Provisions" (that part of the 2015 IECC that is designated as the "IECC - Residential Provisions");

"2015 IECC Residential Provisions (as amended)" (the 2015 IECC Residential Provisions, as said provisions are deemed to be amended by Part 3 of the 2016 Energy Code Supplement);

"ASHRAE 90.1-2013" (the publication entitled "Energy Standard for Buildings Except Low-Rise Residential Buildings," standard reference number 90.1-2013, published by American Society of Heating, Refrigerating and Air-Conditioning Engineers, Inc., publication date July 2014);

"ASHRAE Appendix G Excerpt" (the publication entitled "Standard 90.1 Appendix G 2013 Performance Rating Method, Excerpt from ANSI/ASHRAE/IES Standard 90.1-2013 (I-P)," published by ASHRAE, publication date 2015);

"ASHRAE 90.1-2013 (as amended)" (ASHRAE 90.1-2013, as said publication is deemed to be amended by Part 2 of the 2016 Energy Code Supplement);

"commercial building" (any building that is not a residential building, as defined in subdivision (p) of section 1240.2); and

"residential building" (includes: (1) detached one-family dwellings having not more than three stories above grade plane; (2) detached two-family dwellings having not more than three stories above grade plane; (3) buildings that (i) consist of three or more attached townhouse units and (ii) have not more than three stories above grade plane; (4) buildings that (i) are classified in accordance with Chapter 3 of the publication entitled "2015 International Building Code," published by the International Code Council, Inc. (Third Printing: October 2015), in Group R-2, R-3 or R-4 and (ii) have not more than three stories above grade plane; (5) factory manufactured homes (as defined in section 372(8) of the Executive Law); and (6) mobile homes (as defined in section 372(13) of the Executive Law).

Other terms defined in section 1240.2 are "building," "building system," "dwelling unit," "Energy Code," "grade plane," "historic building," and "townhouse unit."

Section 1240.3 ("Amendments made by the 2016 Energy Code Supplement") provides that for the purposes of applying the 2015 IECC Commercial Provisions, the 2015 IECC Residential Provisions, and ASHRAE 90.1-2013 in this State:

(a) the 2015 IECC Commercial Provisions shall be deemed to be amended in the manner provided in Part 1 of the 2016 Energy Code Supplement;

(b) ASHRAE 90.1-2013 shall be deemed to be amended in the manner provided in Part 2 of the 2016 Energy Code Supplement; and

(c) the 2015 IECC Residential Provisions shall be deemed to be amended in the manner provided in Part 3 of the 2016 Energy Code Supplement.

Section 1240.4 is entitled "Energy Code provisions applicable to Commercial Buildings."

Subdivision (a) of section 1240.4 ("2015 IECC Commercial Provisions (as amended)") provides that except as otherwise provided in section 1240.6 ("Exceptions") of Part 1240, the construction of all new commercial buildings; all additions to, alterations of, and/or renovations of existing commercial buildings; and all additions to, alterations of, and/or renovations of building systems in existing commercial buildings shall comply with the requirements of the 2015 IECC Commercial Provisions (as amended). Section 1240.4(a) also incorporates the 2015 IECC Commercial Provisions and the 2016 Energy Code Supplement by reference; specifies the name and addresses of the publishers where the 2015 IECC (which contains the 2015 IECC Commercial Provisions) and the 2016 Energy Code Supplement may be obtained; and specifies that those publications are available for public inspection and copying at the office of the New York State Department of State located at One Commerce Plaza, 99 Washington Avenue, Albany, NY 12231-0001.

Subdivision (b) of section 1240.4 ("ASHRAE 90.1-2013 (as amended)") provides that to the extent provided in the 2015 IECC Commercial Provisions (as amended), compliance with the requirements of ASHRAE 90.1-2013 (as amended) shall be permitted in lieu of compliance with specified sections of the 2015 IECC Commercial Provisions (as amended). Subdivision (b) of section 1240.4 also incorporates ASHRAE 90.1-2013, the 2016 Energy Code Supplement, and the ASHRAE Appendix G Excerpt by reference; specifies the name and addresses of the publishers where ASHRAE 90.1-2013, the ASHRAE Appendix G Excerpt, and the 2016 Energy Code Supplement may be obtained; and specifies that those publications are available for public inspection and copying at the office of the New York State Department of State located at One Commerce Plaza, 99 Washington Avenue, Albany, NY 12231-0001.

Subdivision (c) of section 1240.4 ("Referenced standards") provides that the referenced standards listed in Chapter 6 of the 2015 IECC Commercial Provisions (as amended) are considered to be part of the 2015 IECC Commercial Provisions (as amended), subject to the provisions and limitations set forth in Sections C106.1, C106.1.1, and C106.1.2 of the 2015 IECC Commercial Provisions (as amended).

Subdivision (c) of section 1240.4 also incorporates the following referenced standards by reference, and provides that the following referenced standards shall be considered to be part of the 2015 IECC Commercial Provisions (as amended), subject to the provisions and limitations set forth in Sections C106.1, C106.1.1, and C106.1.2 of the 2015 IECC Commercial Provisions (as amended):

(1) Room Fan Coil, publication date 2008 ("AHRI 440-08"), and Unit Ventilators, publication date 1998 ("AHRI 840-98"), published by the Air Conditioning, Heating, and Refrigeration Institute;

(2) ASHRAE HVAC Systems and Equipment Handbook - 2012, publication date 2012 ("ASHRAE-2012"); Energy Standard for Buildings Except Low-Rise Residential Buildings, July 2014 printing ("ASHRAE 90.1-2013"); Peak Cooling and Heating Load Calculations in Buildings, Except Low-rise Residential Buildings, publication date 2014 (ANSI/ASHRAE/ACCA Standard 183-2007 [RA2014]); and the ASHRAE Appendix G Excerpt, published by American Society of Heating, Refrigerating and Air-Conditioning Engineers, Inc.;

(3) Standard Test Method for Determining Air Leakage Rate by Fan Pressurization, publication date 2010 ("ASTM E 779-10"), and Standard Specification for Air Barrier (AB) Material or System for Low-Rise Framed Building Walls, publication date 2011 ("ATSM E 1677-11"), published by ASTM International;

(4) North American Fenestration Standard / Specification for Windows, Doors and Unit Skylights, publication date 2011 ("AAMA / WDMA / CSA 101 / I.S.2 / A440-11"), published by Canadian Standards Association;

(5) 2015 International Building Code (Third Printing: October 2015), 2015 International Fire Code (Third Printing: June 2015), 2015 International Fuel Gas Code (Third Printing: June 2015), 2015 International Mechanical Code (Third Printing: November 2015), 2015 International Plumbing Code (Third Printing: August 2015), 2015 International Property Maintenance Code (Fourth Printing: December 2015), and 2015 International Residential Code (Second Printing: January 2016), published by International Code Council, Inc.;

(6) National Electrical Code, publication date 2014 (NFPA 70-14), published by National Fire Protection Association;

(7) HVAC Air Duct Leakage Test Manual, publication date 1985 ("SMACNA-85"), published by Sheet Metal and Air Conditioning Contractors National Association, Inc.; and

(8) Standard for Oil-Fired Central Furnaces, Ninth Edition, including revisions through April 22, 2010, publication date 2010 ("UL 727-06") (Note: The Ninth Edition of this standard was originally published on April 7, 2006. The version of this standard incorporated herein by reference includes revisions through April 22, 2010, and was published in 2010); Oil-fired Unit Heaters—with Revisions through April 2010, original publication date 1995, with revisions published through 2010 ("UL 731-95), published by Underwriters Laboratory.

Subdivision (c) of section 1240.4 also specifies the name and addresses of the publishers where the foregoing referenced standards may be obtained, and specifies that those publications are available for public inspection and copying at the office of the New York State Department of State located at One Commerce Plaza, 99 Washington Avenue, Albany, NY 12231-0001.

Section 1240.5 is entitled "Energy Code provisions applicable to Residential Buildings."

Subdivision (a) of section 1240.5 ("2015 IECC Residential Provisions (as amended)") provides that except as otherwise provided in section 1240.6 ("Exceptions") of Part 1240, the construction of all new residential

buildings; all additions to, alterations of, and/or renovations of existing residential buildings; and all additions to, alterations of, and/or renovations of building systems in existing residential buildings shall comply with the requirements of the 2015 IECC Residential Provisions (as amended). Subdivision (a) of section 1240.5 also incorporates the 2015 IECC Residential Provisions and the 2016 Energy Code Supplement by reference; specifies that names and addresses of the publishers from which copies of the 2015 IECC (which includes the 2015 IECC Residential Provisions) and the 2016 Energy Code Supplement may be obtained, and specifies that the 2015 IECC and the 2016 Energy Code Supplement are available for public inspection and copying at the office of the New York State Department of State located at One Commerce Plaza, 99 Washington Avenue, Albany, NY 12231-0001.

Subdivision (b) of section 1240.5 ("Referenced standards") provides that the referenced standards listed in Chapter 6 of the 2015 IECC Residential Provisions (as amended) are considered to be part of the 2015 IECC Residential Provisions (as amended), subject to the provisions and limitations set forth in Sections R106.1, R106.1.1, and R106.1.2 of the 2015 IECC Residential Provisions (as amended). Subdivision (b) of section 1240.5 also provides that the following referenced standards are incorporated herein by reference and shall be considered to be part of the 2015 IECC Residential Provisions (as amended), subject to the provisions and limitations set forth in Sections R106.1, R106.1.1, and R106.1.2 of the 2015 IECC Residential Provisions (as amended):

(1) Residential Load Calculation, Eighth Edition, publication date 2011 ("Manual J – 2011"), and Residential Equipment Selection, publication date 2013 ("Manual S—13"), published by Air Conditioning Contractors of America;

(2) Method for Measuring Floor Area in Office Buildings, publication date 1996 (Z-65-96), published by American National Standards Institute;

(3) ASHRAE Handbook of Fundamentals - 2013, publication date 2013 ("ASHRAE - 2013"), published by American Society of Heating, Refrigerating and Air-Conditioning Engineers, Inc.;

(4) Standard Test Method for Determining Air Leakage Rate by Fan Pressurization, publication date 2010 ("ASTM E 779-10"), and Standard Test Method for Determining Air Tightness of Building Using an Orifice Blower, publication date 2011 ("ASTM E 1827-11"), published by ASTM International;

(5) 2015 International Building Code (Third Printing: October 2015); 2015 International Fire Code (Third Printing: June 2015); 2015 International Fuel Gas Code (Third Printing: June 2015); 2015 International Mechanical Code (Third Printing: November 2015); 2015 International Plumbing Code (Third Printing: August 2015); 2015 International Property Maintenance Code (Fourth Printing: December 2015); 2015 International Residential Code (Second Printing: January 2016); Standard on the Design and Construction of Log Structures, publication date 2012 ("ICC 400–12"); 2006 International Energy Conservation Code, publication date 2006 ("IECC-2006"); and Energy Conservation Construction Code of New York State, publication date 2010, published by International Code Council, Inc.; and

(6) National Electric Code, publication date 2014 ("NFPA 70-14"), published by National Fire Protection Association.

Section 1240.6 ("Exceptions") provides that the Energy Code shall not apply to the alteration or renovation of an historic building or to certain alterations of existing buildings, provided that the alteration will not increase the energy usage of the building. These exceptions mirror the provisions of Energy Law § 11-104(5) and Energy Law § 11-103(1)(b).

Amended rule as compared with adopted rule: Nonsubstantive changes were made in section 1240.2(a).

Text of amended rule and any required statements and analyses may be obtained from: Gerard Hathaway, Department of State, 99 Washington Avenue, Suite 1160, Albany, NY 12231, (518) 474-4073, email: gerard.hathaway@dos.ny.gov

Summary of Revised Regulatory Impact Statement

1. STATUTORY AUTHORITY.

This Amended Rule amends the State Energy Conservation Construction Code ("Energy Code"). This Amended Rule is authorized by Energy Law § 11-103(2).

2. LEGISLATIVE OBJECTIVES.

The energy policy of the State is "to encourage conservation of energy in the construction and operation of new commercial, industrial, and residential buildings, and in the rehabilitation of existing structures, through heating, cooling, ventilation, lighting, insulation and design techniques and the use of energy audits and life-cycle costing analyses" (Energy Law § 3-101(2)). In furtherance of that policy, the Energy Code is intended "to protect the health, safety and security of the people of the State and to assure a continuing supply of energy for future generations [by mandating] that economically reasonable energy conservation techniques be used in the design and construction of all new public and private buildings in New York" (Energy Law § 11-101).

Energy Law § 11-103(2) provides that the Energy Code, as amended from time to time, should remain "cost effective" with respect to building construction and that in determining whether the Energy Code remains cost effective, the State Fire Prevention and Building Code Council (the Code Council[1]) "shall consider whether the cost of materials and their installation to meet its standards would be equal to or less than the present value of energy savings that could be expected over a ten year period in the building in which such materials are installed."

Energy Law § 11-103(2) provides that the Energy Code for commercial buildings must meet or exceed the 2007 edition of the "Energy Standard for Buildings Except Low-Rise Residential Buildings" (ASHRAE 90.1), or achieve equivalent or greater energy savings; and that the Energy Code for residential buildings must meet or exceed the then most recently published edition of the "International Energy Conservation Code" (the IECC), or achieve equivalent or greater energy savings.

Title III of the Energy Conservation and Production Act (ECPA) provides that when the U.S. Department of Energy (DOE) determines that commercial buildings constructed to a revised edition of ASHRAE 90.1 would achieve greater energy efficiency than buildings constructed to the prior edition of ASHRAE 90.1, states are required to update their energy codes for commercial buildings to codes that meet or exceed the revised ASHRAE 90.1. DOE has determined that the most recent edition of ASGRAE 90.1 (ASHRAE 90.1-2013) would achieve greater energy efficiency than the prior edition (ASHRAE 90.1-2010).

Based on the studies more fully described in Part 3 (Needs and Benefits) below, the Department of State (DOS) and the Code Council have determined that this Amended Rule will (1) make the Energy Code for residential buildings equal to or exceed the most recent (2015) edition of the IECC; (2) make the Energy Code for commercial buildings equal to ASHRAE 90.1-2013; (3) result in significant savings in energy usage; (4) be cost effective; and (5) on average, will pay back increased construction costs through savings in energy costs in less than 10 years.

3. NEEDS AND BENEFITS.

Purpose. The purpose of this Amended Rule is to amend and update the Energy Code to a code that equals or exceeds ASHRAE 90.1-2013 (for commercial buildings) and a code that equals or exceeds the 2015 IECC (for residential buildings).

Necessity. This Amended Rule is necessary to encourage conservation of energy in the construction and operation of new commercial and industrial buildings; and otherwise to help achieve the legislative objectives summarized in Part 2 (Legislative Objectives) above.

Benefits. The principal benefits to be derived from this Amended Rule will be (1) the reduction in the energy used by buildings that comply with the Energy Code as amended by this Amended Rule (the "Amended Energy Code"), and (2) the savings in energy costs to be realized by owners of buildings that comply with the Amended Energy Code. Other benefits to be derived from this Amended Rule include the following:

DOS anticipates that the Amended Energy Code, will be cost effective, and that on average, building owners will receive a net economic benefit from the adoption of this Amended Rule. More specifically, DOS anticipates that, on average, when comparing a building constructed to the requirements of the Amended Energy Code to a similar building constructed to the requirements of the current version of the Energy Code (the Current Energy Code), the present value of the annual savings in energy costs over a 30-year period will exceed the sum of (1) the increase in initial construction costs, plus (2) the present value of the increase in maintenance costs over that 30-year period, plus (3) the present value of the increase in replacement costs over that 30-year period.

DOS anticipates that, on average, the increase in initial construction costs resulting from constructing a building to the requirements of the Amended Energy Code rather than the requirements of the Current Energy Code will be less than the present value of the savings in energy costs over 10 years.

DOS anticipates that many other states will update their building energy codes for commercial buildings to codes that meet or exceed ASHRAE 90.1-2013 and update their building energy codes for residential buildings to codes that meet or exceed the 2015 IECC. This Amended Rule will assure that energy conservation construction practices in the State remain consistent with national practices, which should make it easier and less expensive for regulated parties to comply with the Energy Code.

By reducing energy demands in a cost effective manner, this Amended Rule should reduce the growth in the use of energy produced from nonrenewable sources, reduce dependence on imported fossil fuels, and reduce emissions produced by use of fossil fuels.

Studies used. The studies, reports, and analyses which served as the basis for this Amended Rule include:

Commercial Buildings.

(1) Notice of Determination issued by the U.S. Department of Energy ("DOE") and published in the Federal Register on September 26, 2014 in 79 Federal Register at 57900.[2] This Notice (hereafter referred to as the

"DOE Commercial Notice of Determination") indicates that (1) DOE has determined that buildings constructed to the requirements of ASHRAE 90.1-2013 would achieve greater energy efficiency than buildings constructed to the requirements of ASHRAE 90.1-2010 and (2) based on its quantitative analysis, DOE anticipates national source energy savings of approximately 8.5 percent of commercial building energy consumption and site energy savings of approximately 7.6 percent. See 79 Federal Register 57900 (September 26, 2014) at 57912.

(2) National Cost-effectiveness of ANSI/ASHRAE/IES Standard 90.1-2013 published by Pacific Northwest National Laboratory ("PNNL"), Richland, WA (publication date January 2015).[3] This study (hereinafter referred to as the "PNNL National Cost-Effectiveness Study" or "PNNL-23824") builds on an earlier technical report issued by PNNL, entitled ANSI/ASHRAE/IES Standard 90.1-2013 Determination of Energy Savings: Quantitative Analysis (Halverson et al. 2014),[4] which analyzed sixteen building prototype EnergyPlus building models in 15 climate locations representing all eight U.S. climate zones. The PNNL National Cost-Effectiveness Study "used a subset of prototypes and climate locations, providing coverage of nearly all of the changes in Standard 90.1 from the 2010 to 2013 edition that affect energy savings, equipment and construction costs, and maintenance, including conventional HVAC systems used in commercial buildings" (PNNL National Cost-Effectiveness Study, at page iv). Specifically, the PNNL National Cost-Effectiveness Study considered six commercial building prototypes (small office, large office, standalone retail, primary school, small hotel, and mid-rise apartment) in five climate zones, including two (4A and 5A) of the three climate zones found in New York State. The principal characteristics of the six building prototypes studied in the PNNL National Cost-Effectiveness Study are as set forth in Table 2.4 of the PNNL National Cost-Effectiveness Study.

The PNNL National Cost-Effectiveness Study analyzed the differences in energy usage in the six building prototypes constructed to the requirements of ASHRAE 90.1-2013 compared to similar buildings constructed to the requirements of ASHRAE 90.1-2010; the annual energy cost savings that will result from the reduction in energy usage; the "first costs" (i.e., the increase [or decrease] in the cost of constructing a building that complies with ASHRAE 90.1-2013 compared to the cost of constructing a building that complies with ASHRAE 90.1-2010); and the changes in the costs of maintaining and replacing equipment in a building that complies with ASHRAE 90.1-2013 compared to the costs of maintaining and replacing equipment in a building that complies with ASHRAE 90.1-2010.

(3) Cost Estimate Spreadsheet Workbook, as revised, prepared by PNNL to accompany the PNNL National Cost-Effectiveness Study.[5] This Workbook (hereinafter referred to as the "PNNL Cost Estimate Spreadsheet Workbook") includes a spreadsheet showing electrical energy cost savings and natural gas cost savings of buildings constructed to ASHRAE 90.1-2013, as compared with buildings constructed to ASHRAE 90.1-2010. That spreadsheet also shows the energy costs of buildings constructed to ASHRAE 90.1-2010 and buildings constructed to ASHRAE 90.1-2013 and the energy cost savings that will result from constructing a building to ASHRAE 90.1-2013 rather than ASHRAE 90.1-2010.

(4) Cost-Effectiveness of ASHRAE Standard 90.1-2013 for the State of New York, prepared by PNNL (publication date April 2015). This study (hereinafter referred to as the "PNNL New York Cost-Effectiveness Study" or "PNNL-24223") considers the six commercial building prototypes examined in the PNNL National Cost-Effectiveness Study mentioned above in the three climate zones in New York State, and applies weighting factors to take into account the relative number of each such building prototype constructed in each such climate zone. The PNNL New York Cost-Effectiveness Study indicates that the "simple payback period" (i.e., the time required for the savings in energy costs to equal the "incremental first costs") will range from a low of "immediate" (in cases where the "incremental first costs" are negative, i.e., where initial construction costs are decreased) to a high of 27.1 years. However, when considering the weighted averages of those six commercial building prototypes:

(a) the weighted average annual energy cost savings as a result of construction complying with ASHRAE 90.1-2013 rather than ASHRAE 90.1-2010 would be $0.154 per square foot;

(b) the weighted average increase in construction costs as a result of construction complying with ASHRAE 90.1-2013 rather than ASHRAE 90.1-2010 would be $0.595 per square foot; and

(c) the weighted average "simple payback period" would be approximately 3.9 years.

The PNNL New York Cost-Effectiveness Study also includes an analysis of two "Life Cycle Cost" (or "LCC") scenarios. Both scenarios consider increases (or decreases) in initial construction costs, the present value (over 30 years) of savings in energy costs, the present value (over 30 years) of increases (or decreases) maintenance costs, and the present value (over 30 years) of increases (or decreases) in replacements costs. Scenario 1, which represents publicly owned buildings, does not reflect borrowing costs or taxes. Scenario 2, which represents privately owned buildings, does reflect borrowing costs and tax impacts. The PNNL New York Cost-Effectiveness Study indicates that the weighted average LCC savings will be $2.11 per square foot for Scenario 1 (publically owned buildings) and $1.92 per square foot for Scenario 2 (privately owned buildings). See Tables 2, 3, and 4 in the PNNL New York Cost-Effectiveness Study.

(5) Rulemaking Support to the NYS Department of State for the NYS Energy Conservation Construction Code and 2015 International Energy Conservation Code prepared by Vidaris, Inc., dated June 16, 2015. This report (hereinafter referred to as the "Vidaris Report") refines the information in the PNNL National Cost-Effectiveness Study and the PNNL Cost Estimate Spreadsheet Workbook to better reflect the impact this Amended Rule will have in this State:

First, the Vidaris Report re-computes the energy cost savings using the average energy costs to New York State commercial customers, as reported by the U.S. Energy Information Administration. The costs used for this re-computation of energy cost savings were $0.1535 per kWh for electricity[6] and $7.98 per 1,000 cubic feet (or $0.7763 per therm) for natural gas.[7]

Second, for the purposes of computing the present value of the expected energy savings, the Vidaris Report uses the "Uniform Present Value" factors for Census Region 1 (which includes New York State) as shown in the publication entitled Energy Price Indices and Discount Factors for Life-Cycle Cost Analysis – 2013 Annual Supplement to NIST Handbook 135 and NBS Special Publication 709, published by National Institute of Standards and Technology.[8] The factors used to compute the present value of electrical energy cost savings are 8.32 (for 10 years) and 19.50 (for 30 years), and the factors to be used to compute the present value of natural gas energy cost savings are 8.93 (for 10 years) and 22.92 (for 30 years).

Third, the Vidaris Report shows: (1) for each of the six commercial building prototypes in Climate Zones 4A and 5A, the "net savings" over ten years; and (2) for Climate Zones 4A and 5A, the aggregate "net savings" based on the weighting factors developed by PNNL based on construction volume by building type and climate zone.

Finally, the Vidaris Report shows, for each of the six commercial building prototypes in Climate Zones 4A and 5A: (1) the increase (or decrease) in initial construction costs (the "first costs"); (2) the present value (over 30 years) of the expected increase (or decrease) in replacement costs; (3) the present value (over 30 years) of the expected increase (or decrease) in maintenance costs; (4) the present value (over 30 years) of the expected savings in energy costs; and (5) the present value (over 30 years) of the net benefit of a building constructed to the requirements of ASHRAE 90.1-2013 compared to a building constructed to the requirements of ASHRAE 90.1-2010.

Residential Buildings.

(1) Notice of Determination issued by DOE and published in the Federal Register on June 11, 2015 in 80 Federal Register at 33250.[9] This Notice of Determination (hereinafter referred to as the "DOE Residential Notice of Determination") indicates that (1) DOE has determined that buildings constructed to the requirements of the 2015 IECC would achieve greater energy efficiency than buildings constructed to the requirements of the 2012 IECC and, based on its quantitative analysis, DOE anticipates national source energy savings of approximately 0.87 percent of residential building energy consumption and site energy savings of approximately 0.98 percent of residential building energy consumption. See 80 Federal Register 33250 (June 11, 2015) at 33261.

(2) Energy Use Savings for a Typical New Residential Dwelling Unit Based on the 2009 and 2012 IECC as Compared to the 2006 IECC, published by PNNL (publication date April 2013).[10] This report (hereinafter referred to as the "PNNL Energy Savings Report" or "PNNL-88603") averages the energy use savings for a typical new residential dwelling unit based on the 2009 and 2012 IECC compared to the 2006 IECC. Since the provisions of the Energy Code currently applicable to residential buildings are based on the 2009 IECC, energy savings in the 2012 IECC compared to the 2009 IECC are part of the basis for examining energy savings that would result from adopting the proposed rule. Information extracted from Table 1 of the PNNL Energy Savings Report demonstrates that annual source energy use (in million Btu) would decline from 139 to 103 in Zone 4, from 154 to 114 in Zone 5 and from 179 to 126 in Zone 6. This indicates source energy savings of approximately 25.9 percent in Zones 4 and 5, and 29.6 percent in Zone 6. This is consistent with national average energy savings of approximately 24.1 percent between 2009 IECC and 2012 IECC.

(3) Cost-Effectiveness Analysis of the Residential Provisions of the 2015 IECC for the State of New York, published by PNNL (publication date December 2014).[11] This analysis (hereinafter referred to as the "PNNL Residential Cost-Effectiveness Analysis" or "PNNL-23940") follows the DOE methodology for determining energy savings and cost-effectiveness of various residential building energy codes.[12] It compares the prescriptive and mandatory provisions of the 2015 IECC to those in

the 2009 IECC; as such, it does not include the new Energy Rating Index compliance alternative within the scope of its review. The PNNL Residential Cost-Effectiveness Analysis contains three main parts:

Section 2 in the PNNL Residential Cost-Effectiveness Analysis identifies the code changes between 2009 IECC and 2015 IECC applicable to residential single-family and low-rise multifamily buildings. The PNNL residential prototype building models are customized to reflect the requirements of the 2009 and 2015 editions of the IECC applicable to the State of New York. Representative locations for each IECC climate-zone occurring in the State of New York are identified to represent the variability in construction and energy code requirements throughout the state. Energy savings of the 2015 IECC over the baseline 2009 IECC are calculated and converted to energy costs using latest fuel prices specific to the State of New York.

Section 3 of the PNNL Residential Cost-Effectiveness Analysis documents the estimated incremental costs associated with the code changes identified in Section 2 (Energy Analysis) of the PNNL Residential Cost-Effectiveness Analysis. Section 3 then calculates the Life Cycle Cost (LCC), simple payback period, and annual consumer cash flow for the requirements set by the 2015 IECC over the 2009 IECC.

Section 4 of the PNNL Residential Cost-Effectiveness Analysis summarizes the energy and consumer benefits of the 2015 IECC compared to the 2009 IECC for each climate-zone within the State of New York as well as the average results for the whole State of New York.

(4) State Code Status: Vermont, prepared by the Building Codes Assistance Project, posted on-line at http://bcap-ocean.org/code-status/state/vermont/ (accessed August 2016). This site describes the code adoption and change process in Vermont, the history of Vermont's residential building energy standards (RBES), the Vermont comprehensive energy plan, and alternative prescriptive packages developed by the Vermont Public Service Department and deemed by Vermont to be equivalent, including one with insulation with R25 in the cavity wall only for climate zone 6.

(5) Vermont Residential Building Energy Standards (RBES) Update, prepared by the Vermont Department of Public Service.

(6) Proposal RE28-16 to amend the 2015 International Energy Code (Residential Provisions), prepared by Tom Kositzky and Greg Johnson, representing the Coalition for Fair Energy Codes, Mark Halverson, Representing APA, and Loren Ross, representing the American Wood Council. Proposal RE28-16 includes calculations and software outputs that demonstrate that the new prescriptive insulation option for residential buildings in Climate Zone 6 to be added by the Amended Rule provides energy performance that essentially meets (within 0.4%) the energy performance of the other prescriptive options provided in Section R402.1.2 and Table R402.1.2 of the 2015 IECC Residential Provisions.

Explanation of how studies were used. DOS used the studies, reports, and analyses described above to determine the initial costs of compliance with this Amended Rule and the ongoing costs of continuing to comply with this Amended Rule, and to determine that:

(1) this Amended Rule would reduce energy use by commercial buildings and residential buildings;

(2) the Amended Energy Code will meet or exceed ASHRAE 90.1-2007 (for commercial buildings) and meet or exceed the 2015 IECC (for residential buildings);

(3) adoption of this Amended Rule is necessary to assure that the Energy Code will comply with Title III of the ECPA;

(4) the Amended Energy Code, will be cost effective;

(5) the weighted average of the "first costs" associated with compliance with the Amended Energy Code will be less than the weighted average of the present value of the energy cost savings that can be expected in a ten year period, and

(6) the new prescriptive insulation option for residential buildings in Climate Zone 6 to be added to by this Amended Rule to Section R402.1.2 and Table R402.1.2 of the 2015 IECC Residential Provisions will provide will provide energy performance that essentially meets (within 0.4%) the energy performance of the other prescriptive options provided in Section R402.1.2 and Table R402.1.2.

4. COSTS

a. Costs to Regulated Parties.

Implementation Costs – "First Costs". In general, the costs to regulated parties for implementing this Amended Rule will include the "first costs," i.e., the increase (or decrease) in the costs of constructing a building to the requirements of Amended Energy Code rather than the requirements of the Current Energy Code.

For the six commercial building prototypes studied in the PNNL National Cost-Effectiveness Study in Climate Zones 4A and 5A, the "first costs" range from an increase of $221,481 (for a primary school in Zone 4A) to a decrease of $996,504 (for a large office building in Zone 5A).

For the four residential building prototypes studied in the PNNL Cost-Effectiveness Analysis, the "first costs" range from an increase of $3,592 (for a multifamily prototype with either a slab, unheated basement or crawlspace or a heated basement in Zone 6A) to an increase of $1,004 (for a multifamily prototype with either a slab, unheated basement or crawlspace or a heated basement in Zone 5A).

Other Implementation Costs. A copy of the 2015 IECC costs approximately $44. A copy of ASHRAE 90.1-2013 costs approximately $135. Both publications can also be purchased as a package from ICC at a cost of approximately $149. DOS will make the 2016 Energy Code Supplement available by download from the Department's website, free of charge.

Continuing Compliance Costs. In general, the ongoing costs of continuing to comply with this Amended Rule will consist of the change (increase or decrease) in (1) the cost of maintaining energy-related systems and equipment and (2) the cost of periodic replacement of energy-related systems and equipment.

For commercial buildings, DOS anticipates that the present value (over 30 years) of the change in replacement costs range from an increase of $992 (for a primary school in Zone 5A) to a decrease of $138,295 (for a large office building in Zone 4A), and the present value (over 30 years) of the change in maintenance costs range from an increase of $46,163 (for a large office building in Zone 4A) to a decrease of $2,371 (for a small hotel in Zone 4A).

For residential buildings, DOS anticipates that there will be no significant differences between ongoing maintenance and replacement costs and, accordingly, DOS anticipates that in the case of a residential building, there will be no significant continuing compliance costs associated with this Amended Rule.

b. Costs to DOS, the State, and Local Governments.

DOS's Division of Building Standards and Codes ("DBSC") will offer training on the Amended Energy Code to code enforcement personnel, registered design professionals, and other interested parties. However, offering such training is part of the DBSC's core mission, and DOS anticipates that DBSC will be able to offer such training using its existing staff and facilities, at no significant additional cost to the agency.

Local governments (cities, towns, and villages), counties and State agencies that are currently required by other existing law to administer and enforce the Energy Code will continue to be required by other existing law to administer and enforce the Amended Energy Code. DOS does not anticipate that this Amended Rule will have any significant impact on the existing code administration and enforcement obligations.

Local governments, counties, and State agencies that currently administer and enforce the Energy Code will be required to ensure that their code enforcement personnel receive training on the Amended Energy Code. However, DOS anticipates that code enforcement personnel will be able to receive such training as part of the annual "in-service" code training they are already required to receive by other existing law.

Local governments, counties, and State agencies that currently administer and enforce the Energy Code will be required to purchase one or more copies of the 2015 IECC (about $44) and one or more copies of ASHRAE 90.1-2013 (about $135). Both publications can also be purchased as a package from ICC at a cost of approximately $149. The 2016 Energy Code Supplement will be made available by download from the Department's website, free of charge.

Local governments, counties, and State agencies that construct buildings for their own use will be required to comply with the Amended Energy Code. The costs and benefits for a local government, county or State agency constructs a building for its own use should be substantially similar to the costs and benefits realized by any other regulated party.

5. LOCAL GOVERNMENT MANDATES.

Existing law makes most local governments (cities, towns, and villages) and certain counties responsible for enforcing the Energy Code. This Amended Rule will not change the existing code enforcement responsibilities of any local government or county.

Local governments and counties that currently administer and enforce the Energy Code will be required to ensure that their code enforcement personnel receive training on the Amended Energy Code. However, code enforcement personnel are already required by regulation to receive annual "in-service" code training. DOS anticipates that code enforcement personnel will be able to receive training on the Amended Energy Code as part of the already required in-service training.

Local governments and counties that construct buildings for their own use are required to comply with the Current Energy Code, and will be required to comply with the Amended Energy Code.

6. PAPERWORK.

This Amended Rule will not add any new or additional reporting or paperwork requirements, except as follows:

(1) This Amended Rule will require that reports verifying compliance with air leakage testing provisions of section R402.4.1.2 of the 2015 IECC Residential Provisions (as amended) be submitted to and retained by the code enforcement official.

(2) This Amended Rule will clarify that certain drawings, manuals, and

other data relating to lighting systems and equipment must be provided to the owner of a commercial building.

7. DUPLICATION.

DOS believes that this Amended Rule does not duplicate or conflict with any rule or other legal requirement of the State or the Federal government.

8. ALTERNATIVES.

Adopting ASHRAE 90.1-2013 as the new Energy Code for commercial buildings was considered. This alternative was not selected because adopting the "commercial provisions" of the 2015 IECC (as amended by the 2016 Energy Code Supplement) provides flexibility to building owners and design professionals, while still assuring that the Energy Code for commercial buildings meets or exceeds ASHRAE 90.1-2013.

Adopting the 2015 IECC Commercial Provisions and ASHRAE 90.1-2013, without change, as the new Energy Code for commercial buildings, and adopting the 2015 IECC Residential Provisions, without change, as the new Energy Code for residential buildings were considered. However, these alternatives were not selected because it was determined that the 2015 IECC and ASHRAE 90.1-2013 must be amended to comply with Title III of the EPCA and with Article 11 of the Energy Law.

9. FEDERAL STANDARDS.

This Amended Rule will not cause the Energy Code to violate or exceed any applicable Federal standard.

10. COMPLIANCE SCHEDULE.

This Amended Rule will be effective on the date on which the Original Rule would have become effective, i.e. on October 3, 2016. DOS anticipates that regulated parties will be able to comply with the amended the Energy Code immediately upon the Amended Rule becoming effective.

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[1] The Code Council is a council established within the Department of State. See Executive Law § 374(1).

[2] http://www.gpo.gov/fdsys/pkg/FR-2014-09-26/pdf/2014-22882.pdf

[3] http://www.energycodes.gov/sites/default/files/documents/Cost-effectiveness_of_ASHRAE_Standard_90-1-2013-Report.pdf (accessed February, 2015)

[4] http://www.pnnl.gov/main/publications/external/technical_reports/PNNL-23479.pdf

[5] http://www.energycodes.gov/sites/default/files/documents/Cost-effectiveness_of_ASHRAE_Standard_90-1-2013-Cost_Estimate.zip (accessed March 2, 2015)

[6] http://www.eia.gov/electricity/sales_revenue_price/pdf/table4.pdf (accessed April 23, 2015)

[7] http://eia.gov/tools/faqs/faq.cfm?id=45&t=8 and http://eia.gov/forecasts/aeo/pdf/appg.pdf (accessed April 23, 2015). In 2013, the approximate heat content of natural gas consumed by end-use sectors was 1,028 Btu / cubic foot. One therm equals 100,000 Btu. Using these factors, dividing the natural gas price per 1,000 cubic feet by 10.28 give the natural gas price per therm: $7.98 per 1,000 cubic feet divided by 10.28 equals $0.7763 per therm.

[8] http://dx.doi.org/10.6028/NIST.IR.85-3273-28

[9] http://www.gpo.gov/fdsys/pkg/FR-2015-06-11/pdf/2015-14297.pdf

[10] http://www.energycodes.gov/sites/default/files/documents/NationalResidentialEnergyAnalysis.pdf (accessed March 9, 2015)

[11] http://www.pnnl.gov/main/publications/external/technical_reports/PNNL-23940.pdf (accessed March 9, 2015)

[12] Methodology for Evaluating Cost-Effectiveness of Residential Energy Code Changes (Taylor et al. 2012), https://www.energycodes.gov/sites/default/files/documents/residential_methodology.pdf

Revised Regulatory Flexibility Analysis

On March 9, 2016, the State Fire Prevention and Building Code Council (the "Code Council") adopted a rule (the "Original Rule") that amends and updates the State Energy Conservation Construction Code (the "Energy Code"). The Notice of Adoption of the Original Rule was published in the State Register on April 6, 2016. The effective date of the Original Rule is October 3, 2016.

The Original Rule made non-substantive changes to the rule text as originally proposed. The non-substantive changes made to the rule text between the publication of the original Notice of Proposed Rule Making and the filing of the Notice of Adoption of the Original Rule are described in the "Statement Explaining Why Revised Regulatory Flexibility Analysis for Small Businesses and Local Governments is not Required" attached to and published with that Notice of Adoption.

On August 25, 2016, the Code Council adopted this rule (the "Amended Rule"), which amends the Original Rule. The Amended Rule makes the non-substantive changes to the Original Rule described below.

The Department of State (DOS) believes that the changes made to Original Rule by this Amended Rule are non-substantive, do not affect the issues addressed in the original Regulatory Flexibility Analysis for Small Businesses and Local Governments (the "RFASBLG"), and do not necessitate any changes to the original RFASBLG or to the Summary of the RFASBLG as published in the original Notice of Proposed Rule Making.

The changes made to the Original Rule by this Amended Rule are described as follows:

The Original Rule incorporated the publication entitled "2016 Supplement to the New York State Energy Conservation Construction Code" (Publication date: March 2016) (hereinafter referred to as the "Original 2016 Energy Code Supplement") by reference into 19 NYCRR Part 1240. The Amended Rule incorporates the publication entitled "2016 Supplement to the New York State Energy Conservation Construction Code (Revised August 2016)" (Publication date: August 2016) (hereinafter referred to as the "Revised 2016 Energy Code Supplement") by reference into 19 NYCRR Part 1240. In this Amended Rule, subdivision (a) of 19 NYCRR Section 1240.2, which defines the term "2016 Energy Code Supplement," is amended to read as follows:

"(a) 2016 Energy Code Supplement. The term "2016 Energy Code Supplement" means the publication entitled "2016 Supplement to the New York State Energy Conservation Construction Code (Revised August 2016)" (Publication Date: August, 2016) published by the New York State Department of State."

The following changes result from incorporating the Revised 2016 Energy Code Supplement, rather than the Original 2016 Energy Code Supplement, into 19 NYCRR Part 1240:

Item numbers in the Revised 2016 Energy Code Supplement include a prefix to indicate "Part" of the 2016 Energy Code Supplement in which the section appears. For example, Items in Part 1, which amends the Commercial Provisions of the 2015 IECC, are numbered "1.1," "1.2," etc.

A number of misspellings in the Original 2016 Energy Code Supplement have been corrected in the Revised 2016 Energy Code Supplement.

References in the Original 2016 Energy Code Supplement to the "2016 Supplement to the New York State Uniform Fire Prevention and Building Code" have been corrected in the Revised 2016 Energy Code Supplement to reflect the correct name of that publication (the "2016 Uniform Code Supplement").

The following changes were made to sections in the Revised 2016 Energy Code Supplement:

Changes in Part 1

In Item 1.7, the terms "commercial building," "historic building," and "2015 International Property Maintenance Code (as amended)" were added to the list of definitions added or amended by section 1.7.

In Item 1.8, which amends section C302.2 of the 2015 IECC Commercial Provisions, a note was added to clarify that Item 1.8 does not delete or amend section C303.2.1 of the 2015 IECC Commercial Provisions.

In Item 1.9, which amends section C401.2 of the 2015 IECC Commercial Provisions, a note was added to clarify that Item 1.9 does not delete or amend section C401.2.1 of the 2015 IECC Commercial Provisions.

Item 1.10 was revised to correct the numbering of the new section added by section 1.10 ("C402.2.6" was changed to "C402.6.7"). In addition, a note was added to clarify that Item 1.10 does not delete or amend sections C402.2.1, C402.2.3, C402.2.4, C402.2.5 or C402.2.6 of the 2015 IECC Commercial Provisions.

In Item 1.12, the caption was revised to correct the reference to the section in the 2015 IECC Commercial Provisions amended by section 1.13 ("C402.4.1" was changed to "C402.4.2").

In Item 1.13, the caption was revised and word "stove" was changed to "stoves."

In Item 1.18, the description of the publication known as "ASHRAE Appendix G Excerpt – 2015" was changed to reflect more accurately the manner in which that publication is referenced in the 2015 IECC Commercial Provisions (as amended).

In Item 1.19, the word "paragraphs" was changed to "Items."

Changes in Part 2

Item 2.2, which amends section 4.2.1.1 of ASHRAE 90.1-2013, was revised to clarify that the new item "c" added by Item 2.2 is one of three paths permitted by section 4.2.1.1 of ASHRAE 90.1-2013; to correct the formula for "PCIt" (the second equal sign was changed to a plus sign); and to add a new description of how "regulated energy cost" and "unregulated energy cost" are to be calculated.

Item 2.3 was revised to correct the reference to the section in ASHRAE 90.1-2013 that is amended by section 2.3 ("4.1.2.3" was changed to "4.2.1.3" in two places).

Item 2.5 was revised to correct the reference to the section in ASHRAE 90.1-2013 that is amended by Item 2.5 ("8.41" was changed to "8.4.1" in two places), to add the exception for circuits used for emergency services (the exception was inadvertently omitted from the Original 2016 Energy

Code Supplement), and to clarify the fact that sections 8.4.1.1 and 8.4.1.2 of ASHRAE 90.1-2013 are not included in section 8.4.1 of ASHRAE 90.1-203 as amended by Item 2.5 of the Revised 2016 Energy Code Supplement.

In Item 2.7, the word "paragraphs" was changed to "Items."

Changes in Part 3

Item 3.3 amends and restates Chapter 1 of the 2015 IECC Residential Provisions. In the portion of Item 3.3 that amends and restates section R101.1 of the 2015 IECC Residential Provisions, a reference in the final line to the "2015 IECC" was corrected to be a reference to the "2016 Energy Code Supplement."

In Item 3.5, the terms "historic building" and "2015 International Property Maintenance Code (as amended)" were added to the list of definitions added or amended by Item 3.5, and the definition of "residential building" was corrected by changing the reference to the "2010 Building Code of New York State" to a reference to the "2015 International Building Code (as amended)."

In Item 3.6, which amends section R303.2 of the 2015 IECC Residential Provisions, a note was added to clarify that Item 3.6 does not delete or amend section R303.2.1 of the 2015 IECC Residential Provisions.

Item 3.7 of the Revised 2016 Energy Code Supplement amends sections R402.1, R402.1.1, and R402.1.2 of the 2015 IECC Residential Provisions. The amendments of sections R402.1 and R402.1.1 are the same as the amendments made in items 7 and 8 of Part 3 of the Original 2016 Energy Code Supplement. The amendment of section R402.1.2 is new. Amended section R402.1.2 provides that buildings in climate zone 6 may comply with either of the two rows for climate zone 6 in Table R402.1.2. In addition, a note was added to Item 3.7 to clarify that Item 3.7 does not delete or amend sections R402.1.3, R402.1.4 or R402.1.5 of the 2015 IECC Residential Provisions.

Item 3.8 adds a new row for Climate Zone 6 to Table R402.1.2 of the 2016 IECC Residential Provisions. The new row provides a new option for Climate Zone 6, which allows the use of R-25 cavity-only insulation in wood frame walls, provided that (1) the fenestration U-factor is reduced to 0.28 and (2) the R-value of the insulation in the basement wall and in the crawl space wall is increased from 15/19 to 15/20. Based on recently developed studies and information relating to the Vermont Residential Building Energy Standards (RBES), the Department of State now believes that this additional option for buildings in climate zone 6 meets the REScheck compliance path and does not constitute a substantial change to the Original Rule.

In Item 3.10, a note was added to refer to Item 3.14 for a more complete description of the effect of Items 3.10 through 3.14 on Section R402.4 (including sections R402.4.1, R402.4.1.1, R402.4.1.2, R402.4.1.3, R402.4.2, R402.4.3, R402.4.4, R402.4.5, and R402.4.6) of the 2015 IECC Residential Provisions.

In Item 3.14, references to section numbers were corrected ("C402.4" was changed to "R402.4" and "C402.4.6" was changed to "R402.4.6"). In addition, a note was added to clarify that sections R402.4.1, R402.4.1.1, R402.4.3, R402.4.4, and R402.4.5 of the 2015 IECC Residential Provisions were not deleted or amended by Items 3.10 through 3.14 of the Revised 2016 Energy Code Supplement, and to summarize the effect of Items 3.10 through 3.14 on Section R402.4 (including sections R402.4.1, R402.4.1.1, R402.4.1.2, R402.4.1.3, R402.4.2, R402.4.3, R402.4.4, R402.4.5, and R402.4.6) of the 2015 IECC Residential Provisions.

In Item 3.15, which amends section R403.3.2 of the 2015 IECC Residential Provisions, a note was added to clarify that Item 3.15 does not delete or amend section R403.3.2.1 of the 2015 IECC Residential Provisions.

In Item 3.16, which amends section R403.6 of the 2015 IECC Residential Provisions, a note was added to clarify that section 3.16 does not delete or amend Item R403.6.1 of the 2015 IECC Residential Provisions.

Item 3.20 was revised to clarify its meaning ("Compliance with this section requires that the mandatory provisions identified in Sections R401.2 and R403.5.3 be met" was changed to "Compliance with this section requires that (1) the provisions in Sections R401 through R404 labeled as 'mandatory' and (2) the provisions of Section R403.5.3 be met").

Revised Rural Area Flexibility Analysis

On March 9, 2016, the State Fire Prevention and Building Code Council (the "Code Council") adopted a rule (the "Original Rule") that amends and updates the State Energy Conservation Construction Code (the "Energy Code"). The Notice of Adoption of the Original Rule was published in the State Register on April 6, 2016. The effective date of the Original Rule is October 3, 2016.

The Original Rule made non-substantive changes to the rule text as originally proposed. The non-substantive changes made to the rule text between the publication of the original Notice of Proposed Rule Making and the filing of the Notice of Adoption of the Original Rule are described in the "Statement Explaining Why Revised Rural Area Flexibility Analysis is not Required" attached to and published with that Notice of Adoption.

On August 25, 2016, the Code Council adopted this rule (the "Amended Rule"), which amends the Original Rule. The Amended Rule makes the non-substantive changes to the Original Rule described below.

The Department of State (DOS) believes that the changes made to Original Rule by this Amended Rule are non-substantive, do not affect the issues addressed in the original Rural Area Flexibility Analysis (the "RAFA"), and do not necessitate any changes to the original RAFA or to the Summary of the RAFA as published in the original Notice of Proposed Rule Making.

The changes made to the Original Rule by this Amended Rule are described as follows:

The Original Rule incorporated the publication entitled "2016 Supplement to the New York State Energy Conservation Construction Code" (Publication date: March 2016) (hereinafter referred to as the "Original 2016 Energy Code Supplement") by reference into 19 NYCRR Part 1240. The Amended Rule incorporates the publication entitled "2016 Supplement to the New York State Energy Conservation Construction Code (Revised August 2016)" (Publication date: August 2016) (hereinafter referred to as the "Revised 2016 Energy Code Supplement") by reference into 19 NYCRR Part 1240. In this Amended Rule, subdivision (a) of 19 NYCRR Section 1240.2, which defines the term "2016 Energy Code Supplement," is amended to read as follows:

"(a) 2016 Energy Code Supplement. The term "2016 Energy Code Supplement" means the publication entitled "2016 Supplement to the New York State Energy Conservation Construction Code (Revised August 2016)" (Publication Date: August, 2016) published by the New York State Department of State."

The following changes result from incorporating the Revised 2016 Energy Code Supplement, rather than the Original 2016 Energy Code Supplement, into 19 NYCRR Part 1240:

Item numbers in the Revised 2016 Energy Code Supplement include a prefix to indicate "Part" of the 2016 Energy Code Supplement in which the section appears. For example, Items in Part 1, which amends the Commercial Provisions of the 2015 IECC, are numbered "1.1," "1.2," etc.

A number of misspellings in the Original 2016 Energy Code Supplement have been corrected in the Revised 2016 Energy Code Supplement.

References in the Original 2016 Energy Code Supplement to the "2016 Supplement to the New York State Uniform Fire Prevention and Building Code" have been corrected in the Revised 2016 Energy Code Supplement to reflect the correct name of that publication (the "2016 Uniform Code Supplement").

The following changes were made to sections in the Revised 2016 Energy Code Supplement:

Changes in Part 1

In Item 1.7, the terms "commercial building," "historic building," and "2015 International Property Maintenance Code (as amended)" were added to the list of definitions added or amended by section 1.7.

In Item 1.8, which amends section C302.2 of the 2015 IECC Commercial Provisions, a note was added to clarify that Item 1.8 does not delete or amend section C303.2.1 of the 2015 IECC Commercial Provisions.

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Item 3.7 of the Revised 2016 Energy Code Supplement amends sections R402.1, R402.1.1, and R402.1.2 of the 2015 IECC Residential Provisions. The amendments of sections R402.1 and R402.1.1 are the same as the amendments made in items 7 and 8 of Part 3 of the Original 2016 Energy Code Supplement. The amendment of section R402.1.2 is new. Amended section R402.1.2 provides that buildings in climate zone 6 may comply with either of the two rows for climate zone 6 in Table R402.1.2. In addition, a note was added to Item 3.7 to clarify that Item 3.7 does not delete or amend sections R402.1.3, R402.1.4 or R402.1.5 of the 2015 IECC Residential Provisions.

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In Item 3.10, a note was added to refer to Item 3.14 for a more complete description of the effect of Items 3.10 through 3.14 on Section R402.4 (including sections R402.4.1, R402.4.1.1, R402.4.1.2, R402.4.1.3, R402.4.2, R402.4.3, R402.4.4, R402.4.5, and R402.4.6) of the 2015 IECC Residential Provisions.

In Item 3.14, references to section numbers were corrected ("C402.4" was changed to "R402.4" and "C402.4.6" was changed to "R402.4.6"). In addition, a note was added to clarify that sections R402.4.1, R402.4.1.1, R402.4.3, R402.4.4, and R402.4.5 of the 2015 IECC Residential Provisions were not deleted or amended by Items 3.10 through 3.14 of the Revised 2016 Energy Code Supplement, and to summarize the effect of Items 3.10 through 3.14 on Section R402.4 (including sections R402.4.1, R402.4.1.1, R402.4.1.2, R402.4.1.3, R402.4.2, R402.4.3, R402.4.4, R402.4.5, and R402.4.6) of the 2015 IECC Residential Provisions.

In Item 3.15, which amends section R403.3.2 of the 2015 IECC Residential Provisions, a note was added to clarify that Item 3.15 does not delete or amend section R403.3.2.1 of the 2015 IECC Residential Provisions.

In Item 3.16, which amends section R403.6 of the 2015 IECC Residential Provisions, a note was added to clarify that section 3.16 does not delete or amend Item R403.6.1 of the 2015 IECC Residential Provisions.

Item 3.20 was revised to clarify its meaning ("Compliance with this section requires that the mandatory provisions identified in Sections R401.2 and R403.5.3 be met" was changed to "Compliance with this section requires that (1) the provisions in Sections R401 through R404 labeled as 'mandatory' and (2) the provisions of Section R403.5.3 be met").

Revised Job Impact Statement

On March 9, 2016, the State Fire Prevention and Building Code Council (the "Code Council") adopted a rule (the "Original Rule") that amends and updates the State Energy Conservation Construction Code (the "Energy Code"). The Notice of Adoption of the Original Rule was published in the State Register on April 6, 2016. The effective date of the Original Rule is October 3, 2016.

On August 25, 2016, the Code Council adopted a rule (the "Amended Rule") that amends the Original Rule. The Amended Rule makes nonsubstantive changes to the Original Rule.

The Department of State has determined that it is apparent from the nature and purpose of the Amended Rule will not have a substantial adverse impact on jobs and employment opportunities.

The Amended Rule amends and updates the Energy Code to make the Energy Code (1) a building energy code that is based on the 2015 edition of the International Energy Conservation Code (the "2015 IECC"), a model code developed and published by the International Code Council, Inc. ("ICC"), and the 2013 edition of standard ASHRAE 90.1 ("ASHRAE 90.1-2013"), published by the American Society of Heating, Refrigeration and Air-Conditioning Engineers, Inc., and (2) a building energy code that equals or exceeds the 2015 IECC for residential buildings and a building energy code that equals or exceeds ASHRAE-90.1-2013 for commercial buildings. The 2015 IECC and ASHRAE 90.1-2013 both incorporate more current technology in the area of energy conservation. In addition, as a performance-based, rather than a prescriptive, code, the 2015 IECC provides for alternative methods of achieving code compliance, thereby allowing regulated parties to choose the most cost effective method.

As a consequence, the Department of State and the Code Council conclude that regulations based upon the 2015 IECC and ASHRAE 90.1-2013 will provide a greater incentive for the construction of new buildings and the rehabilitation of existing buildings than exists with the current version of the Energy Code. Therefore, this amendment will not have a substantial adverse impact on jobs and employment opportunities within New York. In fact, the proposed amendment may result in an increase in employment opportunities for those involved in testing and inspecting buildings for compliance with the building air sealing requirements of the amended and updated Energy Code.

AMENDED
NOTICE OF ADOPTION

State Uniform Fire Prevention and Building Code (the Uniform Code)

I.D. No. DOS-47-15-00017-AA

Filing No. 828

Filing Date: 2016-09-01

Effective Date: 2016-10-03

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

Action taken: Amendment of section 1219.1; repeal of Parts 1220, 1221, 1222, 1223, 1224, 1225, 1226, 1227 and 1228; and addition of new Parts 1220, 1221, 1222, 1223, 1224, 1225, 1226 and 1227 to Title 19 NYCRR.

Amended action: This action amends the rule that was filed with the Secretary of State on March 22, 2016, to be effective October 3, 2016, File No. 00346. The notice of adoption, I.D. No. DOS-47-15-00017-A, was published in the April 6, 2016 issue of the *State Register*.

Statutory authority: Executive Law, section 377

Subject: State Uniform Fire Prevention and Building Code (the Uniform Code).

Purpose: To repeal the existing Uniform Code and to adopt a new, updated Uniform Code.

Substance of amended rule: This rule making repeals the current versions of Parts 1220, 1221, 1222, 1223, 1224, 1225, 1226, 1227, and 1228 of Title 19 of the Official Compilation of Codes, Rules and Regulations of the State of New York and adds new Parts 1220, 1221, 1222, 1223, 1224, 1225, 1226 and 1227. The individual Parts pertain to specified portions of the Uniform Fire Prevention and Building Code and are summarized below:

Part 1220 Residential Construction

Section 1220.1. Requirements.

(a) Except as provided in subdivision (b) of this section, the construction, alteration, movement, replacement, repair, equipment, use, maintenance, removal and demolition of applicable residential structures and their accessory structures shall comply with the requirements of the "2015 International Residential Code" Second Printing, published by the International Code Council, Inc. (hereinafter the 2015 IRC), incorporated herein by reference.

Applicable residential structures include detached one- and two-family dwellings and multiple single-family dwellings (townhouses), not more than three stories above grade plane in height with a separate means of egress; such one-family dwellings converted to bed and breakfast dwellings; and certain specified dwellings under the supervision or jurisdiction of a department or agency of New York State (NYS). Copies of the 2015 IRC may be obtained from the publisher at the following address of the publisher:

International Code Council, Inc.
500 New Jersey Avenue, NW, 6th Floor
Washington, DC 20001
The 2015 IRC is available for public inspection and copying at:
New York State Department of State
One Commerce Plaza, 99 Washington Avenue
Albany, NY 12231-0001

(b) As applied in NYS, the 2015 IRC shall be deemed amended as specified in "2016 Uniform Code Supplement," published in March, 2016, by the NYS Department of State and incorporated herein by reference. Copies may be obtained and are available for inspection and copying at the New York State office specified in subdivision (a) of this section.

(c) Referenced standards. Certain published standards are incorporated by reference into 19 NYCRR Part 1220. The 2016 Uniform Code Supplement identifies such standards, and the names and addresses of publishers from which copies may be obtained. Such standards are available for public inspection and copying at the NYS office specified in subdivision (a) of this section.

Part 1221 Building Construction

Section 1221.1. Requirements.

(a) Except as provided in subdivision (b) of this section, the construction, alteration, movement, enlargement, replacement, repair, equipment, use and occupancy, maintenance, removal and demolition of every building or structure, or appurtenance connected or attached to any building or structure, shall comply with the requirements of the publication entitled "2015 International Building Code" Third Printing, published by the International Code Council, Inc. (hereinafter the 2015 IBC), incorporated herein by reference. Copies of the 2015 IBC may be obtained from the publisher at the address specified in subdivision (a) of Section 1220.1. The 2015 IBC is available for public inspection and copying at the NYS office listed in subdivision (a) of section 1220.1.

(b) As applied in NYS, the 2015 IBC shall be deemed amended as specified in "2016 Uniform Code Supplement," published in March 2016, by the NYS Department of State and incorporated herein by reference. Copies may be obtained and are available for inspection and copying at the NYS office specified in subdivision (a) of section 1220.1.

(c) Referenced standards. Certain published standards are incorporated by reference into 19 NYCRR Part 1221. The 2016 Uniform Code Supplement identifies such standards, and the names and addresses of publishers from which copies may be obtained. Such standards are available for public inspection and at the NYS office specified in subdivision (a) of Section 1220.1.

Part 1222 Plumbing Systems

Section 1222.1. Requirements.

(a) Except as provided in subdivision (b) of this section, the erection, installation, alteration, repair, relocation, replacement, addition to, use or maintenance of plumbing systems, nonflammable medical gas systems, and sanitary and condensate vacuum collection systems, shall comply with the requirements of the "2015 International Plumbing Code" Third Printing, published by the International Code Council, Inc. (hereinafter the 2015 IPC), incorporated herein by reference. Copies of the 2015 IPC may be obtained from the publisher, ICC, at the address of the publisher specified in subdivision (a) of Section 1220.1. The 2015 IPC is available for public inspection and copying at the NYS office specified in subdivision (a) of section 1220.1.

(b) As applied in NYS, the 2015 IPC shall be deemed amended as specified in "2016 Uniform Code Supplement," published in March 2016, by the NYS Department of State and incorporated herein by reference. Copies may be obtained and are available for inspection and copying at the NYS office specified in subdivision (a) of section 1220.1.

(c) Referenced standards. Certain published standards are incorporated by reference into 19 NYCRR Part 1222. The 2016 Uniform Code Supplement identifies such standards, and the names and addresses of publishers from which copies may be obtained. Such standards are available for public inspection and copying at the NYS office specified in subdivision (a) of Section 1220.1.

Part 1223 Mechanical Systems

Section 1223.1. Requirements.

(a) Except as provided in subdivision (b) of this section, the design, installation, maintenance, alteration and inspection of mechanical systems that are permanently installed and utilized to provide control of environmental conditions and related processes within buildings shall comply with the requirements of the publication entitled "2015 International Mechanical Code" Third Printing, published by the International Code Council, Inc. (hereinafter the 2015 IMC), incorporated herein by reference. Copies of the 2015 IMC may be obtained from the publisher at the address of the publisher specified in subdivision (a) of Section 1220.1. The 2015 IMC is available for public inspection and copying at the NYS office specified in subdivision (a) of section 1220.1.

(b) As applied in NYS, the 2015 IMC shall be deemed amended as specified in "2016 Uniform Code Supplement," published in March, 2016, by the NYS Department of State and incorporated herein by reference. Copies may be obtained and are available for inspection and copying at the NYS office specified in subdivision (a) of section 1220.1.

(c) Referenced standards. Certain published standards are incorporated by reference into 19 NYCRR Part 1223. The 2016 Uniform Code Supplement identifies such standards, and the names and addresses of publishers from which copies may be obtained. Such standards are available for public inspection and copying at the NYS office specified in subdivision (a) of Section 1220.1.

Part 1224 Fuel Gas Equipment and Systems

Section 1224.1. Requirements.

(a) Except as provided in subdivision (b) of this section, the design, installation, maintenance, alteration and inspection of fuel gas piping and equipment, fuel gas-fired appliances and fuel gas fired appliance ventilating systems shall comply with the requirements of the publication entitled "2015 International Fuel Gas Code" Third Printing, published by the International Code Council, Inc. (hereinafter the 2015 IFGC), incorporated herein by reference. Copies of the 2015 IFGC may be obtained from the publisher at the address of the publisher specified in subdivision (a) of Section 1220.1. The 2015 IFGC is available for public inspection and copying at the NYS office specified in subdivision (a) of section 1220.1.

(b) As applied in NYS, the 2015 IFGC shall be deemed amended as specified in "2016 Uniform Code Supplement," published in March, 2016, by the NYS Department of State and incorporated herein by reference. Copies may be obtained and are available for inspection and copying at the NYS office specified in subdivision (a) of section 1220.1.

(c) Referenced standards. Certain published standards are incorporated by reference into 19 NYCRR Part 1224. The 2016 Uniform Code Supplement identifies such standards, and the names and addresses of publishers from which copies may be obtained. Such standards are available for public inspection and copying at the NYS office specified in subdivision (a) of Section 1220.1.

Part 1225 Fire Prevention

Section 1225.1. Requirements.

(a) Except as provided in subdivision (b) of this section, structures, processes and premises; the storage, handling or use of structures, materials or devices; the occupancy and operation of structures and premises; and the construction, extension, repair, alteration or removal of fire suppression and alarms systems, shall comply with the requirements of the publication entitled "2015 International Fire Code" Third Printing, published by the International Code Council, Inc. (hereinafter the 2015 IFC, incorporated herein by reference. Copies of the 2015 IFC may be obtained from the publisher at the address of the publisher specified in subdivision (a) of Section 1220.1. The 2015 IFC is available for public inspection and copying at the NYS office specified in subdivision (a) of section 1220.1.

(b) As applied in NYS, the 2015 IFC shall be deemed amended as specified in "2016 Uniform Code Supplement," published in March, 2016, by the NYS Department of State and incorporated herein by reference. Copies may be obtained and are available for inspection and copying at the NYS office specified in subdivision (a) of section 1220.1.

(c) Referenced standards. Certain published standards are incorporated by reference into 19 NYCRR Part 1225. The 2016 Uniform Code Supplement identifies such standards, and the names and addresses of publishers from which copies may be obtained. Such standards are available for public inspection and copying at the NYS office specified in subdivision (a) of Section 1220.1.

Part 1226 Property Maintenance

Section 1226.1. Requirements.

(a) Except as provided in subdivision (b) of this section, all existing residential and nonresidential structures, premises, equipment and facilities, owners, operators and occupants of existing structures and premises, and the occupancy of existing structures and premises, shall comply with the requirements of the publication entitled "2015 International Property Maintenance Code" Fourth Printing, published by the International Code Council, Inc. (hereinafter the 2015 IPMC), and incorporated herein by reference. Copies of the 2015 IPMC may be obtained from the publisher at the address of the publisher specified in subdivision (a) of Section 1220.1. The 2015 IPMC is available for public inspection and copying at the NYS office specified in subdivision (a) of section 1220.1.

(b) As applied in NYS, the 2015 IPMC shall be deemed amended as specified in "2016 Uniform Code Supplement," published in March, 2016, by the NYS Department of State and incorporated herein by reference. Copies may be obtained and are available for inspection and copying at the NYS office specified in subdivision (a) of section 1220.1.

(c) Referenced standards. Certain published standards are incorporated by reference into 19 NYCRR Part 1226. The 2016 Uniform Code Supplement identifies such standards, and the names and addresses of publishers from which copies may be obtained. Such standards are available for pub-

lic inspection and copying at the NYS office specified in subdivision (a) of Section 1220.1.

(d) In addition to the amendments made to the 2015 IPMC by the "2016 Uniform Code Supplement" referred to in subdivision (b) of this section, for the purposes of applying the 2015 IPMC in New York State, Chapter 7 of the 2015 IPMC shall be deemed to be amended by the addition of new sections 704.3, 704.3.1, 704.3.2, 704.3.3, 704.3.4, 704.3.5, 704.3.6, and 704.3.7 pertaining to the installation of smoke alarms in certain existing residential buildings.

Part 1227 Existing Buildings

Section 1227.1. Requirements.

(a) Except as provided in subdivision (b) of this section, the repair, alteration, change of occupancy, addition and relocation of existing buildings shall comply with the requirements of the "2015 International Existing Building Code" Fifth Printing, published by the International Code Council, Inc. (hereinafter the 2015 IEBC), incorporated herein by reference. Copies may be obtained from the publisher at the address of the publisher specified in subdivision (a) of Section 1220.1. The 2015 IEBC is available for public inspection and copying at the NYS office specified in subdivision (a) of section 1220.1.

(b) As applied in NYS, the 2015 IEBC shall be deemed amended as specified in "2016 Uniform Code Supplement," published in March 2016, by the NYS Department of State and incorporated herein by reference. Copies may be obtained and are available for inspection and copying at the NYS office specified in subdivision (a) of section 1220.1.

(c) Referenced standards. Certain published standards are incorporated by reference into 19 NYCRR Part 1227. The 2016 Uniform Code Supplement identifies such standards, and the names and addresses of publishers from which copies may be obtained. Such standards are available for public inspection and copying at the NYS office specified in subdivision (a) of section 1220.1.

Finally, 19 NYCRR Part 1219 is amended to conform the references in such Part to the revised titles of Parts 1220 through 1227 and to delete the reference to the repealed Part 1228.

Amended rule as compared with adopted rule: Nonsubstantive changes were made in sections 1220.1(a)(2), 1226.1(b) and (d).

Text of amended rule and any required statements and analyses may be obtained from: Gerard Hathaway, Department of State, 99 Washington Avenue, Suite 1160, Albany, NY 12231, (518) 474-4073, email: gerard.hathaway@dos.ny.gov

Additional matter required by statute:

Executive Law § 378(15)(b) authorizes the State Fire Prevention and Building Code Council ("Code Council") to provide that, during the period between the date of adoption of changes to the Uniform Fire Prevention and Building Code ("Uniform Code") and the date on which such changes become effective, a person shall have the option of complying either with the provisions of the Uniform Code as changed or the provisions as they were set forth immediately prior to adoption of the change.

At its meeting held March 9, 2016, the Code Council voted to adopt a rule (the "Original Rule") to amend the Uniform Code. In addition, the Code Council voted to provide that, during the transition period between adoption of this Original Rule and the date on which the changes to the Uniform Code become effective, a person shall have the option of complying with either the provisions of the Uniform Code as changed, or with the provisions of the Uniform Code in effect immediately prior to the adoption of this rule.

At its meeting held August 25, 2016, the Code Council voted to adopt this rule (the "Amended Rule"), which amends the Original Rule. In addition, the Code Council voted to provide that, during the transition period between adoption of this Amended Rule and the date on which the changes to the Uniform Code become effective, a person shall have the option of complying with either the provisions of the Uniform Code as changed, or with the provisions of the Uniform Code in effect immediately prior to the adoption of this rule.

Executive Law § 378(15)(a) provides that except as otherwise provided by statute, no change to the Uniform Code shall become effective until at least ninety days after the date on which notice of such change has been published in the State Register, unless the Code Council finds that (i) an earlier effective date is necessary to protect health, safety and security; or (ii) the change to the code will not impose any additional compliance requirements on any person.

At its meeting held August 25, 2016, the Code Council found that making all changes made to the Uniform Code by the Amended Rule, including but not limited to the change made to the Original Rule by the Amended Rule, effective on October 3, 2016, the date on which the Original Rule was scheduled to have become effective, is necessary to protect health, safety and security, because delaying the effective date of the changes to the Uniform Code made by the Amended Rule until 90 days after publication of the Amended Notice of Adoption would unnecessarily delay the effective date of all of the improvements made to the Uniform Code by the Original Rule and by the Amended Rule. Therefore, the Amended Rule and the changes to the Uniform Code made by the Amended Rule will become effective on October 3, 2016.

Pursuant to Executive Law § 377(1), Secretary of State Rosanna Rosado reviewed the amendment of the Uniform Code to be implemented by this Amended Rule, found that such amendment effectuates the purposes of Article 18 of the Executive Law, and therefore approved said amendment.

Revised Regulatory Impact Statement

A Notice of Proposed Rule Making for a rule that would amend and update the State Uniform Fire Prevention and Building Code (the "Uniform Code") was published in the State Register on November 25, 2015. A Regulatory Impact Statement was issued at that time, and a Summary of that regulatory Impact Statement was attached to and published with that Notice of Proposed Rule Making.

On March 9, 2016, the State Fire Prevention and Building Code Council (the "Code Council") adopted a rule (the "Original Rule") that amends and updates the Uniform Code. The Notice of Adoption of the Original Rule was published in the State Register on April 6, 2016. The effective date of the Original Rule is October 3, 2016.

The Original Rule made non-substantive changes to the rule text as originally proposed. A Revised Regulatory Impact Statement was issued at that time, and a Summary of the Revised Regulatory Impact Statement was attached to and published with the Notice of Adoption.

On August 25, 2016, the Code Council adopted this rule (the "Amended Rule"), which amends the Original Rule. The Amended Rule makes the following changes to the Original Rule:

First, section 1220.1(a)(2) of the Amended Rule was revised to clarify the height limitation on townhouses that are subject to the 2015 International Residential Code.

Second, the Amended Rule includes new provisions relating to the installation of smoke alarms in certain existing residential buildings, more fully described as follows:

The Original Rule incorporates a number of publications by reference, including, but not limited to, the 2015 edition of the International Property Maintenance Code (the "2015 IPMC") and the 2015 edition of the International Residential Code (the "2015 IRC").

In general, the 2015 IRC applies to the construction of one- and two-family dwellings and townhouse units having not more than three stories above grade plane. The 2015 IRC includes provisions that require the installation of smoke alarms in newly constructed one- and two-family dwellings and townhouse units having not more than three stories above grade plane.

In general, the 2015 IPMC applies to existing buildings. The 2015 IPMC includes provisions that require the installation of smoke alarms in certain existing residential buildings. However, it appears that those smoke alarm provisions in the 2015 IMPC may not be applicable to existing one- and two-family dwellings and townhouse units having not more than three stories above grade plane. As a result, the 2015 IPMC could be construed as not requiring the installation of smoke alarms in existing one- and two-family dwellings and townhouse units having not more than three stories above grade plane.

The version of the Uniform Code that is currently in effect does require the installation of smoke alarms in all existing residential buildings, including all existing one- and two-family dwellings and townhouse units having not more than three stories above grade plane. There was no intent on the part of the Code Council to change that requirement. To the extent that the publications incorporated by reference in the Original Rule could be construed as removing the requirement that smoke alarms be installed in all existing one- and two-family dwellings and townhouses, that would amount to an inadvertent and unintended change to the Uniform Code.

The Amended Rule adds a new provision to NYCRR Part 1226 (the Part that incorporates the 2015 IPMC by reference) to clarify the intent that the Uniform Code continue to require the installation of smoke alarms in all existing residential buildings, including all existing one- and two-family dwellings and townhouse units having not more than three stories above grade plane.

The Amended Rule does not affect any matter discussed in the Revised Regulatory Impact Statement published in the Notice of Adoption of the Original Rule.

The Department of State believes that the changes made to Original Rule by this Amended Rule are not substantial revisions to the Original Rule. The changes do not affect the issues addressed in the Revised Regulatory Impact Statement, and do not necessitate any changes to the Revised Regulatory Impact Statement. Therefore, a second Revised Regulatory Impact Statement is not required.

Revised Regulatory Flexibility Analysis

A Notice of Proposed Rule Making for a rule that would amend and update the State Uniform Fire Prevention and Building Code (the

"Uniform Code") was published in the State Register on November 25, 2015. A Regulatory Flexibility Analysis for Small Businesses and Local Governments was attached to and published with that Notice of Proposed Rule Making.

On March 9, 2016, the State Fire Prevention and Building Code Council (the "Code Council") adopted a rule (the "Original Rule") that amends and updates the Uniform Code. The Notice of Adoption of the Original Rule was published in the State Register on April 6, 2016. The effective date of the Original Rule is October 3, 2016.

The Original Rule made non-substantive changes to the rule text as originally proposed. Those non-substantive changes did not necessitate the issuance of a Revised Regulatory Flexibility Analysis for Small Businesses and Local Governments.

On August 25, 2016, the Code Council adopted this rule (the "Amended Rule"), which amends the Original Rule. The Amended Rule makes the following changes to the Original Rule:

First, section 1220.1(a)(2) of the Amended Rule was revised to clarify the height limitation on townhouses that are subject to the 2015 International Residential Code.

Second, the Amended Rule includes new provisions relating to the installation of smoke alarms in certain existing residential buildings, more fully described as follows:

The Original Rule incorporates a number of publications by reference, including, but not limited to, the 2015 edition of the International Property Maintenance Code (the "2015 IPMC") and the 2015 edition of the International Residential Code (the "2015 IRC").

In general, the 2015 IRC applies to the construction of one- and two-family dwellings and townhouse units having not more than three stories above grade plane. The 2015 IRC includes provisions that require the installation of smoke alarms in newly constructed one- and two-family dwellings and townhouse units having not more than three stories above grade plane.

In general, the 2015 IPMC applies to existing buildings. The 2015 IPMC includes provisions that require the installation of smoke alarms in certain existing residential buildings. However, it appears that those smoke alarm provisions in the 2015 IMPC may not be applicable to existing one- and two-family dwellings and townhouse units having not more than three stories above grade plane. As a result, the 2015 IPMC could be construed as not requiring the installation of smoke alarms in existing one- and two-family dwellings and townhouse units having not more than three stories above grade plane.

The version of the Uniform Code that is currently in effect does require the installation of smoke alarms in all existing residential buildings, including all existing one- and two-family dwellings and townhouse units having not more than three stories above grade plane. There was no intent on the part of the Code Council to change that requirement. To the extent that the publications incorporated by reference in the Original Rule could be construed as removing the requirement that smoke alarms be installed in all existing one- and two-family dwellings and townhouses, that would amount to an inadvertent and unintended change to the Uniform Code.

The Amended Rule adds a new provision to NYCRR Part 1226 (the Part that incorporates the 2015 IPMC by reference) to clarify the intent that the Uniform Code continue to require the installation of smoke alarms in all existing residential buildings, including all existing one- and two-family dwellings and townhouse units having not more than three stories above grade plane.

The Amended Rule does not affect any matter discussed in the original Regulatory Flexibility Analysis for Small Businesses and Local Governments published in the Notice of Proposed Rule Making.

The Department of State believes that the changes made to Original Rule by this Amended Rule are not a substantial revisions to the Original Rule. The changes do not affect the issues addressed in the original Regulatory Flexibility Analysis for Small Businesses and Local Governments, and do not necessitate any changes to the original Regulatory Flexibility Analysis for Small Businesses and Local Governments. Therefore, a Revised Regulatory Flexibility Analysis for Small Businesses and Local Governments is not required.

Revised Rural Area Flexibility Analysis

A Notice of Proposed Rule Making for a rule that would amend and update the State Uniform Fire Prevention and Building Code (the "Uniform Code") was published in the State Register on November 25, 2015. A Rural Area Flexibility Analysis was attached to and published with that Notice of Proposed Rule Making.

On March 9, 2016, the State Fire Prevention and Building Code Council (the "Code Council") adopted a rule (the "Original Rule") that amends and updates the Uniform Code. The Notice of Adoption of the Original Rule was published in the State Register on April 6, 2016. The effective date of the Original Rule is October 3, 2016.

The Original Rule made non-substantive changes to the rule text as originally proposed. Those non-substantive changes did not necessitate the issuance of a Revised Rural Area Flexibility Analysis.

On August 25, 2016, the Code Council adopted this rule (the "Amended Rule"), which amends the Original Rule. The Amended Rule makes the following changes to the Original Rule:

First, section 1220.1(a)(2) of the Amended Rule was revised to clarify the height limitation on townhouses that are subject to the 2015 International Residential Code.

Second, the Amended Rule includes new provisions relating to the installation of smoke alarms in certain existing residential buildings, more fully described as follows:

The Original Rule incorporates a number of publications by reference, including, but not limited to, the 2015 edition of the International Property Maintenance Code (the "2015 IPMC") and the 2015 edition of the International Residential Code (the "2015 IRC").

In general, the 2015 IRC applies to the construction of one- and two-family dwellings and townhouse units having not more than three stories above grade plane. The 2015 IRC includes provisions that require the installation of smoke alarms in newly constructed one- and two-family dwellings and townhouse units having not more than three stories above grade plane.

In general, the 2015 IPMC applies to existing buildings. The 2015 IPMC includes provisions that require the installation of smoke alarms in certain existing residential buildings. However, it appears that those smoke alarm provisions in the 2015 IMPC may not be applicable to existing one- and two-family dwellings and townhouse units having not more than three stories above grade plane. As a result, the 2015 IPMC could be construed as not requiring the installation of smoke alarms in existing one- and two-family dwellings and townhouse units having not more than three stories above grade plane.

The version of the Uniform Code that is currently in effect does require the installation of smoke alarms in all existing residential buildings, including all existing one- and two-family dwellings and townhouse units having not more than three stories above grade plane. There was no intent on the part of the Code Council to change that requirement. To the extent that the publications incorporated by reference in the Original Rule could be construed as removing the requirement that smoke alarms be installed in all existing one- and two-family dwellings and townhouses, that would amount to an inadvertent and unintended change to the Uniform Code.

The Amended Rule adds a new provision to NYCRR Part 1226 (the Part that incorporates the 2015 IPMC by reference) to clarify the intent that the Uniform Code continue to require the installation of smoke alarms in all existing residential buildings, including all existing one- and two-family dwellings and townhouse units having not more than three stories above grade plane.

The Amended Rule does not affect any matter discussed in the original Rural Area Flexibility Analysis published in the Notice of Proposed Rule Making.

The Department of State believes that the changes made to Original Rule by this Amended Rule are not a substantial revisions to the Original Rule. The changes do not affect the issues addressed in the original Rural Area Flexibility Analysis, and do not necessitate any changes to the original Rural Area Flexibility Analysis. Therefore, a Revised Rural Area Flexibility Analysis is not required.

Revised Job Impact Statement

On March 9, 2016, the State Fire Prevention and Building Code Council (the "Code Council") adopted a rule (the "Original Rule") that amends and updates the State Uniform Fire Prevention and Building Code (the "Uniform Code"). The Notice of Adoption of the Original Rule was published in the State Register on April 6, 2016. The effective date of the Original Rule is October 3, 2016.

On August 25, 2016, the Code Council adopted a rule (the "Amended Rule") that amends the Original Rule. The Amended Rule makes non-substantive changes to the Original Rule.

The Department of State has determined that it is apparent from the nature and purpose of the Amended Rule will not have a substantial adverse impact on jobs and employment opportunities.

The Amended Rule repeals the current version of the Uniform Code and adopts a new and updated version of the Uniform Code.

The current version of the Uniform Code (19 NYCRR Parts 1220 through 1228) took effect December 28, 2010. It is based upon the 2006 editions of model codes developed by the International Code Council, Inc. (the "I-Codes"), with some New York modifications.

This Amended Rule repeals the current version of the Uniform Code and adopts a new version of the Uniform Code which is based upon the 2015 editions of I-Codes (the "2015 I-Codes"). The provisions of the 2015 I-Codes are supplemented by provisions which address topics specific to New York State.

The I-Codes are updated on a three-year cycle to keep current with industry practice and technical and life-safety evolution. The 2015 I-Codes incorporate the most current technology in the areas of building construction and fire prevention. As a consequence, the Department of State

concludes that this update, which is based upon the newer (2015) versions of the I-Codes, will provide a greater incentive to construction of new buildings and rehabilitation of existing buildings than exists with the current Uniform Code. Therefore, this Amended Rule making will not have a substantial adverse impact on jobs and employment opportunities within New York.