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.

Adirondack Park Agency

NOTICE OF ADOPTION

Access to Agency Records

I.D. No. APA-39-16-00030-A
Filing No. 53
Filing Date: 2017-01-13
Effective Date: 2017-02-01

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

Action taken: Repeal of section 587.1; addition of new section 587.1; and amendment of section 588.8 of Title 9 NYCRR.

Statutory authority: Executive Law, section 804(6); Public Officers Law, art. 6

Subject: Access to agency records.

Purpose: The rule provides information necessary for implementation of the Freedom of Information Law.

Text of final rule: Section 587.1 of Subtitle Q of 9 NYCRR is repealed and a new section 587.1 is adopted to read as follows:

587.1 Access to agency records.

(a) Purpose. The agency shall provide access to records in conformance with the requirements and procedures set forth in Article 6 of the Public Officers Law, entitled "Freedom of Information Law," and its implementing regulations in 21 NYCRR Part 1401. This section provides regulations specific to the agency's responsibilities under those authorities. Additional information about the agency's implementation of the Freedom of Information Law is on the agency's website at www.apa.ny.gov.

(b) Records access officer. One or more designated project administrators shall be the agency's records access officer(s) with the responsibilities set forth herein and in 21 NYCRR Part 1401. The business address for the records access officer is: Adirondack Park Agency, P.O. Box 99, Ray Brook, New York 12977, and the email address is: FOIL@apa.ny.gov. In the absence of the records access officer, any agency attorney except the counsel may be designated to serve in that capacity.

(c) Requests for access to records. Requests for access to records may be submitted to the agency in writing by email, mail or in person. Record request forms are available at the Adirondack Park Agency, 1133 NYS Route 86, Ray Brook, New York and on the agency's website at www.apa.ny.gov. Oral requests for access to records may also be allowed, although the agency may require a written request. The agency shall respond to requests for access to records in conformance with 21 NYCRR Part 1401. The agency will provide requested records by email or mail, or make them available for inspection at the Adirondack Park Agency, 1133 NYS Route 86, Ray Brook, New York.

(d) Hours for public inspection. The agency shall accept requests for access to records and produce records during all regular business hours. Except on State holidays, or during weather or other emergencies, regular business hours are 8:30 a.m. to 5:00 p.m., Monday through Friday.

(e) Fees. (1) No fee will be charged for electronic copies of records; (2) Fees of 25 cents per page may be charged for photocopies of more than fifty pages of records not exceeding 9 by 14 inches in size; and (3) Other fees may be charged for the actual cost of reproducing records in accordance with 21 NYCRR Part 1401.

(f) Requests for exceptions from disclosure of records. Requests for exceptions from disclosure of records shall be governed by section 89(5) of the Freedom of Information Law. A person submitting records to the agency may identify information therein for which an exception from disclosure is requested pursuant to that section and shall specify the facts, in reasonable detail, supporting the request. The records access officer shall identify the person(s) within the agency who shall have custody and/or access to such information and the manner of safeguarding against unauthorized access to such information until fifteen days after the entitlement to such exception has been finally determined or such further time as ordered by a court of competent jurisdiction.

(g) Appeals. Appeals shall be governed by the Freedom of Information Law or 21 NYCRR Part 1401, as applicable. Any person denied access to records, or denied a requested exception from disclosure of records, in whole or in part, may appeal in writing to the agency's counsel. The business address of the agency's counsel is Adirondack Park Agency, P.O. Box 99, Ray Brook, New York 12977.

Section 588.8 of Subtitle Q of 9 NYCRR is amended to read as follows:

This Subtitle includes all regulations [of the] *adopted by the* Adirondack Park Agency [effective] as of *January 13, 2017* [June 17, 2015].

Final rule as compared with last published rule: Nonsubstantive changes were made in section 588.8.

Text of rule and any required statements and analyses may be obtained from: Paul Van Cott, Associate Attorney, NYS Adirondack Park Agency, 1133 Rte. 86, Ray Brook, New York 12977, (518) 891-4050, email: APARuleMaking@apa.ny.gov

Revised Regulatory Impact Statement

The changes to the proposed rule are technical in nature and are exempt pursuant to section 202-a(5)(a) of the State Administrative Procedure Act. The amendment of 9 NYCRR section 588.8 merely updates the current adoption date of Adirondack Park Agency rules to conform with the adoption of the new 9 NYCRR section 587.1 on January 13, 2017.

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

The amendment of 9 NYCRR section 588.8 is technical and merely updates the current adoption date of Adirondack Park Agency rules to conform with the adoption of the new 9 NYCRR section 587.1 on January 13, 2017.

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 2022, 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.

Department of Agriculture and Markets

NOTICE OF ADOPTION

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

I.D. No. AAM-47-16-00005-A
Filing No. 54
Filing Date: 2017-01-17
Effective Date: 2017-02-01

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

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

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

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

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

Text of final rule: Section 159.2 of 1 NYCRR is amended to read as follows:

§ 159.2 Authorization to grow and cultivate industrial hemp

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

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

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

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

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

(2) a diagram for each premises *where industrial hemp is cultivated, possessed, sold to, distributed to, or transported from,* that visually depicts the buildings, structures and improvements on the premises and identifies their use, and that sets forth the relevant activities conducted at the premises; and

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

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

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

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

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

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

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

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

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

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

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

(3) the applicant or authorization holder is not capable for whatever reason of complying, or has failed to comply, with the provisions of this Part or with state or federal law relating to the possession, sale, [or] cultivation*, distribution, transportation and processing* of industrial hemp; or

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

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

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

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

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

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

[or]

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

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

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

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

§ 159.3 Requirements

(a) Studies and reports.

(1) An authorization holder shall, no later than three months after the date [of] *that his or her* application [to grow or cultivate industrial hemp] was approved by the Commissioner, furnish to the Commissioner a report that provides, in detail[,]:

i. its findings and conclusions regarding the issues and matters set forth in its application [to grow or cultivate industrial hemp.]*; and*

ii. the name and address of each person who, as of the date of submission of such report, will receive industrial hemp or to whom industrial hemp will be sold or distributed to.

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

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

(b) Except as provided in subdivision (a) of section 159.6 of this Part and in this subdivision, industrial hemp may be grown*,* [or] cultivated[,] *or* harvested[, stored, and disposed of] only on the registered premises. Industrial hemp that has been harvested shall be stored in a secured facil-

ity except when it is being transported within the registered premises, to a laboratory for testing, or to another registered premises or facility approved by the Commissioner.

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

(d) Testing and disposition.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(2) industrial] *that industrial* hemp is not acquired, possessed, grown or cultivated, harvested, stored, transported, *sold, processed, distributed* or disposed of except under conditions that ensure that it will not be [removed from registered premises or] used in violation of state or federal law.

Final rule as compared with last published rule: Nonsubstantive changes were made in sections 159.2(d)(2), 159.3(a)(1), (2) and (e).

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

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

The version of the proposed rule, published in the New York State Register on November 23, 2016, has been revised to provide that an institution of higher education, authorized to cultivate, grow, process, sell, transport, and/or distribute industrial hemp, need not submit a diagram of premises where that commodity is processed, and need not submit the name and address of each person to whom that commodity is sold or distributed to, to law enforcement, within fifteen days of such sale or distribution. These amendments are not substantive in that they do not alter the purpose, meaning, or effect of the rule as originally proposed. Furthermore, these amendments lessen compliance requirements upon institutions of higher education that have been granted authorization to grow, etc. industrial hemp and, as such, will have no adverse impact upon regulated parties wherever located; the State; or local governments.

Initial Review of Rule

As a rule that requires a RFA, RAFA or JIS, this rule will be initially reviewed in the calendar year 2020, which is no later than the 3rd year after the year in which this rule is being adopted.

Assessment of Public Comment

The Department of Agriculture and Markets ("Department") received four letters in response to its notice that it intends to promulgate a rule amending 1 NYCRR Part 159 to allow the Commissioner of Agriculture and Markets ("Commissioner") to authorize institutions of higher education to not only grow and process industrial hemp but, also to sell, process, transport, and distribute that commodity.

The Department received a letter from the Farm Bureau, dated December 12, 2016, that was supportive of the proposed rule; as such, the provisions thereof were not amended in response to this letter.

The Department also received a letter from PreProcess, Inc., dated December 14, 2016, wherein PreProcess suggested that the proposed rule be amended to allow the Commissioner to authorize entities other than institutions of higher education to grow, cultivate, sell, process, transport, and distribute industrial hemp; the proposed rule was not amended to incorporate this suggestion, however, because Agriculture and Markets Law section 506, the statutory authority for 1 NYCRR Part 159, permits the Commissioner to authorize only institutions of higher education to grow, etc. industrial hemp or to engage, itself, in that activity.

In addition, the Department received a letter from JD Farms, dated December 13, 2016, that contained numerous suggestions for amending the proposed rule. The Department has considered JD Farms' suggestions and has amended the proposed rule to incorporate several of such suggestions. To begin with, the proposed rule has been amended so that institutions of higher education that apply to the Commissioner for authorization to grow, etc. industrial hemp will not be required to submit a diagram of premises upon which industrial hemp is processed. Further-

more, the proposed rule was amended so that an authorized institution of higher education will not be required to submit the name and address of each person to whom industrial hemp is sold or distributed to law enforcement, within fifteen days of such sale and distribution but, rather, will be required to do so in a report submitted quarterly to the Commissioner.

JD Farms also suggested that the proposed rule be amended to allow the Commissioner to authorize "private farms" to grow, etc. industrial hemp; this suggestion was not accepted for the same reason that PreProcess, Inc.'s suggestion was not. Finally, JD Farms suggested that the proposed rule be amended so that an authorized institution of higher education will not be prohibited from selling and distributing industrial hemp unless and until a contract for sale and distribution has been approved by the Commissioner. The Department has declined to amend the proposed rule in response to this suggestion because it believes that its ability to approve such contracts will allow it to exercise a necessary level of supervision over the disposition of industrial hemp, a commodity that is a controlled substance pursuant to state and federal law. Furthermore, the Department anticipates that it will be able to readily review and either approve or disapprove such contracts; as such, commerce in industrial hemp should not be impeded, due to this requirement. However, should the Department obtain statutory authorization to expand the number of agricultural pilot programs, the Department will reconsider this requirement based upon administrative burden and the potential for delay.

The Department also received a letter from Assemblywoman Donna A. Lupardo and Senator Tom O'Mara, dated January 3, 2017, in which the legislators made several of the same suggestions made by JD Farms that were accepted by the Department and which resulted in the proposed rule being amended accordingly (that is, that authorized institutions of higher education should not be required to submit a diagram of premises where industrial hemp is processed, and that such institutions should, also, not be required to submit to law enforcement the name and address of each person to whom that commodity is sold or distributed to, within fifteen days of such sale and distribution).

The legislators also suggested, as did JD Farms, that the proposed rule should be amended so that an authorized institution of higher education should not be prohibited from selling and distributing industrial hemp unless and until a contract for sale and distribution has been approved by the Commissioner; as set forth above, the proposed rule will not, at this time, be amended to reflect such suggestion but the Department may consider, in a subsequent rulemaking, whether this provision of 1 NYCRR should be amended or deleted.

Finally, the legislators suggested that the proposed rule should be amended to set forth procedures for the Department to operate a pilot program to study the growth and cultivation of industrial hemp and, in connection therewith, to enter into contracts with farmers to allow them to grow and cultivate industrial hemp as well as to sell, distribute, transport, and process that commodity. Because such an amendment would be a substantive change to the proposed rule, and to facilitate the broadening of the scope of the current pilot programs, the Department declines to use this rulemaking to establish a Department run program. However, the Department intends to move rapidly to establish a research pilot program conducted by the Department that is open to private farm participation.

Department of Environmental Conservation

EMERGENCY RULE MAKING

Chemical Bulk Storage (CBS)

I.D. No. ENV-19-16-00006-E
Filing No. 52
Filing Date: 2017-01-12
Effective Date: 2017-01-12

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

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

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

Finding of necessity for emergency rule: Preservation of public health.

Specific reasons underlying the finding of necessity: The New York State Department of Health (NYSDOH) has requested that the New York State Department of Environmental Conservation (DEC) add perfluorooctanoic acid (PFOA-acid, Chemical Abstracts Service (CAS) No. 335-67-1), ammonium perfluorooctanoate (PFOA-salt, CAS No. 3825-26-1), perfluorooctane sulfonic acid (PFOS-acid, CAS No. 1763-23-1), and perfluorooctane sulfonate (PFOS-salt, CAS No. 2795-39-3) to 6 NYCRR Section 597.3, List of Hazardous Substances. DEC has concluded that these four substances meet the definition of a hazardous substance based upon the conclusion of the NYSDOH that prolonged exposure to significantly elevated levels of these compounds can affect health and, consequently, pose a threat to public health in New York State when improperly treated, stored, transported, disposed of or otherwise managed. NYSDOH scientists have concluded that it is essential to list these chemicals as hazardous substances. See the Regulatory Impact Statement for additional information, including NYSDOH's letter requesting that these chemicals be added to the List of Hazardous Substances (Section 597.3).

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

Subject: Chemical Bulk Storage (CBS).

Purpose: To amend Part 597 of the CBS regulations.

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

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

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

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

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

Existing section 597.3 is amended to read as follows:

597.3 List of hazardous substances

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

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

Table 1 – Alphabetical Order

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

Table 2 – CAS Number Order

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

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

(a) Prohibition of releases.

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

(1) such release is authorized; [or]

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

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

Existing subdivision 597.4(b) remains unchanged.

This notice is intended to serve only as a notice of emergency adoption. This agency intends to adopt the provisions of this emergency rule as a permanent rule, having previously submitted to the Department of State a notice of proposed rule making, I.D. No. ENV-19-16-00006-EP, Issue of May 11, 2016. The emergency rule will expire March 12, 2017.

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

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

Summary of Regulatory Impact Statement

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

1. STATUTORY AUTHORITY

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

2. LEGISLATIVE OBJECTIVES

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

3. NEEDS AND BENEFITS

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

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

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

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

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

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

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

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

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

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

Need for Correction of the List of Hazardous Substances

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

4. COSTS

Costs to Regulated Parties

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

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

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

Costs to the Department, State, and Local Government

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

State and local governments will incur costs making determinations

regarding whether products containing one of these substances are stored at their facilities.

5. LOCAL GOVERNMENT MANDATES

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

6. PAPERWORK

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

7. DUPLICATION

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

8. ALTERNATIVES

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

9. FEDERAL STANDARDS

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

10. COMPLIANCE SCHEDULE

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

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

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

Summary of Regulatory Flexibility Analysis

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

1. EFFECT OF RULE

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

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

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

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

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

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

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

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

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

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

The Department anticipates that remediation issues would be most significant for areas where the substances were either manufactured, used to make other products, released, or disposed of. Based upon currently available information, the four substances have not been manufactured in New York State, but have been used here to create other products. It is not known how many small businesses or local governments own properties that will be subject to the regulatory requirements of Part 375because of contamination from these four substances.

2. COMPLIANCE REQUIREMENTS

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

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

If a facility is already storing any of the four substances and is subject to the registration requirements, the registration requirement became ef-

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

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

3. PROFESSIONAL SERVICES

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

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

4. COMPLIANCE COSTS

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

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

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

5. ECONOMIC AND TECHNOLOGICAL FEASIBILITY

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

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

6. MINIMIZING ADVERSE IMPACT

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

7. SMALL BUSINESS AND LOCAL GOVERNMENT PARTICIPATION

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

8. CURE PERIOD OR OTHER OPPORTUNITY FOR AMELIORATIVE ACTION

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

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

9. INITIAL REVIEW OF THE RULE

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

Rural Area Flexibility Analysis

1. TYPES AND ESTIMATED NUMBER OF RURAL AREAS

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

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

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

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

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

tive CBS compliance requirements regarding these chemicals beyond the registration requirement.

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

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

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

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

3. COSTS

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

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

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

4. MINIMIZING ADVERSE IMPACT

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

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

5. RURAL AREA PARTICIPATION

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

6. INITIAL REVIEW OF THE RULE

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

Job Impact Statement

1. NATURE OF IMPACT

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

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

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

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

The substantive effects of listing of these substances in Section 597.3 is to (1) make the handling and storage of PFOA-acid, PFOA-salt, PFOS-acid, and PFOS-salt subject to the registration and other regulatory standards for Chemical Bulk Storage (CBS) facilities (6 NYCRR Parts 596-

599); (2) prohibit the unauthorized release of PFOA-acid, PFOA-salt, PFOS-acid, and PFOS-salt to the environment (subdivision 597.4(a)) and require that any releases above the RQ (one pound) be reported to the Department (subdivision 597.4(b)); and (3) make the investigation and remediation of releases of PFOA-acid, PFOA-salt, PFOS-acid, and PFOS-salt to the environment subject to the Department's remedial program requirements (6 NYCRR Part 375).

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

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

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

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

2. CATEGORIES AND NUMBERS AFFECTED

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

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

The number of sites that may become remedial sites because of the addition of PFOA-acid, PFOA-salt, PFOS-acid, and PFOS-salt to Section 597.3 is unknown. The Department has placed one site on the Registry of Inactive Hazardous Waste Disposal Sites (Registry) as a result of adding PFOA-acid to Section 597.3 (Site Registry ID No. 442046). The Department expects that other sites that used PFOA-acid, PFOA-salt, PFOS-acid, or PFOS-salt in commercial or industrial processes may have PFOA-acid, PFOA-salt, PFOS-acid, or PFOS-salt environmental contamination. Locations where PFOA-acid, PFOA-salt, PFOS-acid, or PFOS-salt disposal occurred or where PFOA-acid, PFOA-salt, PFOS-acid, or PFOS-salt were components of materials released to the environment may become remedial sites subject to the requirements of Part 375. Nationally, research by the United States Department of Defense (DoD) found that approximately 600 DoD sites are categorized as fire/crash/training areas and thus have the potential for contamination with perfluoroalkyl compounds (including PFOA-related and PFOS-related substances) due to historical use of aqueous film-forming foams (AFFF) [Strategic Environmental Research and Development Program (SERDP), FY 2014 Statement of Need (SON), Environmental Restoration (ER) Program Area, "In Situ Remediation of Perfluoroalkyl Contaminated Groundwater," SON Number: ERSON-14-02, October 25, 2012]. It is possible that the Department will list additional Registry sites. The work needed to investigate and remediate these sites may be accomplished by existing staff or new jobs may be added depending upon the number and complexity of sites.

3. REGIONS OF ADVERSE IMPACT

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

4. MINIMIZING ADVERSE IMPACT

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

5. SELF-EMPLOYMENT OPPORTUNITIES

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

6. INITIAL REVIEW OF RULE

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

Assessment of Public Comment

The agency received no public comment.

Department of Financial Services

NOTICE OF ADOPTION

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

I.D. No. DFS-47-16-00006-A
Filing No. 50
Filing Date: 2017-01-11
Effective Date: 2017-02-01

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

Action taken: Amendment of Subpart 65-3 (Regulation 68-C) and Part 216 (Regulation 64) of Title 11 NYCRR.

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

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

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

Text or summary was published in the November 23, 2016 issue of the Register, I.D. No. DFS-47-16-00006-P.

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

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

Assessment of Public Comment

The agency received no public comment.

Department of Labor

NOTICE OF ADOPTION

Employer Imposed Limitations on the Inquiry, Discussion, and Disclosure of Wages

I.D. No. LAB-03-16-00009-A
Filing No. 58
Filing Date: 2017-01-19
Effective Date: 2017-02-01

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

Action taken: Addition of Part 194 to Title 12 NYCRR.

Statutory authority: Labor Law, sections 21, 194 and 199

Subject: Employer Imposed Limitations on the Inquiry, Discussion, and Disclosure of Wages.

Purpose: This regulation sets forth standards for limitations on inquiry, discussion, or the disclosure of wages amongst employees.

Text of final rule: *Part 194 Pay Equity*

Subpart-1 General Provisions

§ 194-1.1 Prohibited Practices

No employer shall prohibit an employee from inquiring about, discussing, or disclosing the wages of such employee or other employee, except as otherwise provided herein.

§ 194-1.2 Definitions

For the purposes of this part:

(a) The terms employee and employer shall be as those terms are defined in Section 190 of the Labor Law.

(b) Permission shall mean an express, advance, authorization given voluntarily by the employee, and permission may be withdrawn by an employee at any time. A writing shall not be required.

194-1.3 Employer Imposed Limitations on the Inquiry, Discussion, and Disclosure of Wages

An employer may, in a written policy provided to an employee either electronically, through publicly available posting, or by paper copy, place reasonable limitations on the time, place and manner that an employee may inquire about, discuss, or disclose wages. Such limitations must be justified without reference to the content of the regulated speech, narrowly tailored to serve a significant interest, and leave open ample alternative channels for the communication of information. An employer shall not impose restrictions on employees in such a way that unreasonably or effectively precludes or prevents inquiry, discussion, or disclosure of wages at the worksite and/or during work hours, directly or in practice. An employer may prohibit an employee from discussing or disclosing the wages of another employee unless the other employee provides verbal or written permission, either directly or indirectly. An employer may also limit an employee who has access to wage information of other employees as part of that employee's essential job functions as set forth in Section 194(4)(d) of the Labor Law. An employer may not avail itself to the affirmative defense contained in Section 194(4)(c) of the Labor Law, unless the employer can demonstrate that the written policy was provided to the relevant employee(s) in accordance with this Part. The employer must maintain copies of its written policies during the period of the applicability and for six years following such period.

194-1.4 Federal and State Law

The provisions of this Part shall not be construed to diminish or waive any rights or obligations of any employee pursuant to any other law, regulation, or collective bargaining agreement.

194-1.5 Severability

If any provision of this Part or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of this Part which can be given effect without the invalid provisions or applications. To this end, the provisions of this Part are declared to be severable.

Final rule as compared with last published rule: Nonsubstantive changes were made in sections 194-1.2(b) and 194-1.3.

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

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

The revisions do not necessitate revisions to the previously published 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 2020, 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 comments following publication of the proposed rule in the January 20, 2016 edition of the NY Register. The following represents a summary and an analysis of such comments, and the reasons why any significant alternatives were not incorporated into the rule.

Comment 1:

The Department of Labor (Department) should revise the rule to use the term "permission," as opposed to the word consent, due to the use of the word "permission" in Section 194 of the Labor Law.

Response 1:

The Department agrees and has made this non-substantial change.

Comment 2:

The rule should be revised to require that employers post notice of employees' rights under Section 194 of the Labor Law, and under this rule.

Response 2:

The Department disagrees that the rule should be revised to require an additional posting requirement. However, the Department will revise the Notice of Rates of Pay, required to be provided to employees pursuant to Section 195 of the Labor Law, to include a statement reflecting employees' rights under Section 194 of the Labor Law and this rule.

Comment 3:

Employer policies need to state employees' rights under the law.

Response 3:

The Department disagrees. As stated above, a statement of employees' rights to discuss wages will be included in the Notice of Rates of Pay posted on the Department's website for all employers to access. Employers are required to provide such notices to employees pursuant to Section 195 of the Labor Law.

Comment 4:

Electronic notice is insufficient to provide notice of employees' rights.

Response 4:

The Department disagrees. The policies may be provided and obtained electronically so long as an employee is provided with the ability to view and print the information while the employee is at work and without cost to the employee, and the employee is notified of his or her right to print such materials by the employer through such electronic notice process.

Comment 5:

The rule should repeat the provisions contained in Section 194 of the Labor Law.

Response 5:

The Department has made non-substantial revisions to the rule in order to more closely track the statutory provisions within Section 194 of the Labor Law, including the exception for employees with access to other employees' wage information and the statutory use of the term "permission," in lieu of "consent," as described above. Furthermore, the Department will include in guidance and training materials, distributed to the regulated community, information on both the relevant requirements of this rule, and on the requirements of Section 194 of the Labor Law, so as to help ensure that both employees and employers are aware of the provisions, requirements, and exceptions contained in both the rule and in Section 194.

State Liquor Authority

NOTICE OF EXPIRATION

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

Update Outdated Freedom of Information Law Procedures Utilized by Authority

I.D. No.	Proposed	Expiration Date
LQR-02-16-00002-P	January 13, 2016	January 12, 2017

Office for People with Developmental Disabilities

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Hearing Procedures Update

I.D. No. PDD-05-17-00001-P

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

Proposed Action: This is a consensus rule making to amend section 602.5 of Title 14 NYCRR.

Statutory authority: Mental Hygiene Law, section 13.09(b)

Subject: Hearing Procedures Update.

Purpose: To correct a grammatical error in Title 14 NYCRR 602.5.

Text of proposed rule: Subparagraph 602.5(f) is amended as follows:

(f) When the office seeks the revocation, suspension [of] *or* limitation of an operating certificate previously granted by the OPWDD or to levy a fine on the holder of an operating certificate, either party shall, upon demand and at least seven days prior to the hearing, disclose the evidence that the party intends to introduce at the hearing, including documentary evidence and identification of witnesses, provided, however, the provisions of this subdivision shall not be deemed to require the disclosure of information or material otherwise protected by law from disclosure, including information and material protected because of privilege or confidentiality. If, after such disclosure, a party determines to rely upon other witnesses or information, the party shall, as soon as practicable, supplement its disclosure by providing the names of such witnesses or the additional documents.

Text of proposed rule and any required statements and analyses may be obtained from: Office of Counsel, Bureau of Policy and Regulatory Affairs, Office for People With Developmental Disabilities (OPWDD), 44 Holland Avenue 3rd Floor, Albany, NY 12229, (518) 474-7700, email: rau.unit@opwdd.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.

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.

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

Consensus Rule Making Determination

OPWDD is updating language in Title 14 NYCRR Part 602.5 to correct a minor grammatical error in subparagraph (f). This correction is necessary for the regulation's coherency.

OPWDD has determined that due to the nature and purpose of the amendment, no person is likely to object to the rule as written.

Job Impact Statement

OPWDD is not submitting a Job Impact Statement for this proposed rulemaking because this rulemaking will not have a substantial adverse impact on jobs or employment opportunities.

The proposed regulation updates language found in Title 14 NYCRR Part 602.5 regulation to correct an error in subparagraph (f). The amendment makes a technical change that will not result in any increased costs (including staffing costs) or compliance activities. Consequently, the proposed regulation will not have a substantial adverse impact on jobs or employment opportunities.

Public Service Commission

PROPOSED RULE MAKING
NO HEARING(S) SCHEDULED

Minor Rate Filing

I.D. No. PSC-05-17-00002-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 proposed tariff amendments, filed by the Village of Fairport, to P.S.C. No. 1 — Electricity, by which it would increase its annual electric revenues by approximately $1,526,480 or 8.44%.

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

Subject: Minor rate filing.

Purpose: To consider an increase in annual revenues of about $1,526,480 or 8.44%.

Substance of proposed rule: The Commission is considering proposed tariff amendments, filed by the Village of Fairport, to P.S.C. No. 1 — Electricity, by which it would increase its annual electric revenues by approximately $1,526,480 or 8.44%. Under the proposal, the monthly bill of a residential customer using 750 kilowatt-hours of electricity would increase from $35.83 to $38.66 or 7.88%. The proposed amendments have an effective date of July 1, 2017. The Commission may adopt, reject or modify, in whole or in part, the relief proposed and may resolve related matters.

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

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

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

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

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

(17-E-0009SP1)

PROPOSED RULE MAKING
NO HEARING(S) SCHEDULED

Grant of Easement to Real Property

I.D. No. PSC-05-17-00003-P

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

Proposed Action: The Commission is considering a petition by Rochester Gas and Electric Corporation (RG&E) to grant an Environmental Easement to the People of the State of New York for its Brooks Avenue Facility located at 755 Brooks Avenue, Rochester, New York.

Statutory authority: Public Service Law, section 70

Subject: Grant of easement to real property.

Purpose: To consider RG&E's request to grant an Environmental Easement for 755 Brooks Avenue, Rochester, New York.

Substance of proposed rule: The Public Service Commission (Commission) is considering the petition by Rochester Electric and Gas Corporation (RG&E), for authority to grant an Environmental Easement to the People of the State of New York, for the Brooks Avenue Facility located at 755 Brooks Avenue, Rochester, New York. 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-0719SP1)

PROPOSED RULE MAKING
NO HEARING(S) SCHEDULED

Petition to Submeter Electricity

I.D. No. PSC-05-17-00004-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 Himrod Development LLC, to submeter electricity at 336 Himrod Street, Brooklyn, New York and a request for waiver of 16 NYCRR section 96.5(k)(3), requiring an energy audit.

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: Petition to submeter electricity.

Purpose: To consider the petition to submeter electricity at 336 Himrod Street, Brooklyn, New York and waiver request of section 96.5(k)(3).

Substance of proposed rule: The Commission is considering the petition, filed by Himrod Development LLC (Owner) on December 22, 2016, to submeter electricity at 336 Himrod Street, Brooklyn, New York, located in the service territory of Consolidated Edison Company of New York, Inc. The Commission is also considering the Owner's request for a waiver of 16 NYCRR § 96.5(k)(3), which requires proof that an energy audit has been conducted when 20 percent or more of the residents receive income-based housing assistance. The Commission may adopt, reject or modify, in whole or in part, the relief proposed and may resolve related matters.

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

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

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

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

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

(16-E-0717SP1)

Office of Temporary and Disability Assistance

NOTICE OF ADOPTION

Child Support

I.D. No. TDA-37-16-00001-A

Filing No. 55

Filing Date: 2017-01-17

Effective Date: 2017-02-01

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

Action taken: Amendment of section 347.19 of Title 18 NYCRR.

Statutory authority: Social Services Law, sections 17(a)-(b), (j), 20(3)(d), 34(3)(f), 111-a and 111-v; 42 United States Code, sections 651-658, 660, 663-664, 666-667, 1302, 1396a(25), 1396b(d)(2), (o), (p) and (k); 45 Code of Federal Regulations, sections 303.21, 303.69, 303.70 and 307.13

Subject: Child Support.

Purpose: To help ensure the State's compliance with the federal rules for safeguarding confidential information, disclosing said information, where appropriate, to authorized persons and entities for authorized purposes, and reporting of delinquent child support payors to credit reporting agencies.

Substance of final rule: This is a general summary of the rule text to amend to 18 NYCRR § 347.19. The full rule text is posted at the following State website: http://otda.ny.gov/legal/.

The rule amends 18 NYCRR § 347.19 to conform with amendments to title IV-D of the federal Social Security Act and regulations promulgated by the federal Department of Health and Human Services. Section 347.19 is renamed as "Use and Disclosure of Confidential Information and Credit Reporting" to better reflect the new provisions.

Section 347.19(a) clarifies what information is to be safeguarded and what uses are permitted for child support purposes. It details when disclosure of location information is not permitted due to the risk of family violence. It also addresses the limitations on disclosure to third parties, including other government agencies or programs. The revisions provide instructions on the manner in which to respond to court ordered disclosure and identify the penalties for unauthorized use or disclosure. The revisions authorize the Office of Temporary and Disability Assistance to promulgate standards and controls for safeguarding confidential information on State and local systems.

New York State maintains a State parent locator service in accordance with federal law. As required by recently adopted federal regulation, § 347.19(b) establishes separate rules regarding the use and disclosure of information contained in the state parent locator service. The regulation identifies the persons authorized to receive the information, the authorized uses of information, and the types of information that may be disclosed.

Section 347.19(c) amends the existing rules regarding reporting child support arrears to consumer reporting agencies. The amendments clarify the rules setting out the threshold requirements for reporting child support arrears and the process for challenging the support collection unit's determination to make such a report.

Final rule as compared with last published rule: Nonsubstantive changes were made in section 347.19(a)(2)(ii)(d) and (c)(2)(iv).

Text of rule and any required statements and analyses may be obtained from: Joseph C. Mazza, New York State Office of Temporary and Disability Assistance, 40 North Pearl Street, 16C, Albany, New York 12243-0001, (518) 474-0574, email: Joseph.Mazza@OTDA.NY.GOV

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

The Office of Temporary and Disability Assistance has determined that changes made to the last published rule do not necessitate revision to the previously published Regulatory Impact Statement, Regulatory Flexibility Analysis, Rural Area Flexibility Analysis and Job Impact Statement. Nonsubstantive changes were made to the language in 18 NYCRR § 347.19(a)(2)(ii)(d) and (c)(2)(iv).

Initial Review of Rule

As a rule that requires a RFA, RAFA or JIS, this rule will be initially reviewed in the calendar year 2020, which is no later than the 3rd year after the year in which this rule is being adopted.

Assessment of Public Comment

The Office of Temporary and Disability Assistance (OTDA) received one comment, from a social services district, relative to the regulatory amendments. The comment has been reviewed and duly considered in this Assessment of Public Comments.

The comment asked whether the regulatory amendments would respect the needs of child welfare workers to check the parent locator to find fathers and obtain information for use in child welfare cases. OTDA maintains that the regulatory amendments do not change the existing federal law and regulations governing access to the Federal Parent Locator Service for authorized purposes under titles IV-B and IV-E of the Social Security Act. The regulatory amendments adopt identical rules for access to the State Parent Locator Service for authorized purposes under titles IV-B and IV-E of the Social Security Act. Adoption of the regulatory amendments will not change authority to request location information to find fathers and obtain information about the fathers for use in child welfare cases.

NOTICE OF ADOPTION

Operational Plans for Uncertified Shelters for the Homeless

I.D. No. TDA-39-16-00006-A

Filing No. 56

Filing Date: 2017-01-17

Effective Date: 2017-02-11

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

Action taken: Addition of new section 352.39 to Title 18 NYCRR.

Statutory authority: Social Services Law, sections 17(a)-(b), (j), 20(2)-(3), 34, 460-c and 460-d

Subject: Operational Plans for Uncertified Shelters for the Homeless.

Purpose: To require social services districts to submit to the Office of Temporary and Disability Assistance for review and approval operational plans and closure reports for each publicly-funded emergency shelter that currently does not fall within the scope of section 352.3(e)-(h), Part 491 or Part 900 of Title 18 NYCRR.

Text or summary was published in the September 28, 2016 issue of the Register, I.D. No. TDA-39-16-00006-P.

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

Text of rule and any required statements and analyses may be obtained from: Richard P. Rhodes, Jr., New York State Office of Temporary and Disability Assistance, 40 North Pearl Street, Floor 16-C, Albany, NY 12243-0001, (518) 486-7503, email: richard.rhodesjr@otda.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 2020, which is no later than the 3rd year after the year in which this rule is being adopted.

Assessment of Public Comment

The Office of Temporary and Disability Assistance (OTDA) received comments from one social services district (SSD) relative to the proposed regulation. These comments have been reviewed and duly considered in this Assessment of Public Comments.

The comment requested that OTDA amend its existing regulations at 18 NYCRR § 352.3(e), or 18 NYCRR, Parts 491 or 900, to expand its own responsibility for shelter certification to include uncertified shelters that are not covered by current regulations, rather than assign the responsibility to the SSDs. The SSD also asserts that the statewide compliance cost of approximately $190,000 annually for urban local governments is unacceptable.

The responsibility of SSDs to ensure that publicly-funded emergency shelters to which SSDs refer recipients of temporary housing assistance in need of emergency shelter, are safe, secure, compliant with all applicable laws and regulations, and operated in accordance with operational plans acceptable to OTDA is well-established in statute. Section 62(1) of the Social Services Law (SSL) explicitly provides that "each public welfare district shall be responsible for the assistance and care of any person who resides or is found in its territory and who is in need of public assistance and care which he is unable to provide for himself." SSL § 69 provides that "[t]he responsibility for the administration of public assistance and care in a county social services district and the expense thereof may either be borne by the county social services district or be divided between such district and the towns and cities." SSL § 20 explicitly authorizes OTDA to supervise all social services work and SSDs, and "to withhold or deny state reimbursement, in whole or in part, from or to any [SSD] or any city or town thereof, in the event of the failure of either of them to comply with law, rules or regulations of [OTDA] relating to public assistance and care or the administration thereof." Consequently, OTDA believes that the suggested revisions to the regulation are unnecessary.

With respect to the estimated annual cost to urban local governments, OTDA anticipated that local review of each new operational plan should take no more than ten hours of work time. Using an average hourly rate (including salary and fringe) of $53 per hour in New York City and $46.50 in the rest of the State (ROS), and assuming a maximum of ten hours of work per shelter, the cost to localities to review the 194 uncertified shelters in NYC and the 178 uncertified shelters in ROS would be $185,752 annually, which was rounded to approximately $190,000. OTDA does not believe that this cost is unreasonable or unduly burdensome.

The comment requested further clarification and guidance relative to the information that must be included in an operational plan, as referenced in 18 NYCRR § 352.39(d)(8), which requires an emergency shelter's policies and procedures; § 352.39(d)(11), which requires policies and procedures of shelters for families with children for providing needed care, services and support of children and families consistent with applicable regulations; § 352.39(d)(13), which requires plans for providing health services; § 352.39(d)(21), which requires information on resident capacity; and § 352.39(d)(31), which requires procedures for providing shelter residents with services, including, among other things, medical referrals, assistance obtaining permanent housing, and assistance securing necessary supportive social and mental health services, including psychiatric and alcohol abuse services.

OTDA maintains that such further clarification and guidance will be more appropriately provided through issuance of an Administrative Directive (ADM), and therefore, amendment of the regulation to add clarifying language is unnecessary.

The SSD points out with respect to § 352.39(d)(13) that many smaller faith-based shelters and "scatter site" shelters (comprised of individual apartment units "scattered" throughout multiple private apartment buildings) may not have direct relations with health service providers. The SSD therefore requests additional information on the consequences to the SSDs and shelter operators in instances where there is no plan for health services. Specifically, the SSD asks whether a shelter that does not have a plan for health services can be certified by the SSD, and whether the SSD then can claim reimbursement from the State.

OTDA points out that § 352.39(c) expressly provides that an SSD "may be reimbursed for costs incurred for emergency shelters and services provided by emergency shelters … only when the emergency shelters are operated pursuant to operational plans that have been approved by [OTDA]" (emphasis added). In turn, § 352.39(d) makes clear that to be approved by OTDA, an emergency shelter's operational plan must include, among other things, and at a minimum, a plan for providing residents with access to health services and necessary medical referrals. Nothing in § 352.39 requires an emergency shelter operator to maintain direct relations with health service providers, but all shelters, or perhaps the SSD itself, must have a plan for providing shelter residents with access to health care services and necessary medical referrals.

One comment requested further clarification as to how the per diem and interim per diem rates referenced in § 352.39(f), are set. OTDA maintains that such further clarification and guidance will be more appropriately provided through issuance of an ADM, and therefore, amendment of the regulation to add clarifying language is unnecessary.

One comment requested further clarification with respect to payment and reimbursement to SSDs as provided for in § 352.39(i). OTDA maintains that such further clarification and guidance will be more appropriately provided through issuance of an ADM, and therefore, amendment of the regulation to add clarifying language is unnecessary.

Department of Transportation

NOTICE OF ADOPTION

Provisions Applicable to Administrative Hearings in Office of Proceedings

I.D. No. TRN-41-16-00001-A
Filing No. 51
Filing Date: 2017-01-12
Effective Date: 2017-02-01

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

Action taken: Repeal of Part 558, sections 508.3 and 508.5; addition of new sections 508.3 and 508.5; amendment of sections 501.1, 501.2, 502.1(a), 502.5, 502.6, 503.2(b), (c), 503.5, 503.9(b), (c), (e), 504.2, 504.3, 505.6(b), (d), 505.8, 505.9(d), 505.15, 508.4 and 508.5 of Title 17 NYCRR.

Statutory authority: Transportation Law, sections 14(18), 84(1), 138, 139 and 145

Subject: Provisions applicable to administrative hearings in Office of Proceedings.

Purpose: Update of rules applicable to administrative hearings and repeal of obsolete provisions in Part 558.

Text of final rule: 17 NYCRR Part 558 and sections 508.3 and 508.5 are hereby repealed. New sections 508.3 and 508.5 are added to read as follows:

Section 508.3 Applications.

A carrier seeking authority to become a self-insurer must file a verified application which shall include:

(a) the name and address of the principal office of the carrier. If different, the mailing address of the carrier;

(b) a balance sheet prepared within six months of the date of the application giving detailed information concerning the financial condition of the carrier;

(c) an income statement covering at least a 12-month period immediately prior to the date of the filing of the application;

(d) a record of all personal injury or property damage claims, paid and unpaid, filed in the three-year period immediately prior to the date of the filing of the application;

(e) a record of all cargo claims paid and unpaid filed in the three-year period immediately prior to the date of the filing of the application, if applicable;

(f) a list of every insurance policy cancelled within five years prior to the date of the application with a complete explanation as to the circumstances surrounding each cancellation;

(g) the number and description of the vehicles owned or operated by the carrier;

(h) the amount and type of coverage sought to be retained by the self-insurer;

(i) an explanation of procedures to be used for settling or resolving claims, including the name, address and telephone number of the individual designated to receive claims; and

(j) a copy of a Federal Motor Carrier Safety Administration order granting permission to become a self-insurer, plus the documentary evidence upon which the order was based, if available.

Section 508.5 Self-insurance order.

A self-insurance order shall include any reasonable conditions deemed appropriate and shall also include:

(a) a termination date not to exceed five years from the date of issuance;

(b) a statement as to the amount of the self-insurance fund and the number of deposits to be made to establish such fund;

(c) if no fund is required a statement as to the manner in which claims will be paid;

(d) a requirement that the bank or trust company accepting such a fund shall agree, in writing, not to allow a withdrawal of all or any part of the fund without first obtaining the consent of the commissioner, based on the financial viability of the fund;

(e) a requirement that the bank wherein the fund is deposited agrees to hold the fund in trust for insurance claimants and that the fund is not to be considered as part of the assets of the depositor subject to other categories of creditors;

(f) a requirement that appropriate proof of insurance up to the limits prescribed be filed if a self-insurance retention is less than that required by sections 750 and 855 of this Title; and

(g) a statement that the authority to become a self-insurer may be revoked upon 30 days' notice by reason of the failure of the carrier to comply with any of the conditions of the order.

17 NYCRR sections 501.1, 501.2, subdivision 502.1(a), sections 502.5, 502.6, subdivisions 503.2(b),(c), section 503.5, subdivisions 503.9(b),(c),(e), sections 504.2, 504.3, subdivisions 505.6(b) and (d), 505.8, subdivision 505.9(d), sections 505.15, 508.4 and 508.5 are amended as follows:

Section 501.1. Service of papers by the commissioner.

Notices or other papers will be served by the commissioner either personally, *electronically* or by mail. Service on a representative of a party will be deemed to be proper service upon the party. Service by mail will be deemed completed five days after the date of mailing.

Section 501.2 Representation.

(a) In any proceeding, [except a tariff proceeding,] parties may present their own case either personally or through a non-paid representative, or through a representative who is an attorney duly licensed to practice in the State of New York, or a practitioner [duly] *formerly* licensed by the Interstate Commerce Commission *or duly licensed by the Surface Transportation Board*. For the purpose of this section, an officer of a corporation that is a party to a proceeding may represent that corporation.

(b) All representatives must file a written notice of appearance.

[(c) In a tariff proceeding a party may designate any person to act on its behalf.]

(c)[(d)] All representatives will be held to the same standard of conduct as are attorneys licensed by the State of New York. Failure to comply with such standards may result in the barring of a representative from further participation in the proceeding.

Section 502.1 General.

(a) Applications for the issuance of certificates or permits, extensions of certificates or permits, transfer or leases of certificates or permits shall be made on forms furnished by the commissioner, or a reasonable facsimile thereof[, and submitted in duplicate].

502.5 Applications for emergency authority

(a)(1) Unless it is demonstrated that, by reason of an unforeseen emergency need, transportation must commence immediately, an application for emergency authority shall be made by letter or [telegram] *electronically*, to be received at the office of the department, not later than three working days prior to the date when the transportation is to start.

(2) Where it is demonstrated that because of an unforeseen emergency need the transportation must commence immediately, an application may be made, in person, *electronically* or by telephone, to the office of the [chief] administrative law judge, during regular office hours. In such event, the [chief] administrative law judge may require written confirmation of the telephone request or other oral representation in such manner and within such time limits as he *or she* may require.

(b) The written or oral application must show:

(1) that the applicant is ready, willing and able to provide the proposed transportation;

[(2) the rate to be applied or the charge to be made;]

(*2*[3]) if the applicant holds no authority from the Commissioner of Transportation, the name of the insurance company carrying applicant's bodily injury and property damage insurance and if applicable, cargo insurance, the amounts of such coverage, the effective date and expiration date of the policy or policies of insurance and the number or numbers of such policies; and

(*3*[4]) if the applicant intends to carry passengers, evidence that the vehicles to be utilized have been, or prior to the commencement of the transportation involved, will be inspected in accordance with the provisions of the Transportation Law and the rules and regulations of the Commissioner of Transportation promulgated thereunder.

(c) Applications must be accompanied with or followed by letters or [telegram] *electronic submissions* by the proposed user or users of the service setting forth:

(1) a description of the transportation involved including the point or points of origin and destination or destinations and date or dates of movement;

(2) facts relied upon to demonstrate that there is an immediate or urgent need for such transportation; and

(3) the period of time during which the service will be required.

Section 502.6 Applications to other agencies.

Carriers submitting applications to the commissioner which are also subject to the jurisdiction of the [Interstate Commerce Commission] *Federal Motor Carrier Safety Administration* or other federal or state commission or agency shall state at the time such application is submitted whether or not a corresponding application has been submitted and whether or not action has yet been taken thereon.

Section 503.2 Hearings.

(b) Hearings will be held at a location selected by the presiding officer and written notice setting forth the date, time and location of the hearing will be mailed *or sent electronically* to all parties of record.

(c) *If mailed*, [N]*n*otice will be mailed [at least two weeks prior] *via first-class mail* prior to the date of the hearing.

Section 503.5 Record.

The record of a proceeding shall consist of all filed documents, the minutes of a hearing, and exhibits accepted into evidence. If exhibits are offered, at least [two copies] *one copy* shall be submitted to the presiding officer and one to each party of record.

Section 503.9 Disqualification of presiding officer

(b) A motion to disqualify shall be made to the [Chief] [A]*a*dministrative [L]*l*aw [J]*j*udge and be supported by affidavits setting forth the grounds for disqualification. Answering affidavits may be submitted by the presiding officer within five days of the date of the submission of the motion.

(c) A determination on the motion will be made by the [Chief] [A]*a*dministrative [L]*l*aw [J]*j*udge as soon thereafter as is practicable, but before the record in the proceeding is closed.

(e) Notwithstanding any other provision herein, a presiding officer may disqualify himself or herself upon written request to and approval of the [Chief] [A]*a*dministrative [L]*l*aw [J]*j*udge.

Section 504.2 Reconsideration or rehearing.

Applications for reconsideration or rehearing after a determination shall be in writing, shall state specifically the grounds upon which the application is based and be accompanied by the required filing fee. [If the application is based on specific facts adduced at a hearing the page numbers of the minutes wherein those facts are set forth must be provided.] At least [two copies] *one copy* of the application shall be submitted to the office of the commissioner at Albany within 30 days after service of a final order or decision. A copy of the application for reconsideration must be served on all parties to the proceeding and their representatives, and there shall be attached to the application, certification of such service. If any party to the proceeding wishes to oppose the granting of reconsideration, such party must file within 15 days after service of a copy of the application for reconsideration or rehearing, an answer setting forth the basis for its belief that reconsideration or rehearing should not be granted. Such answer shall have attached a certification of service on all other parties and their representatives. The commissioner may at any time reopen a proceeding or grant reconsideration or rehearing. The commissioner may, upon good cause shown, stay the implementation of any order pending a determination on an application for reconsideration or rehearing.

Section 504.3 Appeals.

In the event of an adverse ruling by the presiding officer during the pendency of a proceeding, the aggrieved party may appeal within 10 days to the commissioner. Such an appeal must be in writing *and may be served upon the department electronically* with copies served on all parties of record and their representatives. During the pendency of the appeal the presiding officer's rulings will be in full force and effect. On appeal, the commissioner may affirm, reverse or modify a ruling of the presiding officer. The commissioner may affirm a ruling by a presiding officer by refusing to reverse or modify that ruling within 30 days after the appeal is filed.

Section 505.6 Notice of hearing.

(b) Any party may submit a written request for a clarification of the charges in the notice of hearing to the department or presiding officer *via first-class mail or electronically*. A written response will be sent to such party prior to the hearing *via first-class mail or electronically*.

(d) Service of a notice of hearing shall be by personal service*, electronically* or by first-class mail. Any notice of hearing not returned by the post office for non-delivery *or electronic notification of failed delivery* shall be presumed received by the respondent. Any notice of hearing returned by the post office as having been refused by the respondent shall be deemed properly served. The service date is the date a notice is mailed *via first-class mail or electronically* or the date it is personally served.

Section 505.8 Adjournment.

A request for an adjournment of a hearing may be made to the depart-

ment in writing *via first-class mail or electronically* or to the presiding officer orally. Adjournment may be granted at the discretion of the presiding officer, who may deny such request if there is not good and sufficient cause shown.

Section 505.9 Conduct of hearing.

(d) If the decision of the presiding officer is reserved, a written determination on the notice of violation, specifying the findings of fact and conclusions of law, shall be served by first-class mail *or electronically* on the parties and their representatives, if any.

Section 505.15 Appeals.

Appeals from a presiding officer's decision or amount of the fine imposed shall be in writing and verified. [Three copies of t] *T*he appeal must be submitted to the office of the commissioner in Albany within 30 days of the date of service of the order *in person, via first-class mail or electronically*. Appeals may be taken only by the respondent and must specifically set forth the grounds upon which the appeal is based.

Section 508.4 Decision.

Permission to become a self-insurer will be granted, with or without a hearing, if the carrier establishes that it has the capability to adjust and pay any and all insurance obligations or has been authorized by the [Interstate Commerce Commission] *Federal Motor Carrier Safety Administration* to become a self-insurer.

Section 508.5. Self-insurance order.

A self-insurance order shall include any reasonable conditions deemed appropriate and shall also include:

(a) a termination date not to exceed five years from the date of issuance;

(b) a statement as to the amount of the self-insurance fund and the number of deposits to be made to establish such fund;

(c) if no fund is required a statement as to the manner in which claims will be paid;

(d) a requirement that the bank or trust company accepting such a fund shall agree, in writing, not to allow a withdrawal of all or any part of the fund without first obtaining the consent of the commissioner, based on the financial viability of the fund;

(e) a requirement that the bank wherein the fund is deposited agrees to hold the fund in trust for insurance claimants and that the fund is not to be considered as part of the assets of the depositor subject to other categories of creditors;

[(f) a direction that reports on forms prescribed by the commissioner and made a part of these rules are to be submitted at least once a year on the date or dates set forth in the order;]

(f)[(g)] a requirement that appropriate proof of insurance up to the limits prescribed be filed if a self-insurance retention is less than that required by sections 750 and 855 of this Title; and

(g)[(h)] a statement that the authority to become a self-insurer may be revoked upon 30 days' notice by reason of the failure of the carrier to comply with any of the conditions of the order.

Final rule as compared with last published rule: Nonsubstantial changes were made in section 503.2.

Text of rule and any required statements and analyses may be obtained from: Alan Black, Legal Assistant 2, Department of Transportation, NYSDOT Office of Legal Services, 6th floor, 50 Wolf Road Albany, NY 12232, (518) 457-2411, email: alan.black@dot.ny.gov

Revised Job Impact Statement

It is determined that this rulemaking will have no impact on jobs and employment opportunities.

Assessment of Public Comment

The agency received no public comment.