RULE MAKING ACTIVITIES

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

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

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

Department of Civil Service

NOTICE OF ADOPTION

Jurisdictional Classification

I.D. No. CVS-20-16-00005-A
Filing No. 322
Filing Date: 2017-05-11
Effective Date: 2017-05-31

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

Action taken: Amendment of Appendix 2 of Title 4 NYCRR.

Statutory authority: Civil Service Law, section 6(1)

Subject: Jurisdictional Classification.

Purpose: To delete positions from and classify positions in the non-competitive class.

Text or summary was published in the May 18, 2016 issue of the Register, I.D. No. CVS-20-16-00005-P.

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

Text of rule and any required statements and analyses may be obtained from: Jennifer Paul, NYS Department of Civil Service, Empire State Plaza, Agency Building 1, Albany, NY 12239, (518) 473-6598, email: jennifer.paul@cs.ny.gov

Assessment of Public Comment
The agency received no public comment.

NOTICE OF ADOPTION

Jurisdictional Classification

I.D. No. CVS-20-16-00006-A
Filing No. 323
Filing Date: 2017-05-11
Effective Date: 2017-05-31

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

Action taken: Amendment of Appendix 2 of Title 4 NYCRR.

Statutory authority: Civil Service Law, section 6(1)

Subject: Jurisdictional Classification.

Purpose: To classify positions in the non-competitive class.

Text or summary was published in the May 18, 2016 issue of the Register, I.D. No. CVS-20-16-00006-P.

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

Text of rule and any required statements and analyses may be obtained from: Jennifer Paul, NYS Department of Civil Service, Empire State Plaza, Agency Building 1, Albany, NY 12239, (518) 473-6598, email: jennifer.paul@cs.ny.gov

Assessment of Public Comment
The agency received no public comment.

State Commission of Correction

PROPOSED RULE MAKING
NO HEARING(S) SCHEDULED

Feminine Hygiene Products in Lockups

I.D. No. CMC-22-17-00003-P

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

Proposed Action: Renumbering of section 7506.1(g) to section 7506.1(h); and addition of new section 7506.1(g) to Title 9 NYCRR.

Statutory authority: Correction Law, section 45(6) and (15)

Subject: Feminine hygiene products in lockups.

Purpose: To ensure feminine hygiene products are available and accessible to female prisoners detained in local lockups.

Text of proposed rule: Subdivision (g) of section 7506.1 of Title 9 is renumbered subdivision (h), and a new subdivision (g) is added to read as follows:

(g) In addition to the items listed in subdivision (f), tampons and sanitary napkins shall be made available to all female prisoners at facility expense. Facilities shall maintain a sufficient supply of tampons and sanitary napkins, which shall be stored, dispensed and disposed of in a sanitary manner.

Text of proposed rule and any required statements and analyses may be obtained from: Deborah Slack-Bean, Senior Attorney, New York State Commission of Correction, Alfred E. Smith State Office Building, 80 S. Swan Street, 12th Floor, Albany, New York 12210, (518) 485-2346, email: Deborah.Slack-Bean@scoc.ny.gov

Data, views or arguments may be submitted to: Same as above.
Public comment will be received until: 45 days after publication of this notice.

Regulatory Impact Statement

1.) Statutory authority:

Subdivision (6) of section 45 of the Correction Law authorizes the Commission to promulgate rules and regulations establishing minimum standards for the care, custody, correction, treatment, supervision, discipline, and other correctional programs for all person confined in the correctional facilities of New York State. Subdivision (15) of section 45 of the Correction Law allows the Commission to adopt, amend or rescind such rules and regulations as may be necessary or convenient to the performance of its functions, powers and duties.

2.) Legislative objectives:

By vesting the Commission with this rulemaking and oversight authority, the Legislature intended the Commission to enact regulations that ensure prisoners of local correctional facilities are confined in a humane manner under sanitary conditions.

3.) Needs and benefits:

A recent media account detailed allegations of a female police lockup detainee who was not provided feminine hygiene products following her request, likely because the police station did not maintain a supply. Upon a review of its regulations, the Commission noted that the provision of feminine hygiene products is required for county jails, Department of Corrections and Community Supervision (DOCCS) facilities and juvenile secure facilities operated by the Office of Children and Family Services (OCFS), but no such obligation is contained in the regulations for police lockups.

A review of annual reports to the Commission reveals that the population of female detainees in police lockups is relatively small, totaling approximately 87,000 in 2016. Approximately 55,000 of those detentions occurred in lockups of the New York City Police Department, who confirmed that present policy requires feminine hygiene products be made available to female detainees at facility expense. While the Commission is confident that the majority of police lockups outside of New York City have a similar policy or practice, it is likely that female detention is so infrequent in smaller facilities that authorities are unprepared when the need for feminine hygiene products arises. By instituting this regulation, the Commission will assure that the necessary hygiene needs of female detainees are met, while also providing police lockup officials notice to prepare for such needs beforehand.

4.) Costs:

a. Costs to regulated parties for the implementation of and continuing compliance with the rule: Minimal. As stated above, female detainees of the New York City Police Department are presently provided female hygiene products per policy. Outside of New York City, there are approximately 280 lockups that annually detain the remaining 32,000 female arrestees. Conservatively estimating a need by a quarter of the population, at twenty cents ($0.20) per product, the average annual cost per lockup would approximate $5.71.

b. Costs to the agency, the state and local governments for the implementation and continuation of the rule: None. The regulation does not apply to state agencies or governmental bodies. As set forth above in subdivision (a), any additional costs to local governments would be minimal.

c. This statement detailing the projected costs of the rule is based upon the Commission's oversight and experience relative to the operation and function of a local correctional facility.

5.) Local government mandates:

The regulation imposes a duty on police lockups to provide feminine hygiene products to detainees at facility expense, as well as store, dispense and dispose of such products in a sanitary manner.

6.) Paperwork:

None.

7.) Duplication:

The rule does not duplicate any existing State or Federal requirement.

8.) Alternatives:

The alternative, not requiring the provision of feminine hygiene products to lockup detainees, was dismissed by the Commission as inconsistent with its statutory mandate to ensure prisoners of local correctional facilities are confined in a humane manner under sanitary conditions.

9.) Federal standards:

There are no applicable minimum standards of the federal government.

10.) Compliance schedule:

Each local correctional facility is expected to be able to achieve compliance with the proposed rule immediately upon its Notice of Adoption.

Regulatory Flexibility Analysis

A regulatory flexibility analysis is not required pursuant to subdivision three of section 202-b of the State Administrative Procedure Act because the rule does not impose an adverse economic impact on small businesses or local governments. The proposed rule seeks only to ensure that feminine hygiene products are available and accessible to female prisoners detained in local lockups. Accordingly, it will not have an adverse impact on small businesses or local governments, nor impose any additional significant reporting, record keeping, or other compliance requirements on small businesses or local governments.

Rural Area Flexibility Analysis

A rural area flexibility analysis is not required pursuant to subdivision four of section 202-bb of the State Administrative Procedure Act because the rule does not impose an adverse impact on rural areas. The proposed rule seeks only to ensure that feminine hygiene products are available and accessible to female prisoners detained in local lockups. Accordingly, it will not impose an adverse economic impact on rural areas, nor impose any additional significant record keeping, reporting, or other compliance requirements on private or public entities in rural areas.

Job Impact Statement

A job impact statement is not required pursuant to subdivision two of section 201-a of the State Administrative Procedure Act because the rule will not have a substantial adverse impact on jobs and employment opportunities, as apparent from its nature and purpose. The proposed rule seeks only to ensure that feminine hygiene products are available and accessible to female prisoners detained in local lockups. As such, there will be no impact on jobs and employment opportunities.

Department of Environmental Conservation

EMERGENCY/PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Regulations Governing the Recreational Harvest of Summer Flounder

I.D. No. ENV-22-17-00001-EP
Filing No. 321
Filing Date: 2017-05-10
Effective Date: 2017-05-10

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

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

Statutory authority: Environmental Conservation Law, sections 3-0301, 13-0105 and 13-0340-b

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

Specific reasons underlying the finding of necessity: This rulemaking is necessary for New York to remain in compliance with the Atlantic States Marine Fisheries Commission's (ASMFC) approved option in Addendum XXVII to the Summer Flounder Fishery Management Plan (FMP). The National Marine Fisheries Service (NMFS) has set the 2017 coast-wide recreational harvest limit (RHL) for summer flounder thirty percent lower than it was in 2016 in response to declining stock biomass. This rulemaking will make New York State's recreational regulations for summer flounder more restrictive to reduce harvest in response to the decrease in RHL.

New York State marine recreational anglers had an opportunity to comment upon Addendum XXVII, including the measures proposed in this rulemaking, during the ASMFC's public comment period from December 22, 2016 through January 19, 2017. New York's anglers also had the opportunity to attend a public hearing on the Addendum at the DEC's Division of Marine Resources office in East Setauket on January 9, 2017. While some anglers questioned the need to reduce harvest at all, support was overwhelmingly in favor of the measures included in this rule making when compared to alternative reduction options. The reduction measures included in this rulemaking are:

- 19.0" minimum size (increase of 1 inch from current 18.0" size limit)
- 3 fish possession limit (reduced from current 5 fish possession limit)
- Open season (May 17-September 21) remains unchanged.

DEC is adopting these changes by emergency rulemaking in order to protect the general welfare. The regulations currently in place for

recreational harvest of summer flounder were developed for prior fishing years, and are not restrictive enough for the current fishing year. Current summer flounder regulations do not satisfy the latest reduction mandated by the ASMFC, and leaving them unchanged would likely result in the over-harvest of summer flounder by New York anglers. Falling out of compliance with the ASMFC requirements could result in federal sanctions and closure of the summer flounder fishery.

The normal rulemaking process would not be completed in time to have these changes in place for the season opening on May 17. Emergency rulemaking is necessary to have these provisions in place by May 17 in order to avoid over-harvest of summer flounder by New York anglers.

Subject: Regulations governing the recreational harvest of summer flounder.

Purpose: To revise regulations concerning the recreational harvest of summer flounder in New York State.

Text of emergency/proposed rule: Existing subdivision 40.1(f) of 6 NYCRR is amended to read as follows:

Species Striped bass through Atlantic cod remain the same. Species Summer flounder is amended to read as follows:

40.1(f) Table A – Recreational Fishing.

Species	Open Season	Minimum Length	Possession Limit
Summer flounder	May 17 – Sept 21	[18] *19*" TL	[5] *3*

Species Yellowtail flounder through Oyster toadfish remain the same.

This notice is intended: to serve as both a notice of emergency adoption and a notice of proposed rule making. The emergency rule will expire August 7, 2017.

Text of rule and any required statements and analyses may be obtained from: John Maniscalco, New York State Department of Environmental Conservation, 205 North Belle Mead Rd., Suite 1, East Setauket, NY 11733, (631) 444-0437, email: john.maniscalco@dec.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: The proposed rulemaking action is subject to SEQR as an Unlisted action and a Short EAF was completed. The Department has determined that an EIS need not be prepared and has issued a negative declaration. The EAF and negative declaration are available upon request. The emergency adoption of this regulation is Type II.

Regulatory Impact Statement

1. Statutory authority:

Environmental Conservation Law (ECL) sections 3-0301, 13-0105, and 13-0340-b authorize the Department of Environmental Conservation (DEC or the department) to establish by regulation the open season, size, catch limits, possession and sale restrictions and manner of taking for summer flounder.

2. Legislative objectives:

It is the objective of the above-cited legislation that DEC manages marine fisheries to optimize resource use for commercial and recreational harvesters in a manner that is consistent with marine fisheries conservation and management policies and interstate fishery management plans.

3. Needs and benefits:

This rulemaking is necessary for New York to remain in compliance with the Atlantic States Marine Fisheries Commission's (ASMFC) approved option in Addendum XXVII to the Summer Flounder Fishery Management Plan (FMP). The National Marine Fisheries Service (NMFS) has set the 2017 coast-wide recreational harvest limit (RHL) for summer flounder thirty percent lower than it was in 2016 in response to declining stock biomass. This rulemaking will make New York State's recreational regulations for summer flounder more restrictive to reduce harvest in response to the decrease in RHL.

DEC is adopting these changes by emergency rulemaking in order to protect the general welfare. The regulations currently in place for recreational harvest of summer flounder were developed for prior fishing years, and are not restrictive enough for the current fishing year. Current summer flounder regulations do not satisfy the latest reduction mandated by the ASMFC, and leaving them unchanged would likely result in the over-harvest of summer flounder by New York anglers. Falling out of compliance with the ASMFC requirements could result in federal sanctions and closure of the summer flounder fishery.

The normal rulemaking process would not be completed in time to have these changes in place for the season opening on May 17. Emergency rulemaking is necessary to have these provisions in place by May 17 in order to avoid over-harvest of summer flounder by New York anglers.

4. Costs:

There are no new costs to state and local governments from this action. The Department will incur limited costs associated with both the implementation and administration of these rules, including the costs relating to notifying recreational harvesters, party and charter boat operators and other recreational fishing associated businesses of the new rules.

5. Local government mandates:

The emergency rule does not impose any mandates on local government.

6. Paperwork:

None.

7. Duplication:

The amendment does not duplicate any state or federal requirement.

8. Alternatives:

New York State marine recreational anglers had an opportunity to comment upon the ASMFC Addendum XXVII draft, including the measures proposed in this rulemaking, during the ASMFC's public comment period from December 22, 2016 through January 19, 2017. New York's anglers also had the opportunity to attend a public hearing on the Addendum at the Division of Marine Resources office in East Setauket on January 9, 2017. While some anglers questioned the need to reduce harvest at all, support was overwhelmingly in favor of the measures included in this rule making when compared to alternative reduction options.

"No action" alternative: If New York were to not adopt regulations that reduced recreational summer flounder harvest in 2017, the State would be out of compliance with ASMFC and NMFS requirements and subject to federal sanctions.

9. Federal standards:

The amendments to Part 40 in this rulemaking are in compliance with the ASMFC and the Mid-Atlantic Fishery Management Council fishery management plan for summer flounder.

10. Compliance schedule:

These regulations are being adopted by emergency rulemaking and therefore will take effect immediately upon filing with Department of State. Regulated parties must comply immediately and will be notified of the changes to the regulations through appropriate news releases, by mail, and through DEC's website.

Regulatory Flexibility Analysis

1. Effect of rule:

The proposed amendment will implement more restrictive fishing rules for New York recreational anglers targeting summer flounder. The proposed rule will adopt the following provisions: increase the minimum size by 1 inch, from 18 to 19 inches, and reduce the possession limit from 5 fish to 3 fish; for the entire season. The open season of May 17 through September 21 (128 days) will remain unchanged.

The proposed rule is more restrictive than last year's regulations. In 2016, there were 492 licensed party and charter businesses in New York State. There were also a number of retail and wholesale marine bait and tackle shop businesses operating in New York. The 1-inch increase in size limit and 2-fish decrease in possession limit throughout the season may decrease angler interest in targeting summer flounder and may impact businesses dependent upon these trips. The new size limit will not impact all anglers in the same manner; those fishing from shore and within the bays may have more difficulty encountering legal sized fish, especially later in the season.

2. Compliance requirements:

None.

3. Professional services:

None.

4. Compliance costs:

There are no initial capital costs that will be incurred by a regulated business or industry that complies with the emergency rule.

5. Economic and technological feasibility:

The emergency regulations do not require any expenditure on the part of affected businesses in order to comply with the changes. The emergency regulations may decrease the income of party and charter businesses, marinas and marine bait and tackle shops that depend heavily upon the recreational summer flounder fishery, especially in areas where larger fish are less available.

6. Minimizing adverse impact:

The promulgation of this regulation is necessary for DEC to reduce recreational summer flounder harvest in order to maintain compliance with the Atlantic States Marine Fisheries Commission (ASMFC) while providing New York's anglers with appropriate and equitable access to this popular recreational fishery. These proposed amendments are consistent with the required harvest reduction, and DEC anticipates that New York State will therefore remain in compliance with ASMFC and federal requirements.

Ultimately, the maintenance of long-term sustainable fisheries will have a positive effect on employment for the fisheries in question, including party and charter boat fisheries as well as wholesale and retail bait and

tackle shops and other support industries for recreational fisheries. Failure to comply and take required actions to protect our natural resources could cause the collapse of a stock and have a severe, adverse impact on the commercial and recreational fisheries for that species as well as the supporting industries for those fisheries.

7. Small business and local government participation:

New York State marine recreational anglers and associated businesses had an opportunity to comment upon Addendum XXVII, including the measures proposed in this rulemaking, during the ASMFC's public comment period from December 22, 2016 through January 19, 2017. New York's anglers also had the opportunity to attend a public hearing on the Addendum at the Division of Marine Resources office in East Setauket on January 9, 2017. While some anglers questioned the need to reduce harvest at all, support was overwhelmingly in favor of the measures included in this rule making when compared to alternative reduction options.

8. Cure period or other opportunity for ameliorative action:

Pursuant to the State Administrative Procedure Act § 202-b(1-a)(b) (SAPA), a cure period is not included in the rule because of the potential adverse impact on the resource. Cure periods for the illegal taking of fish or wildlife are neither desirable nor recommended. Immediate compliance is required to ensure that the general welfare of the public and the resource are both protected.

9. Initial review of rule:

The Department will conduct an initial review of the rule within three years as required by SAPA § 207(1)(b).

Rural Area Flexibility Analysis

The Department of Environmental Conservation has determined that this rule will not impose an adverse impact on rural areas. There are no rural areas within the marine and coastal district. The summer flounder fishery directly affected by the proposed rule is entirely located within the marine and coastal district and is not located adjacent to any rural areas of the state. Further, the proposed rule does not impose any reporting, record-keeping, or other compliance requirements on public or private entities in rural areas. Since no rural areas will be affected by the proposed amendments of 6 NYCRR Part 40, a Rural Area Flexibility Analysis is not required.

Job Impact Statement

1. Nature of impact:

The proposed amendment will implement more restrictive fishing rules for New York recreational anglers targeting summer flounder. The proposed rule will adopt the following provisions: increase the minimum size by 1 inch, from 18 to 19 inches, and reduce the possession limit from 5 fish to 3 fish; for the entire season. The open season of May 17 through September 21 (128 days) will remain unchanged.

2. Categories and numbers affected:

In 2016, there were 492 licensed party and charter businesses in New York State. There were also a number of marinas, retail and wholesale marine bait and tackle shop businesses operating in New York. According to the American Sportfishing Association, in 2011 New York had an estimated 800,811 marine recreational anglers that spent $1,194,493,042 on saltwater fishing, generating $144,539,079 in state and local tax revenue.

3. Regions of adverse impact:

The proposed regulation is more restrictive than last year's regulations and will likely impact recreational fishing anglers and associated businesses throughout most of New York's Marine and Coastal District. The 1-inch increase in size limit and 2-fish decrease in possession limit throughout the season may decrease angler interest in targeting summer flounder and may impact businesses dependent upon these trips through lesser sales of bait, tackle, gas, dockage and for-hire fares. The new size limit will not impact all anglers in the same manner; those fishing from shore and within the bays may have more difficulty encountering legal sized fish, especially later in the season.

4. Minimizing adverse impact:

The promulgation of this regulation is necessary for DEC to reduce recreational summer flounder harvest in order to maintain compliance with the Atlantic States Marine Fisheries Commission and avoid federal sanctions.

New York State marine recreational anglers and associated businesses had an opportunity to comment upon Addendum XXVII, including the measures proposed in this rulemaking, during the ASMFC's public comment period from December 22, 2016 through January 19, 2017. New York's anglers also had the opportunity to attend a public hearing on the Addendum at the Division of Marine Resources office in East Setauket on January 9, 2017. While some anglers questioned the need to reduce harvest at all, support was overwhelmingly in favor of the measures included in this rule making when compared to alternative reduction options which would have been even more restrictive.

Ultimately, the maintenance of long-term sustainable fisheries will have a positive effect on employment for the fisheries in question, including party and charter boat fisheries as well as wholesale and retail bait and tackle shops and other support industries for recreational fisheries.

5. Self-employment opportunities:

The party and charter boat businesses, the bait and tackle shops, and marinas are, for the most part, small businesses, owned and often operated by a single owner. The recreational fishing industry is mostly self-employed. This rule will likely have a negative effect upon opportunities for businesses related to the recreational harvest of summer flounder. However, failing to adopt this rulemaking and comply with ASMFC requirements could lead to federal closure of New York's summer flounder fishery.

6. Initial review of the rule, pursuant to the State Administrative Procedure Act § 207 (SAPA):

The Department will conduct an initial review of the rule within three years as required by SAPA § 207(b).

Department of Financial Services

NOTICE OF ADOPTION

Minimum Standards for the Form and Rating of Family Leave Benefits Coverage, Including the Establishment and Operation of a Risk

I.D. No. DFS-08-17-00009-A
Filing No. 326
Filing Date: 2017-05-16
Effective Date: 2017-05-31

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

Action taken: Addition of Part 363 (Regulation 211) to Title 11 NYCRR.

Statutory authority: Financial Services Law, sections 202 and 302; Insurance Law, sections 301, 3201, 3217, 3221 and 4235; Workers' Compensation Law, sections 204(2)(a), 208(2) and 209(3)(b)

Subject: Minimum Standards for the Form and Rating of Family Leave Benefits Coverage, Including the Establishment and Operation of a Risk.

Purpose: Implement statutory mandates for family leave benefits coverage set forth in Insurance Law, section 4235(n) and Workers' Compensation Law, sections 204(2)(a), 208(2) and 209(3)(b).

Substance of final rule: As enacted by Part SS of Chapter 54 of the Laws of 2016, Insurance Law Section 4235(n)(1) requires the Superintendent of Financial Services ("Superintendent"), in consultation with the Chair of the Workers' Compensation Board ("Chair"), to determine by regulation whether family leave benefits coverage issued pursuant to Workers' Compensation Law Article 9 will be experience rated or community rated. Pursuant to Insurance Law Section 4235(n)(1), if the determination is made to community rate such coverage, then the regulation may include subjecting the family leave benefits coverage to a risk adjustment mechanism. Insurance Law Section 4235(n)(1) also authorizes the Superintendent to establish the rates and Workers' Compensation Law Section 209(3)(b) authorizes the Superintendent to set the maximum employee contribution applicable to family leave benefits coverage.

New Part 363 (Insurance Regulation 211) establishes that family leave benefits coverage must be community rated and may be subject to a risk adjustment mechanism. The regulation also establishes the procedures for establishing the community rate, a risk adjustment mechanism, the rules relating to the content and sale of policy forms for family leave benefits coverage, the maximum employee contribution, and data collection.

The regulation consists of ten sections addressing the regulation of family leave benefits coverage.

Section 363.1 is the preamble of the regulation, which sets forth the Superintendent's authority for the regulation and summarizes the content of the regulation.

Section 363.2 is the applicability section, which describes that the regulation is applicable to issuers providing family leave benefits coverage to employers pursuant to Workers' Compensation Law Section 211 for their employees. The requirements apply to issuers, which includes authorized insurers that write family leave benefits coverage and the State Insurance Fund. Certain reporting requirements and the maximum employee contribution provision also apply to self-funded employers.

Section 363.3 adds the definitions used within the regulation.

Section 363.4 sets forth that family leave benefits coverage will be com-

munity rated and provides the procedures for establishing rates. The Superintendent sets the community rate as a defined dollar amount per employee or as a percentage of an employee's weekly wage or the Superintendent may utilize one of the three classification methodologies specified in the section. Pursuant to the regulation, the community rate for premiums shall also be the maximum employee contribution.

In establishing the community rate for premiums, the Superintendent will apply commonly accepted actuarial principles to establish rates for family leave benefits coverage that are not excessive, inadequate or unfairly discriminatory. The Superintendent may use data collected from the previous calendar year from issuers and self-funded employers to establish the community rate.

Every issuer must file and maintain a current rate manual that includes specific information for a group accident and health insurance policy providing family leave benefits. The rate manual pages for family leave benefits must be separately maintained from all other types of insurance.

Section 363.5 contains the risk adjustment mechanism, which is not applicable to self-funded employers. Risk adjustment will be applied for calendar year 2018 and the Superintendent will determine, in consultation with the Chair, if risk adjustment will apply in each subsequent year. Every issuer is required to participate in the risk adjustment mechanism, although the Superintendent has the discretion to exempt the State Insurance Fund if the Superintendent finds that such exemption facilitates a fair and efficient market for family leave benefits coverage. The risk adjustment mechanism will be applied by the Superintendent to equalize the per member per month claim amounts among issuers by group size in order to protect issuers from disproportionate adverse risks in accordance with Insurance Law Section 4235(n)(3).

If the Superintendent determines that risk adjustment is appropriate, then the Superintendent may employ the risk adjustment mechanism specified in the section. The risk adjustment mechanism targets a defined loss ratio per group size and equalizes the risk to that target loss ratio. A specified initial target loss ratio is applied to each of the group sizes and each group size pays into or collects from the risk adjustment pool. The group sizes are: small group with one to 49 employees, medium group with 50 to 499 employees, and large group with 500 or more employees. The Superintendent may audit the issuer calculations each calendar year. If the Superintendent finds that adjustments are necessary to correct any errors, then the corrections will be made to the issuer's risk adjustment payment or distribution in the following calendar year.

Section 363.6 contains the rules relating to the content and sale of policy forms for family leave benefits coverage, including notification to the Superintendent when an issuer elects to discontinue the sale of disability and family leave benefits coverage.

Section 363.7 provides that the Superintendent will set the maximum employee contribution on or before June 1, 2017 and annually thereafter on or before September 1 in accordance with Workers' Compensation Law Section 209(3)(b).

Section 363.8 requires data submissions. Issuers and self-funded employers must electronically submit data to the Superintendent for each employer and each self-funded employer, details for each family leave benefits coverage claim, and any other data requested by the Superintendent on a quarterly basis. Issuers must also report to the Superintendent on a quarterly basis the data necessary to administer and monitor the risk adjustment program including earned premiums and incurred claim data by group size. An officer of the issuer or self-funded employer must sign the data submissions, attesting to the best of his or her knowledge and belief that the information provided is accurate.

Section 363.9 allows for an exemption from the electronic filing and submission requirements for issuers and self-funded employers that provide a written request to the Superintendent.

Section 363.10 sets forth the authority for the Superintendent to ensure compliance with the regulation.

Final rule as compared with last published rule: Nonsubstantive changes were made in sections 363.3, 363.4, 363.5, 363.6 and 363.8.

Text of rule and any required statements and analyses may be obtained from: Laura Evangelista, NYS Department of Financial Services, One State Street, New York, NY 10004, (212) 480-4738, email: Laura.Evangelista@dfs.ny.gov

Summary of Revised Regulatory Impact Statement

Paragraphs 1 – 9 are not changed from the Regulatory Impact Statement filed with the Notice of Proposed Rule Making. Paragraph 10 has been amended as follows:

10. Compliance schedule: The regulation will take effect upon publication of the Notice of Adoption in the State Register. However, since the family leave benefits program will not begin until the 2018 policy year, issuers and self-funded employers will have more than 30 days to come into compliance with the regulation.

Revised Regulatory Flexibility Analysis

The changes made to the regulation did not impact the Regulatory Flexibility Analysis for Small Businesses and Local Governments filed with the Notice of Proposed Rule Making.

Revised Rural Area Flexibility Analysis

The changes made to the regulation did not impact the Rural Area Flexibility Analysis filed with the Notice of Proposed Rule Making.

Revised Job Impact Statement

The changes made to the regulation did not impact the Job Impact Statement filed with the Notice of Proposed Rule Making.

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

Community Rating – Section 363.4

Comment

Commenters expressed support for community rating of family leave coverage and further supported premium differentiation based on income. Commenters requested that the Department clarify that an employee's deduction is only for the actual cost of the premium.

Response

The regulation defines maximum employee contribution as the maximum amount a covered employer is authorized to collect from each of its employees to fund the family leave benefits. The regulation further sets the community rate for premiums as the maximum employee contribution. The Department has determined that no clarification is necessary.

Comment

Comments were received regarding the rate setting methods available to the Superintendent. Some commenters requested that the Department adopt a single rating methodology and others expressed preference for a particular rating methodology, i.e., a percent of wages, uniform dollar amount per employee per week.

Response

The Department's determination that family leave benefits coverage shall be community rated ensures that employees are similarly treated; all employees are charged a rate based upon the same principles and are not subject to premium variations based upon age, gender, occupation, health status, geographic location or any other demographic factor. The Department rejected an experience rating method. To ensure that the Superintendent has discretion to make necessary changes to the rating methodology as the family leave program benefits are phased in over the next four years, the existing structure of the proposed regulation was not changed.

Comment

One commenter sought clarification as to whether the premium may vary by group size and whether the Superintendent will select one rating methodology for all group sizes in any given year.

Response

The community rate is applicable to all group sizes in any given year.

Comment

One commenter requested that the phrase "up to and including" be added to the rating methodologies in Section 363.4(a)(3).

Response

No changes were made because the existing language is clear.

Comment

One commenter sought clarification regarding calculation of group size for farm employees.

Response

Farm laborers are exempt from family leave benefits coverage under Workers' Compensation Law Section 201(6), and all non-exempt employees are counted in calculating group size. As the existing language is clear, no changes were made.

Comment

One commenter noted that the proposed regulation referenced September 1 instead of October 1 as the start of the fourth quarter.

Response

This typographical error was corrected in Section 363.4(a)(4)(i).

Rate Submission – Proposed Section 363.4(c)

Comment

One commenter suggested that the submission of a rate manual is unnecessary because the Superintendent sets the premium rate. Two commenters sought clarification whether the rate manual and schedule of expenses as a percentage of premiums, including administrative expenses, commissions, taxes, fees, and expected profit, are required only in the context of a policy offering enhanced benefits.

Response

Pursuant to Insurance Regulation 62 (11 NYCRR 52), all insurance companies are required to maintain a rate manual that includes information on all of the company's accident and health insurance offerings, including disability benefits and family leave benefits coverage. Consistent with this rule, the proposed regulation requires that separate rate manual pages for family leave benefits be submitted as part of the rate manual,

whether or not the policy includes enhanced benefits. The proposed regulation clearly indicates when a required rate manual provision only applies to additional or enhanced benefits. The Department has determined that no changes to the proposed regulation are necessary.

Comment

One commenter sought clarification as to whether insurance companies can charge an additional premium for enhanced benefits and, if so, who determines the rate to be charged for the enhanced benefit.

Response

Insurance companies may charge an additional premium for enhanced benefits. Such an additional premium for enhanced benefits is subject to the approval of the Superintendent. A clarification was made to Section 363.4(c)(4) to specify that an actuarial memorandum must be included in a rate filing to justify the proposed rate.

Comment

One commenter expressed concerns over broker commissions for family leave benefits coverage. The commenter sought clarification as to whether the commission scale applicable to statutory disability benefits also applies to family leave benefits coverage. The commenter also suggested that commissions on family leave benefits be treated as "file and use."

Response

The proposed regulation requires separate rate manual pages for family leave benefits coverage that include the schedule of expenses as a percentage of premium, including administrative expenses, commissions, taxes, fees and expected profit. Family leave benefits are accident and health insurance benefits and thus its commission filings shall be treated consistent with commission filings for other types of accident and health insurance. Accordingly, no changes were made.

Comment

One commenter asked whether the rate for family leave benefits coverage must be shown separately in the rate manual or may be combined with the rates for statutory disability coverage.

Response

As the proposed regulation makes clear, the rate manual must include pages for family leave benefits coverage that are separate from the pages for statutory disability benefits.

Comment

One commenter asked whether the rate manual pages need to be updated annually.

Response

In order to remain in compliance with Section 363.4(c), rate manual pages must be current. The Department anticipates that changes in the statutory benefit level and duration, which are based on the calendar year, will necessitate annual updates to the rate manual pages.

Risk Adjustment – Section 363.5

Comment

Some commenters suggested that the proposed regulation's option of two possible risk adjustment mechanisms may lead to uncertainty in the market and market disruption. Some commenters suggested that the Department should retain the mechanism that provides for target loss ratios and delete other methodologies. One commenter suggested this would ensure that claims will be shifted fairly across case or group size segments, which would encourage insurance companies to participate in the family leave benefits market.

Response

The Department has determined that retaining the mechanism that utilizes target loss ratios based on case size segments of the market accomplishes the Department's purpose while providing more clarity on how that mechanism will function.

Comment

Two commenters suggested that the New York State Insurance Fund (SIF) should not be exempt from the risk adjustment mechanism. One commenter further suggested that exempting self-funded plans from the risk adjustment is inconsistent with the use of self-funded plan experience in setting the rate.

Response

The proposed regulation does not automatically exempt SIF but rather provides that the Superintendent shall have the discretion to exempt SIF from the risk adjustment mechanism if the Superintendent finds that such exemption facilitates a fair and efficient market for family leave benefits coverage. The Department has determined that the ability to exempt SIF from the mechanism is necessary for an effective risk adjustment mechanism.

There is no inconsistency in excluding self-funded employers from the risk adjustment mechanism while using their experience to set the premium rate. The risk adjustment mechanism is designed to evenly spread the risk across the pool of issuers of family leave benefits to ensure market stability.

Comment

One commenter expressed a concern that a 1% compound interest per month for insurers whose conduct causes them to underpay or be overpaid during the risk adjustment process is too high.

Response

The 1% interest applies only to an issuer whose conduct caused it to underpay or caused it to be overpaid. The 1% rate is appropriate and consistent with the interest rate applied in the market stabilization mechanism established under Insurance Regulation 146 (11 NYCRR 361).

Comment

One commenter inquired whether there will be any relief for insurers where actual experience is much higher than the target loss ratios.

Response

The risk adjustment mechanism set forth in the proposed regulation has been established to provide the relief the commenter seeks in order to equalize loss ratios across market segments so that no one insurer bears the risk of significantly higher experience in any one year. An insurer with higher experience compared to the market may be eligible for a distribution from the risk adjustment pool to mitigate its losses.

Comment

One commenter raised concerns about potential conflicts of interest with any third party vendor employed to administer the risk adjustment mechanism.

Response

The State procurement process will screen bidders for any potential conflict of interest.

Data Collection – Section 363.8

Comment

Two commenters suggested that the monthly reporting requirements for insurers should be shifted to a quarterly requirement for consistency with other reporting requirements within the proposed regulation. An additional commenter suggested moving the reporting requirements for self-funded employers from quarterly to annual reporting.

Response

The Department revised the regulation to replace the monthly reporting with quarterly reporting, and has maintained the reporting requirements for self-funded employers, for consistency in administration.

Comment

Some commenters suggested that zip codes should be used instead of county designations to conform to existing insurer data systems.

Response

The Department has determined that this requested change will assist issuers in adapting their information technology systems for family leave benefits coverage, without any adverse impact on the information requirements of the Department. As such, the Department has adopted the requested change.

Comment

Two commenters suggested insurers have access to the data collected by the Department from all other insurers, including the loss ratios calculated by group size.

Response

The Department believes that requiring the release of family leave benefits coverage information by regulation could have unforeseen consequences on the market. As such, the Department will continue to exercise its discretion and will release such information as is necessary in a manner that protects the proprietary information of individual insurers and guards the market against adverse consequences. The Department has determined that no change is necessary for this purpose.

Comment

Three commenters requested clarification on the electronic data collection requirements.

Response

The Department will be issuing specific guidance and instructions on the data submission requirements, consistent with the requirements of the proposed regulation.

Policy Forms – Section 363.6

Comment

One commenter noted that public employers who voluntarily provide statutory disability insurance coverage pursuant to Workers' Compensation Law Section 212(2) are not required to provide family leave benefits coverage and requested that the regulations clearly reflect the optional nature of this coverage.

Response

For consistency with Workers' Compensation Law Section 212(2), a clarification was made in the rulemaking to address this issue.

Comment

One commenter suggested that a surcharge option for late entrants will raise adverse selection concerns.

Response

To minimize the potential adverse selection consequences of the proposed rule, the regulation has been modified to eliminate the option

whether to apply a surcharge or a waiting period to the late entrants. The final rulemaking retains the two year waiting period for late entrants.

Comment

A number of changes were suggested surrounding the market withdrawal provisions contained in the proposed regulation. Two commenters suggested that the notification period for insurers who seek to withdraw from the family leave benefits market be shortened. One commenter suggested that, for 2018, the notification to the Superintendent of an insurance company's intention to exit the market be modified to allow insurers at least 60 days from the release of the community rate to provide the required withdrawal notice. The same commenter suggested that notifications of discontinuance required by the proposed regulation should only be sent to the employer and not to each employee covered under the policy.

Response

The Department has made three changes to the proposed regulation in response to these comments. The final rulemaking reflects a 90 day timeframe for notification of withdrawal, shortened from 180 days. The Department has also expanded for 2018 the timeframe in which an insurer may provide notice of an intent to exit the market to 60 days from the release of the rate decision. Finally, consistent with existing statutory disability insurance policies, the Department clarified that notices of discontinuance only need to be sent to employers, but must include a notice to employees which is to be distributed by the employer.

Department of Health

PROPOSED RULE MAKING
NO HEARING(S) SCHEDULED

Updating Certificate of Need Thresholds

I.D. No. HLT-22-17-00009-P

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

Proposed Action: Amendment of section 710.1 of Title 10 NYCRR.

Statutory authority: Public Health Law, section 2803(2)(a)

Subject: Updating Certificate of Need Thresholds.

Purpose: To update Certificate of Need review thresholds.

Text of proposed rule: Paragraph (3) of subdivision (b) of section 710.1 is amended to read as follows:

(3) [Reserved.] *For purposes of this Part, "general hospital" means a general hospital as defined in subdivision 10 of section 2801 of the public health law.*

Subparagraph (iii) of paragraph (1) of subdivision (c) of section 710.1 is amended to read as follows:

(iii) the initial acquisition or addition of any equipment, regardless of cost, utilized in the provision of a service listed in paragraph (2) of this subdivision, other than the acquisition or addition of equipment subject to paragraph ([7]*6*) of this subdivision. A proposal for the replacement of existing equipment, regardless of cost, which meets the criteria contained therein, shall not require an application but shall be processed pursuant to [subparagraph]*paragraph* (4)[(iii)]of this subdivision;

Subparagraph (vi) of paragraph (1) of subdivision (c) of section 710.1 is amended to read as follows:

(vi) any other construction, addition or replacement proposal involving a total project cost in excess of *$15,000,000 for a general hospital or* $6,000,000 *for all other facilities*, except non-clinical and health information technology projects subject to paragraph [5]*(4)* of this subdivision.

Subclause (3) of clause (b) of subparagraph (i) of paragraph (2) of subdivision (c) of section 710.1 is amended to read as follows:

(3) cardiac catheterization, including the relocation of any Cardiac Catheterization Laboratory Center service within a network or to another site in a multi-site facility, as defined in Section 401.1 of this Title, and the addition of a PCI Capable Cardiac Catheterization Laboratory Center at a facility that is not already approved to provide cardiac catheterization services; provided however that the addition of a PCI Capable Cardiac Catheterization Laboratory Center or Cardiac EP Laboratory Program at a facility approved to provide cardiac catheterization services shall be reviewed pursuant to paragraph (3) of this subdivision, and the addition of a Cardiac EP Laboratory Program services at a facility approved to provide cardiac surgery shall be reviewed pursuant to paragraph ([7]*6*) of this subdivision;

Clause (c) of subparagraph (i) of paragraph (2) of subdivision (c) of section 710.1 is amended to read as follows:

(c) any proposal involving total project cost in excess of *$30,000,000 for a general hospital or* $15,000,000 *for all other facilities*, except as otherwise provided under paragraph (3) of this subdivision;

Clause (a) of subparagraph (ii) of paragraph (2) of subdivision (c) of section 710.1 is amended to read as follows:

(a) The addition of equipment utilized in the provision of Cardiac Catheterization Laboratory Center services shall be eligible for limited review pursuant to paragraph ([7]*6*) of this subdivision, to the extent that it does not otherwise require an administrative or a full review under this Part;

The opening paragraph of subparagraph (i) of paragraph (3) of subdivision (c) of section 710.1 is amended to read as follows:

(i) [Except as otherwise stated in this paragraph, the]*The* commissioner may administratively approve applications submitted pursuant to Article 28 of the Public Health Law and this Part [but] without the recommendation of the [State Hospital Review]*Public Health* and *Health* Planning Council[,] when an application has *not* been recommended for [approval]*disapproval* by the health systems agency having jurisdiction, and where the total project cost does not exceed *$30,000,000 for a general hospital or* $15,000,000 *for all other facilities*. An application shall be eligible for administrative review even though total project costs exceed *$30,000,000 for a general hospital or* $15,000,000 *for all other facilities*, if: (a) total project costs do not exceed 10% of the total operating costs of the facility for the fiscal year ended two years prior to the submission of the application; and (b) total project costs do not exceed [$50,000,000;]*$100,000,000* for a general hospital [as defined in section 2801 of the Public Health Law]or $25,000,000 for all other facilities. Notwithstanding anything in this Part to the contrary, any cost increase of a project in excess of *$30,000,000 for general hospitals or* $15,000,000 *for all other facilities* that is administratively reviewed under the subparagraph, resulting in total project costs in excess of the [$50,000,000]*$100,000,000* for general hospitals or $25,000,000 for all other facilities, or in excess of 10% of the total operating costs of the facility for the fiscal year ended two years prior to the submission of the application, shall subject the application to full review. The following types of proposals are eligible for administrative review:

* * *

Clause (f) of subparagraph (i) of paragraph (3) of subdivision (c) of section 710.1 is amended to read as follows:

(f) [in] *the* addition, updating or modification of equipment utilized in the provision of a service listed in paragraph (2) of this subdivision, by a medical facility already approved to provide such service, except for the addition of equipment utilized in cardiac catheterization laboratory center services by a facility already approved to provide such service, which shall be subject to limited review pursuant to paragraph ([7]*6*) of this subdivision;

Clause (q) of subparagraph (i) of paragraph (3) of subdivision (c) of section 710.1 is amended to read as follows:

(q) [any proposal that relates to health information technology, provided that proposals with a total cost of up to $15 million may be reviewed under paragraph (5) of this subdivision]*Reserved*;

Subclause (7) of clause (w) of subparagraph (i) of paragraph (3) of subdivision (c) of section 710.1 is amended to read as follows:

(7) neither the facility nor any part thereof, nor the project is currently or is proposed to be financed by bonds or other debt instruments insured, enhanced or guaranteed by any state or municipal agency or public benefit corporation. Notwithstanding anything in this Part to the contrary, any cost increase of a primary care services project resulting in total project costs in excess of the *$30,000,000 threshold for general hospitals or the* $15,000,000 threshold *for all other facilities* shall subject the application or amendment, as the case may be, to full review.

Clause (e) of subparagraph (i) of paragraph (4) of subdivision (c) of section 710.1 is amended to read as follows:

(e) Subject to clause (d) of subparagraph (ii) of paragraph (5) of this subdivision, any proposal for a nonclinical infrastructure project *with total project costs in excess of $6,000,000* [, regardless of cost], including but not limited to replacement of heating, ventilating and air conditioning, fire alarm and call bell systems or components thereof, roofs, elevators, parking lots and garages, dietary, and solid waste and/or sewage disposal and upgrades of the exterior building envelope. The facility's written notice to the department shall include a written certification by a New York State licensed architect or engineer that the project meets the applicable statutes, codes and regulations; and shall include a plan to protect patient safety during construction consistent with section 711.2 of this part and other applicable standards, and as otherwise required by the department. Upon completion of the project, the facility shall, where applicable, submit written certification by a New York State licensed architect, engineer and/or physicist that the project as constructed or installed meets ap-

plicable statutes, codes and regulations; and such other close-out documents as may be specified by the department.

A new clause (g) is added to subparagraph (i) of paragraph (4) of subdivision (c) of section 710.1 to read as follows:

(g) Any proposal that relates to health information technology regardless of cost. For health information technology proposals involving the implementation of clinical information systems, electronic medical records, computerized physician order entry, radiology systems, lab ordering systems or other health information systems impacting patient care, the facility's written notice to the department shall include a certification of the technology's interoperability with other systems and conformance with state and federal guidelines and regulations governing the use and exchange of information, including privacy and security, that is acceptable to the department.

A new subparagraph (ii) is added to paragraph (4) of subdivision (c) of section 710.1 to read as follows:

(ii) Proposals for a nonclinical infrastructure project, including but not limited to replacement of heating, ventilating and air conditioning, fire alarm and call bell systems or components thereof, roofs, elevators, parking lots and garages, dietary, and solid waste and/or sewage disposal and upgrades of the exterior building envelope, where total project costs do not exceed $6,000,000, shall not require prior approval or written notice to the department under this Part, except as required by clause (d) of subparagraph (ii) of paragraph (5) of this subdivision.

The opening sentence of paragraph (5) of subdivision (c) of section 710.1 is amended to read as follows:

(5) Proposals requiring a limited review. Proposals where total project cost does not exceed *$15,000,000 for a general hospital or* $6,000,000 *for all other facilities*, and for which a certificate of need is not otherwise required under this Part, shall be reviewed under this paragraph, except for proposals covered by paragraph (4) of this subdivision.

Clause (g) of subparagraph (iv) of paragraph (5) of subdivision (c) of section 710.1 is amended to read as follows:

[(g) Any proposal to acquire, install or modify health information technology; provided that, notwithstanding any inconsistent provision in this paragraph, the cost of the proposal does not exceed $15 million. The applicant shall submit information, as requested by the department, including information concerning the technology's interoperability with other systems and conformance with state and federal guidelines and regulations governing the use and exchange of information, including privacy and security]*Reserved*.

Clause (b) of subparagraph (ii) of paragraph (6) of subdivision (c) of section 710.1 is amended to read as follows:

(b) Requests for approval of proposals described in this subparagraph shall be made [directly to the Director of the Division of Health Facility Planning. The applicant shall submit three (3) copies of such request] *through the electronic application submission process at the address posted on the department's website or any other means approved by the department*, including information indicating the services to be provided, the facility areas to be utilized, and such other information as the Department may require. If construction is required, the request should include the cost of such construction and other information required by the Bureau of Architectural and Engineering Facility Planning under this Part. If the proposal involves the addition of Cardiac EP Laboratory Program Services, the applicant shall also submit a copy to the local health systems agency (HSA) having jurisdiction, if any. The HSA shall have 10 days to make a recommendation to the department.

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

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

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

Regulatory Impact Statement

Statutory Authority:

Public Health Law (PHL) section 2803(2)(a) provides that the Public Health and Health Planning Council (PHHPC) shall adopt rules and regulations, subject to the approval of the Commissioner of Health, to effectuate the purposes of PHL Article 28 with respect to hospitals.

Legislative Objectives:

PHL section 2800 declares that "[h]ospital and related services including health-related service of the highest quality, efficiently provided and properly utilized at a reasonable cost, are of vital concern to the public health" and bestows upon the Department of Health the "central, comprehensive responsibility for the development and administration of the state's policy with respect to hospital and related services."

The review of applications for hospital establishment and construction is referred to as the Certificate of Need (CON) process, the objectives of which are to align health care resources with community health needs, preserve and promote access to high quality health care, and control utilization to promote cost-effective health care.

PHL section 2801-a provides that hospitals, defined in PHL section 2801 to mean "general hospitals", nursing homes and diagnostic and treatment centers, may not be established except as approved by PHHPC. PHHPC may not approve establishment unless it is satisfied as to the public need for and financial feasibility of the proposed project, the character and competence of the proposed owners and operators, and such other matters as it deems pertinent.

The construction of a hospital, defined by PHL section 2801 to mean the erection, building, or substantial acquisition, alteration, reconstruction, improvement, extension or modification of a hospital, including its equipment, requires the prior approval of the Commissioner under PHL section 2802. The Commissioner may approve a construction application only after affording PHHPC an opportunity to make a recommendation, except where regulations adopted by PHHPC and approved by the Commissioner provide that PHHPC review is not necessary, and only if the Commissioner is satisfied as to public need, financial feasibility and character and competence.

PHL section 2802 details procedures for approval of hospital construction projects and provides that certain types of hospital construction projects require written notice to the Department but not prior approval. These include the acquisition of minor equipment, non-clinical infrastructure projects (such as replacement of heating, ventilating and air conditioning systems, parking lots and elevators), the replacement of existing equipment, and other projects set forth in regulation.

Current Requirements:

Consistent with these provisions, Department regulations establish the parameters of the CON process for establishment and construction projects. Part 600, et seq., of Title 10 of the Official Compilation of New York Codes, Rules and Regulations (NYCRR) pertains to establishment and 10 NYCRR Part 710, et seq., relates to construction projects.

Part 710 of 10 NYCRR, et seq., defines three levels of review for construction projects. Construction projects of greater complexity and higher costs undergo full review, requiring submission of a CON application that includes a series of forms and schedules and a detailed review for financial feasibility and public need. PHHPC must be afforded an opportunity to make a recommendation on full review construction projects, while the ultimate determination of whether to approve such projects lies with the Commissioner.

Applications that undergo administrative or limited review may be approved by the Commissioner without the recommendation of PHHPC. Administrative review requires a CON application including forms and schedules which are less detailed than those needed for full review, and involves review for financial feasibility and public need. Limited review requires a narrative describing the construction activity to be undertaken, the cost of the construction and where applicable, architecture/engineering drawings or certification and does not include review for financial feasibility or public need.

Section 710.1(c)(1) specifies that CON applications are necessary for certain types of construction projects, generally including the addition, modification or decertification of licensed services, changes in the method of delivery of a licensed service, regardless of cost, or the acquisition or addition of equipment. Subsequent paragraphs delineate the criteria by which projects are assigned an appropriate level of review based on the type of action, the services and specific circumstances of a project as well as the project cost.

Section 710.1(c)(2) provides that "full review" is required for construction applications that involve the addition of beds, the addition or modification of a change in delivery for certain services, and proposals involving total project costs in excess of $15 million. Section 710.1(c)(3) provides that projects eligible for "administrative review" generally include those with a total project cost that does not exceed $15 million. However, an application shall be eligible for administrative review even though total project costs exceed $15 million, if: (a) total project costs do not exceed 10 percent of the total operating costs of the facility for the fiscal year ended two years prior to the submission of the application; and (b) total project costs do not exceed $50 million for a general hospital or $25 million for all other facilities. Further, under section 710.1(c)(3)(i)(q), administrative review also applies to proposals related to health information technology (HIT) with a total cost above $15 million.

Section 710.1(c)(5) identifies construction projects subject to "limited review," which generally includes projects with costs that do not exceed $6 million. Pursuant to section 710.1(c)(5)(ii), limited review also applies to non-clinical projects involving heating, ventilating, air conditioning, plumbing, electrical, water supply and fire protection systems where such projects involve the modification or alteration of clinical space, services or equipment. Section 710.1(5)(iv)(g) further provides for limited review of any proposal to acquire, install or modify HIT that does not cost more than $15 million.

Section 710.1(c)(4) provides that certain construction projects do not require review but require written notice to the Department. Such projects include non-clinical infrastructure projects (other than projects affecting clinical space, which would require limited review as noted above).

Needs and Benefits:

Over the last several years, the Department has refined the CON process to ensure that it continues to advance its objectives, is responsive to a changing health care environment, focuses Department and PHHPC resources on issues and projects with the greatest impact, and is as streamlined and expeditious as possible within the parameters of the statutory authority.

This proposal represents the next phase of CON streamlining measures and will: (1) raise the monetary thresholds impacting the level of review for "general hospital" construction projects; (2) eliminate the requirement that notice be provided for non-clinical infrastructure projects that do not exceed $6 million; (3) eliminate the requirement for Department approval of HIT projects, instead requiring notice which, for HIT projects impacting patient care, will include certification as to interoperability and compliance with other applicable requirements; (4) update language to require that construction applications be submitted electronically; and (5) correct several erroneous references within the regulation. The proposal does not modify the level of review required to add, reduce or decertify medical services in a community.

Section 710.1(c)(2)(i)(c) will be amended to subject "general hospital" construction projects to full review if they exceed $30 million. Section 710.1(c)(3)(i) will be amended to require administrative review if costs are not more than $30 million for "general hospitals" or, if in excess of $30 million, no more than 10 percent of operating costs and no more than $100 million. Section 710.1(c)(1)(vi) will be amended to raise the threshold for limited review of a general hospital construction project to $15 million.

These increases recognize the overall upward movement in construction costs for large-scale projects undertaken by "general hospitals". The relative size of operating budgets and accumulated financial resources of applicants other than "general hospitals" make the current dollar thresholds still appropriate for those facilities.

In addition, section 710.1(c)(4)(i)(e) will be amended to apply the notice requirement to non-clinical infrastructure projects costing over $6 million. A new section 710.1(c)(4)(ii) will reflect that neither review nor notice is required for non-clinical infrastructure projects that do not exceed $6 million. Both provisions will reflect, however, that non-clinical projects impacting clinical spaces, services or equipment will continue to be subject to limited review under section 710.1(c)(5)(ii)(d).

Section 710.1(c)(3)(i)(q), which subjects HIT projects to administrative review if they are over $15 million, and section 710.1(c)(5)(iv)(g), which subjects HIT projects to limited review if they are no more than $15 million, will be repealed. A new section 710.1(c)(4)(i)(g) will provide that Department review of HIT projects is not required, but a facility will be required to provide notice to the Department that it is undertaking such a project. For HIT projects involving systems that impact patient care, the notice will have to include certification as to the system's interoperability and conformance with state and federal guidelines governing the use and exchange of information.

Finally, this proposal will amend section 710.1(c)(6)(ii)(b), related to limited review cardiac catheterization proposals, to update language and clarify that applications must be submitted electronically, consistent with Department practice.

The measures included in this streamlining initiative will continue to reflect the overall objective of the statutory and regulatory framework, as set forth in 10 NYCRR section 710.1(a), to help ensure that medical facilities are planned to achieve efficiency and economy of operation and care of high quality. At the same time, it will help support regulated providers in meeting heightened demands to be increasingly agile given ongoing health system reform and evolving trends in medicine. Further, these changes are consistent with a broader effort being undertaken by the Department, in consultation with stakeholders, to fundamentally restructure health care statutes, regulations and policies to better align with changes in the health care system, affording opportunities to streamline requirements and promote flexibility that supports efficiency and innovation.

COSTS:

Costs to Private Regulated Parties:

The proposed amendments will not increase costs for private entities subject to the requirements of PHL Article 28 and in fact are expected to have a favorable fiscal impact. Some applicants either would no longer need to submit a CON application or would need to prepare a less complex application, meaning that they will pay less in application fees, which are required in higher amounts for applications requiring higher levels of review. These changes also should expedite the time for approval of projects and therefore minimize costs related to construction delays.

Costs to Local Government:

This proposal will not impact local governments unless they operate a general hospital, in which case they are likely to experience decreases in costs as noted above with respect to private entities.

Costs to the Department of Health:

This proposal is not anticipated to have a fiscal impact on the Department.

Costs to Other State Agencies:

The proposed regulatory changes will not result in additional costs to other State agencies.

Local Government Mandates:

The proposed regulatory amendments do not impose new programs, services, duties or responsibilities upon any county, city, town, village, school district, fire district, or other special district.

Paperwork:

The proposed amendments will impose no new reporting requirements, forms or other paperwork. The amendments will reduce paperwork by shifting projects to lower levels of review or removing the requirement for the filing of a CON application.

Duplication:

This rule does not duplicate any other law, rule or regulation.

Alternatives:

The Department considered higher increases of the monetary thresholds but ultimately determined that the amounts included in the proposal reflect an appropriate balance between the recognition of increased construction costs for large-scale projects and the desire to maintain sufficient oversight for purposes of promoting high quality services aligned with community need.

Federal Standards:

The proposed amendments do not exceed any minimum standards of the Federal government. There are no Federal rules currently addressing the CON process.

Compliance Schedule:

These regulations will be effective upon publication of a Notice of Adoption in the New York State Register and would apply to all construction applications submitted thereafter. Consequently, regulated parties should be able to comply with the proposed regulation as of its effective date.

Regulatory Flexibility Analysis

No regulatory flexibility analysis is required pursuant to section 202-(b)(3)(a) of the State Administrative Procedure Act. The proposed rule will not have a substantial adverse impact on small businesses or local governments.

Rural Area Flexibility Analysis

No rural area flexibility analysis is required pursuant to section 202-bb(4)(a) of the State Administrative Procedure Act. The proposed amendments will not impose an adverse impact on facilities in rural areas, and will not impose reporting, record keeping or other compliance requirements on facilities in rural areas.

Job Impact Statement

No job impact statement is required pursuant to section 201-a(2)(a) of the State Administrative Procedure Act. No adverse impact on jobs and employment opportunities is expected as a result of this proposed regulation.

Department of Motor Vehicles

NOTICE OF WITHDRAWAL

Private Service Bureaus

I.D. No. MTV-11-17-00005-W

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

Action taken: Notice of proposed rule making, I.D. No. MTV-11-17-00005-P, has been withdrawn from consideration. The notice of proposed rule making was published in the *State Register* on March 15, 2017.

Subject: Private Service Bureaus.

Reason(s) for withdrawal of the proposed rule: The Department received an objection to the proposed rule.

Public Service Commission

PROPOSED RULE MAKING
NO HEARING(S) SCHEDULED

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

I.D. No. PSC-22-17-00004-P

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

Proposed Action: The Commission is considering the Interconnection Survey and Process proposed by the Joint Utilities on May 8, 2017, to inform each utility's Earning Adjustment Mechanism.

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

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

Purpose: To consider the proposed Interconnection Survey Process and Earnings Adjustment Mechanisms.

Substance of proposed rule: The Public Service Commission (Commission) is considering the Interconnection Survey Process and Proposed Earning Adjustment Mechanism filed by the Joint Utilities on May 8, 2017, in response to the Commission's Order Adopting a Ratemaking and Utility Revenue Model Policy Framework, issued on May 19, 2016 in Case 14-M-0101. Each utility will conduct Interconnection Surveys with distributed energy resource providers, the results of which will inform each utility's positive earning opportunity. Satisfactory achievement of a baseline level of timely and cost-effective interconnection approvals is a threshold condition for earning positive adjustments. Interconnection Earnings Adjustment Mechanisms are financial incentives that a utility may capture to create customer savings and develop market-enabling tools. The full text may be reviewed online at the Department of Public Service web page: www.dps.ny.gov. The Commission may adopt, reject, or modify, in whole or in part, the proposed Interconnection Survey Process and Proposed Earning Adjustment Mechanism filing, and may resolve other related matters.

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

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

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

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

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

(16-M-0429SP3)

PROPOSED RULE MAKING
NO HEARING(S) SCHEDULED

To Effectuate Amendments to 49 CFR Part 192 Mandated by the Pipeline and Hazardous Materials Safety Administration

I.D. No. PSC-22-17-00005-P

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

Proposed Action: The Commission is considering a proposal filed by Central Hudson Gas & Electric Corporation to revise its gas tariff schedule, P.S.C. No. 12, regarding the installation of excess flow valves pursuant to changes to 49 CFR part 192.

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

Subject: To effectuate amendments to 49 CFR part 192 mandated by the Pipeline and Hazardous Materials Safety Administration.

Purpose: To consider revisions to its gas tariff schedule regarding the installation of excess flow valves.

Substance of proposed rule: The Commission is considering a proposal filed by Central Hudson Gas & Electric Corporation (Central Hudson) to revise P.S.C. No. 12 – Gas, to effectuate amendments to 49 CFR Part 192 regarding the installation of excess flow valves mandated by the Pipeline and Hazardous Materials Safety Administration's Final Rule issued on October 14, 2016 and effective April 14, 2017. The revisions to 49 CFR Part 192 require that excess flow valves be installed at the customer request. The proposed amendments have an effective date of August 7, 2017. The full text of the proposal may be reviewed online at the Department of Public Service web page: www.dps.ny.gov. 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-G-0256SP1)

PROPOSED RULE MAKING
NO HEARING(S) SCHEDULED

Revisions to the Delivery Discount and Monthly Customer Charge for SC No. 3 and the Commodity Price for SC 15

I.D. No. PSC-22-17-00006-P

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

Proposed Action: The Commission is considering a proposal filed by Rochester Gas & Electric Corporation to revise its gas tariff schedule, P.S.C. No. 16, regarding a delivery discount and monthly customer charge for SC No. 3 and the commodity price for SC No. 15.

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

Subject: Revisions to the delivery discount and monthly customer charge for SC No. 3 and the commodity price for SC 15.

Purpose: To consider revisions to the delivery discount and monthly customer charge for SC No. 3 and the commodity price for SC 15.

Substance of proposed rule: The Commission is considering a proposal filed by Rochester Gas and Electric Corporation (RG&E or the Company) to make further revisions to Service Classification (SC) No. 3 – Large Transportation Service and SC No. 15 – Interruptible Sales Service contained in P.S.C. No. 16 – Gas. RG&E proposes an interruptible service delivery discount to SC No. 3 of $0.007351 per therm from each of the per therm rate blocks during the months of December through March. RG&E proposes that the charge for the first 1000 therms or less of monthly usage for interruptible customers be set at 80% of the monthly charge paid by SC No. 3 customers. The Company plans to amend SC No. 15 to state that the commodity price shall be based on the highest cost of gas delivered on either the Dominion Transmission Incorporated Pipeline or the Empire Pipeline. The proposed amendments have an effective date of September 1, 2017. The full text of the proposal may be reviewed online at the Department of Public Service web page: www.dps.ny.gov. The Commission may adopt, reject or modify, in whole or in part, the relief proposed and may resolve related matters.

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

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

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

Regulatory Impact Statement, Regulatory Flexibility Analysis, Rural Area Flexibility Analysis and Job Impact Statement
Statements and analyses are not submitted with this notice because the proposed rule is within the definition contained in section 102(2)(a)(ii) of the State Administrative Procedure Act.
(16-G-0533SP2)

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Certain Commission Requirements Related to Blockable Central Office Codes

I.D. No. PSC-22-17-00007-P

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

Proposed Action: The Commission is considering a petition by Verizon New York Inc. to exclude certain central office codes from blocking options offered to customers.

Statutory authority: Public Service Law, sections 94(2) and 97(2)

Subject: Certain Commission requirements related to blockable central office codes.

Purpose: To consider a change to certain Commission requirements related to blockable central office codes.

Substance of proposed rule: The Public Service Commission (Commission) is considering a petition filed by Verizon New York Inc. (Verizon), on May 5, 2017, to exclude certain central office codes from blocking options offered to customers. Blocking services, as offered by Verizon and other local exchange carriers in New York State, enable customers to block outgoing calls to certain central office codes that have been identified as codes used to provide certain information provider (IP) services (blockable codes). Some instances that blocking services may be useful to subscribers are in preventing the billing of IP charges to their lines, or in preventing minors in their households from accessing inappropriate content. Verizon requests authorization for all local exchange carriers in New York to re-align the blocking service provisions of their tariffs and customer service guides and the corresponding switch translations in their networks. The request would authorize and require all regulated carriers in the State to remove certain central office codes from any blocking service options offered in their tariffs and customer service guides to address a situation that has resulted from the incorrect assignment of telephone numbers from certain blockable codes to carriers providing "ordinary" or "general" telecommunications services, rather than IP services. The carriers to which such telephone numbers have been or could be assigned include incumbent local exchange carriers, competitive local exchange carriers, mobile wireless communication companies, and interconnected VoIP providers. The full text of the petition may be reviewed online at the Department of Public Service web page: www.dps.ny.gov. The Commission may adopt, reject, or modify, in whole or in part, the petition proposed and may resolve other related matters.

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

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

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

Regulatory Impact Statement, Regulatory Flexibility Analysis, Rural Area Flexibility Analysis and Job Impact Statement
Statements and analyses are not submitted with this notice because the proposed rule is within the definition contained in section 102(2)(a)(ii) of the State Administrative Procedure Act.
(17-C-0278SP1)

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Petition to Submeter Electricity and Waiver Request

I.D. No. PSC-22-17-00008-P

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

Proposed Action: The Public Service Commission is considering a petition of 412-14 East 10th Street Housing Development Fund Corporation to submeter electricity at 412-14 East 10th Street, New York, New York and request for a waiver of 16 NYCRR § 96.2(b).

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

Subject: Petition to submeter electricity and waiver request.

Purpose: To consider the petition to submeter electricity at 412-14 East 10th Street, New York, New York and waiver of 16 NYCRR § 96.2(b).

Substance of proposed rule: The Commission is considering the petition of 412-14 East 10th Street Housing Development Fund Corporation (Applicant), filed on April 25, 2017, to submeter electricity at 412-14 East 10th Street, New York, New York, located in the service territory of Consolidated Edison Company of New York, Inc. The Commission is also considering the Applicant's request for a waiver of 16 NYCRR § 96.2(b), which requires the applicant to demonstrate that the building will participate in demand response programs or employ on-site co-generation or an alternative, advanced energy efficiency design when submetering authorization is sought for direct meter to submeter conversions. The full text of the petition and waiver request may be reviewed online at the Department of Public Service web page: www.dps.ny.gov. 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-0234SP1)

Department of Taxation and Finance

NOTICE OF ADOPTION

Division of Taxation and Finance Powers of Attorney

I.D. No. TAF-48-16-00003-A
Filing No. 325
Filing Date: 2017-05-15
Effective Date: 2017-05-31

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

Action taken: Amendment of sections 2370.5(b)(3), 2371.5(c)(2), 2390.1(c)(3), (g)(1); and repeal of section 2390.1(f) and (g)(2) of Title 20 NYCRR.

Statutory authority: Tax Law, section 171, subd. First

Subject: Division of Taxation and Finance Powers of Attorney.

Purpose: To simplify and expedite the process for filing Powers of Attorney with the Division of Taxation and Finance.

Text or summary was published in the November 30, 2016 issue of the Register, I.D. No. TAF-48-16-00003-P.

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

Text of rule and any required statements and analyses may be obtained from: Kathleen D. O'Connell, Tax Regulations Specialist, Department of Taxation and Finance, Office of Counsel, Building 9, W.A. Harriman Campus, Albany, NY 12227, (518) 530-4153, email: tax.regulations@tax.ny.gov

Initial Review of Rule
As a rule that does not require a RFA, RAFA or JIS, this rule will be initially reviewed in the calendar year 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.

NOTICE OF ADOPTION

Fuel Use Tax on Motor Fuel and Diesel Motor Fuel and the Art. 13-A Carrier Tax Jointly Administered Therewith

I.D. No. TAF-09-17-00003-A
Filing No. 324
Filing Date: 2017-05-15
Effective Date: 2017-05-15

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

Action taken: Amendment of section 492.1(b)(1) of Title 20 NYCRR.

Statutory authority: Tax Law, sections 171, subd. First, 301-h(c), 509(7), 523(b) and 528(a)

Subject: Fuel use tax on motor fuel and diesel motor fuel and the art. 13-A carrier tax jointly administered therewith.

Purpose: To set the sales tax component and the composite rate per gallon for the period April 1, 2017 through June 30, 2017.

Text or summary was published in the March 1, 2017 issue of the Register, I.D. No. TAF-09-17-00003-P.

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

Text of rule and any required statements and analyses may be obtained from: Kathleen D. O'Connell, Tax Regulations Specialist, Department of Taxation and Finance, Office of Counsel, Building 9, W.A. Harriman Campus, Albany, NY 12227, (518) 530-4153, email: tax.regulations@tax.ny.gov

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

PROPOSED RULE MAKING
NO HEARING(S) SCHEDULED

Fuel Use Tax on Motor Fuel and Diesel Motor Fuel and the Art. 13-A Carrier Tax Jointly Administered Therewith

I.D. No. TAF-22-17-00002-P

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

Proposed Action: Amendment of section 492.1(b)(1) of Title 20 NYCRR.

Statutory authority: Tax Law, sections 171, subd. First, 301-h(c), 509(7), 523(b) and 528(a)

Subject: Fuel use tax on motor fuel and diesel motor fuel and the art. 13-A carrier tax jointly administered therewith.

Purpose: To set the sales tax component and the composite rate per gallon for the period July 1, 2017 through September 30, 2017.

Text of proposed rule: Section 1. Paragraph (1) of subdivision (b) of section 492.1 of such regulations is amended by adding a new subparagraph (lxxxvii) to read as follows:

	Motor Fuel			Diesel Motor Fuel	
Sales Tax Component	Composite Rate	Aggregate Rate	Sales Tax Component	Composite Rate	Aggregate Rate
(lxxxvi) April-June 2017					
14.6	22.6	38.8	15.7	23.7	38.15
(lxxxvii) July-Sept. 2017					
14.6	*22.6*	*38.8*	*15.7*	*23.7*	*38.15*

Text of proposed rule and any required statements and analyses may be obtained from: Kathleen D. O'Connell, Tax Regulations Specialist, Department of Taxation and Finance, Office of Counsel, Building 9, W.A. Harriman Campus, Albany, NY 12227, (518) 530-4153, email: tax.regulations@tax.ny.gov

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

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

Regulatory Impact Statement, 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.