

RULE MAKING ACTIVITIES

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

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

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

Department of Agriculture and Markets

EMERGENCY RULE MAKING

Shell Eggs; Acidified Foods

I.D. No. AAM-40-18-00021-E

Filing No. 1093

Filing Date: 2018-11-27

Effective Date: 2018-12-17

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

Action taken: Repeal of Part 261; and addition of new Part 261 to Title 1 NYCRR.

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

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

Specific reasons underlying the finding of necessity: The current Part 261, which gives the Department authority to inspect acidified food and egg shell producers, processors and manufacturers based on 21 CFR Parts 114 and 118, will lapse after September 18, 2018. This rulemaking repeals the current Part 261, and re-adopts portions of the current Part 261 to allow the Department to continue to inspect and regulate these entities, that produce and manufacture foods to be consumed by the general public to ensure that these establishments continue to comply with public health and safety minimum requirements. In re-adopting this portion, the Department is not amending the previously promulgated requirements, but instead, is preventing a lapse in the current Part 261.

Based on the facts and circumstances set forth above, the Department has determined that the immediate adoption of these rules is necessary for the preservation of public health and the general welfare and that compliance with Section 202(1) of the State Administrative Procedure Act would be contrary to the public interest.

Subject: Shell Eggs; Acidified Foods.

Purpose: To continue regulatory powers in connection with acidified foods and shell eggs used in foods for human consumption.

Text of emergency rule: Part 261 of 1 NYCRR is repealed and a new Part 261 is added thereto to read as follows:

PART 261

SHELL EGGS; ACIDIFIED FOODS

§ 261.1 Shell eggs

(a) Except where in conflict with the statutes of this State or with rules and regulations promulgated by the commissioner of agriculture and markets, the commissioner hereby adopts the current Federal regulation as it appears in title 21 of the "Code of Federal Regulations," Part 118 (revised as of April 1, 2013; U.S. Government Printing Office, Washington, DC 20402), at pages 300-310, entitled "Production, Storage, and Transportation of Shell Eggs."

(b) A copy of title 21 of the Code of Federal Regulations containing part 118 is maintained in a file at the Department of Agriculture and Markets, Division of Food Safety and Inspection, 10B Airline Drive, Albany, NY 12235, and at the Department of State, 99 Washington Avenue, Suite 650, Albany, NY 12231, and is available for public inspection and copying during regular business hours.

§ 261.2 Acidified foods

(a) Except where in conflict with the statutes of this State or with rules and regulations promulgated by the commissioner of agriculture and markets, the commissioner hereby adopts the current Federal regulation as it appears in title 21 of the "Code of Federal Regulations," Part 114 (revised as of April 1, 2013; U.S. Government Printing Office, Washington, DC 20402), at pages 291-297, entitled "Acidified Foods."

(b) A copy of title 21 of the Code of Federal Regulations containing part 114 is maintained in a file at the Department of Agriculture and Markets, Division of Food Safety and Inspection, 10B Airline Drive, Albany, NY 12235, and at the Department of State, 99 Washington Avenue, Suite 650, Albany, NY 12231, and is available for public inspection and copying during regular business hours.

§ 261.3 Exclusions

(a) The following establishments, businesses and operations are excluded from coverage under this Part:

(1) Establishments covered by Part 273 of this Title.

(2) Those businesses operating subject to Federal or State meat and poultry inspection laws and/or the rules and regulations promulgated thereunder.

(3) Those establishments now or in the future to be covered by specific rules and regulations promulgated pursuant to the Agriculture and Markets Law of the State of New York, including but not limited to the following Parts of this Title: Parts 16, 32, 36, 240, 256, 258, 270 and 275.

(b) The commissioner, however, may promulgate and adopt special or specific rules and regulations when he or she believes it necessary to cover or control the operations excluded by the provisions of subdivision (a) of this section.

This notice is intended to serve only as a notice of emergency adoption. This agency intends to adopt the provisions of this emergency rule as a permanent rule, having previously submitted to the Department of State a notice of proposed rule making, I.D. No. AAM-40-18-00021-EP, Issue of October 3, 2018. The emergency rule will expire January 25, 2019.

Text of rule and any required statements and analyses may be obtained from: John Luker, Asst. Director, Division of Food Safety & Inspection, NYS Dept. of Agriculture and Markets, 10B Airline Drive, Albany, NY 12235, (518) 457-5382, email: john.luker@agriculture.ny.gov

Regulatory Impact Statement

1. Statutory authority:

Agriculture and Markets Law ("AML") section 16 authorizes the Com-

missioner of Agriculture and Markets (“Commissioner”) to execute the laws of the State relative to the marketing and distribution of food. AML section 18 authorizes the Commissioner to enact rules necessary for the exercise of his power to execute such laws. AML section 214-b allows the Commissioner to promulgate regulations that aid in the prevention of the sale and distribution of misbranded or adulterated food.

2. Legislative objectives:

The proposed rule continues previously existing authority to regulate entities that produce, process, and manufacture acidified food and shell eggs. The proposal accords with the public policy objectives the Legislature sought to advance by enacting the statutory authority in that it will help protect the food supply of the State from adulteration by requiring that foods be produced, processed and manufactured in a manner that will help to ensure that such foods are and remain wholesome.

3. Needs and benefits:

On September 18, 2018, the Department’s authority to effectively regulate, inter alia, manufacturers of acidified foods and producers and processors of shell eggs was continued through the proposed rule, adopted as an emergency measure, preventing a lapse in the current rule. The proposed rule is needed to reduce the number of foodborne illnesses throughout the State. The State’s public health and safety will benefit by the adoption of the proposed rule. The proposed rule will continue to incorporate provisions of the federal regulations which establish good manufacturing practice standards applicable to acidified foods and shell eggs designed to ensure that such foods are not adulterated and do not contribute to foodborne illness.

Since the proposed rulemaking will continue to help reduce the threat of outbreaks of foodborne illnesses, consumers will benefit in the adoption of the federally established general manufacturing practices.

4. Costs:

a. Costs to regulated parties:

None; the proposed rule does not add any additional costs to regulated parties which did not previously exist.

b. Costs to state and local governments:

None; the proposed rule does not add any additional costs to state and local governments which did not previously exist.

5. Local government mandates:

None; the proposed rule does not add any additional local government mandates which did not previously exist.

6. Paperwork:

None.

7. Duplication:

The proposed amendments do not duplicate existing State requirements, nor establish any duplicative, overlapping or conflicting requirements. The federal regulations are incorporated to authorize the Department to require facilities within New York State to comply with the standards established by federal regulations.

8. Alternatives:

The Department did not consider any alternatives to the proposed rule. As set forth above, the Department is extending the applicability of the current provisions, and, to date, has not seen any reason to modify the current standards established in the proposed rulemaking.

9. Federal standards:

The proposed amendments do not exceed any minimum standards of the federal government for the same or similar subject area.

10. Compliance schedule:

The proposed rule was effective on September 18, 2018, the date that it was filed as an emergency rule; regulated parties were required to comply therewith on that date.

Regulatory Flexibility Analysis

The proposed rule will repeal Part 261 of 1 NYCRR and “readopt” three sections currently set forth therein; i.e., sections 261.8, 261.9, and 261.11, which incorporate by reference certain federal regulations governing the handling and/or manufacture of shell eggs and acidified foods respectively. The proposed rule imposes no new reporting, recordkeeping, or other compliance requirements on small businesses or local governments; nor imposes any adverse impact on small businesses or local governments that may not already exist, and accordingly, no regulatory flexibility analysis has been prepared in connection with the proposed rule, pursuant to SAPA section 202-b (3)(a).

Rural Area Flexibility Analysis

The proposed rule will repeal Part 261 of 1 NYCRR and “readopt” three sections currently set forth therein; i.e., sections 261.8, 261.9, and 261.11 which incorporate by reference certain federal regulations governing the handling and/or manufacture of shell eggs and acidified foods respectively. The proposed rule imposes no new regulatory burden upon regulated parties and will not, therefore, have an adverse impact upon rural areas because it imposes no reporting, recordkeeping or other compliance

requirements on public or private entities in rural areas that may not already exist, no rural area flexibility has been prepared in connection with the proposed rule, pursuant to SAPA section 202-bb(4)(a).

Job Impact Statement

The proposed rule will not have an adverse impact upon employment opportunities.

The proposed rule will repeal Part 261 of 1 NYCRR and “readopt” three sections currently set forth therein; i.e., sections 261.8, 261.9, and 261.11 which incorporate by reference certain federal regulations governing the handling and/or manufacture of shell eggs and acidified foods respectively. The proposed rule imposes no new regulatory burden upon regulated parties and will not, therefore, have an adverse impact upon jobs.

Assessment of Public Comment

The agency received no public comment.

Department of Audit and Control

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Reporting of Miscellaneous Abandoned Property

I.D. No. AAC-50-18-00001-P

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

Proposed Action: This is a consensus rule making to repeal section 115.1; add new section 115.1; and amend section 115.2 of Title 2 NYCRR.

Statutory authority: Abandoned Property Law, section 1414

Subject: Reporting of Miscellaneous Abandoned Property.

Purpose: To update and clarify requirements relating to the reporting of miscellaneous abandoned property.

Text of proposed rule: Part 115.1 is repealed and a new Part 115.1 is added to read as follows:

§ 115.1 Property to be reported

Property deemed abandoned pursuant to subdivisions (1), (1-a) or (1-b) of section 1315 of the Abandoned Property Law shall include, but not be limited to:

(a) Any unclaimed amount representing gift certificates sold after December 31, 1983, including gift certificates for merchandise only, remaining unclaimed for five years.

(b) Any amount representing outstanding checks issued on and after July 1, 1974 in payment for goods or for services, and any unclaimed amount received after July 1, 1974 for services not rendered or for goods not delivered that has remained unclaimed by the owner thereof for three years.

(c) Property referred to in subdivision (b) of this section shall include, but not be limited to: deposits or payments for repairs not made or purchases of goods or services not delivered; unrefunded overcharges; accounts payable balances, credit balances, accounts receivable credit balances, rebates, and outstanding checks issued to vendors and suppliers of goods or services.

Part 115.2 is amended to read as follows:

§ 115.2 Report of abandoned property.

(a) Verified written reports of property deemed abandoned pursuant to section 1315 of the Abandoned Property Law must be filed with the state comptroller [by corporations (other public corporations), joint stock companies individuals engaged in the conduct of business, associations of one or more individuals, committees or business trusts in this State].

(b) Such report shall be in such form as the State Comptroller may prescribe and shall set forth therein:

(1) the name and last known address, if any of the person or entity appearing to be entitled to such property;

(2) a description of such abandoned property;

(3) the amount of such abandoned property;

(4) the date such amount was demandable, payable or received; and

(5) such other identifying information as the State Comptroller may require.

(c)(1) Unpaid checks or drafts issued by the state of New York deemed abandoned under subdivision 4 of section 1315 of the Abandoned Property Law shall be reported to the State Comptroller on or before the 10th day of June in each year and shall be accompanied by payment to the

State Comptroller of all property which on the preceding 31st day of December was deemed abandoned property pursuant to subdivision 4 of section 1315 of the Abandoned Property Law excepting such property as since such date has ceased to be abandoned.

(2) [Such report] All other property deemed abandoned under section 1315 of the Abandoned Property Law shall be filed with the State Comptroller on or before the 10th day of March in each year and shall be accompanied by payment to the State Comptroller of all property which on the preceding 31st day of December was deemed abandoned property pursuant to section 1315 of the Abandoned Property Law excepting such property as since such date has ceased to be abandoned.

Text of proposed rule and any required statements and analyses may be obtained from: Jamie Elacqua, Office of the State Comptroller, 110 State Street, Albany, NY 12235, (518) 473-4146, email: jelacqua@osc.ny.gov

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

Public comment will be received until: 60 days after publication of this notice.

Consensus Rule Making Determination

This is a consensus rulemaking proposed for the purpose of clarifying and updating regulations relating to the reporting of miscellaneous abandoned property. These technical amendments relate to the reporting of miscellaneous abandoned property required to be paid or delivered to the State Comptroller and not otherwise covered by sections of the Abandoned Property Law. It has been determined that no person is likely to object to the adoption of the rule as written.

Department of Civil Service

NOTICE OF ADOPTION

Jurisdictional Classification

I.D. No. CVS-24-18-00003-A

Filing No. 1094

Filing Date: 2018-11-27

Effective Date: 2018-12-12

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

Action taken: Amendment of Appendix 1 of Title 4 NYCRR.

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

Subject: Jurisdictional Classification.

Purpose: To classify positions in the exempt class.

Text or summary was published in the June 13, 2018 issue of the Register, I.D. No. CVS-24-18-00003-P.

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

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

Assessment of Public Comment

The agency received no public comment.

Department of Health

EMERGENCY RULE MAKING

Update Standards for Adult Homes and Standards for Enriched Housing Programs

I.D. No. HLT-37-18-00008-E

Filing No. 1089

Filing Date: 2018-11-21

Effective Date: 2018-11-21

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

Action taken: Amendment of sections 486.7, 487.4, 488.4, 490.4 and 494.4 of Title 18 NYCRR.

Statutory authority: Social Services Law, sections 461 and 461-l(5)

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

Specific reasons underlying the finding of necessity: Compliance with the requirements of the State Administrative Procedure Act for filing of a regulation on a non-emergency basis including the requirement for a period of time for public comment cannot be met because to do so would be detrimental to the health and general welfare of individuals who primarily use a wheelchair for mobility and who are eligible for admission to adult care facilities.

Adult care facilities, including Adult Homes, Enriched Housing, and Assisted Living Programs, provide a range of care options in non-institutional, home-like, flexible living environments, and benefit the health and general welfare of individuals who require care but are capable of independent living. Denying otherwise eligible individuals admission to adult care facilities solely on the grounds that they primarily use a wheelchair for mobility compels such individuals to either enter nursing homes unnecessarily or continue living independently while foregoing the care they need.

The Department is concerned that some adult care facility operators may be denying admission solely on the grounds that applicants primarily use a wheelchair for mobility. Without this emergency regulation some operators will continue to refuse admission to otherwise eligible applicants, to the detriment of the health and general welfare of such individuals.

Subject: Update Standards for Adult Homes and Standards for Enriched Housing Programs.

Purpose: To prohibit residential providers from excluding an applicant based solely on the individual’s status as a wheelchair user.

Text of emergency rule: Section 486.7(c) of Title 18 of the NYCRR is amended as follows:

(c) Penalties for Part 487 of this Title.

Department regulations	Penalty per violation per day
487.3(a)	\$ 50
(b)	50
(d)	50
(e)	50
(f)	50
487.4(a)	\$ 50
[(b)](c)(1)	50
2	50
3	50
4	50
5	50
6	50
7	50
8	50
[(9)]	[50]
[(10)](9)	50
[(11)](10)	50
[(12)](11)	50
[(13)](12)	50
[(14)](13)	50
[(15)](14)	50
[(16)](15)	50
[(c)](d)	100
[(d)](e)	25
[(e)](f)	5
[(f)](g)	5
[(g)](h)	25
[(h)](i)	25
[(i)](j)(1)	25
(2)	25

Department regulations	Penalty per violation per day
[(j)](k)	25
[(k)](l)(1)	
[(k)](l)(2)	25
[(1)](m)(1)	10
(2)	10
[(m)](n)	10
[(k)](l)	NA
(ii)	1,000
(iii)	1,000
(iv)	1,000
[(n)](o)	10
[(o)](p)(1)	10
(2)	10
(3)	10
(4)	10
[(p)](q)	10
[(q)](r)	25

Section 486.7(f) of Title 18 of the NYCRR is amended as follows:
 (f) Penalties for Part 490 of this Title.

Department regulations	Penalty per violation per day
490.3(a)	\$ 50
(b)	50
(c)	50
(d)	50
(e)	50
490.4(a)	50
[(b)](c)(1)	50
(2)	50
(3)	50
(4)	50
(5)	50
(6)	50
(7)	50
(8)	50
(9)	50
[(10)]	[50]
[(11)](10)	50
[(12)](11)	50
[(13)](12)	50
[(14)](13)	50
[(15)](14)	50
[(16)](15)	50
[(17)](16)	50
[(18)](17)	50
[(d)](e)	100
[(e)](f)	25
[(f)](g)	25
[(g)](h)	25
[(h)](i)	25
[(i)](j)	25
[(j)](k)(1)	25
(2)	25
[(k)](l)	25

Department regulations	Penalty per violation per day
[(l)](m)(1)	50
[(m)](n)(1)	10
(2)	50
[(n)](o)	25
[(o)](p)	10
[(p)](q)	10
[(q)](r)	10
[(r)](s)	10
[(s)](t)	25

Subdivisions (b)-(q) of section 487.4 of Title 18 of the NYCRR are re-lettered (c)-(r) and a new subdivision (b) is added.

Reference to subdivision (b) is re-lettered to subdivision (c) in new subdivision (l).

Reference to subdivision (i) is re-lettered to subdivision (j) in new subdivision (m).

Reference to subdivision (b) is re-lettered to subdivision (c) in paragraph (2) of new subdivision (m).

Reference to subdivisions (f) and (g) are re-lettered (g) and (h) in new subdivision (n).

Paragraph (9) of new subdivision (c) is repealed and paragraphs (10)-(16) of new subdivision (c) are renumbered (9)-(15), to read as follows:

Section 487.4 Admission standards

(b) An operator shall not exclude an individual on the sole basis that such individual is a person who primarily uses a wheelchair for mobility, and shall make reasonable accommodations to the extent necessary to admit such individuals, consistent with the Americans with Disabilities Act of 1990, 42 U.S.C. 12101 et seq. and with the provisions of this section.

Subdivisions (b)-(k) of section 488.4 of Title 18 of the NYCRR are re-lettered (c)-(l) and a new subdivision (b) is added.

Reference to subdivision (b) is re-lettered subdivision (c) in new subdivision (h).

Reference to subdivision (d) is re-lettered subdivision (e) in new subdivision (i).

Reference to subdivision (b) is re-lettered to subdivision (c) in paragraph (2) of new subdivision (i).

Reference to subdivision (d) is re-lettered to subdivision (e) in new subdivision (j).

Paragraph (9) of new subdivision (c) is repealed and paragraphs (10)-(17) of new subdivision (c) are renumbered (9)-(16), to read as follows:

Section 488.4 Admission and retention standards

(b) An operator shall not exclude an individual on the sole basis that such individual is a person who primarily uses a wheelchair for mobility, and shall make reasonable accommodations to the extent necessary to admit such individuals, consistent with the Americans with Disabilities Act of 1990, 42 U.S.C. 12101 et seq. and with the provisions of this section.

Subdivisions (b)-(s) of section 490.4 of Title 18 of the NYCRR are re-lettered (c)-(t) and a new subdivision (b) is added.

Reference to subdivision (b) is re-lettered to subdivision (c) in new subdivision (m).

Reference to subdivisions (e), (f), and (j) are re-lettered to subdivisions (f), (g), and (k) in new subdivision (n).

Reference to subdivision (b) is re-lettered to subdivision (c) in paragraph (2) of new subdivision (n).

References to subdivision (f) and (g) are re-lettered to (g) and (h) in new subdivision (p).

Paragraph (9) of new subdivision (c) is repealed and paragraphs (10)-(18) of new subdivision (c) are renumbered (9)-(17), to read as follows:

Section 490.4 Admission and retention standards

(b) An operator shall not exclude an individual on the sole basis that such individual is a person who primarily uses a wheelchair for mobility, and shall make reasonable accommodations to the extent necessary to admit such individuals, consistent with the Americans with Disabilities Act of 1990, 42 U.S.C. 12101 et seq. and with the provisions of this section.

Subdivisions (b)-(j) of section 494.4 of Title 18 of the NYCRR are re-lettered (c)-(k) and a new subdivision (b) is added.

References to subdivision (b) is re-lettered to subdivision (c) in paragraph (4) of new subdivision (i).

Reference to subdivision (c) is re-lettered to subdivision (d) in new subdivision (k).

Paragraph (3) of new subdivision (e) is repealed and paragraph (4) of new subdivision (e) is renumbered (3), to read as follows:

Section 494.4 Admission and retention standards

(b) An operator shall not exclude an individual on the sole basis that such individual is a person who primarily uses a wheelchair for mobility, and shall make reasonable accommodations to the extent necessary to admit such individuals, consistent with the Americans with Disabilities Act of 1990, 42 U.S.C. 12101 et seq. and with the provisions of this section.

This notice is intended to serve only as a notice of emergency adoption. This agency intends to adopt the provisions of this emergency rule as a permanent rule, having previously submitted to the Department of State a notice of proposed rule making, I.D. No. HLT-37-18-00008-P, Issue of September 12, 2018. The emergency rule will expire January 19, 2019.

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

Regulatory Impact Statement

Statutory Authority:

The authority for the promulgation of these regulations is contained in sections 461 and 461-l(5) of Social Services Law. Section 461(1) provides the authority for the department to promulgate regulations for adult care facilities, specifically adult homes, enriched housing, and residences for adults. Section 461-l(5) provides the authority for Commissioner to promulgate regulations for assisted living programs.

Legislative Objectives:

The Legislature has determined that oversight of adult care facilities is in the interests of the state because the residents, who are typically over the age of 65, can be vulnerable to conditions that the resident is unable to change. The primary purpose of these amendments is to prevent adult care facilities from excluding an applicant on the sole basis that such individual is a person who primarily uses a wheelchair for mobility.

Needs and Benefits:

New York State has the responsibility to ensure the support and safety of its most vulnerable citizens. These amendments address Admission Standards (Part 487 – Adult Homes), and Admission and Retention Standards (Parts 488 – Enriched Housing, 490 – Residences for Adults, and 494 – Assisted Living Programs) for adult care facilities regulated by the Department of Health. The changes incorporate provisions that prohibit a provider from excluding an applicant on the sole basis that such applicant is a person who primarily uses a wheelchair for mobility, thereby aligning with the provisions of the Americans with Disabilities Act of 1990, 42 U.S.C. 12101 et seq.

Adult care facilities provide a range of care options in non-institutional, home-like, flexible living environments, to benefit the health and general welfare of individuals who require care but are capable of independent living. The amended regulations will ensure that individuals who are otherwise eligible for admission are not denied access to the benefits and services provided by adult care facilities solely because they primarily use a wheelchair for mobility.

Costs:

Costs to Private Regulated Parties:

Projected provider costs are minimal, as all regulated Parties are already required to maintain compliance with applicable federal, state and local laws, regulations and ordinances.

Costs to State Government:

There will be no costs incurred by State government.

Costs to Local Governments:

There will be no costs incurred by local governments.

Local Government Mandates:

There is no local government program, service, duty or responsibility imposed by the rule.

Paperwork:

There are no new reporting requirements imposed by the rule.

Duplication:

There are no other rules or other legal requirements of the state and federal governments that may duplicate, overlap or conflict with the rule.

Alternatives:

This rule is a necessary update to maintain the Department’s oversight of the adult care facility program and to align regulations with controlling law. There were no significant alternatives to this rule that achieve these goals.

Federal Standards:

Not applicable. Adult care facility programs are regulated by the State only.

Compliance Schedule:

Adult care facilities will be able to comply with this regulation upon promulgation.

Regulatory Flexibility Analysis

Effect of Rule:

The proposed regulations will apply to all adult homes, enriched housing, residences for adults, and assisted living programs in New York State.

This regulation will not impact local governments or small business unless they operate such adult care facilities. In such case, the flexibility afforded by the regulations is expected to minimize any costs of compliance as described below.

Compliance Requirements:

This regulation does not represent a practical change in compliance requirements, as providers are already required to maintain compliance with all applicable federal, state and local laws, regulations and ordinances.

Professional Services:

This regulation is not expected to require any additional use of professional services.

Compliance Costs:

There are no additional compliance costs associated with this proposed regulation, as providers are already required to maintain compliance with applicable federal, state and local laws, regulations and ordinances.

Economic and Technological Feasibility:

This regulation is economically and technically feasible. The intent of the amended section of regulation is to protect the rights of individuals who rely in part on a wheelchair for mobility. Currently, all admissions should be based on the provider’s ability to meet the individual needs of each prospective resident, including but not limited to, the reasonable accommodation of the individual’s needs. If the facility is not able to meet the needs of prospective resident, they should not admit that individual.

Minimizing Adverse Impact:

There is no adverse impact. This regulation does not represent a practical change in compliance requirements, as providers are already required to maintain compliance with all applicable federal, state and local laws, regulations and ordinances.

Small Business and Local Government Participation:

The proposed regulation will have a 60-day public comment period.

For Rules That Either Establish or Modify a Violation or Penalties Associated With a Violation:

Chapter 524 of the Laws of 2011 requires agencies to include a “cure period” or other opportunity for ameliorative action to prevent the imposition of penalties on a party subject to enforcement when developing a regulation or explain in the Regulatory Flexibility Analysis why one is not included. As this proposed regulation does not create a new penalty or sanction, no cure period is necessary.

Rural Area Flexibility Analysis

Types and Estimated Numbers of Rural Areas:

This rule applies uniformly throughout the state, including rural areas. Rural areas are defined as counties with a population less than 200,000 and counties with a population of 200,000 or greater that have towns with population densities of 150 persons or fewer per square mile. The following 43 counties have a population of less than 200,000 based upon the United States Census estimated county populations for 2010 (<http://quickfacts.census.gov>). Approximately 17% of adult care facilities are located in rural areas.

Allegany County	Greene County	Schoharie County
Cattaraugus County	Hamilton County	Schuyler County
Cayuga County	Herkimer County	Seneca County
Chautauqua County	Jefferson County	St. Lawrence County
Chemung County	Lewis County	Steuben County
Chenango County	Livingston County	Sullivan County
Clinton County	Madison County	Tioga County
Columbia County	Montgomery County	Tompkins County
Cortland County	Ontario County	Ulster County
Delaware County	Orleans County	Warren County
Essex County	Oswego County	Washington County
Franklin County	Otsego County	Wayne County
Fulton County	Putnam County	Wyoming County
Genesee County	Rensselaer County	Yates County
	Schenectady County	

The following counties have a population of 200,000 or greater and towns with population densities of 150 persons or fewer per square mile. Data is based upon the United States Census estimated county populations for 2010.

Albany County	Monroe County	Orange County
Broome County	Niagara County	Saratoga County
Dutchess County	Oneida County	Suffolk County

Erie County

Onondaga County

There are 291 adult homes, 90 enriched housing programs, 0 residences for adults and 95 assisted living programs in rural areas.

Reporting, Recordkeeping and Other Compliance Requirements; and Professional Services:

This regulation does not represent a practical change in compliance requirements, as providers are already required to maintain compliance with all applicable federal, state and local laws, regulations and ordinances.

Costs:

There are no additional costs associated with this proposed regulation, as providers are already required to maintain compliance with applicable federal, state and local laws, regulations and ordinances.

Minimizing Adverse Impact:

There is no adverse impact. This regulation does not represent a practical change in compliance requirements, as providers are already required to maintain compliance with all applicable federal, state and local laws, regulations and ordinances.

Rural Area Participation:

The proposed regulation will have a 60-day public comment period.

Job Impact Statement

A Job Impact Statement for these amendments is not being submitted because it is apparent from the nature and purposes of the amendments that they will not have a substantial adverse impact on jobs and/or employment opportunities.

NOTICE OF ADOPTION**Criminal History Record Checks and Advanced Home Health Aides**

I.D. No. HLT-22-18-00010-A

Filing No. 1090

Filing Date: 2018-11-23

Effective Date: 2018-12-12

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

Action taken: Amendment of Parts 402, 403, 700, 763, 765, 766, 793, 794 and 1001 of Title 10 NYCRR.

Statutory authority: Public Health Law, sections 2899-a(4), 3602(17), 3612(5), 4010(4); Executive Law, section 845-b(12)

Subject: Criminal History Record Checks and Advanced Home Health Aides.

Purpose: This rule will implement statutory changes related to criminal history records checks and advanced home health aides.

Text or summary was published in the May 30, 2018 issue of the Register, I.D. No. HLT-22-18-00010-P.

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

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

Initial Review of Rule

As a rule that requires a RFA, RAFA or JIS, this rule will be initially reviewed in the calendar year 2021, which is no later than the 3rd year after the year in which this rule is being adopted.

Assessment of Public Comment

The New York State Department of Health (Department) received comments from seven entities regarding the proposed amendments to Parts 402, 403, 700, 763, 765, 766, 793, 794, and 1001 of Title 10 of the Official Compilation of Codes, Rules and Regulations of the State of New York.

Comment: An advocacy organization that focuses on direct care workforce issues stated that the proposed regulations (specifically the proposed amendments to 10 NYCRR § 700.2(b)(54)) should detail the process for approval and monitoring of training for advanced home health aides.

Response: The Department will provide guidance on the procedures, approval, and monitoring of training programs. No changes were made to the regulation as a result of this comment.

Comment: An advocacy organization that focuses on direct care workforce issues stated that State Education Law § 6908(2)(b)(iv) requires that registered professional nurses (RNs) “visit individuals receiving services for the purpose of supervising the services provided by advanced home health aides no less than once every two weeks.” The commenter

noted that such visits have financial and operational implications and requested that the Department consider permitting options other than in-person visits, such as permitting remote supervision via the use of technology.

Response: Noting that State Education Law § 6908(2)(b)(iv) also requires an RN to be available to an advanced home health aide by telephone 24 hours a day, the Department, in consultation with the New York State Education Department, interprets the requirement for a “visit” once every two weeks to mean an “in-person” visit. No changes were made to the regulation as a result of this comment.

Comment: An advocacy organization that focuses on direct care workforce issues stated that the regulations should be amended to include details about the duration of certification for advanced home health aides and the process for recertification. The commenter suggested that a model can be found in the current requirements for home health aides, where certification lapses when an individual has not worked for a home care agency for two full years, and an aide can be recertified through the successful completion of a competency examination.

Response: The Department does not believe it is necessary to include the requested information about certification in the regulation. This information will be made available by the Department in the form of guidance. No changes to the regulation are necessary.

Comment: An advocacy organization that focuses on direct care workforce issues suggested that the regulations should include a requirement for the formation of a stakeholder workgroup.

Response: The Department has previously convened a workgroup related to advanced home health aides and intends to do so again. Convening a workgroup in this manner does not require a regulation. No changes were made to the regulation as a result of this comment.

Comment: An association representing long term care providers suggested that the scope of practice for advanced home health aides should be expanded to include additional tasks suggested by a workgroup convened by the Department.

Response: Pursuant to the New York State Education Law, the scope of practice for advanced home health aides will be established pursuant to regulations of the State Education Department. No changes were made to the regulation as a result of this comment.

Comment: Several commenters (an association of hospice programs, two associations representing long term care providers, an association representing adult care facility providers, and a certified home health agency) noted that when an individual declines services by an advanced home health aide, the regulation provides for the services to be provided by an RN. The commenters suggest that the regulation should include licensed practical nurses (LPNs) as well.

Response: Services provided by an advanced home health aide are considered skilled in nature and an extension of the RN’s practice. Consequently, individuals who exercise their right to refuse of services provided by an advanced home health aide should receive services from an RN. The Department will consider whether expanding the regulation to include LPNs could provide an appropriate level of care in the future. No changes were made to the regulation as a result of this comment.

Comment: An association of long term care providers and a certified home health agency noted that, in addition to requiring that advanced home health aides be supervised by RNs and not LPNs, the regulation eliminates current language permitting LPNs to supervise home health aides and personal care aides. The commenters believe that home health aides and personal care aides should continue to be supervised by LPNs.

Response: Pursuant to federal regulation 42 CFR 484.36, supervision of home health aides and personal care aides must be conducted by registered professional nurses. No changes were made to the regulation as a result of this comment.

Comment: An association of long term care providers and an association of adult care facilities commented that the regulation’s requirement that any failure by a supervising RN be reported to the Department is too broad and subjective.

Response: This provision is consistent Public Health Law § 206(30) and Education Law § 6909(8). The Department believes that a registered professional nurse that engages in improper behavior while supervising an advanced home health aide should be reported. The grounds for improper behavior by a supervising registered professional nurse are listed specifically in the regulation. No changes were made to the regulation as a result of this comment.

Comment: An association of long term care providers asked whether personal care aides and home health aides who have completed a state approved training program and are employed by an enhanced assisted living residence (EALR) are subject to the provisions of Part 403 related to the Home Care Services Registry (Registry).

Response: The regulations provide that all individuals who complete a state-approved home health aide or personal care aide training program and are employed by an EALR are subject to the Registry requirements.

Comment: An association of long term care providers and an association of adult care facilities asked if a licensed home care services agency associated with an Assisted Living Program (ALP) can offer advanced home health aide services to residents in the ALP.

Response: Section 494.3 of Title 18 specifically indicates that the provision of nursing and therapy services provided to individuals who reside in the ALP must be provided by a certified home health agency. Further, on June 7, 2012, the Department issued guidance regarding the Medicaid program's revised regulations, allowing ALPs to conduct initial and re-assessments directly or through contract with a certified home health agency. Services provided by an advanced home health aide are considered skilled in nature and an extension of the RN's practice.

Comment: An association of adult care facilities asked if the phrase "or services" could be added to 10 NYCRR § 402.3(i)(3) to clarify that the criminal history record check provisions apply to all unlicensed staff that have regular face to face interactions with residents.

Response: This clarification will be provided in guidance issued to providers. No changes were made to the regulation as a result of this comment.

Comment: A certified home health agency asked whether the organization employing an advanced home health aide must also employ the supervising RN.

Response: The supervising RN must be employed by the same entity which employs the advanced home health aide. No changes were made to the regulation as a result of this comment.

Comment: A certified home health agency requested clarification as to whether medical orders for advance home health aides must be in writing or if verbal orders can be obtained.

Response: Pursuant to 10 NYCRR 766.4, physician orders may be obtained verbally but signed orders must be obtained within 12 months. No changes were made to the regulation as a result of this comment.

Comment: A certified home health agency requested clarification as to whether the minimum 18 hours in-service training required for advanced home health aides under the regulations includes or is in addition to the 12 hours currently required for home health aides. The commenter expressed concern that a total of 30 hours would be a barrier to training.

Response: The minimum total hours of in-service training for advanced home health aides under the regulation is 18 hours. This includes the initial 12 hours for initial home health aide training. No changes were made to the regulation as a result of this comment.

Comment: A licensed home care services agency wrote to express concern that the demand for RNs will increase, as more RNs will be needed to oversee advanced home health aides. The commenter stated that recruitment may be more difficult as fewer RNs will be willing to accept the added responsibility.

Response: State Education Law § 6908 requires that RNs provide oversight of advanced home health aides. No changes were made to the regulation as a result of this comment.

Justice Center for the Protection of People with Special Needs

NOTICE OF ADOPTION

Protocols for Interviewing Service Recipients

I.D. No. JCP-31-18-00008-A

Filing No. 1091

Filing Date: 2018-11-26

Effective Date: 2018-12-12

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

Action taken: Addition of Part 705 to Title 14 NYCRR.

Statutory authority: Executive Law, section 553(28); L. 2014, ch. 394, section 3

Subject: Protocols for interviewing service recipients.

Purpose: To ensure interviews of service recipients during investigations are conducted in a safe and sensitive manner.

Text of final rule: A new Part 705 is added to title 14 to read as follows:

Part 705 *The Justice Center Protocols for Interviewing People Who Receive Services*

§ 705.1 *Background and Intent*

(a) *The Protection of People with Special Needs Act (the "Act") established the Justice Center for the Protection of People with Special Needs (the "Justice Center"). The Act charges the Justice Center with establishing consistent safeguards for vulnerable persons to protect against abuse, neglect and other conduct that may jeopardize their health, safety and welfare.*

(b) *To accomplish this goal, the Act requires the Justice Center to establish procedures for the timely response to, and effective investigation of, allegations of reportable incidents against individuals who receive services. During the course of an investigation of abuse and neglect it is often necessary for individuals who receive services to be interviewed. This regulation outlines the procedures developed by the Justice Center to ensure that interviews of individuals who receive services during the course of an investigation of alleged abuse and neglect are conducted in a safe and appropriately sensitive manner.*

§ 705.2 *Applicability*

This regulation applies to all investigations of alleged abuse and neglect conducted by the Justice Center, as well as investigations conducted by state agencies whose programs are under the jurisdiction of the Justice Center and by the facilities and programs defined in section 488(4) of the Social Services Law when acting as the delegate investigatory entity.

§ 705.3 *Legal Authority*

Subdivision 28 of section 553 of the Executive Law requires the Justice Center to develop protocols to ensure the safety of individuals receiving services who may have evidence relevant to an investigation of alleged abuse or neglect and requires that the protocols be developed in consultation with the Justice Center's statutorily created Advisory Council and the relevant State Oversight Agencies. These agencies include: the Office of Mental Health, the State Education Department, the Office of Alcoholism and Substance Abuse Services, the Office for People With Developmental Disabilities, the Office of Children and Family Services and the Department of Health.

§ 705.4 *Definitions*

Whenever used in this Part:

(a) *"Delegate Investigatory Entity" shall mean a facility or provider agency, or any other entity authorized by the regulations of a state oversight agency or the Justice Center to conduct an investigation of a reportable incident.*

(b) *"Justice Center" means the Justice Center for the Protection of People with Special Needs.*

(c) *"Personal Representative" shall mean a person authorized under state, tribal, military or other applicable law to act on behalf of a vulnerable person in making health care decisions or, for programs that serve children under the jurisdiction of the State Education Department or the Office of Children and Family Services, the service recipient's parent, guardian or other person legally responsible for such person as defined in subdivision 10 of section 488 of the Social Services Law. For other programs that serve children, the personal representative of the child would be the parent, guardian or other person authorized under law to make health care decisions.*

(d) *"Potential Witness" shall mean any service recipient known to be physically present in the place and at the time of the alleged abuse or neglect. It can also include any service recipient who it is believed may have information that could be useful to an investigation.*

(e) *"Service Provider" shall mean a provider of services as defined in subdivision 4 of section 488 of the Social Services Law.*

(f) *"Service Recipient" shall mean an individual who resides or is an inpatient in a residential facility or who receives services from a facility or provider agency, as defined in subdivision 9 of section 488 of the Social Services Law.*

(g) *"Confidential information" shall mean information that is protected from disclosure to a personal representative by any federal or state law or regulation.*

§ 705.5 *Notification Protocols*

(a) *Process for providing notification to alleged victims and/or their personal representatives.*

(1) *When a service provider is notified that a report of alleged abuse or neglect in their program has been accepted by the Justice Center, the service provider or state oversight agency, as appropriate, shall immediately attempt to notify any service recipients who are alleged victims of that alleged abuse or neglect, and/or their personal representatives, that the service recipient may be interviewed as part of the investigation. This notification may be completed through oral communication or in writing.*

(2) *The service provider or state oversight agency shall not make such notification to a personal representative if the alleged victim objects to such notification or if it would violate relevant confidentially laws, be contrary to court order, or is otherwise contrary to the best interests of the alleged victim or if the investigator has notified the service provider or state oversight agency that such notification would compromise the*

investigation. Objections by a service recipient to a personal representative being notified should be reviewed on an individual basis consistent with the existing standards that the relevant state oversight agency requires to be used to determine the ability of a service recipient to consent to services, programs and treatment. Service providers who are required to provide notifications pursuant to section 33.23 of the Mental Hygiene Law shall do so regardless of the exemptions outlined here.

(3) The service provider or state oversight agency shall document in writing that such notification was made or that there was a diligent effort to make such notification. If an alleged victim's personal representative is not notified for the reasons outlined in Part 705.5(a)(2), the service provider or state oversight agency shall document the reason. All such documentation shall be maintained in a consistent manner and be readily available for inspection upon request of the Justice Center or a state oversight agency. Service providers and state oversight agencies shall make this information available immediately upon request of the investigator.

(b) Process for providing notification to potential witnesses and/or their personal representatives.

(1) When a service provider is notified that a report of alleged abuse or neglect in their program has been accepted by the Justice Center, the service provider or state oversight agency, as appropriate, shall make a good faith effort to ascertain whether any service recipients in its program are potential witnesses to such incident, and shall attempt to notify those service recipients and/or their personal representatives that the service recipient may be interviewed as part of the investigation. This notification may be completed through oral communication or in writing.

(2) The service provider or state oversight agency shall not make such notification to a personal representative if the potential witness objects to such notification or if such notification would violate relevant confidentially laws, be contrary to court order, or is otherwise contrary to the best interests of the potential witness or if the investigator notifies the service provider that such notification would compromise the investigation. Objections by a service recipient to a personal representative being notified should be reviewed on an individual basis consistent with the existing standards that the relevant state oversight agency requires to be used to determine the ability of a service recipient to consent to services, programs and treatment.

(3) The service provider or state oversight agency shall document in writing that such notification was made or that there was a diligent effort to make such notification. If a potential witness' personal representative is not notified for the reasons outlined in Part 705.5(b)(2), the service provider or state oversight agency shall document the reason. All such documentation shall be maintained in a consistent manner and be readily available for inspection upon request of the Justice Center or a state oversight agency. Service providers and state oversight agencies shall make this information available immediately upon request of the investigator.

(4) If the personal representative of a potential witness is contacted, the service provider or state oversight agency shall not disclose confidential information regarding the allegation of abuse or neglect to the personal representative.

(c) Inquiry of personal representative. The service provider shall ask the personal representative if he or she has additional information not known to the service provider concerning the most effective ways to communicate with the service recipient in order to support the interview process.

(d) Exceptions to notification requirements.

(1) Those service providers who are required to provide notifications pursuant to section 33.23 of the Mental Hygiene Law are not required to provide additional notification pursuant to this regulation.

(2) If an alleged victim or potential witness does not have a personal representative, there is no need for a service provider to comply with these notification and documentation requirements pertaining to personal representatives.

§ 705.6 Interview Protocols

(a) Determinations regarding appropriateness of conducting an interview.

(1) Prior to commencing an interview, an investigator must determine if the interview can be conducted in a safe, sensitive and timely manner. To make this determination, an investigator may consider any relevant facts or circumstances, including: the setting where and circumstances under which the interview is to be conducted; the opinion of a service recipient's personal representative; the service recipient's diagnosis; any information received after consulting with the service recipient's licensed health professionals; information in the service recipient's files; observations of the service recipient's behavior; information obtained from service provider employees; the service recipient's capability to provide information to assist the investigation; and information obtained from engaging in preliminary inquiries with service recipients to establish that proceeding with an interview would be appropriate.

(2) A formal clinical assessment is not required prior to interviewing a service recipient.

(3) If conducting an interview of the service recipient would be clinically contraindicated, despite the provision of appropriate accommodations, the interview shall not take place, except where circumstances exist which support a determination that there exists an overriding health and safety need to proceed with the interview. Such circumstances may include but not be limited to: an investigator reasonably believes that a service recipient has information relevant to maintaining or securing the safety of service recipients and is capable of reliably communicating that information; an investigator reasonably believes that failure to interview a service recipient may allow for the destruction of evidence or for a subject to evade law enforcement; or a delay in interviewing a service recipient may allow a subject to evade law enforcement. Prior to proceeding with the interview, the investigator shall consult with and obtain approval of his or her supervisor. Further, such investigator shall document in the investigative record the reason why it was appropriate to proceed with the interview and include the steps taken to protect the service recipient's health, safety, and wellbeing during the interview.

(b) Information from a service provider.

(1) An investigator must notify a service provider if he or she will need specific information from a service provider to determine whether to proceed with an interview, including the identity of any additional service recipient witnesses for whom the service provider did not make the required notification as set forth in Section 705.5(b)(1).

(2) The service provider shall supply the Justice Center or the delegate investigatory entity with the requested information within 72 hours of receiving such notification from an investigator.

(3) The requested information may be conveyed verbally or in writing.

(c) Communication. If an investigator determines that a service recipient may have difficulty comprehending questions due to linguistic or other barriers, such investigator shall work with a service provider to provide the service recipient with the means to communicate with the investigator.

(d) Personal Representative Presence at an Interview.

(1) A personal representative may be permitted to accompany a service recipient who is an alleged victim or a potential witness during an interview, except when: (i) the service recipient objects to the personal representative being present during the interview; or (ii) the investigator believes the presence of the personal representative would impede the investigation. Objections by a service recipient to a personal representative being present during an interview should be reviewed on an individual basis consistent with the existing standards that the relevant state oversight agency requires to be used to determine the ability of a service recipient to consent to services, programs and treatment.

(2) When a service recipient is being interviewed as a potential witness, the investigator should be especially sensitive to the presence a personal representative if the service recipient witness will be questioned about injuries or other confidential information relating to the alleged victim of abuse or neglect. In any instance in which confidential information will be discussed, the investigator may require that: (i) the personal representative leave the interview during the time in which confidential information is discussed; or (ii) the personal representative be present outside the interview room or available by telephone, to provide any needed support to the service recipient during the interview process.

(3) If a personal representative is allowed to be present during an interview, the personal representative may not interfere with the interview. If an investigator believes that the personal representative is interfering with the interview, the investigator may take appropriate actions to prevent such interference, including speaking with the personal representative or stopping the interview. If an investigator determines that a personal representative should not be present or should leave an interview once it is underway, the investigator must document the rationale for such decision in the investigative record.

(4) If a personal representative cannot attend an interview in a timely manner, the service provider may provide appropriate technology to allow the personal representative to participate in the interview. This may entail the use of a conference call line or a video conference, if available. An investigator shall not be required to unreasonably delay an interview to allow for a personal representative to participate.

(e) Information for service recipients. Prior to beginning an interview with a service recipient, the investigator shall advise service recipients and/or their personal representatives about what to expect in an interview. The investigator shall explain that participation in an interview is voluntary. In addition, and as applicable, the investigator shall advise the service recipient and/or his or her personal representative about searches of the service recipient's personal property and searches of the service recipient's person for the purposes of non-criminal investigations.

Final rule as compared with last published rule: Nonsubstantive changes were made in sections 705.5(a)(2), (b)(2), 705.6(a)(3), (d)(1), (2) and (3).

Text of rule and any required statements and analyses may be obtained from: Rebecca Mudie, NYS Justice Center for the Protection of People with Special Needs, 161 Delaware Avenue, Delmar, NY 12054, (518) 549-0254, email: rebecca.mudie@justicecenter.ny.gov

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

A revised Regulatory Impact Statement, Regulatory Flexibility Analysis, Rural Area Flexibility Analysis and Job Impact Statement are not required because changes made to the last published rules do not necessitate revision to the previously published Regulatory Impact Statement, Regulatory Flexibility Analysis, Rural Area Flexibility Analysis and Job Impact Statement.

Initial Review of Rule

As a rule that requires a RFA, RAFA or JIS, this rule will be initially reviewed in the calendar year 2021, which is no later than the 3rd year after the year in which this rule is being adopted.

Assessment of Public Comment

The NYS Justice Center for the Protection of People with Special Needs (the Justice Center) received two comments from the public in response to the Notice of Proposed Rulemaking that appeared in the August 8, 2018 edition of the State Register regarding proposed regulations governing the process by which service recipients may be interviewed when they are victims or witnesses to abuse or neglect.

One comment received by the Justice Center raised concerns that both the language allowing for an interview to proceed when it would be clinically contraindicated as well as the involvement of a personal representative lacked clarity. While the Justice Center does not believe the language has or will lead to confusion in practice, the language has been amended to more clearly specify the protocols in both of these provisions.

Another comment received by the Justice Center was that the use of the term "existing standards" when reviewing a service recipient's objection to personal representative notification could be made clearer due there being multiple standards regarding individual capacity in decision making. The language has been amended to refer to the standards utilized by the relevant state oversight agency of the program in which the individual is served.

Department of Labor

REVISED RULE MAKING NO HEARING(S) SCHEDULED

Employee Scheduling (Call-In Pay)

I.D. No. LAB-47-17-00011-RP

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

Proposed Action: Amendment of sections 142-2.3 and 142-3.3 of Title 12 NYCRR.

Statutory authority: Labor Law, sections 21(11) and 659(2)

Subject: Employee Scheduling (Call-In Pay).

Purpose: To strengthen existing call-in pay protections involving employee scheduling.

Text of revised rule: Sections 142-2.3 and 142-3.3 of 12 NYCRR are amended to read as follows:

§ 142-2.3 Call-in pay.

(a) *Call-in pay shall be provided as set forth below.*

(1) *Reporting to work.* An employee who by request or permission of the employer reports for work on any [day] shift shall be paid for at least four hours[, or the number of hours in the regularly scheduled shift, whichever is less, at the basic minimum hourly wage] of call-in pay.

(2) *Unscheduled shift.* An employee who by request or permission of the employer reports to work for any shift for hours that have not been scheduled at least 14 days in advance of the shift shall be paid an additional two hours of call-in pay. Where an employer provides a weekly schedule, 14-day period referenced in this section may be measured from the last day of the schedule.

(3) *Cancelled shift.* An employee whose shift is cancelled by the employer shall be paid for at least two hours of call-in pay, if the shift is cancelled within 14 days, or for at least four hours of call-in pay if the shift is cancelled within 72 hours, in advance of the scheduled start of such shift.

(4) *On-call.* An employee who is required by the employer to be available to report to work for any shift shall be paid for at least four hours of call-in pay.

(5) *Call for schedule.* An employee who is required by the employer

to be in contact with the employer within 72 hours of start of the shift to confirm whether to report to work shall be paid for at least four hours of call-in pay.

(b) *Calculation of call-in pay.* Call-in pay shall be calculated as follows.

(1) *Actual attendance.* Payments for time of actual attendance shall be calculated at the employee's regular rate or overtime rate of pay, whichever is applicable, minus any allowances permitted under this Part.

(2) *Minimum rate.* Payments for other hours of call-in pay shall be calculated at the basic minimum hourly rate with no allowances. Such payments are not payments for time worked or work performed and need not be included in the regular rate for purposes of calculating overtime pay.

(3) *Offsets.* Call-in pay shall not be offset by the required use of leave time, or by payments in excess of those required under this Part.

(4) *Shorter work days.* The four hours of call-in pay for reporting to work and for cancelled shifts under paragraphs (1) and (3) of subdivision (a) of this section may be reduced to the lesser number of hours that the employee is scheduled to work and normally works, for that shift.

(c) *Applicability.* This section applies to all employees, except as provided below.

(1) *This section shall not apply to employees who are covered by a valid collective bargaining agreement that expressly provides for call-in pay.*

(2) *Paragraphs (2) through (5) of subdivision (a) of this section shall not apply to employees during work weeks when their weekly wages exceed 40 times the applicable basic hourly minimum wage rate.*

(3) *In addition, paragraphs (2) through (5) of subdivision (a) of this section shall also not apply to employees whose duties are directly dependent on weather conditions, or to employees whose duties are necessary to protect the health or safety of the public or any person, or to employees whose assignments are subject to work orders, or cancellations thereof; provided, however, that such employees also receive weekly compensation that exceeds the number of compensable hours worked times the applicable basic minimum wage rate, with no allowances.*

(4) *Paragraph (2) of subdivision (a) of this section (unscheduled shift) shall not apply to: (i) any new employee during the first two weeks of employment; or (ii) any employee who volunteers to cover a new shift or a previously scheduled shift. For purposes of this section, the term "new shift" shall mean the first two weeks of an additional shift that results in a net increase in staffing at a single workplace during the period of time covered by such shift; the term "previously scheduled shift" shall mean a shift that would not have been subject to unscheduled shift call-in pay if worked by the employee who was originally assigned to work that shift; and the term "volunteers" shall mean that the employee may refuse to cover the new or previously scheduled shift.*

(5) *Paragraphs (2) and (3) of subdivision (a) of this section (unscheduled shift and cancelled shift) shall not apply when an employer responds to weather or other travel advisories by offering employees the option to voluntarily reduce or increase their scheduled hours, so that employees may stay home, arrive early, arrive late, depart early, depart late, or any combination thereof, without call-in pay for unscheduled or cancelled shifts.*

(6) *In addition, paragraph (3) of subdivision (a) of this section (cancelled shift) shall also not apply when an employer cancels a shift at the employee's request for time off, or when operations at the workplace cannot begin or continue due to an act of God or other cause not within the employer's control, including, but not limited to, a state of emergency declared by federal, state, or local government.*

(d) *Safe Harbor.* For purposes of paragraph (4) of subdivision (c) of this section, there shall be a rebuttable presumption that an employee has volunteered to cover a new or previously scheduled shift if the employer provides a written good faith estimate of hours to all employees upon hiring, or after the effective date of this section for previously hired employees, which may be amended at the employee's request or upon two weeks' notice by the employer, and if the request to cover a new or previously scheduled shift is either: (i) made by the employee whose shift would be covered; or (ii) made by the employer in a written communication to a group of employees requesting a volunteer from among the group and identifying a reasonable deadline for responses. If no employee volunteers prior to the deadline, the employer may assign an employee to cover the shift without the additional call-in pay required for unscheduled shifts.

§ 142-3.3 Call-in pay.

(a) *Call-in pay shall be provided as set forth below.*

(1) *Reporting to work.* An employee who by request or permission of the employer reports for work on any [day] shift shall be paid for at least four hours[, or the number of hours in the regularly scheduled shift, whichever is less, at the basic minimum hourly wage] of call-in pay.

(2) *Unscheduled shift.* An employee who by request or permission of the employer reports to work for any shift for hours that have not been scheduled at least 14 days in advance of the shift shall be paid an ad-

ditional two hours of call-in pay. Where an employer provides a weekly schedule, 14-day period referenced in this section may be measured from the last day of the schedule.

(3) **Cancelled shift.** An employee whose shift is cancelled by the employer shall be paid for at least two hours of call-in pay, if the shift is cancelled within 14 days, or for at least four hours of call-in pay if the shift is cancelled within 72 hours, in advance of the scheduled start of such shift.

(4) **On-call.** An employee who is required by the employer to be available to report to work for any shift shall be paid for at least four hours of call-in pay.

(5) **Call for schedule.** An employee who is required by the employer to be in contact with the employer within 72 hours of start of the shift to confirm whether to report to work shall be paid for at least four hours of call-in pay.

(b) **Calculation of call-in pay.** Call-in pay shall be calculated as follows.

(1) **Actual attendance.** Payments for time of actual attendance shall be calculated at the employee's regular rate or overtime rate of pay, whichever is applicable, minus any allowances permitted under this Part.

(2) **Minimum rate.** Payments for other hours of call-in pay shall be calculated at the basic minimum hourly rate with no allowances. Such payments are not payments for time worked or work performed and need not be included in the regular rate for purposes of calculating overtime pay.

(3) **Offsets.** Call-in pay shall not be offset by the required use of leave time, or by payments in excess of those required under this Part.

(4) **Shorter work days.** The four hours of call-in pay for reporting to work and for cancelled shifts under paragraphs (1) and (3) of subdivision (a) of this section may be reduced to the lesser number of hours that the employee is scheduled to work and normally works, for that shift.

(c) **Applicability.** This section applies to all employees, except as provided below.

(1) This section shall not apply to employees who are covered by a valid collective bargaining agreement that expressly provides for call-in pay.

(2) Paragraphs (2) through (5) of subdivision (a) of this section shall not apply to employees during work weeks when their weekly wages exceed 40 times the applicable basic hourly minimum wage rate.

(3) In addition, paragraphs (2) through (5) of subdivision (a) of this section shall also not apply to employees whose duties are directly dependent on weather conditions, or to employees whose duties are necessary to protect the health or safety of the public or any person, or to employees whose assignments are subject to work orders, or cancellations thereof; provided, however, that such employees also receive weekly compensation that exceeds the number of compensable hours worked times the applicable basic minimum wage rate, with no allowances.

(4) Paragraph (2) of subdivision (a) of this section (unscheduled shift) shall not apply to: (i) any new employee during the first two weeks of employment; or (ii) any employee who volunteers to cover a new shift or a previously scheduled shift. For purposes of this section, the term "new shift" shall mean the first two weeks of an additional shift that results in a net increase in staffing at a single workplace during the period of time covered by such shift; the term "previously scheduled shift" shall mean a shift that would not have been subject to unscheduled shift call-in pay if worked by the employee who was originally assigned to work that shift; and the term "volunteers" shall mean that the employee may refuse to cover the new or previously scheduled shift.

(5) Paragraphs (2) and (3) of subdivision (a) of this section (unscheduled shift and cancelled shift) shall not apply when an employer responds to weather or other travel advisories by offering employees the option to voluntarily reduce or increase their scheduled hours, so that employees may stay home, arrive early, arrive late, depart early, depart late, or any combination thereof, without call-in pay for unscheduled or cancelled shifts.

(6) In addition, paragraph (3) of subdivision (a) of this section (cancelled shift) shall also not apply when an employer cancels a shift at the employee's request for time off, or when operations at the workplace cannot begin or continue due to an act of God or other cause not within the employer's control, including, but not limited to, a state of emergency declared by federal, state, or local government.

(d) **Safe Harbor.** For purposes of paragraph (4) of subdivision (c) of this section, there shall be a rebuttable presumption that an employee has volunteered to cover a new or previously scheduled shift if the employer provides a written good faith estimate of hours to all employees upon hiring, or after the effective date of this section for previously hired employees, which may be amended at the employee's request or upon two weeks' notice by the employer, and if the request to cover a new or previously scheduled shift is either: (i) made by the employee whose shift would be covered; or (ii) made by the employer in a written communication to a group of employees requesting a volunteer from among the group and

identifying a reasonable deadline for responses. If no employee volunteers prior to the deadline, the employer may assign an employee to cover the shift without the additional call-in pay required for unscheduled shifts.

Revised rule compared with proposed rule: Substantive revisions were made in sections 142-2.3 and 142-3.3.

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

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

Public comment will be received until: 30 days after publication of this notice.

Revised Regulatory Impact Statement

STATUTORY AUTHORITY:

Labor Law §§ 21(11) and 659(2).

LEGISLATIVE OBJECTIVES:

The Legislature, in adopting the New York State Minimum Wage Act, empowered the Commissioner of Labor to promulgate regulations as she "deems necessary or appropriate to carry out the purposes of this article and to safeguard the minimum wage" (L. 1960, Ch. 619, § 2, at Labor Law § 652(2) & (4)), to order "such modifications of or additions to any regulations as he may deem appropriate to effectuate the purposes of this article" (Labor Law § 659(2)), and to investigate hours worked (Labor Law §§ 660(b)(1) & 661).

The regulations to be amended. In 1960, based on the Legislature's delegation of authority, the Commissioner promulgated a new Minimum Wage Order for Miscellaneous Industries and Occupations (currently codified at 12 NYCRR Part 142) (hereinafter "the Wage Order"). The Wage Order contains "Call-in pay" regulations (12 NYCRR §§ 142-2.3 & 142-3.3) that require employers to pay employees who report to work for four hours of work or the amount of their regularly scheduled shift, whichever is less, at the applicable minimum wage rate.

Public hearings. In 2017, the Commissioner published notices of hearings pursuant to Labor Law § 659(2) soliciting public testimony regarding employer scheduling practices including "just-in-time," "call-in," or "on-call" scheduling for employees subject to the Wage Order. The Commissioner held those hearings on September 28, October 3, October 11, and October 17, 2017, in Albany, Binghamton, Buffalo, and New York City, respectively. Recordings of those hearings, and copies of written testimony received in connection with those hearings, are available online at www.labor.ny.gov/scheduling.

The proposed rule. The proposed regulation amends the Wage Order's Call-in pay regulations (12 NYCRR §§ 142-2.3 & 142-3.3) to strengthen the protections for employees who report to work, who report for unscheduled shifts, who have shifts cancelled at the last minute, who are required to be on-call, and who are required to call-in to be scheduled for work. The proposed regulation includes provisions addressing the calculation and applicability of call-in pay under various circumstances.

NEEDS AND BENEFITS:

Testimony received through the four public hearings referenced above demonstrated that work schedule unpredictability has a detrimental impact both employees and employers.

Employers. Business and industry advocates agreed that many industries require flexibility and employers need a mechanism to adjust to unpredictable circumstances like an employee calling out sick, a worker leaving unexpectedly, delays in the delivery of materials or inclement weather conditions. For businesses, testimony pointed to a decrease in employee turnover and an increase in attendance and worker loyalty as likely benefits of predictable scheduling practices. In addition, these proposed regulations still allow employers, without an unfair burden, to contend with unforeseen issues, including severe weather, fluctuations due to seasonal demand and other market conditions like material supply and emergency situations.

Employees. Many workers and advocates described the precarious nature of jobs that involve schedules with little to no worker input, schedules that vary wildly day-to-day or week-to-week, and schedules that demand around-the-clock availability. Workers said they often do not find out until hours before their shift whether they will work that day and face involuntary rotation or shift extensions with little to no notice. Even as part-time workers, they must be ready to work during the amount of time equivalent to working a full-time job, but are not compensated and, in the end, do not actually work many shifts for which they're supposed to be available. The hearings revealed that low wage workers are most likely to contend with the difficulties of unpredictable work schedules as well as be severely impacted by unpredictable work scheduling practices that commonly involve announcing schedules less than a week, or sometimes less than a day, in advance. Additionally:

- Testimony at these hearings showed that unpredictable work schedules negatively impact workers' income, leaving them without the ability to

hold a second job – potentially having to turn down all other opportunities for outside income – or receive a reliable and predictable paycheck. These scheduling practices prevent workers from working full-time or making overtime, budget for recurring expenses and large purchases, pursue further educational opportunities like attending college classes, and securing reliable and affordable transportation.

- Testimony showed that workers were unable to predict childcare with employees sometimes being forced to pay in advance and lose that money if the need never materialized. Such scheduling practices also impacted their eligibility for supportive services like childcare subsidies and limited their access to high-quality and reliable childcare.

- Testimony also pointed to the inability to achieve an appropriate work-life balance with unpredictable schedules that cause stress and psychological distress, which has been shown to lead to unhealthy behaviors like smoking and excessive alcohol consumption. In addition, these practices made it more difficult for individuals trying to get their life back together (as a domestic violence survivor, for example) by eliminating dependable routines. Testimony pointed to problems workers had attending important family gatherings, buying tickets to events, and attending to their own or a family member's health needs.

- Testimony also showed that unpredictable scheduling is bad for business, resulting in high turnover, which leads to lost productivity and higher unemployment insurance contributions. This, in turn, can cause reduced morale and low customer satisfaction, which, in industries like home health care, can leave patients severely impacted. Today, sophisticated technology and algorithms has changed the nature of work and how workers are notified of work hours and require the state's regulatory framework to be updated to address and acknowledge the realities of modern working conditions.

- Testimony pointed to numerous benefits of increased predictability in scheduling, including stability in workers' lives as workers get more control and are allowed a voice in setting their own schedules. Workers would be compensated for the time they give up for the sake of the employer but retain the ability to have a flexible schedule if desired and the ability to swap shifts without employer intervention – all while participating in a transparent scheduling process.

The proposed regulation updates the Wage Order's long-established call-in pay regulations (12 NYCRR §§ 142-2.3 & 142-3.3) to protect minimum wage employees from unpredictable work schedule practices, while providing for appropriate exceptions for emergency and other unforeseen circumstances.

COSTS:

This proposed regulation does not impose any mandatory costs on the regulated community, as employers may avoid call-in pay by providing sufficient notice to employees of work schedules. Additionally, the requirements of the proposed regulation provide for exceptions for unforeseeable or unavoidable changes or delays in informing employees of their work schedule, including changes necessitated due to declared states of emergency and during the initial two weeks of an employee's employment. Furthermore, the revisions in the proposed rule provide for greater flexibility to employers who operate are subject to outside forces like weather (e.g., snow removal), at the will of customers and customer needs (e.g., funeral homes, emergency transportation, health care), or due to customer cancellations or last-minute orders, should not be required to pay employees additional money under such circumstances. Costs for employers who fail to comply with the requirements of the proposed regulation are limited to the payment of employees at their regular rate of pay for actual attendance at work and pay for other hours required by this proposed rule at the applicable minimum wage rate.

The Department of Labor also estimates that there will be no increased or additional costs to the Department, or to state and local governments to implement this regulation.

LOCAL GOVERNMENT MANDATES:

None. Employees of federal, state and municipal governments and political subdivisions thereof are generally excluded from coverage under the Minimum Wage Law and the Wage Order by Labor Law §§ 651(5)(n) and 12 NYCRR §§ 142-2.14(b) & 142-3.12(b).

PAPERWORK:

This rulemaking does not impact any reporting requirements currently required in either statute or regulation.

DUPLICATION:

This rulemaking does not duplicate, overlap, or conflict with any other state or federal requirements.

ALTERNATIVES:

There were no significant alternatives considered.

FEDERAL STANDARDS:

There are no federal standards relating to this rule.

COMPLIANCE SCHEDULE:

Employers who do not currently provide timely notice of scheduling changes will need up to 14 days to comply with this rulemaking. While no

schedule has been set, any future adoption will provide businesses with sufficient time to comply with the rulemaking.

Revised Regulatory Flexibility Analysis

EFFECT OF RULE: The proposed regulation amends the Minimum Wage Order for Miscellaneous Industries and Occupations (12 NYCRR Part 142) (hereinafter "the Wage Order") to strengthen the Call-in pay regulation (12 NYCRR §§ 142-2.3 & 142-3.3) to protections for employees who report to work, who report for unscheduled shifts, who have shifts cancelled at the last minute, who are required to be on-call, and who are required to call-in to be scheduled for work. The rule includes provisions addressing the calculation and applicability of call-in pay under various circumstances, and the revisions in the proposed rule provide for greater flexibility to employers who operate are subject to outside forces like weather (e.g., snow removal), at the will of customers and customer needs (e.g., funeral homes, emergency transportation, health care), or due to customer cancellations or last minute orders, should not be required to pay employees additional money under such circumstances. The proposed rule does not apply to local governments.

COMPLIANCE REQUIREMENTS: Small businesses and local governments will not have to undertake any new reporting, recordkeeping, or other affirmative act, other than providing timely notice of scheduling changes, in order to comply with this regulation. The proposed revisions further assist small businesses and ensure that unavoidable costs can be avoided.

PROFESSIONAL SERVICES: No professional services would be required to effectuate the purposes of this regulation.

COMPLIANCE COSTS: The Department estimates that there will be no costs to the small businesses or local governments to implement this regulation, and the proposed revisions help to alleviate concerns about unavoidable costs for employers. See Regulatory Impact Statement, at Costs.

ECONOMIC AND TECHNOLOGICAL FEASIBILITY: The regulation does not require any use of technology to comply.

MINIMIZING ADVERSE IMPACT: The Department does not anticipate that this regulation will adversely impact small businesses or local governments. Since no adverse impact to small businesses or local governments will be realized, it was unnecessary for the Department to consider approaches for minimizing adverse economic impacts as suggested in State Administrative Procedure Act § 202-b(1). Furthermore, the revised rulemaking helps to ensure that no adverse impact to small businesses will be realized by eliminating costs that could be difficult to avoid with certain types of work duties.

SMALL BUSINESS AND LOCAL GOVERNMENT PARTICIPATION:

The Department does not anticipate that this rule will have an adverse economic impact upon small businesses or local governments, nor will it impose new reporting, recordkeeping, or other compliance requirements upon them. Nevertheless, small businesses and local governments had opportunity to participate in the rulemaking process by participating in public hearings that were held pursuant to Labor Law § 659 and by providing comment during the public comment period.

Revised Rural Area Flexibility Analysis

TYPES AND ESTIMATED NUMBERS OF RURAL AREAS: The Department anticipates that this regulation will have a positive or neutral impact upon all areas of the state; there is no adverse impact anticipated upon any rural area of the state resulting from adoption of this regulation.

REPORTING, RECORDKEEPING AND OTHER COMPLIANCE REQUIREMENTS; AND PROFESSIONAL SERVICES: This regulation will not impact reporting, recordkeeping or other compliance requirements.

PROFESSIONAL SERVICES: No professional services will be required to comply with this regulation.

COSTS: The Department estimates that there will be no new or additional costs to rural areas to implement this regulation. Furthermore, the revisions in the proposed rule provide for greater flexibility to employers who operate are subject to outside forces like weather (e.g., snow removal), at the will of customers and customer needs (e.g., funeral homes, emergency transportation, health care), or due to customer cancellations or last-minute orders, should not be required to pay employees additional money under such circumstances. The proposed revisions further assist small businesses and ensure that unavoidable costs can be avoided. See Regulatory Impact Statement at Costs.

MINIMIZING ADVERSE IMPACT: The Department does not anticipate that this regulation will have an adverse impact upon any region of the state. As such, different requirements for rural areas were not necessary. Furthermore, the revised rulemaking helps to ensure that no adverse impact to small businesses will be realized by eliminating costs that could be difficult to avoid with certain types of work duties.

RURAL AREA PARTICIPATION: The Department does not anticipate that the regulation will have an adverse economic impact upon rural areas nor will it impose new reporting, recordkeeping, or other compliance

requirements. Nevertheless, rural areas in the state had an opportunity to participate in the rulemaking process by participating in public hearings that were held pursuant to Labor Law § 659 and by providing comment during the public comment period.

Revised Job Impact Statement

NATURE OF IMPACT: The Department of Labor (hereinafter “Department”) projects there will be no adverse impact on jobs or employment opportunities in the State of New York as a result of this regulation. The nature and purpose of this regulation is such that it will not have an adverse impact on jobs or employment opportunities.

CATEGORIES AND NUMBERS AFFECTED: The Department does not anticipate that this regulation will have an adverse impact on jobs or employment opportunities in any category of employment. This regulation will apply to employees covered by the Minimum Wage Order for Miscellaneous Industries and Occupations (12 NYCRR Part 142) (hereinafter “the Wage Order”) and will exclude workers who are covered by collective bargaining agreements that provide for call-in pay and workers whose weekly wages exceed 40 times the applicable minimum wage. The Wage Order covers all industries and occupations other than those that are covered by the hospitality and the building services industries. The Department’s Division of Research and Statistics estimates that just under one million employees will be covered by this regulation, based on the number of employees who work in industries and occupations other than hospitality and building service whose weekly wages do not exceed 40 times the hourly minimum wage.

REGIONS OF ADVERSE IMPACT: The Department does not anticipate that this regulation will have an adverse impact upon jobs or employment opportunities statewide or in any particular region of the state.

MINIMIZING ADVERSE IMPACT: Since the Department does not anticipate any adverse impact upon jobs or employment opportunities resulting from this regulation, no measures to minimize any unnecessary adverse impact on existing jobs or to promote the development of new employment opportunities are required. Furthermore, the revised rulemaking helps to ensure that no adverse impact to small businesses will be realized by eliminating costs that could be difficult to avoid with certain types of work duties.

SELF-EMPLOYMENT OPPORTUNITIES: The Department does not foresee a measurable impact upon opportunities for self-employment resulting from adoption of this regulation.

Assessment of Public Comment

The Department received comments following publication of the proposed rulemaking in the November 22, 2017 edition of the NY Register. The following represents a summary and analysis of such comments, and the reasons why any significant alternatives were not incorporated into the rulemaking. Generally, comments were received arguing against the adoption of the present rulemaking, and comments were received commending the Department for this proposal and urging its adoption.

Comment 1:

Very few employees earn 40 times the minimum wage on an hourly basis; this should be lowered.

Response 1:

The rulemaking does not apply to employees earning 40 times the applicable minimum wage on an hourly basis, but rather only to employees who earn less than 40 times the applicable minimum wage on a weekly basis.

Comment 2:

Shifts that were cancelled due to an employee calling in (e.g., sick) should not require payment to the employee who called in sick.

Response 2:

The rulemaking does not require any additional compensation for employees who call in or otherwise notify their employer that they will not be working a shift. Rather, additional payment is only required where the cancellation is due to the action or decision of the employer. Furthermore, the rulemaking has been revised to provide employers and employees with greater flexibility to provide coverage for scheduling changes that are outside of the employer’s control or through reasonable efforts by an employer to solicit volunteers to cover.

Comment 3:

Employers that operate subject to outside forces like weather (e.g., snow removal), at the will of customers and customer needs (e.g., funeral homes, emergency transportation, health care), or due to customer cancellations or last-minute orders, should not be required to pay employees additional money under such circumstances.

Response 3:

The Department has revised the rulemaking in response to this comment to provide an expanded exception for employees whose duties are (1) weather dependent, (2) necessary to protect the health or safety of the public or any person, or (3) subject to large or unpredictable orders from

customers and customer needs. With regard to orders from customers, such exception is limited to orders or requests from customers outside of the traditional retail or customer service setting, such as large print shop orders or last-minute events.

Comment 4:

The cost to implement and administer the rulemaking would be cost-prohibitive and harmful, including for employers that depend on negotiated or government funding, like Medicare-funded home health care and education, or for small businesses.

Response 4:

The Department has revised the rulemaking in response to this comment to provide greater flexibility for employers and to minimize or eliminate any required costs associated with this rulemaking. Such revisions provide for greater flexibility and options to eliminate unavoidable costs through proactive compliance measures by employers.

Comment 5:

Workers who desire or require additional flexibility to accommodate their last-minute scheduling needs could be harmed by a regulatory approach that increases employers’ costs and limits their flexibility.

Response 5:

As described above, the Department has revised the rulemaking in response to this comment.

Comment 6:

The exception in (c)(4) of the rulemaking (exempting employers who cease operations due to acts of god or circumstances outside of their control) should be expanded to apply to all of the scheduling requirements of the rulemaking and to include situations which could endanger the health or safety of any employee or person, or cause damage to property.

Response 6:

The Department has revised the rulemaking in response to this comment.

Comment 7:

The 14-day notice requirement is too long and will require, in practice, as much a 21-day notice.

Response 7:

The Department has revised the rulemaking to measure the 14-day requirement from the last day of the schedule, rather than from the start of the workweek so as to limit the requirement to 14 days, rather than requiring as much as 21 days.

Comment 8:

The Department should clarify what “voluntary” means within the context of an employee working a shift without the requisite advanced notice. Requests for employees to volunteer should be made in writing, as should the employee’s consent to such.

Response 8:

The Department has revised the rulemaking in response to this comment.

Comment 9:

The Department should reconsider the scope of employers within the coverage of this rulemaking to exclude non-profits and weather-dependent businesses.

Response 9:

The Department has revised the rulemaking in response to this comment.

Comment 10:

All employers should be required to provide a good-faith estimate of employees’ work schedules.

Response 10:

The Department has revised the rulemaking in response to this comment.

Comment 11:

The rulemaking will have a negative financial impact on employers, who may not be able to avoid last-minute schedule changes.

Response 11:

The Department has revised the rulemaking in response to this comment to provide employers with greater flexibility and to limit costs where additional pay would be required at no fault of the employer.

Comment 12:

Employees who are not designated as “heads of households” on their federal tax returns should be exempt from the rulemaking.

Response 12:

The Department disagrees as such status is facially irrelevant to the need for a predictable schedule and could have a potentially disparate impact based upon gender or other protected classes.

Comment 13:

The rulemaking should be amended to include an affirmative record-keeping obligation. Conversely, the rulemaking is onerous in that employers will need to keep records of all employee schedules and the records that support compliance with the rulemaking.

Response 13:

While no affirmative rulemaking requirement is included in the revised proposed rulemaking, employers are encouraged to keep and maintain additional records that can help demonstrate their compliance.

Comment 14:

The rulemaking should apply to independent contractors as well.

Response 14:

This exceeds the Department's rulemaking authority under Article 19 of the Labor Law.

Comment 15:

The effective date of the rulemaking should be delayed providing employers with time to comply.

Response 15:

The Department agrees, and any future adoption will provide businesses with sufficient time to comply with the rulemaking.

Comment 16:

Temporary staffing agencies should be exempted as their entire business model is based around last minute scheduling.

Response 16:

The Department has revised the rulemaking in response to this comment to provide employers with greater flexibility to respond to last-minute orders and customer requests.

Comment 17:

It is not clear if the rulemaking preempts local laws, such as New York City's Fair Workweek Law.

Response 17:

The preemptive effect of the rulemaking is a matter for the courts, not the Department.

Comment 18:

Students working for schools or non-profits should be exempted from the rulemaking.

Response 18:

Students working in a not-for-profit organization or institution are exempt from the Minimum Wage Order for Miscellaneous Industries, which contains the rulemaking, so long as the organization is organized and operated exclusively for these charitable, educational, or religious purposes, and they attend an institution leading to a degree or certificate.

Comment 19:

The proposed rule is difficult for employers, many of them in the health care sector, who rely on government funding to operate.

Response 19:

The Department has revised the rulemaking in response to this comment to provide greater flexibility for employers and to minimize or eliminate any required costs associated with this rulemaking. Such revisions provide for greater flexibility and options to eliminate unavoidable costs through proactive compliance measures by employers.

Comment 20:

Employees who work shorter shifts will incur higher proportionate costs for cancelled shifts.

Response 20:

The Department has revised the rule to provide for 2 hours of call-in pay if the shift is scheduled more than 72 hours in advance of the scheduled shift, or 4 hours of call-in pay if it is cancelled with less than 72 hours in advance. This should lessen the effect on employees who work shorter shifts.

Office of Mental Health

NOTICE OF WITHDRAWAL

Children's Mental Health Rehabilitation Services

I.D. No. OMH-47-18-00003-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. OMH-47-18-00003-P, has been withdrawn from consideration. The notice of proposed rule making was published in the *State Register* on November 21, 2018.

Subject: Children's Mental Health Rehabilitation Services.

Reason(s) for withdrawal of the proposed rule: Did not receive sign-off from RRU.

Office for People with Developmental Disabilities

NOTICE OF ADOPTION

Telehealth

I.D. No. PDD-32-18-00003-A

Filing No. 1092

Filing Date: 2018-11-26

Effective Date: 2018-12-12

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

Action taken: Amendment of Subpart 635-13 and Part 679 of Title 14 NYCRR.

Statutory authority: Mental Hygiene Law, sections 13.07, 13.09(b), 16.00; Public Health Law, sections 2999-cc and 2999-dd

Subject: Telehealth.

Purpose: To authorize telehealth as a new modality for the delivery of clinical services.

Text of final rule: • New paragraph 679.1(c)(4) is added as follows, and all remaining paragraphs are renumbered accordingly:

(4) *Providing access to clinical services to a person located in his/her residence or other temporary location via telehealth (see glossary) while the provider is located either at a main clinic site certified by OPWDD or at a certified satellite site (see glossary).*

• New subdivision 679.2(c) is added as follows, and all remaining paragraphs are renumbered accordingly:

(c) *Section 367-u of the Social Services Law provides that the commissioner shall not exclude from the payment of medical assistance funds the delivery of healthcare services through telehealth when the services are provided pursuant to section 2999-cc(3) of the Public Health Law and meet the requirements of federal law, rules and regulations.*

• New subdivision 679.2(f) is added as follows:

(f) *Section 2999-cc of the Public Health Law provides that health care services, which must include the assessment, diagnosis, consultation, treatment, education, care management, and/or self-management of a patient, may be provided via the use of electronic information and communication technologies between qualifying providers located at a distant site and a patient located at an originating site.*

• New subdivision 679.2(g) is added as follows:

(g) *Section 4406-g of the Public Health Law provides that a health maintenance organization shall not exclude from coverage a service that is covered under an enrollee contract of a health maintenance organization because the service is delivered via telehealth.*

• New subdivision 679.2(h) is added as follows:

(h) *Sections 3217-h and 4306-g of the Insurance Law provide that under an insurance policy that provides comprehensive coverage for hospital, medical or surgical care, said services shall not be excluded from coverage because the service is delivered via telehealth.*

• Existing subdivision 679.5(c) is amended as follows:

(c) *A clinic visit may include face-to-face service as defined by allowable Current Procedural Terminology (CPT)/Healthcare Common Procedure Coding System (HCPCS) and/or Current Dental Terminology (CDT) codes, or such allowable services provided via telehealth.*

• Existing subdivision 679.6(b) is amended as follows:

(b) *Each agency that operates a clinic treatment facility shall provide OPWDD information it requests, including but not limited to the following: services provided by CPT/HCPCS and/or CDT codes, where such services were delivered, including the location of both the provider and the individual when services are delivered via telehealth, (i.e., on-site or at a certified satellite site, or, prior to April 1, 2016, off-site) and revenues by funding source or payee. These data shall correspond to the identical time period of the cost report.*

• New subdivision 679.99(w) is added as follows, and all remaining subdivisions are renumbered accordingly:

(w) *Telehealth. The use of electronic information and communication technologies by a health care provider to deliver health care services to an individual while such individual is located at a site that is different from the site where the health care provider is located.*

• New subdivision 635-13.4(c) is added as follows, and all remaining subdivisions are renumbered accordingly:

(c) *IPSIDD services are prohibited from being delivered via telehealth.*

Final rule as compared with last published rule: Nonsubstantive changes were made in section 679.2(f), (g) and (h).

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

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

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

Changes to the text of this regulation do not necessitate a revision to the previously filed regulatory impact statement, regulatory flexibility analysis, rural area flexibility analysis and job impact statement as the changes to the text are technical and involve correction to numbering and lettering only.

Initial Review of Rule

As a rule that requires a RFA, RAFA or JIS, this rule will be initially reviewed in the calendar year 2021, which is no later than the 3rd year after the year in which this rule is being adopted.

Assessment of Public Comment

The agency received no public comment.

Public Service Commission

NOTICE OF ADOPTION

Tariff Amendments

I.D. No. PSC-05-18-00005-A

Filing Date: 2018-11-21

Effective Date: 2018-11-21

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

Action taken: On 11/15/18, the PSC adopted an order approving, with modifications, National Fuel Gas Distribution Corporation's (NFG) tariff amendments to P.S.C. No. 9 — Gas, regarding Pilot Programs.

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

Subject: Tariff amendments.

Purpose: To approve, with modifications, NFG's tariff amendments to P.S.C. No. 9 — Gas, regarding Pilot Programs.

Substance of final rule: The Commission, on November 15, 2018, adopted an order approving, with modifications, National Fuel Gas Distribution Corporation's (NFG) tariff amendments to P.S.C. No. 9 — Gas, related to its Distributed Generation (DG), Natural Gas Vehicle (NGV) and Partnership to Revitalize the Industrial Manufacturing Economy of Western New York (PRIME-WNY) Pilot Programs. The tariff amendments filed by NFG and listed in the Appendix shall become effective on December 1, 2018, provided it files further revisions as discussed in the body of this order regarding the modifications to the surcharge applicable to customers in its PRIME-WNY Pilot Program to become effective on not less than one day's notice on December 1, 2018. A tariff filing made and approved in Case 14-M-0565 has affected Leaf No. 0-3 that was originally filed for approval in this case. Therefore, to avoid any duplication or conflict, NFG is directed to file Seventh Revised Leaf 0-3 incorporating provisions that were previously approved by the Commission since the tariff amendment listed in the Appendix was filed, on not less than one day's notice to become effective on December 1, 2018. NFG's DG and NGV Pilot Programs shall be made permanent, beginning on December 1, 2018. NFG's PRIME-WNY program will begin a three-year test pilot beginning on December 1, 2018, subject to the terms and conditions set forth in the order.

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

Text of rule may be obtained from: John Pitucci, Public Service Commission, 3 Empire State Plaza, Albany, New York 12223-1350, (518) 486-2655, email: john.pitucci@dps.ny.gov An IRS employer ID no. or social security no. is required from firms or persons to be billed 25 cents per page. Please use tracking number found on last line of notice in requests.

Assessment of Public Comment

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

(17-G-0799SA1)

NOTICE OF ADOPTION

Submetering of Electricity

I.D. No. PSC-07-18-00016-A

Filing Date: 2018-11-26

Effective Date: 2018-11-26

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

Action taken: On 11/15/18, the PSC adopted an order approving Silo Ridge Condo Association's (Silo Ridge) notice of intent to submeter electricity at 5021 Route 44, Amenia, New York.

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

Subject: Submetering of electricity.

Purpose: To approve Silo Ridge's notice of intent to submeter electricity.

Substance of final rule: The Commission, on November 15, 2018, adopted an order approving Silo Ridge Condo Association's notice of intent to submeter electricity at 5021 Route 44, Amenia, New York, located in the service territory of New York State Electric & Gas Corporation, subject to the terms and conditions set forth in the order.

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

Text of rule may be obtained from: John Pitucci, Public Service Commission, 3 Empire State Plaza, Albany, New York 12223-1350, (518) 486-2655, email: john.pitucci@dps.ny.gov An IRS employer ID no. or social security no. is required from firms or persons to be billed 25 cents per page. Please use tracking number found on last line of notice in requests.

Assessment of Public Comment

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

(17-E-0792SA1)

NOTICE OF ADOPTION

Electric Metering Equipment

I.D. No. PSC-09-18-00010-A

Filing Date: 2018-11-21

Effective Date: 2018-11-21

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

Action taken: On 11/15/18, the PSC adopted an order approving Itron Inc.'s (Itron) petition to use its OpenWay Riva CENTRON CP2SRA electric meter for electric metering applications in New York State.

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

Subject: Electric metering equipment.

Purpose: To approve Itron's OpenWay Riva CENTRON CP2SRA electric meter for electric metering applications in New York State.

Substance of final rule: The Commission, on November 15, 2018, adopted an order approving Itron Inc.'s petition to use its OpenWay Riva CENTRON CP2SRA electric meter for electric metering applications in New York State, subject to the terms and conditions set forth in the order.

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

Text of rule may be obtained from: John Pitucci, Public Service Commission, 3 Empire State Plaza, Albany, New York 12223-1350, (518) 486-2655, email: john.pitucci@dps.ny.gov An IRS employer ID no. or social security no. is required from firms or persons to be billed 25 cents per page. Please use tracking number found on last line of notice in requests.

Assessment of Public Comment

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

(18-E-0077SA1)

NOTICE OF ADOPTION

Submetering of Electricity and Waiver Request

I.D. No. PSC-22-18-00006-A

Filing Date: 2018-11-26

Effective Date: 2018-11-26

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

Action taken: On 11/15/18, the PSC adopted an order approving WP North Tower LLC's (WP North Tower) notice of intent to submeter electricity at 55 Bank Street, White Plains, New York and request for waiver of 16 NYCRR section 96.5(k)(3).

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

Subject: Submetering of electricity and waiver request.

Purpose: To approve WP North Tower's notice of intent to submeter electricity and request for waiver of 16 NYCRR section 96.5(k)(3).

Substance of final rule: The Commission, on November 15, 2018, adopted an order approving WP North Tower LLC's notice of intent to submeter electricity at 55 Bank Street, White Plains, New York, New York, located in the service territory of Consolidated Edison Company of New York, Inc., and request for waiver of the energy audit and energy efficiency plan requirements in 16 NYCRR § 96.5(k)(3), subject to the terms and conditions set forth in the order, subject to the terms and conditions set forth in the order.

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

Text of rule may be obtained from: John Pitucci, Public Service Commission, 3 Empire State Plaza, Albany, New York 12223-1350, (518) 486-2655, email: john.pitucci@dps.ny.gov An IRS employer ID no. or social security no. is required from firms or persons to be billed 25 cents per page. Please use tracking number found on last line of notice in requests.

Assessment of Public Comment

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

(18-E-0024SA1)

NOTICE OF ADOPTION

Electric Metering Equipment

I.D. No. PSC-24-18-00016-A

Filing Date: 2018-11-21

Effective Date: 2018-11-21

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

Action taken: On 11/15/18, the PSC adopted an order approving Artech USA's (Artech) petition to use its CID-17 and VCE-7 transformers for electric metering applications in New York State.

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

Subject: Electric metering equipment.

Purpose: To approve Artech's CID-17 and VCE-7 transformers for electric metering applications in New York State.

Substance of final rule: The Commission, on November 15, 2018, adopted an order approving Artech USA's petition to use its CID-17 and VCE-7 transformers for electric metering applications in New York State, subject to the terms and conditions set forth in the order.

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

Text of rule may be obtained from: John Pitucci, Public Service Commission, 3 Empire State Plaza, Albany, New York 12223-1350, (518) 486-2655, email: john.pitucci@dps.ny.gov An IRS employer ID no. or social security no. is required from firms or persons to be billed 25 cents per page. Please use tracking number found on last line of notice in requests.

Assessment of Public Comment

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

(18-E-0208SA1)

NOTICE OF ADOPTION

Petition for Treatment of Tax Changes

I.D. No. PSC-26-18-00010-A

Filing Date: 2018-11-21

Effective Date: 2018-11-21

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

Action taken: On 11/15/18, the PSC adopted an order denying National Fuel Gas Distribution Corporation's (NFG) petition regarding NFG's proposed disposition of the net federal income tax savings resulting from the federal Tax Cuts and Jobs Act of 2017 (Tax Act).

Statutory authority: Public Service Law, section 66

Subject: Petition for treatment of tax changes.

Purpose: To deny NFG's petition for treatment of tax changes.

Substance of final rule: The Commission, on November 15, 2018, adopted an order denying National Fuel Gas Distribution Corporation's (NFG) petition regarding NFG's proposed disposition of the net federal income tax savings resulting from the federal Tax Cuts and Jobs Act of 2017. NFG is directed to file a cancellation supplement, on not less than one day's notice to become effective no later than November 28, 2018 cancelling the tariff amendment and suspension supplement filed in this proceeding and listed in the Appendix, subject to the terms and conditions set forth in the order.

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

Text of rule may be obtained from: John Pitucci, Public Service Commission, 3 Empire State Plaza, Albany, New York 12223-1350, (518) 486-2655, email: john.pitucci@dps.ny.gov An IRS employer ID no. or social security no. is required from firms or persons to be billed 25 cents per page. Please use tracking number found on last line of notice in requests.

Assessment of Public Comment

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

(18-G-0337SA1)

NOTICE OF ADOPTION

Submetering of Electricity

I.D. No. PSC-26-18-00013-A

Filing Date: 2018-11-26

Effective Date: 2018-11-26

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

Action taken: On 11/15/18, the PSC adopted an order approving 650 Met Partners, LLC's (650 Met Partners) petition to submeter electricity at 195 Clarkson Avenue, Brooklyn, New York.

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

Subject: Submetering of electricity.

Purpose: To approve 650 Met Partners' petition to submeter electricity.

Substance of final rule: The Commission, on November 15, 2018, adopted an order approving 650 Met Partners, LLC's petition to submeter electricity at 195 Clarkson Avenue, Brooklyn, New York, located in the service territory of Consolidated Edison Company of New York, Inc., subject to the terms and conditions set forth in the order.

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

Text of rule may be obtained from: John Pitucci, Public Service Commission, 3 Empire State Plaza, Albany, New York 12223-1350, (518) 486-2655, email: john.pitucci@dps.ny.gov An IRS employer ID no. or social security no. is required from firms or persons to be billed 25 cents per page. Please use tracking number found on last line of notice in requests.

Assessment of Public Comment

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

(17-E-0796SA1)

NOTICE OF ADOPTION

Submetering of Electricity

I.D. No. PSC-27-18-00005-A

Filing Date: 2018-11-26

Effective Date: 2018-11-26

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

Action taken: On 11/15/18, the PSC adopted an order approving Harmony Mills Riverview LLC's (Harmony Riverview) petition to submeter electricity at 100 North Mohawk Street, Cohoes, New York.

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

Subject: Submetering of electricity.

Purpose: To approve Harmony Riverview's petition to submeter electricity.

Substance of final rule: The Commission, on November 15, 2018, adopted an order approving Harmony Mills Riverview LLC's petition to submeter electricity at 100 North Mohawk Street, Cohoes, New York, located in the service territory of Niagara Mohawk Power Corporation d/b/a National Grid, subject to the terms and conditions set forth in the order.

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

Text of rule may be obtained from: John Pitucci, Public Service Commission, 3 Empire State Plaza, Albany, New York 12223-1350, (518) 486-2655, email: john.pitucci@dps.ny.gov An IRS employer ID no. or social security no. is required from firms or persons to be billed 25 cents per page. Please use tracking number found on last line of notice in requests.

Assessment of Public Comment

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

(18-E-0274SA1)

NOTICE OF ADOPTION

Submetering of Electricity

I.D. No. PSC-27-18-00006-A

Filing Date: 2018-11-26

Effective Date: 2018-11-26

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

Action taken: On 11/15/18, the PSC adopted an order approving Harmony Mills West LLC's (Harmony West) petition to submeter electricity at 50 and 100 North Mohawk Street, Cohoes, New York.

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

Subject: Submetering of electricity.

Purpose: To approve Harmony West's petition to submeter electricity.

Substance of final rule: The Commission, on November 15, 2018, adopted an order approving Harmony Mills West LLC's petition to submeter electricity at 50 and 100 North Mohawk Street, Cohoes, New York, located in the service territory of Niagara Mohawk Power Corporation d/b/a National Grid, subject to the terms and conditions set forth in the order.

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

Text of rule may be obtained from: John Pitucci, Public Service Commission, 3 Empire State Plaza, Albany, New York 12223-1350, (518) 486-2655, email: john.pitucci@dps.ny.gov An IRS employer ID no. or social security no. is required from firms or persons to be billed 25 cents per page. Please use tracking number found on last line of notice in requests.

Assessment of Public Comment

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

(18-E-0275SA1)

NOTICE OF ADOPTION

Submetering of Electricity and Waiver Request

I.D. No. PSC-34-18-00008-A

Filing Date: 2018-11-26

Effective Date: 2018-11-26

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

Action taken: On 11/15/18, the PSC adopted an order approving Roosevelt Parc LLC's (Roosevelt Parc) notice of intent to submeter electricity at 37-46 72nd Street, Jackson Heights, New York and request for waiver of 16 NYCRR section 96.5(k)(3).

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

Subject: Submetering of electricity and waiver request.

Purpose: To approve Roosevelt Parc's notice of intent to submeter electricity and request for waiver of 16 NYCRR section 96.5(k)(3).

Substance of final rule: The Commission, on November 15, 2018, adopted an order approving Roosevelt Parc LLC's notice of intent to submeter electricity at 37-46 72nd Street, Jackson Heights, New York, located in the service territory of Consolidated Edison Company of New York, Inc., and request for waiver of the energy audit and energy efficiency plan requirements in 16 NYCRR § 96.5(k)(3), subject to the terms and conditions set forth in the order, subject to the terms and conditions set forth in the order.

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

Text of rule may be obtained from: John Pitucci, Public Service Commission, 3 Empire State Plaza, Albany, New York 12223-1350, (518) 486-2655, email: john.pitucci@dps.ny.gov An IRS employer ID no. or social security no. is required from firms or persons to be billed 25 cents per page. Please use tracking number found on last line of notice in requests.

Assessment of Public Comment

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

(18-E-0378SA1)

NOTICE OF ADOPTION

Submetering of Electricity

I.D. No. PSC-34-18-00012-A

Filing Date: 2018-11-26

Effective Date: 2018-11-26

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

Action taken: On 11/15/18, the PSC adopted an order approving Sheldrake Station Development LLC's (Sheldrake) petition to submeter electricity at 270 Waverly Avenue, Mamaroneck, New York.

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

Subject: Submetering of electricity.

Purpose: To approve Sheldrake's petition to submeter electricity.

Substance of final rule: The Commission, on November 15, 2018, adopted an order approving Sheldrake Station Development LLC's petition to submeter electricity at 270 Waverly Avenue, Mamaroneck, New York, located in the service territory of Consolidated Edison Company of New York, Inc., subject to the terms and conditions set forth in the order.

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

Text of rule may be obtained from: John Pitucci, Public Service Commission, 3 Empire State Plaza, Albany, New York 12223-1350, (518) 486-2655, email: john.pitucci@dps.ny.gov An IRS employer ID no. or social security no. is required from firms or persons to be billed 25 cents per page. Please use tracking number found on last line of notice in requests.

Assessment of Public Comment

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

(18-E-0387SA1)

NOTICE OF ADOPTION

Tariff Amendments

I.D. No. PSC-35-18-00004-A

Filing Date: 2018-11-21

Effective Date: 2018-11-21

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

Action taken: On 11/15/18, the PSC adopted an order approving National Fuel Gas Distribution Corporation's (NFG) tariff amendments to P.S.C. No. 9 — Gas, regarding Renewable Natural Gas.

Statutory authority: Public Service Law, sections 65 and 66

Subject: Tariff amendments.

Purpose: To approve NFG's tariff amendments to P.S.C. No. 9 — Gas, regarding Renewable Natural Gas.

Substance of final rule: The Commission, on November 15, 2018, adopted an order approving National Fuel Gas Distribution Corporation's (NFG) tariff amendments to P.S.C. No. 9 — Gas, regarding Renewable Natural Gas (RNG) to add a definition for and identify RNG as a source of production gas that is subject to the Receipt Facility Maintenance Fee for Production Facilities. The tariff amendments filed by NFG and listed in the Appendix shall become effective on December 1, 2018, subject to the terms and conditions set forth in the order.

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

Text of rule may be obtained from: John Pitucci, Public Service Commission, 3 Empire State Plaza, Albany, New York 12223-1350, (518) 486-2655, email: john.pitucci@dps.ny.gov An IRS employer ID no. or social security no. is required from firms or persons to be billed 25 cents per page. Please use tracking number found on last line of notice in requests.

Assessment of Public Comment

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

(18-G-0493SA1)

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

Waiver of Tariff Provision

I.D. No. PSC-50-18-00002-P

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

Proposed Action: The Commission is considering a petition filed by the Sisters of Charity Housing Development Corporation and Vincent's Village Associates, LLC for a waiver of a tariff requirement for metering of individual residences in apartment buildings.

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

Subject: Waiver of tariff provision.

Purpose: To determine if it is the public interest to waive individual metering requirements for the planned senior housing.

Substance of proposed rule: The Commission is considering a petition filed by the Sisters of Charity Housing Development Corporation and Vincent's Village Associates, LLC (collectively Petitioners), on November 14, 2018, for a waiver of a tariff requirement for metering of individual residences in apartment buildings.

Petitioners are developing Vincent's Village, a 93-unit low-income senior apartment complex in the Town of Clarkstown, Rockland County, with a planned completion date of 2020. The petition states that all housing units will have low-flow water fixtures, and given this, and the nature of the housing, water consumption will be uniform from unit to unit. Petitioners note the need for such housing in Rockland County and the economic benefits that will be derived from Vincent's Village's construction and operation. The tariff of Suez Water New York, Inc. (Suez), the water utility serving the Town of Clarkstown, requires that all new multi-unit housing developments be separately metered for water service. Petitioners are seeking a waiver of this requirement.

The full text of the petition and the full record of the proceeding 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 action 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: 60 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.

(18-W-0708SP1)

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

Proposed Transfer of Interests in an Electric Generating Facility and Dedicated Natural Gas Pipeline

I.D. No. PSC-50-18-00003-P

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

Proposed Action: The Commission is considering a joint petition filed by Binghamton BOP LLC and the City of Binghamton seeking approval for the transfer of direct ownership interests in an electric generating facility and dedicated natural gas pipeline.

Statutory authority: Public Service Law, sections 2(10), (11), (12), (13), 5(1)(b), 5-b, 64, 65, 66, 69 and 70

Subject: Proposed transfer of interests in an electric generating facility and dedicated natural gas pipeline.

Purpose: To consider the transfer of generating facility and dedicated gas pipeline if there is no market power or ratepayer harm.

Substance of proposed rule: The Commission is considering a petition filed by Binghamton BOP LLC (BBOP) and The City of Binghamton (City or Binghamton) (collectively, the Petitioners) for a declaratory ruling that the transfer of an approximately 47.7 MW electric generating facility, located at 22 Charles Street and 5 West Street in the City of Binghamton, from BBOP to the City does not require regulatory review under Section 70 of the Public Service Law (PSL).

Petitioners contend that Section 70 applies to the transfer of electric and gas plant, and that the facility is not electric plant because it has been deactivated and is not now used to generate or transmit electricity and it has not been used for electricity generation since January 2018. For instance, Petitioners represent that the turbine has been removed, the interconnection between facility and bulk system severed, and other steps taken to render the facility incapable of generating electricity. In the alternative, Petitioners request that the Commission approve the transfer pursuant to PSL Section 70 because, they contend, the transaction does not present any market power risk or potential harm to captive ratepayers. Notwithstanding this request, the Petitioners represent that BBOP transferred ownership of the facility to the City in December 2017.

The petition acknowledges that the City may decide at some future point to use the site for electric generation, and that the City is aware of the need for regulatory approvals that must be obtained before it may begin construction, development, or initiate electric generation activities at the site.

The petition explains that the facility was used for electric generation and was served by a 0.2-mile natural gas pipeline owned by BBOP pursuant to the terms and conditions of a Certificate of Environmental Compatibility and Public Need (Certificate) and applicable laws and regulations. Petitioners contend that the transfer of this pipeline does not require Section 70 review because it qualifies for a regulatory exemption provided by PSL § 2(11)(a). According to Petitioners, that exemption provides that the owner of gas plant (e.g., a pipeline) will not be deemed a "gas corporation" subject to Commission regulation if the gas plant is used to distribute gas made or produced by the plant owner on or through private property solely for use by the plant owner or its tenants. Petitioners request a finding that this exemption applies and, therefore, that Section 70 review of the pipeline transfer is not required and the City of Binghamton will not be subject to Commission regulation as a gas corporation. In the alternative, should the exemption not be applicable, Petitioners seek an order approving the transfer of the 0.2-mile pipeline to the City of Binghamton.

In addition, Petitioners also request authority to transfer the Certificate relating to the 0.2-mile pipeline from BBOP to Binghamton. In the petition, the City of Binghamton commits to comply with the Certificate terms and conditions. The Commission's inquiry may include public interest issues including, without limitation, potential future uses, environmental liabilities, and decommissioning issues.

The full text of the petition and the full record of the proceeding 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 action 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: 60 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.

(18-T-0347SP1)

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

Sale of Street Lighting Facilities to the City of Albany

I.D. No. PSC-50-18-00004-P

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

Proposed Action: The Public Service Commission is considering a petition filed by Niagara Mohawk Power Corporation d/b/a National Grid for the transfer of its street lighting facilities located in the City of Albany to the City of Albany.

Statutory authority: Public Service Law, section 70(1)

Subject: Sale of street lighting facilities to the City of Albany.

Purpose: To determine whether to approve the transfer of street lighting facilities in the City of Albany.

Substance of proposed rule: The Public Service Commission (Commission) is considering a petition filed on November 13, 2018 by Niagara Mohawk Power Corporation, d/b/a National Grid (National Grid), requesting approval to transfer certain street lighting facilities located in the City of Albany, New York (City) to the City.

Based on plant records, National Grid represents that the original book cost of the facilities is approximately \$15,375,198 and the net book value, as of August 31, 2018, is \$9,611,237. National Grid proposes to transfer the street lighting facilities to the City for \$9,450,674.81.

The full text of the petition and the full record of the proceeding may be viewed 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 action 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: 60 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.

(18-E-0707SP1)

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

Establishment of the Regulatory Regime Applicable to an Approximately 100 MW Electric Generating Facility

I.D. No. PSC-50-18-00005-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 petition filed by Ball Hill Wind Energy, LLC for approval of a lightened ratemaking regulatory regime in connection with its approximately 100 MW electric generating facility, located in Chautauqua County, New York.

Statutory authority: Public Service Law, sections 2(12), (13), (22), 5(1)(b), 64-69, 69-a, 70-72, 72-a, 78, 79, 105-114, 114-a, 115, 117, 118, 119-b and 119-c

Subject: Establishment of the regulatory regime applicable to an approximately 100 MW electric generating facility.

Purpose: To ensure appropriate regulation of a new electric corporation.

Substance of proposed rule: The Public Service Commission (Commission) is considering a petition filed by Ball Hill Wind Energy LLC (Ball Hill) on October 12, 2018 requesting approval of a lightened ratemaking regulatory regime in connection with the approximately 100 MW electric generating facility that Ball Hill is developing in Chautauqua County, New York.

Ball Hill requests an order providing that it will be regulated as an electric corporation under a lightened ratemaking regulatory regime similar to that imposed on the owners-operators of other competitive wholesale generators that do not serve retail customers. The regulatory relief requested, if granted, would exempt Ball Hill from certain sections of the Public Service Law otherwise applicable to electric corporations including, for instance, obligations applicable to utilities that serve retail customers.

The full text of the petition and the full record of the proceeding 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 action 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: 60 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.

(18-E-0654SP1)

Department of Taxation and Finance

REGULATORY IMPACT STATEMENT, REGULATORY FLEXIBILITY ANALYSIS, RURAL AREA FLEXIBILITY ANALYSIS AND/OR JOB IMPACT STATEMENT

Congestion Surcharge

I.D. No. TAF-49-18-00007-E

This regulatory impact statement, regulatory flexibility analysis, rural area flexibility analysis and/or job impact statement pertain(s) to a notice of Emergency rule making, I.D. No. TAF-49-18-00007-E, printed in the *State Register* on December 5, 2018.

Regulatory Impact Statement

1. Statutory authority: Tax Law, section 171, subdivision First, generally authorizes the Commissioner of Taxation and Finance to promulgate regulations; section 1096(a) of the Tax Law generally authorizes the Commissioner to administer and enforce the tax imposed by Articles nine, nine-a, nine-b and nine-c, and to make such rules and regulations, and to require such facts and information to be reported, as it may deem necessary to enforce the provisions of such articles and of Article 27 of the Tax Law; section 1299-A of Article 29-C the Tax Law imposes a surcharge on for-hire transportation trips that begin in, end in, or pass through the geographic area of the city of New York, in the borough of Manhattan, south of and excluding 96th Street (the “congestion zone”); Article 29-C of Tax Law requires the Commissioner to administer the congestion surcharge, and to accept the registration of those who will be liable for the payment of the surcharge. Section 1299-C of Article 29-C requires that every person liable for the congestion surcharge file with the Commissioner a completed application for a certificate of registration, in a form prescribed by the Commissioner, subject to renewal in accordance with rules promulgated by the Commissioner. Section 1299-E of Article 29-C requires records to be kept by those liable for the surcharge.

2. Legislative objectives: New Subchapter E (section 700.1 through section 700.4) of Chapter IV of Title 20 NYCRR reflects the imposition of the congestion surcharge. Subchapter E implements the registration and administration requirements of Article 29-C of the Tax Law. Section 700.1 of Subchapter E contains definitions that are applicable throughout Subchapter E, while section 700.2 reflects the imposition of the congestion surcharge. Section 700.3 sets forth registration and renewal requirements (including the payment of fees) for those responsible for the surcharge. Finally, section 700.4 identifies the types of records and information that must be kept, how they must be kept and transmitted, and who is responsible for keeping them (i.e., those who are responsible for the payment of the surcharge).

3. Needs and benefits: This rule sets forth the renewal and registration requirements necessary to comply with Article 29-C, as well as the records that must be kept to accomplish compliance with Article 29-C. This rule benefits taxpayers by putting in place the means for complying with the congestion surcharge effective January 1, 2019 for Tax Year 2019.

4. Costs: (a) Costs to regulated parties for the implementation and continuing compliance with this rule: There is no additional cost or burden to comply with these amendments. There is no additional time period needed for compliance.

(b) Costs to this agency, the State and local governments for the implementation and continuation of this rule: Since the need to make amendments to the New York State Sales and Use and Other Miscel-

laneous Tax Regulations under Article 29-C of the Tax Law arises due to the statutory changes requiring that the Commissioner administer the congestion surcharge, and accept the registration of those who will be liable for the surcharge, there are no costs to this agency or the State and local governments that are due to the promulgation of this rule.

(c) Information and methodology: This analysis is based on a review of the statutory requirements and on discussions among personnel from the Department’s Taxpayer Guidance Division, Office of Counsel, Office of Tax Policy Analysis Bureau of Tax and Fiscal Studies, Office of Budget and Management Analysis, and Management Analysis and Project Services Bureau.

5. Local government mandates: There are no costs or burdens imposed on local governments to comply with this amendment.

6. Paperwork: This rule will not require any new forms or information. The rule merely implements the registration, renewal and recordkeeping requirements of Article 29-C of the Tax Law.

7. Duplication: This rule does not duplicate any other requirements.

8. Alternatives: Since Article 29-C, as added by Part NNN of Chapter 59 of the Laws of 2018, requires that the Commissioner administer the congestion surcharge, and prescribes renewal, registration and recordkeeping requirements, there are no viable alternatives to providing for registration, renewal and recordkeeping procedures and methods.

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

10. Compliance schedule: The required registration, renewal and recordkeeping information has been made available to regulated parties, by means of the emergency adoption of New Subchapter E of the Sales and Use and Other Miscellaneous Tax Regulations on November 19, 2019, in sufficient time for affected parties to comply with the congestion surcharge effective January 1, 2019. This rule adopts the amendments relating to the congestion surcharge as an emergency measure.

Regulatory Flexibility Analysis

A Regulatory Flexibility Analysis for Small Businesses and Local Governments is not being submitted with this rule because it will not impose any adverse economic impact or any additional reporting, recordkeeping, or other compliance requirement on small businesses or local governments.

The purpose of the rule is to add a new Subchapter E to 20 NYCRR, to implement Article 29-C of the Tax Law, as added by Part NNN of Chapter 59 of the Laws of 2018. Article 29-C generally imposes a surcharge on for-hire transportation that begins in, ends in, or passes through the geographic area of the City of New York, in the borough of Manhattan, south of and excluding 96th Street (the “congestion zone”). The Commissioner is required to administer the congestion surcharge imposed by Article 29-C, and to accept the registration of those who will be liable for payment of the surcharge.

Section 1299-C of Article 29-C requires that every person liable for the congestion surcharge file with the commissioner a completed application for a certificate of registration, in a form prescribed by the commissioner, subject to renewal in accordance with rules promulgated by the commissioner. The rule implements section 1299-C by setting forth registration and renewal requirements. Section 1299-E of Article 29-C requires records to be kept by those liable for the surcharge. The rule implements section 1299-E by enumerating those records to be kept by entities subject to the surcharge. Without a recordkeeping requirement, it would be impossible to ensure compliance with section 1299-A of Article 29-C, which imposes the congestion surcharge.

This rule merely complies with the mandates of Article 29-C of the Tax Law, as added by Part NNN of Chapter 59 of the Laws of 2018, by adding a new Subchapter E to 20 NYCRR, setting forth renewal, registration and recordkeeping requirements relating to the congestion surcharge.

Rural Area Flexibility Analysis

A Rural Area Flexibility Analysis is not being submitted with this rule because it will not impose any adverse impact on any rural areas.

The purpose of the rule is to add a new Subchapter E to 20 NYCRR, to implement Article 29-C of the Tax Law, as added by Part NNN of Chapter 59 of the Laws of 2018. Article 29-C generally imposes a surcharge on for-hire transportation that begins in, ends in, or passes through the geographic area of the City of New York, in the borough of Manhattan, south of and excluding 96th Street (the “congestion zone”). The Commissioner is required to administer the congestion surcharge imposed by Article 29-C, and to accept the registration of those who will be liable for payment of the surcharge.

Section 1299-C of Article 29-C requires that every person liable for the congestion surcharge file with the commissioner a completed application for a certificate of registration, in a form prescribed by the commissioner, subject to renewal in accordance with rules promulgated by the commissioner. The rule implements section 1299-C by setting forth registration and renewal requirements. Section 1299-E of Article 29-C requires records to be kept by those liable for the surcharge. The rule enumerates those records to be kept by entities subject to the surcharge. Without a recordkeeping requirement, it would be impossible to ensure compliance with section 1299-A of Article 29-C, which imposes the congestion surcharge.

This rule merely complies with the mandates of Article 29-C of the Tax Law, as added by Part NNN of Chapter 59 of the Laws of 2018, by adding a new Subchapter E to 20 NYCRR, setting forth renewal, registration and recordkeeping requirements relating to the congestion surcharge.

Job Impact Statement

A Job Impact Statement is not being submitted with this rule because it is evident from the subject matter of the rule that it will have no adverse impact on jobs and employment opportunities.

The purpose of the rule is to add a new Subchapter E to 20 NYCRR, to implement Article 29-C of the Tax Law, as added by Part NNN of Chapter 59 of the Laws of 2018. Article 29-C generally imposes a surcharge on for-hire transportation that begins in, ends in, or passes through the geographic area of the City of New York, in the borough of Manhattan, south of and excluding 96th Street (the “congestion zone”). The Commissioner is required to administer the congestion surcharge imposed by Article 29-C, and to accept the registration of those who will be liable for payment of the surcharge.

Section 1299-C of Article 29-C requires that every person liable for the congestion surcharge file with the commissioner a completed application for a certificate of registration, in a form prescribed by the commissioner, subject to renewal in accordance with rules promulgated by the commissioner. Section 1299-E of Article 29-C requires records to be kept by those liable for the surcharge. The rule enumerates those records to be kept by entities subject to the surcharge. Without a recordkeeping requirement, it would be impossible to ensure compliance with section 1299-A of Article 29-C, which imposes the congestion surcharge.

This rule merely complies with the mandates of Article 29-C of the Tax Law, as added by Part NNN of Chapter 59 of the Laws of 2018, by adding a new Subchapter E to 20 NYCRR, setting forth renewal, registration and recordkeeping requirements relating to the congestion surcharge.