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.

Office of Alcoholism and Substance Abuse Services

NOTICE OF ADOPTION

Repeal Part 830 (Acupuncture) and Add New Part 830 (Designated Services; Acupuncture and Telepractice) to Title 14 NYCRR

I.D. No. ASA-44-17-00001-A
Filing No. 32
Filing Date: 2018-01-08
Effective Date: 2018-01-24

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

Action taken: Repeal of Part 830; addition of new Part 830 to Title 14 NYCRR.

Statutory authority: Mental Hygiene Law, sections 19.07(e), 19.09(b) and 32.01; Education Law, art. 160; Public Health Law, section 2999-cc

Subject: Repeal Part 830 (Acupuncture) and add new Part 830 (Designated Services; Acupuncture and Telepractice) to Title 14 NYCRR.

Purpose: Repeal obsolete regulations and incorporate provisions into a new Part with additional provisions.

Substance of final rule (Full text is posted at the following State website: https://www.oasas.ny.gov/regs/index.cfm): The Proposed Rule repeals Part 830 and adds certain provisions of that Part to a new Part 830 (Designated Services) which includes new provisions for "telepractice," an optional technological means of delivering medical assessment, medication assisted treatment and monitoring from a practitioner located at a remote site from the certified program where the patient is admitted for treatment.

Section 830.1 sets forth the Applicability of this new Part.
§ 830.2 sets forth the legal basis for the provisions in this Part.
§ 830.3 defines terms applicable to this Part.
§ 830.4 consolidates certain provisions related to acupuncture in treatment programs from the previous Part 830.
§ 830.5 sets forth the requirements for Office approval for a certified provider to offer certain clinical services (assessment, medication assisted treatment and monitoring) via real-time audio-video systems referred to as "telepractice."
§ 830.6 Standard severability clause.

Final rule as compared with last published rule: Nonsubstantial changes were made in sections 830.3(d), 830.5(b)(viii), (d)(1), (4) and (e)(2).

Text of rule and any required statements and analyses may be obtained from: Sara Osborne, Associate Attorney, NYS Office of Alcoholism and Substance Abuse Services, 1450 Western Ave., Albany NY 12203, (518) 485-2317, email: Sara.Osborne@oasas.ny.gov

Revised Regulatory Impact Statement
A revised regulatory impact statement is not being submitted because the corrections made to the adopted text constitute language intended to clarify the original intent of the regulation, misunderstandings of which were reflected in comments received. The impact statement for the initial proposal and the adopted text are the same because the intent of the regulation is not changed.

Revised Regulatory Flexibility Analysis
A revised statement in lieu of a regulatory flexibility analysis for small businesses and local governments is not being submitted because the corrections made to the adopted text constitute language intended to clarify the original intent of the regulation, misunderstandings of which were reflected in comments received. The Regulatory Flexibility Analysis for the initial proposal and the adopted rulemaking are the same because the intent of the regulation is not changed.

Revised Rural Area Flexibility Analysis
A revised statement in lieu of a rural area flexibility analysis is not being submitted because the corrections made to the adopted text constitute language intended to clarify the original intent of the regulation, misunderstandings of which were reflected in comments received. The Rural Area Flexibility Analysis for the initial proposal and the adopted rulemaking are the same because the intent of the regulation is not changed.

Revised Job Impact Statement
A revised job impact statement is not being submitted because the corrections made to the adopted text constitute language intended to clarify the original intent of the regulation, misunderstandings of which were reflected in comments received. The job impact statement for the initial proposal and the adopted rulemaking are the same because the intent of the regulation is not changed.

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
Notice of Proposed Rule Making was published in the New York State Register on November 1, 2017. The Office of Alcoholism and Substance Abuse Services (OASAS) received two (2) sets of comments during the public comment period associated with the revised rulemaking: from Northwell Health Telehealth Program ("Northwell") and from the Healthcare Association of New York (HANYS). Issues and concerns raised in these comments with OASAS responses are set forth below, grouped according to the section of the rule to which they apply.

830.3(f)(1):

Issue/concern: HANYS urges definition of "distant site" to allow practitioners to be located in non-Medicaid enrolled sites such as a homeless shelter.

Response: Regulation does not define "distant site" to be Medicaid enrolled; OASAS does not require practitioners at a distant site to be located in a Medicaid enrolled site. Practitioners may be located anywhere in the U.S and patients may be located in any site previously approved by the Office which could include such in-community locations. No amendments needed.

830.5(a)(3):

Issue/concern: HANYS is concerned that OASAS requirement for a written plan and attestation from its certified providers is an unnecessary and cumbersome regulatory burden on hospitals and that verifying program compliance as part of the process of recertification of OASAS programs should be sufficient. In lieu of removing the requirement for written approval by the Office, HANYS asks that the approval process by expedited or not unnecessarily delayed.

Response: OASAS is responsible for regulatory oversight of programs it certifies; approving proposals for how those programs utilize this means of service delivery is part of that oversight even if programs propose contracts or MOUs with one or more hospitals. Individual programs may have variations on how they propose to use this means of service delivery; reviewing those different proposals is the way for OASAS to meet its oversight obligations and the designation process proposed in the regulation is a streamlined review process. No amendments needed.

830.5(a)(3):

Issue/concern: Northwell is concerned that OASAS approval of a site where the patient is located may be too restrictive of patient choice and exclude sites such as a primary care office or other medical site; Northwell recommends simplifying the process of originating site approval or utilizing the federal definition of originating site.

Response: Office approval of a certified provider's application does not exclude the possibility of a single site for patients to be located or at multiple sites within a provider network such as multiple primary care offices affiliated with a regional hospital. OASAS defines "originating sites" where the patient is located pursuant to NYS Public Health Law § 2999-cc which is based on federal statute. No amendments needed.

830.5(a)(4):

Issue/concern: HANYS recommends telepractice include a consultation between two staff persons regarding treatment of an individual.

Response: Regulation does not regulate or limit audio or visual conferencing between practitioners; such activities may support telepractice but they are not providing services directly to patients and therefore are not telepractice. OASAS will amend definition to clarify.

830.5(b)(2)(viii):

Issue/concern: HANYS and Northwell propose that agreements should be between an OASAS provider and a site comprised of multiple practitioners rather than with individual practitioners, or between OASAS and a distant site provider.

Response: OASAS regulations do not specify that a provider/practitioner agreement must be with an individual person only and is not intended to be restrictive. OASAS as an agency does not contract for these services but individual certified providers would be the entities contracting with distant practitioners. However, OASAS will amend text to clarify intent.

830.5(b)(2)(ix):

Issue/concern: HANYS and Northwell are concerned that requiring both an individual practitioner and a certified applicant/provider be Medicaid enrolled will exclude access by patients with private insurance.

Response: OASAS does not intend to exclude patients or practitioners who are not Medicaid enrolled; rather the intent is that for purposes of billing Medicaid, both must be enrolled and in good standing. OASAS will amend text to clarify intent.

830.5(c)(1)(v):

Issue/concern: HANYS and Northwell both seek clarification about whether an in-person evaluation to determine if telepractice is appropriate for that person must be done in an OASAS program and if it can be the same day as a telepractice session.

Response: Regulations do not require a patient or prospective patient to be in an OASAS certified program for an evaluation as to whether telepractice is appropriate; the patient must only be located in an OASAS-approved site which could be a primary care office, a community center, a homeless shelter, etc. pursuant to an MOU with the provider/applicant. Such evaluation may be done by clinical staff, as defined in 14 NYCRR Part 800, and may be done on the same day as services delivered via telepractice. No amendments needed.

830.5(d)(1):

Issue/concern: Northwell is concerned that this regulation requires an individual practitioner to be Medicaid enrolled to bill Medicaid and would exclude a site-to-site connection where both sites are Medicaid enrolled and billing on behalf of their employee practitioners. Northwell also is concerned that the the process for becoming designated as a "telehealth provider" is cumbersome.

Response: OASAS does not intend to restrict telepractice to solo practice practitioners and anticipates such site-to-site arrangements will be a significant part of the implementation of this method of service delivery. OASAS will amend text to clarify intent. "Telehealth provider" is defined in public health law (§ 2999-cc) and provides for regulatory definisions by Commissioner of Health. No amendments needed.

830.5(d)(4): HANYS supports billing for an additional administrative fee for transmission services if issued by the NYS Dept. of Health and urges OASAS to work with DOH on making that an available option.

Response: OASAS is in consultation with Dept. of Health. No amendments needed.

830.5(3)(2):

Issue/concern: HANYS and Northwell both seek clarification on the nature of an MOU between a provider/applicant and practitioner regarding payment and billing.

Response: Regulation anticipates the provider/applicant as the default billing entity. However, regulation does not preclude alternative billing arrangements pursuant to an agreement between provider/applicant and practitioner(s). No amendments needed.

NOTICE OF ADOPTION

Children's Behavioral Health Services

I.D. No. ASA-44-17-00002-A
Filing No. 31
Filing Date: 2018-01-08
Effective Date: 2018-01-24

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

Action taken: Addition of Part 823 to Title 14 NYCRR.

Statutory authority: Mental Hygiene Law, sections 19.07(e), 19.09(b) and 32.01; 42 USC, section 1396d(r)(5); 18 NYCRR, section 505.38

Subject: Children's behavioral health services.

Purpose: Defines and implements children's behavioral health services pursuant to the EPSDT program in New York.

Text or summary was published in the November 1, 2017 issue of the Register, I.D. No. ASA-44-17-00002-P.

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

Text of rule and any required statements and analyses may be obtained from: Carmelita Cruz, Senior Attorney, NYS Office of Alcoholism and Substance Abuse Services, 1450 Western Avenue, Albany, NY 12203, (518) 485-2312, email: Carmelita.Cruz@oasas.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 agency received no public comment.

Office of Children and Family Services

ERRATUM

I.D. No. CFS-51-17-00017-EP, pertaining to Specialized Secure Detention Facilities, published in the December 20, 2017 issue of the *State Register*, indicated that public comment would be received until 45 days after publication of the Notice.

The public comment period for this Notice has been extended until February 20, 2018.

Department of Civil Service

ERRATUM

I.D. Nos.: CVS-50-17-00001-P through CVS-50-17-00014-P, pertaining to Jurisdictional Classification, published in the December 13,

2017 issue of the *State Register*, indicated that public comment would be received until 45 days after publication of the Notices.

The public comment periods for these Notices have been extended until February 12, 2018.

NOTICE OF EXPIRATION

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

Jurisdictional Classification

I.D. No.	Proposed	Expiration Date
CVS-01-17-00007-P	January 4, 2017	January 4, 2018
CVS-01-17-00009-P	January 4, 2017	January 4, 2018
CVS-01-17-00017-P	January 4, 2017	January 4, 2018

Department of Economic Development

NOTICE OF ADOPTION

Life Sciences Research and Development Tax Credit

I.D. No. EDV-46-17-00001-A
Filing No. 30
Filing Date: 2018-01-05
Effective Date: 2018-01-24

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

Action taken: Addition of Part 260 to Title 5 NYCRR.

Statutory authority: Tax Law, section 43

Subject: Life Sciences Research and Development Tax Credit.

Purpose: Allow the Department to implement the Life Sciences Research and Development Tax Credit program.

Text or summary was published in the November 15, 2017 issue of the Register, I.D. No. EDV-46-17-00001-EP.

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

Text of rule and any required statements and analyses may be obtained from: Thomas P. Regan, Department of Economic Development, 625 Broadway, Albany, NY 12245, (518) 292-5120, email: thomas.regan@esd.ny.gov

Initial Review of Rule

As a rule that does not require a RFA, RAFA or JIS, this rule will be initially reviewed in the calendar year 2023, which is no later than the 5th year after the year in which this rule is being adopted.

Assessment of Public Comment

The agency received no public comment.

Education Department

ERRATUM

I.D. Nos.: EDU-52-17-00007-EP and EDU-52-17-00012-EP, pertaining to Biological Products in the Profession of Pharmacy, Superintendent Determination for Certain Students with Disabilities to Graduate with a Local Diploma, published in the December 27, 2017 issue of the *State Register*, indicated that public comment would be received until 45 days after publication of the Notices.

The public comment periods for these Notices have been extended until February 26, 2018.

I.D. Nos.: EDU-52-17-00008-P through EDU-52-17-00011-P, pertaining to Requires Teachers to Complete a Mentoring Program During Their First Year of Teaching, Creation of New Certification Area and Tenure Area in the Classroom Teaching Service for Computer Science, Alternative Teacher Certification Program Models, Grade-Level Extensions for Certain Candidates Who Hold a Students with Disabilities Generalist Certificate, published in the December 27, 2017 issue of the *State Register*, indicated that public comment would be received until 45 days after publication of the Notices.

The public comment periods for these Notices have been extended until February 26, 2018.

Department of Environmental Conservation

ERRATUM

I.D. No. ENV-49-17-00005-P, pertaining to Bay Scallop Size Limit; and I.D. No. ENV-49-17-00006-P, pertaining to Climate Smart Communities Project, published in the December 6, 2017 issue of the *State Register*, indicated that public comment would be received until 45 days after publication of the Notices.

The public comment periods for these Notices have been extended until February 5, 2018.

Contact: Ruth L. Earl, Agency Regulatory Coordinator, DEC, 625 Broadway, Albany, NY 12233-1500, (518) 402-2791, e-mail ruth.earl@dec.ny.gov

Department of Financial Services

ERRATUM

I.D. Nos.: DFS-52-17-00001-P and DFS-52-17-00020-P, pertaining to Special Risk Insurance, Suitability in Life Insurance and Annuity Transactions, published in the December 27, 2017 issue of the *State Register*, indicated that public comment would be received until 45 days after publication of the Notices.

The public comment periods for these Notices have been extended until February 26, 2018.

Department of Health

EMERGENCY RULE MAKING

Medical Use of Marihuana

I.D. No. HLT-43-17-00001-E
Filing No. 26
Filing Date: 2018-01-03
Effective Date: 2018-01-03

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

Action taken: Amendment of sections 1004.3, 1004.4, 1004.22 and 1004.23 of Title 10 NYCRR.

Statutory authority: Public Health Law, section 3369-a

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

Specific reasons underlying the finding of necessity: Currently, over 31,000 patients have been certified to use medical marihuana in New York State. Many of these certified patients are admitted into hospitals or reside in residential health care facilities, adult care facilities, community mental health residences, mental hygiene facilities, residential facilities for the care and treatment of persons with developmental disabilities, and residential treatment facilities for children and youth. In addition, there are certified patients who attend private or public schools. These severely ill, and often disabled, certified patients are currently being denied access to medical marihuana because of concerns from facilities over the handling of the medication. Denying certified patients access to medical marihuana,

or forcing them to abruptly discontinue using medical marihuana, poses an immediate risk to the health and safety of these patients, some of whom are terminally ill.

The proposed regulations are necessary to immediately allow these facilities the option of becoming designated caregivers for certified patients. Once registered with the Department, designated caregivers are authorized by Public Health Law Section 3362 to possess, acquire, deliver, transfer, transport and/or administer medical marihuana on behalf of their certified patient(s). By allowing a facility to become a designated caregiver, these regulations will authorize the facility to lawfully possess, acquire, deliver, transfer, transport and/or administer medical marihuana to certified patients residing in, or attending, that facility. In doing so, these regulations will help prevent patients from experiencing adverse events associated with abrupt discontinuation of this treatment alternative.

Subject: Medical Use of Marihuana.

Purpose: To allow certain defined facilities to become a designated caregiver for a certified patient in NYS's Medical Marihuana Program.

Text of emergency rule: Subdivision (k) of section 1004.3 is amended to read as follows:

(k) A certified patient may designate up to two designated caregivers either on the application for issuance or renewal of a registry identification card or in another manner determined by the department. *A designated caregiver may be either a natural person or a facility. For purposes of this section, a "facility" shall mean: a general hospital or residential health care facility operating pursuant to Article 28 of the Public Health Law; an adult care facility operating pursuant to Title 2 of Article 7 of the Social Services Law; a community mental health residence established pursuant to section 41.44 of the Mental Hygiene Law; a hospital operating pursuant to section 7.17 of the Mental Hygiene Law; a mental hygiene facility operating pursuant to Article 31 of the Mental Hygiene Law; an inpatient or residential treatment program certified pursuant to Article 32 of the Mental Hygiene Law; a residential facility for the care and treatment of persons with developmental disabilities operating pursuant to Article 16 of the Mental Hygiene Law; a residential treatment facility for children and youth operating pursuant to Article 31 of the Mental Hygiene Law; or a private or public school. Further, within each of the facilities listed above, each division, department, component, floor or other unit of such facility shall be entitled to be considered to be a "facility" for purposes of this section.* The application *for issuance or renewal of a registry identification card* shall include the following information:

* * *

(3) date of birth of the proposed designated caregiver(s)*, unless the proposed designated caregiver is not a natural person*;

* * *

Subdivision (b) of section 1004.4 is amended to read as follows:

(b) A *facility or natural* person selected by a certified patient as a designated caregiver [shall] *may* apply to the department for a registry identification card or renewal of such card on a form or in a manner determined by the department. The proposed designated caregiver shall submit an application to the department which shall contain the following information and documentation:

(1) *For a proposed designated caregiver that is a natural person, the individual shall submit:*

(i) the applicant's full name, address, date of birth, telephone number, email address if available, and signature;

([2]*ii*) if the applicant has a registry identification card, the registry identification number;

([3]*iii*) a nonrefundable application fee of fifty ($50) dollars, provided, however that the department may waive or reduce the fee in cases of financial hardship as determined by the department;

([4]*iv*) a statement that the applicant is not the certified patient's practitioner;

([5]*v*) a statement that the applicant agrees to secure and ensure proper handling of all approved medical marihuana products;

([6]*vi*) acknowledgement that a false statement in the application is punishable under section 210.45 of the penal law;

([7]*vii*) proof that the applicant is a New York State resident, consisting of a copy of either:

([i]*a*) a New York State issued driver's license; or

([ii]*b*) a New York State *non-driver* identification card;

([8]*viii*) If the documentation submitted by the applicant in accordance with paragraph ([7]*vii*) of this subdivision does not contain a photograph of the applicant or the photograph on the documentation is not a true likeness of the applicant, the applicant shall provide one recent passport-style color photograph of the applicant's face taken against a white background or backdrop. The photograph shall be a true likeness of the applicant's appearance on the date the photograph was taken and shall not be altered to change any aspect of the applicant's physical appearance. The photograph shall have been taken not more than thirty (30) days prior to the date of the application. The photograph shall be submitted in a form and manner as directed by the department, including as a digital file (.jpeg).

([9]*ix*) Identification of all certified patients for which the applicant serves, has served or has an application pending to serve as a designated caregiver and a statement that the applicant is not currently a designated caregiver for five current certified patients, and that he/she has not submitted an application which is pending and, if approved, would cause the applicant to be a designated caregiver for a total of five current certified patients;

(2) For a proposed designated caregiver that is an entire facility that is licensed or operated pursuant to an authority set forth in subdivision (k) of section 1004.3 of this Part, the designated caregiver shall submit:

(i) the facility's full name, address, operating certificate or license number where appropriate, email address, and printed name, title, and signature of an authorized facility representative;

(ii) if the facility has a registry identification card, the registry identification number;

(iii) a statement that the facility agrees to secure and ensure proper handling of all approved medical marihuana products; and

(iv) an acknowledgement that a false statement in the application is punishable under section 210.45 of the penal law;

(3) For a proposed designated caregiver that is a division, department, component, floor or other unit pursuant to subdivision (k) of section 1004.3 of this Part, the designated caregiver shall submit:

(i) the parent facility's full name, address, operating certificate or license number where appropriate, email address, and printed name, title and signature of an authorized representative of the parent facility and of an authorized representative of the division, department, component, floor or other unit;

(ii) if the parent facility, division, department, component, floor or other unit has a registry identification card, the registry identification number;

(iii) a statement that the parent facility, and the division, department, component, floor or other unit, agree to secure and ensure proper handling of all approved medical marihuana products; and

(iv) an acknowledgement that a false statement in the application is punishable under section 210.45 of the penal law.

Subdivision (e) of section 1004.22 is amended to read as follows:

(e) A practitioner shall not be a designated caregiver for any patients that he or she has certified under section 1004.2 of this Part. *However, this shall not prohibit a facility, or a division, department, component, floor or other unit from being a designated caregiver pursuant to section 1004.4 of this Part.*

Section 1004.23 is amended as follows:

§ 1004.23 Designated Caregiver Prohibitions *and Protections*

* * *

(b) A designated caregiver may only obtain payment from the certified patient to be used for the cost of the approved medical marihuana product purchased for the certified patient in the actual amount charged by the registered organization; provided, however, that a designated caregiver may charge the certified patient for reasonable costs incurred in the transportation*,* [and] delivery*, storage and administration* of *approved* medical marihuana [product to the certified patient] *products*.

(c) Designated caregivers, including employees of facilities registered as designated caregivers and acting within their scope of employment, shall not be subject to arrest, prosecution, or penalty in any manner, or denied any right or privilege, including but not limited to civil penalty or disciplinary action by a business or occupational or professional licensing board or bureau, solely for an action or conduct in accordance with this Part.

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-43-17-00001-P, Issue of October 25, 2017. The emergency rule will expire March 3, 2018.

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

Regulatory Impact Statement

Statutory Authority:

The Commissioner is authorized pursuant to Section 3369-a of the Public Health Law (PHL) to promulgate rules and regulations necessary to effectuate the provisions of Title V-A of Article 33 of the Public Health Law.

Legislative Objectives:

The legislative objective of Title V-A is to comprehensively regulate the manufacture, sale and use of medical marihuana, by striking a balance between potentially relieving the pain and suffering of those individuals with serious medical conditions, as defined in Section 3360(7) of the Public Health Law, and protecting the public against risks to its health and safety.

Needs and Benefits:

The proposed regulations are necessary to allow certain defined facilities to seek Department of Health approval to become a designated caregiver for a certified patient in New York State's Medical Marihuana Program. A certified patient must have one of the severe debilitating or life-threatening conditions listed in Section 1004.2(8) of Title 10 Part 1004 in order to receive a certification and subsequently register with the Medical Marihuana Program. Patients with one of these conditions might not be able to visit the dispensing facilities operated by registered organizations to pick up their medical marihuana, or might not be able to administer medical marihuana to themselves properly, and therefore need to rely on designated caregivers. Previously, the regulations only allowed for designated caregivers to be natural persons. However, recognizing that certified patients may be located in certain facilities, the proposed regulations would allow those certain facilities to be designated caregivers. Facilities designated as caregivers by certified patients would have the ability to register with the Department. Further, each division, department, component, floor or other unit of a parent facility may be designated as a "facility" for purposes of being designated a caregiver. After registering, a designated caregiver facility would be authorized to possess, acquire, deliver, transfer, transport, and administer medical marihuana on behalf of a certified patient. This would help to prevent patients from experiencing adverse events associated with abrupt discontinuation of a treatment alternative that may be providing relief for the severe debilitating or life-threatening condition.

Costs:

Costs to the Regulated Entity:

Facilities seeking to register as designated caregivers would incur nominal administrative costs in registering. Pursuant to PHL Section 3363(f), there is a $50 application fee for designated caregivers to register with the department. However, the department is currently waiving the $50 application fee for all designated caregivers, including facilities registering as designated caregivers.

Costs to Local Government:

The proposed rule does not require the local government to perform any additional tasks; therefore, it is not anticipated to have an adverse fiscal impact.

Costs to the Department of Health:

The Department anticipates an increased administrative cost to support facilities seeking to register as designated caregivers, however such increase would be minimal.

Local Government Mandates:

The proposed amendments do not impose any new programs, services, duties or responsibilities on local government.

Paperwork:

No paperwork will be required to be maintained, as the registration process for designated caregivers is all done electronically. A registry identification card will be provided to the facility. The facility will be responsible for maintaining the registry identification card at all times when medical marihuana is present at the facility for the certified patient. The facility may have its own paperwork related to internal policies and procedures for possession of the registry identification card by staff members.

Duplication:

The proposed regulations do not duplicate any existing State or federal requirements.

Alternatives:

The Department could have chosen to keep the status quo and not allow patients to designate facilities as designated caregivers. The Department could have also allowed certified patients to designate an individual within the facility to be a caregiver. However, these options are not viable since patients in facilities may be cared for by multiple staff members in the course of a day. Certified patients have severe debilitating or life-threatening conditions and the regulatory amendments would help to prevent adverse events associated with abrupt discontinuation of a treatment alternative that may be providing relief for certified patients in these facilities.

Federal Standards:

Federal requirements do not include provisions for a medical marihuana program.

Compliance Schedule:

There is no compliance schedule imposed by these amendments, which shall be effective upon filing with the Secretary of State.

Regulatory Flexibility Analysis

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

Cure Period:

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 the party or parties subject to enforcement under the proposed regulation. The regulatory amendment authorizing the patients to designate facilities as designated caregivers does not mandate that a facility register with the medical marihuana program. Hence, no cure period is necessary.

Rural Area Flexibility Analysis

No Rural Area Flexibility Analysis is required pursuant to Section 202-bb(4)(a) of the State Administration Procedure Act (SAPA). It is apparent from the nature of the proposed regulation that it will not impose any adverse impact on rural areas, and the rule does not impose any new reporting, recordkeeping or other compliance requirements on public or private entities in rural areas.

Job Impact Statement

No job impact statement is required pursuant to Section 201-a(2)(a) of the State Administrative Procedure Act. It is apparent, from the nature of the proposed amendment, that it will not have an adverse impact on jobs and employment opportunities.

Assessment of Public Comment

The Department of Health ("Department") received comments from various stakeholders, including representatives of hospitals, nursing homes and assisted living providers. Comments were received regarding the storage and administration of medical marihuana products, the process for registering as a designated caregiver facility, the federal status of marihuana, and various other topics. Based on the comments received, no changes are being made to the emergency rulemaking.

PROPOSED RULE MAKING
NO HEARING(S) SCHEDULED

Emergency Medical Services (EMS) Initial Certification Eligibility Requirements

I.D. No. HLT-04-18-00010-P

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

Proposed Action: Amendment of section 800.6 of Title 10 NYCRR.

Statutory authority: Public Health Law, section 3002

Subject: Emergency Medical Services (EMS) Initial Certification Eligibility Requirements.

Purpose: To reduce the EMS certification eligibility minimum age from 18 to 17 years of age.

Text of proposed rule: Pursuant to the authority vested in the New York State Emergency Medical Services Council and subject to the approval of the Commissioner of Health pursuant to section 3002 of the Public Health Law, section 800.6 of Title 10 (Health) of the Official Compilation of Codes, Rules and Regulations of the State of New York is hereby amended to be effective upon publication of a Notice of Adoption in the New York State Register, to read as follows:

Emergency Medical Services Personnel

Section 800.6 Initial Certification Requirements

To qualify for initial certification, an applicant shall:

(a) file a completed application bearing the applicant's original signature in ink, or an electronic application approved by the department.

(b) be at least *17* [18] years of age prior to the last day of the month in which he/she is scheduled to take the written certification examination for the course in which they are enrolled, except that an applicant for certified first responder must be at least 16 years of age prior to the last day of the month in which he/she is scheduled to take the written certification examination;

(c) satisfactorily complete the requirements of a state-approved course given by a state-approved course sponsor at one of the following levels for which certification is available:

(1) certified first responder (CFR);
(2) emergency medical technician (EMT);
(3) advanced emergency medical technician;
(4) emergency medical technician-critical care (EMT-CC);
(5) emergency medical technician-paramedic (EMT-P);
(6) certified laboratory instructor (CLI); or
(7) certified instructor coordinator (CIC).

(d) pass the State practical skills examination for the level at which certification is sought within one year of the scheduled written examination date for the course;

(e) after passing the practical skills examination, pass the State written certification examination for the level at which certification is sought within one year of the scheduled written examination date for the course, except at the certified instructor coordinator level and certified lab instructor level; and

(f) if the applicant has been convicted of one or more criminal offenses, as defined in section 800.3(ak) of this Part, be found eligible after a balancing of the factors set out in Article 23-A of Corrections Law. In accordance with that Article, no application for a license shall be denied by reason of the applicant having been previously convicted of one or more criminal offenses unless:

(1) there is a direct relationship between one or more of the previous criminal offenses and duties required of this certificate; or

(2) certifying the applicant would involve an unreasonable risk to property or the safety or welfare of a specific individual or the general public. In determining these questions, the agency will look at the eight factors listed under New York State Corrections Law Section 753.

(g) not have been found guilty or in violation, in any jurisdiction, of any other non- criminal offense or statutory and/or regulatory violation, as those terms are defined in Section 800.3 of this Part, relating to patient safety unless the department determines such applicant would not involve an unreasonable risk to property or the safety or welfare of a specific individual or the general public.

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

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

Public comment will be received until: March 26, 2018.

Regulatory Impact Statement

Statutory Authority:

Article 30 of the Public Health Law, section 3002(2) grants the New York State EMS Council (SEMSCO) the power, by an affirmative vote of a majority of those present, subject to approval by the commissioner, to enact and, from time to time, amend and repeal rules and regulations establishing minimum standards for ambulance services, ambulance service certification, advanced life support first response services, the provision of prehospital emergency medical care, public education, the development of a statewide emergency medical services system, the provision of ambulance services outside the primary territory specified in the ambulance services' certificate and the training, examination, and certification of certified first responders, emergency medical technicians, and advanced emergency medical technicians; provided, however, that such minimum standards must be consistent with the staffing standards established by section 3005-a of the Public Health Law.

Legislative Objectives:

The legislative objective of PHL Article 30 includes establishing minimum standards for ambulance services and to promote appropriate staffing standards for the provision of EMS care.

Needs and Benefits:

At present, there is a dearth of individuals participating in the EMS system across the state. In order to be a Certified First Responder (CFR), an individual must be at least 16 years of age. However, this level of certification does not meet the minimum staffing requirements for the transport of a patient in an ambulance. Approximately 2% of all certified EMS providers in New York State are under the age of twenty (20). Lowering the minimum age for initial EMT certification to 17 would enable high school age individuals who are currently in school to be certified through structured, school based programs and complete the certification process prior to graduating. At present, the age requirement of 18 precludes many students from being certified before graduation. There may be employment and volunteer opportunities for people who are 17 years old who complete the training and achieve initial EMT certification.

Costs:

Costs to Regulated Parties:

The rule does not impose any new compliance costs on regulated parties.

Costs to the Agency and to the State and Local Governments Including this Agency:

The rule does not impose any new compliance costs to the Agency, the State or Local Governments.

Local Government Mandates:

This rule imposes no mandates upon any county, city, town, village, school district, fire district, or other special district.

Paperwork:

The rule imposes no new reporting requirements, forms, or other paperwork upon regulated parties.

Duplication:

There are no relevant rules or other legal requirements of the Federal or State governments that duplicate, overlap, or conflict with this rule.

Alternatives:

The alternative is to maintain the current regulatory requirement that an individual must be eighteen (18) years of age prior to the last day of the month in which he/she is scheduled to take the written certification examination for the course in which they are enrolled. As stated above, this requirement precludes many students from being certified before graduation.

Federal Standards:

The rule does not exceed any minimum standards of the Federal government for the same or similar subject area.

Compliance Schedule:

The amendment will take effect when the Notice of Adoption is published in the State Register.

Regulatory Flexibility Analysis

No regulatory flexibility analysis is required. The proposed amendment does not impose an adverse economic impact on small businesses or local governments, and it does not impose reporting, record keeping or other compliance requirements on small businesses or local governments. At present the regulations require an individual to be eighteen (18) years of age prior to the last day of the month in which he/she is scheduled to take the written certification examination for the course in which they are enrolled. This proposed amendment would reduce the minimum age to seventeen (17) years of age in order to enable training programs to be offered in high schools and BOCES programs so that young people would be able to work or volunteer as EMS providers.

Rural Area Flexibility Analysis

No rural area flexibility analysis is required. The proposed amendment does not impose an adverse impact on facilities in rural areas, and it does not impose reporting, record keeping or other compliance requirements on facilities in rural areas. At present the regulations require an individual to be eighteen (18) years of age prior to the last day of the month in which he/she is scheduled to take the written certification examination for the course in which they are enrolled. This proposed amendment would reduce the minimum age to seventeen (17) years of age in order to enable training programs to be offered in high schools and BOCES programs so that young people would be able to work or volunteer as EMS providers.

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. At present the regulations require an individual to be eighteen (18) years of age prior to the last day of the month in which he/she is scheduled to take the written certification examination for the course in which they are enrolled. This proposed amendment would reduce the minimum age to seventeen (17) years of age in order to enable training programs to be offered in high schools and BOCES programs so that young people would be able to work or volunteer as EMS providers.

Office of Information Technology Services

ERRATUM

I.D. Nos.: ITS-52-17-00002-P through ITS-52-17-00005-P, pertaining to Implementing the Electronic Signatures and Records Act, Concerning State Agency Internet Posting of Application Forms, Providing Public Access to the Records of the Office of Information Technology Services, Providing Access to Personal Information, published in the December 27, 2017 issue of the *State Register*, indicated that public comment would be received until 45 days after publication of the Notices.

The public comment periods for these Notices have been extended until February 26, 2018.

Department of Labor

EMERGENCY RULE MAKING

Home Care Aide Hours Worked

I.D. No. LAB-04-18-00002-E
Filing No. 29
Filing Date: 2018-01-05
Effective Date: 2018-01-05

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

Action taken: Amendment of sections 142-2.1(b), 142-3.1(b) and 143.7 of Title 12 NYCRR.

Statutory authority: Labor Law, sections 21(11) and 659; State Administrative Procedure Act, section 202(6)

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

Specific reasons underlying the finding of necessity: This emergency regulation is needed to preserve the status quo, prevent the collapse of the home care industry, and avoid institutionalizing patients who could be cared for at home, in the face of recent decisions by the State Appellate Divisions that treat meal periods and sleep time by home care aides who work shifts of 24 hours or more as hours worked for purposes of state (but not federal) minimum wage. As a result of those decisions, home care agencies may cease to provide home care aides thereby threatening the continued operation of this industry that employs and serves thousands of New Yorkers by providing vital, lifesaving services and averting the institutionalization of those who could otherwise be cared for at home. Because those decisions relied upon the Commissioner's regulation, and rejected the Department's opinion letters as inconsistent with that regulation, this emergency adoption amends the relevant regulations to codify the Commissioner's longstanding and consistent interpretations that such meal periods and sleep times do not constitute hours worked for purposes of minimum wage and overtime requirements.

Subject: Home Care Aide Hours Worked.

Purpose: To clarify that hours worked may exclude meal periods and sleep times for home care aides who work shifts of 24 hours or more.

Text of emergency rule: Sections 142-2.1, 142-3.1 and 143.7 of 12 NYCRR are amended to read as follows:

§ 142-2.1 Basic minimum hourly wage rate and allowances.

(a) The basic minimum hourly wage rate shall be, for each hour worked in:

(1) New York City for

(i) Large employers of eleven or more employees
$11.00 per hour on and after December 31, 2016;
$13.00 per hour on and after December 31, 2017;
$15.00 per hour on and after December 31, 2018;

(ii) Small employers of ten or fewer employees
$10.50 per hour on and after December 31, 2016;
$12.00 per hour on and after December 31, 2017;
$13.50 per hour on and after December 31, 2018;
$15.00 per hour on and after December 31, 2019;

(2) Remainder of downstate (Nassau, Suffolk and Westchester counties)
$10.00 per hour on and after December 31, 2016;
$11.00 per hour on and after December 31, 2017;
$12.00 per hour on and after December 31, 2018;
$13.00 per hour on and after December 31, 2019;
$14.00 per hour on and after December 31, 2020;
$15.00 per hour on and after December 31, 2021;

(3) Remainder of state (outside of New York City and Nassau, Suffolk and Westchester counties)
$9.70 per hour on and after December 31, 2016;
$10.40 per hour on and after December 31, 2017;
$11.10 per hour on and after December 31, 2018;
$11.80 per hour on and after December 31, 2019;
$12.50 per hour on and after December 31, 2020.

(4) If a higher wage is established by Federal law pursuant to 29 U.S.C. section 206 or its successors, such wage shall apply.

(b) The minimum wage shall be paid for the time an employee is permitted to work, or is required to be available for work at a place prescribed by the employer, and shall include time spent in traveling to the extent that such traveling is part of the duties of the employee. However, a residential employee--one who lives on the premises of the employer—shall not be deemed to be permitted to work or required to be available for work: (1) during his or her normal sleeping hours solely because he is required to be on call during such hours; or (2) at any other time when he or she is free to leave the place of employment. *Notwithstanding the above, this subdivision shall not be construed to require that the minimum wage be paid for meal periods and sleep times that are excluded from hours worked under the Fair Labor Standards Act of 1938, as amended, in accordance with sections 785.19 and 785.22 of 29 C.F.R. for a home care aide who works a shift of 24 hours or more.*

§ 142-3.1 Basic minimum hourly wage rate.

(a) The basic minimum hourly wage rate shall be, for each hour worked in:

(1) New York City for

(i) Large employers of eleven or more employees
$11.00 per hour on and after December 31, 2016;
$13.00 per hour on and after December 31, 2017;
$15.00 per hour on and after December 31, 2018;

(ii) Small employers of ten or fewer employees
$10.50 per hour on and after December 31, 2016;
$12.00 per hour on and after December 31, 2017;
$13.50 per hour on and after December 31, 2018;
$15.00 per hour on and after December 31, 2019;

(2) Remainder of downstate (Nassau, Suffolk and Westchester counties)
$10.00 per hour on and after December 31, 2016;
$11.00 per hour on and after December 31, 2017;
$12.00 per hour on and after December 31, 2018;
$13.00 per hour on and after December 31, 2019;
$14.00 per hour on and after December 31, 2020;
$15.00 per hour on and after December 31, 2021;

(3) Remainder of state (outside of New York City and Nassau, Suffolk and Westchester counties)
$9.70 per hour on and after December 31, 2016;
$10.40 per hour on and after December 31, 2017;
$11.10 per hour on and after December 31, 2018;
$11.80 per hour on and after December 31, 2019;
$12.50 per hour on and after December 31, 2020.

(4) If a higher wage is established by Federal law pursuant to 29 U.S.C. section 206 or its successors. Such wage shall apply.

(b) The minimum wage shall be paid for the time an employee is permitted to work, or is required to be available for work at a place prescribed by the employer, and shall include time spent in traveling to the extent that such traveling is part of the duties of the employee. However, a residential employee--one who lives on the premises of the employer--shall not be deemed to be permitted to work or required to be available for work:

(1) during his or her normal sleeping hours solely because such employee is required to be on call during such hours; or

(2) at any other time when he or she is free to leave the place of employment.

Notwithstanding the above, this subdivision shall not be construed to require that the minimum wage be paid for meal periods and sleep times that are excluded from hours worked under the Fair Labor Standards Act of 1938, as amended, in accordance with sections 785.19 and 785.22 of 29 C.F.R. for a home care aide who works a shift of 24 hours or more.

§ 143.7 An hour.

The term an hour shall include each hour an employee is permitted to work, or is required to be available for work at a place prescribed by the employer, and shall include time spent in traveling to the extent that such traveling is part of the duties of the employee. However, a residential employee–one who lives on the premises of the employer–shall not be deemed to be permitted to work or required to be available for work:

(a) during such employee's normal sleeping hours solely because he or she is required to be on call during such hours;

(b) at any other time when he or she is free to leave the place of employment.

Notwithstanding the above, the term an hour shall not be construed to include meal periods and sleep times that are excluded from hours worked under the Fair Labor Standards Act of 1938, as amended, in accordance with sections 785.19 and 785.22 of 29 C.F.R. for a home care aide who works a shift of 24 hours or more.

This notice is intended to serve only as a notice of emergency adoption. This agency intends to adopt this emergency rule as a permanent rule and will publish a notice of proposed rule making in the *State Register* at some future date. The emergency rule will expire April 4, 2018.

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

Regulatory Impact Statement

Statutory Authority: State Administrative Procedure Act (SAPA) § 202(6) and Labor Law §§ 21(11) and 659.

Legislative Objectives: In enacting the Minimum Wage Law (Labor Law Article 19) in 1960 the Legislature mandated that the minimum wage be paid "for each hour worked" (Labor Law § 652(1)), without defining that phrase (Labor Law § 651), and delegated authority to the Commissioner of Labor ("Commissioner") 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). While Labor Law § 659(2) provides for rulemaking after a hearing, emergency adoption of this rulemaking is authorized "[n]otwithstanding any other law" by SAPA § 202(6).

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 Parts 142 and 143) ("the Wage Order"). The Wage Order contains regulations that defined the term "An hour" and provided that the requirement to pay minimum wages expressly covers time "an employee is permitted to work, or required to be available for work at a place prescribed by the employer." The Wage Order's regulations explicitly recognized that such time shall not be deemed to include sleeping time of a residential employee "solely because he or she is required to be on call during such hours" (see 12 NYCRR §§ 142-2.1(b), 142-3.1(b) & 143.7, originally promulgated as Minimum Wage Order 11 (1960), at II.A.1 (Hourly rate) and III.A.1 (Hourly rate), and Regulations (for exempt nonprofits) at IV.7 (A hour), and published at NYCRR, Supplement 15 (1963) at 344-64).

Legislative expansions to cover workers in the home. Over the years, the Legislature expanded the scope of the Minimum Wage Law as applied to domestic service and home companions. The original 1960 enactment expressly excluded any individual "employed or permitted to work (a) in domestic service in the home of the employer" (L. 1960, Ch. 691, § 2). In 1972, the Legislature removed that exclusion and replaced it with an exclusion for "service as a part time baby sitter in the home of the employer; or someone who lives in the home of the employer for the purpose of serving as a companion to a sick, convalescing or elderly person, and whose principal duties do not include housekeeping" (L. 1971, Ch. 1165, § 1). Finally, in 2010, the Legislature removed the exclusion for in-home companions as part of the Domestic Workers Bill of Rights (L. 2010, Ch. 481 § 8).

Administrative interpretations accompany statutory expansions. The above-referenced legislative expansions in 1972 and 2010 were each preceded by Commissioner's interpretations in the late 1960s and early 1980s that construed the statutory exclusions of domestic service and companions "in the home of the employer" to be inapplicable to domestic service and companions who were employed by agencies and placed in the home of a client. Such interpretations were affirmed by the Board of Standards and Appeals and its successor the Industrial Board of Appeals, and eventually by the Courts (see e.g., Settlement Home Care v. Industrial Board of Appeals, 151 A.D. 580 (2d Dept. 1989)). As the scope of minimum wage coverage expanded through administrative interpretations and legislative enactments, the Commissioner continued to interpret the statutory requirement to pay minimum wages for "each hour worked" to exclude sleep and meal periods of various categories of newly covered workers who were employed by agencies to work in the home of a client for extended periods of time. Those interpretations were set forth in investigators' manuals, formal guidelines, legal opinions, and Commissioner's determinations starting in the early 1970s, and were relied upon by the New York State Department of Health and by private agencies that employed home care aides. While the Commissioner did not amend the Wage Order's regulations to expressly codify those interpretations, she did amend it in 1986 to provide for overtime to be calculated "in the manner and methods provided for in and subject to the exemptions of" the federal Fair Labor Standards Act (FLSA) (12 NYCRR §§ 142-2.2 & 142-3.2) and, in so doing, grew to increasingly look to, and rely upon, federal FLSA regulations interpreting hours worked (29 CFR Part 785) to address meal periods (29 CFR §§ 785.18-19) and sleeping time (29 CFR §§ 785.20-23) so that hours worked were calculated consistently at the state and federal level for overtime (and other) purposes.

Needs and Benefits: This emergency regulation is necessary to preserve the status quo, prevent the collapse of the home care industry, and avoid institutionalizing patients who could be cared for at home, in the face of recent decisions by the State Appellate Divisions for the First and Second Departments that treat meal periods and sleep time by home care aides as hours worked for purposes of state (but not federal) minimum wage. Tokhtaman v. Human Care, LLC, Docket No. 3671 151268/16, 2017 NY Slip Op 02759 (1st Dept. Apr. 11, 2017), motion to reargue and for leave to appeal denied, 2017 NY Slip Op 82713(U) (1st Dept. Aug. 15, 2017); Andryeyeva v. New York Health Care, Inc., 2017 NY Slip Op 06421 (2nd Dept. Sept. 13, 2017); and Moreno v Future Care Health Servs., Inc., 2017 NY Slip Op 06439 (2nd Dept. Sept. 13, 2017). Absent a conflict between the First and Second Departments, and a final judgement in any of these cases that would make them ripe to be heard by the Court of Appeals, the Commissioner must take action now to avert an impending crisis. Emergency adoption of this regulation is necessary for the preservation of the public health, safety, and general welfare to ensure that home care aides will be available to provide care for, and avoid the institutionalization of, those who rely on home care.

The purpose and intent of this rulemaking is to narrowly codify the Commissioner's longstanding and consistent interpretation that compensable hours worked under the State Minimum Wage Law do not include meal periods and sleep time of home care aides who work shifts of 24 hours or more. While the Commissioner's interpretations regarding meal periods and sleep time have not been limited to home care aides, the current emergency is, and thus the necessarily limited nature of this emergency rulemaking should not be taken as evidence that the Commissioner interprets hours worked to include meal periods and sleep time for all others who work shifts of 24 hours or more. Rather, the Commissioner anticipates that regulations to codify the full scope of her interpretations regarding meal periods and sleep time can be appropriately pursued through the ordinary rulemaking process, after a public hearing and a full notice and comment period.

Costs: As this rule codifies existing Federal regulations and the Commissioner's interpretations, the Department estimates that there will be no costs to the regulated community, to the Department of Labor, or to state and local governments to implement this rulemaking.

Local Government Mandates: None. Federal, state and municipal governments and political subdivisions thereof are excluded from coverage under Part 142 by Labor Law §§ 651(5)(n) and 651(5)(last paragraph).

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: This rule keeps New York State in conformity with existing Federal standards involving working time contained in Federal Regulations 29 C.F.R. Part 785, as applied to meal periods and sleep time for home care aides who work shifts of 24 hours or more. There are no other federal standards relating to this rule.

Compliance Schedule: This emergency rulemaking shall become effective upon filing with the Department of State.

Regulatory Flexibility Analysis

Effect of Rule: The purpose and intent of this emergency rulemaking is to narrowly codify the Commissioner's longstanding and consistent interpretation of Article 19 of the Labor Law and to make clear that the amended regulations shall not be construed to require that the minimum wage be paid for meal periods and sleep times that are excluded from hours worked under the federal minimum wage laws and regulations for home care aides who work shifts of 24 hours or more. The Department anticipates this will have a positive impact on small businesses as it will eliminate any instability introduced by decisions recently issued by the State Appellate Divisions. See Tokhtaman v. Human Care, LLC, Docket No. 3671 151268/16, 2017 NY Slip Op 02759 (1st Dept. Apr. 11, 2017), motion to reargue and for leave to appeal denied, 2017 NY Slip Op 82713(U) (1st Dept. Aug. 15, 2017); Andryeyeva v. New York Health Care, Inc., 2017 NY Slip Op 06421 (2nd Dept. Sept. 13, 2017); and Moreno v Future Care Health Servs., Inc., 2017 NY Slip Op 06439 (2nd Dept. Sept. 13, 2017).

Compliance Requirements: Small businesses and local governments will not have to undertake any new reporting, recordkeeping, or other affirmative act in order to comply with this regulation.

Professional Services: No professional services would be required to effectuate the purposes of this regulation.

Compliance Costs: As this regulation codifies existing administrative interpretations relied upon by regulators and employers, the Department estimates that there will be no costs to the small businesses or local governments to implement this regulation.

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).

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, the Department will ensure that small businesses and local governments have an opportunity to participate in the rulemaking process. In connection with a final revision to the regulation, the Department will elicit input from small businesses and local governments during the public comment period, and through a publicly scheduled hearing in accordance with Labor Law §§ 659 and 656.

Initial review of the rule pursuant to SAPA § 207: Initial review of this regulation shall occur no later than the third calendar year in which it is adopted.

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: 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: As this regulation codifies the Commissioner's longstanding interpretation of Article 19 of the Labor Law, consistent with federal law and regulations, the Department estimates that there will be no new or additional costs to rural areas to implement this regulation.

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.

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, the Department will ensure that rural areas in the state have an opportunity to participate in the rulemaking process. In connection with a final revision to the regulation, the Department will elicit input from rural areas of the state during the public comment period, and through a publicly scheduled hearing in accordance with Labor Law §§ 659 and 656.

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 emergency rulemaking. Rather, this regulation will help to limit or eliminate any negative impact on jobs from recent court decisions affecting the home care industry. This regulation amends existing regulations to codify the Commissioner's longstanding and consistent interpretation of Article 19 of the Labor Law and clarify that the amended regulations shall not be construed to require that the minimum wage be paid for meal periods and sleep times that are excluded from hours worked under federal minimum wage laws and regulations for home care aides who work shifts of 24 hours or more. 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 help to ensure the stability of the jobs of home care workers who work shifts of 24 hours or more in New York State. According to the Department's Division of Research and Statistics, there are an estimated 330,650 home care aides employed across the state.

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.

Self-employment opportunities: The Department does not foresee a measureable impact upon opportunities for self-employment resulting from adoption of this regulation.

Initial review of the rule pursuant to SAPA § 207: Initial review of this regulation shall occur no later than the third calendar year in which it is adopted.

Assessment of Public Comment

The agency received no public comment.

State Liquor Authority

NOTICE OF ADOPTION

Updated Price Posting Rules and Recordkeeping Requirements, and Repeal of License Durations and Whiskey Dividend Rules

I.D. No. LQR-35-17-00002-A
Filing No. 33
Filing Date: 2018-01-08
Effective Date: 2018-01-24

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

Action taken: Amendment of sections 65.5 and 65.11; repeal of Part 90 and section 97.1 of Title 9 NYCRR.

Statutory authority: State Administrative Procedures Act, section 201; Alcoholic Beverage Control Law, section 55-a(1), 101(1)(c), 101-b(4) and 109(1)

Subject: Updated price posting rules and recordkeeping requirements, and repeal of license durations and whiskey dividend rules.

Purpose: To update price posting rules and recordkeeping requirements, and repeal of license durations and whiskey dividend rules.

Text of final rule: Title 9, Subtitle B, of the Official Compilation of Codes, Rules and Regulations of the State of New York (NYCRR), is hereby amended to include amendments to sections 65.5, and 65.11, as well as the repeal of part 90 and section 97.1.

§ 65.5 Prices to wholesalers

(a) The prices of liquor to wholesalers must be scheduled by the following methods for designated points of shipment. If the brand owner or brand agent ships from more than one point-of-shipment to any wholesaler anywhere in any State of the United States or in the District of Columbia, or to any state (or state agency) then the points-of-shipment most economical to the New York wholesaler must be scheduled.

(1) F.O.B. United States of America point-of-shipment designated which shall include Federal customs duties, internal revenue taxes, New York State excise taxes and all charges up to the point-of-shipment designated.

(2) F.O.B. United States of America point-of-shipment designated which shall include all Federal customs duties, internal revenue taxes and all charges up to the point-of-shipment designated if sales to any wholesaler in any other state, or to any state (or state agency) are made on this basis.

(3) In bond f.o.b. United States of America point-of-shipment designated if sales to any wholesaler in any other state, or to any state (or state agency) are made on this basis.

(4) In bond f.o.b. foreign point-of-shipment designated (direct import) if sales to any wholesaler in any other state, or to any state (or state agency) are made on this basis.

(5) F.O.B. foreign point-of-shipment designated which shall include all Federal customs duties, internal revenue taxes and all charges up to the point-of-shipment designated if sales to any wholesaler in any other State, or to any state (or state agency) are made on this basis.

[(b) Liquor prices to wholesalers may not be scheduled by any other method unless it is first established to the satisfaction of the Authority that the bottle and case prices under the alternate method are not higher than the lowest prices at which the brand will be sold to any wholesaler anywhere in any other state of the United States or in the District of Columbia, or to any state (or state agency).

(c)] *(b)* Where any schedule of liquor prices to wholesalers reflects a reduction or increase in the bottle or case price filed pursuant to subdivision (a)(1) of this section for any item set forth therein from the bottle or case price of such item theretofore in effect, then the schedules of liquor prices to retailers shall reflect, in the event of a decrease at least a like reduction in per centum in the bottle and case price of such item set forth therein, and in the event of an increase, not more than a like increase in per centum in the bottle and case price of such item set forth therein.

[(d)] *(c)* The prices of wine to wholesalers may be scheduled by the following methods:

(1) F.O.B. United States of America point-of-shipment designated which shall include all Federal customs duties, internal revenue taxes, New York State excise taxes and all charges up to the point-of-shipment designated.

(2) F.O.B. United States of America point-of-shipment designated

which shall include all federal customs duties, internal revenue taxes and all charges up to the point-of-shipment designated.

(3) In bond f.o.b. United States of America point-of-shipment designated.

(4) In bond f.o.b. foreign point-of-shipment designated (direct import).

(5) F.O.B. foreign point-of-shipment which shall include all federal customs duties, internal revenue taxes and all charges up to the point-of-shipment designated.

(6) A price which shall include federal customs duties, internal revenue taxes, State excise taxes and cost of delivery to the wholesaler. No charge shall be made in addition thereto except where the manufacturer or wholesaler lists in his schedule of wine prices to wholesalers the counties in which no charge for delivery will be made, in which event the actual cost of delivery in all other counties shall be charged to the wholesalers in addition to the price set forth on the schedule.

(7) A price which shall conform to the same terms and conditions set forth in method number (6) above except exclusive of federal customs duties, internal revenue taxes and State excise taxes.

(8) A price which shall conform to the same terms and conditions set forth in method number (6) above except exclusive of State excise taxes.

[(e)] *(d)* Wine prices to wholesalers may not be scheduled by any other method except with the approval of the Authority first obtained.

§ 65.11 Breakage

[(a)] As part of its regular books and records, each manufacturer and wholesaler licensed to sell liquor or wine shall keep a monthly record of all allowances for breakage containing the name, address and license number of the customer, the amount of breakage allowance, the date and number of the invoice of sale[, and the Federal strip stamp numbers of each broken bottle for which allowance is given.

(b) No allowances for breakage shall be given unless the broken bottle is returned to the seller and where the container is required to have a Federal strip stamp affixed thereto, such stamp must be intact at the time of return. Such broken bottles shall be kept available for inspection by representatives of the Liquor Authority, and may not be removed from the licensed premises or destroyed without permission from the Liquor Authority].

Part 90 is hereby repealed.

Section 97.1 is hereby repealed.

Final rule as compared with last published rule: Nonsubstantive changes were made in section 65.4.

Text of rule and any required statements and analyses may be obtained from: Paul Karamanol, Senior Attorney, State Liquor Authority, 80 South Swan Street, Suite 900, Albany, NY 12210, (518) 474-3114, email: paul.karamanol@sla.ny.gov

Revised Regulatory Impact Statement

Statutory authority:

These proposed regulations concerning permissible advertising, signage, and services or gifts to retailers are being issued by the State Liquor Authority ("Authority") and will appear as amendments to Sections 65.5, and 65.11, as well as the repeal of Part 90 and Section 97.1 of Title 9, Subtitle B of the New York Codes, Rules and Regulations.

These regulations are issued pursuant to the following:

Alcoholic Beverage Control Law section 101(1)(c), which authorizes the Authority to determine at what point any gift or service provided to a retailer is intended to influence the retailer to purchase the alcoholic beverages of a given manufacturer or wholesaler;

Alcoholic Beverage Control Law section 101-b(4), which authorizes the Authority to make such rules as shall be appropriate to regulate price posting of liquor and wine prices in New York;

Alcoholic Beverage Control Law section 109(1), which authorizes the Authority to make such rules as may be necessary regarding applications for renewals of licenses and permits and the timing of same;

State Administrative Procedure Act section 201, which authorizes all agencies to adopt by rule additional procedures not inconsistent with statute.

Legislative objectives:

Changing the public policy underpinnings of the Alcoholic Beverage Control Law ("ABCL") to be more business friendly where possible was recommended by the New York State Law Revision Commission in their 2009 Report on the Alcoholic Beverage Control Law and its Administration, which included recommendations of "supporting economic growth, job development, and the state's alcoholic beverage production industries and its tourism and recreation industry…provided that such activities do not conflict with the primary regulatory objectives of [promoting the health, welfare and safety of the people of the state, and promoting temperance in the consumption of alcoholic beverages.]" Along those lines, a recent legislative change put into effect the recommendations of the Law Revision Commission via Chap. 406 of the Laws of 2014. The policy of the Alcoholic Beverage Control Law ("ABCL") has been updated to include supporting, where possible, the economic development and job opportunities for New York residents when making decisions related to the regulation of alcoholic beverages.

It was from the Law Revision Commission recommendations that these regulatory proposals were conceived, to be used by the Authority to promote economic growth and job opportunities for New York by modernizing outdated price posting procedures, repealing breakage returns retention requirements for breakage returns from retailers to manufacturers and/or wholesalers, repealing various license and permit durations from the rules and relying upon industry advisories for same to conform with modern practices, and repealing World War II Era "whiskey dividend" rules that are no longer utilized.

Needs and benefits:

These regulatory proposals will help modernize administration of the ABCL in keeping with the new public policy goals of supporting economic growth and job development whenever possible by modernizing outdated price posting procedures, repealing breakage returns retention requirements for breakage returns from retailers to manufacturers and/or wholesalers, repealing various license and permit durations from the rules to rely instead upon industry advisories to set forth same to conform with modern practices, and repealing World War II Era "whiskey dividend" rules that are no longer utilized.

Costs:

There will be no additional costs to regulated parties or to local governments resulting from these proposals. To the contrary, the repeal of breakage returns retention requirements for industry members will reduce requisite storage costs for industry members arising therefrom. Additionally, the proposed price posting changes would merely conform Authority rules to current practices. Further, many license and permit durations are already communicated to the industry and to the public via industry advisories, and the changes proposed hereby would merely conform Authority rules to current practices. Due to the above, there will be no added costs to the Authority, regulated parties, or to local governments because of the implementation of the proposed rule amendments.

Local government mandates:

None. Local governments are not involved in the manufacture, distribution or retail sale of alcoholic beverages or the licensure of same, and therefore would not be impacted by the proposed rule amendments.

Paperwork:

The proposed rule amendments impose no new recordkeeping or reporting requirements to industry members.

Duplication/federal standards:

The federal Alcohol and Tobacco Tax and Trade Bureau rules do not require industry members to store breakage returns as proof of the business loss incurred thereby, but merely impose recordkeeping requirements relative to same via 27 CFR 19.614 (distilled spirits), 27 CFR 24.308 (wine), and 27 CFR 25.286 (beer). The proposed amendments would therefor merely conform New York State and federal regulatory requirements on point relative to breakage recordkeeping. There are no federal rules relative to price posting, duration of licenses, or whiskey dividends, and as a result there is no duplication of state regulations on point at the federal level in any of those areas.

Alternatives:

The Authority originally proposed this package of rule amendments as a consensus rule making featuring a new 30 day cutoff for breakage returns retention, and one industry member responded that the proposed amendment to add a 30 day cutoff for breakage returns retention did not go far enough to relieve burdensome regulatory requirements on industry members. As a result, the consensus rule making package was withdrawn and the instant package was instead put forth, featuring the complete repeal of breakage returns retention requirements from the Authority's rules. The Authority also considered merely extending the ball park beer license from one year to three to conform with current practices, but decided instead to repeal section 97.1 in its entirety and communicate the various license and permit durations contained therein to the industry via an Advisory from the Members of the Authority, thereby conforming with current practices.

Compliance schedule:

The period of time the industry will require to enable compliance is likely to be negligible as they are already likely in compliance with these proposals, and the Authority is merely seeking to conform Authority rules to current industry practices. The Authority expects the industry to already be compliant immediately upon adoption.

Revised Regulatory Flexibility Analysis

Effect of rule:

The proposed amendments to Sections 65.5, and 65.11, as well as the repeal of Part 90 and Section 97.1 of Title 9, Subtitle B of the New York Codes, Rules and Regulations (N.Y.C.R.R.) would affect all approximately 3000 wholesalers and manufacturers, as well as tens of thousands of on and off-premises retailers currently licensed by the State Liquor Authority.

Compliance requirements:

The proposed rule amendments would not impose any additional compliance requirements on small businesses or local governments. On the contrary, the repeal of breakage returns retention and storage requirements will remove the burden for industry members of needing to store broken bottle and case returns as proof of any business losses incurred. Additionally, the proposed price posting amendments and the repeal of various license and permit durations from the rules to rely instead upon industry advisories to set forth same would merely conform Authority rules to current practices. Finally, the World War II Era "whiskey dividend" rules are no longer utilized. As a result the proposed rule amendments would not impose any compliance requirements on small businesses or local governments.

Professional services:

No new professional services would be needed to comply with the proposed rule amendments.

Compliance costs:

The proposed rule amendments would not impose any initial capital costs or continuing compliance costs for regulated businesses or local governments.

Economic and technological feasibility:

Compliance with the proposed rule amendments by small businesses and local governments would be economically and technically feasible because the amendments would not impose any additional compliance requirements, but would instead either relieve regulatory burdens on regulated businesses or merely conform regulations to current industry and regulatory practices.

Minimizing adverse impact:

Since the proposed rule amendments would either relieve regulatory burdens on regulated businesses by repealing breakage returns retention and storage requirements or merely conform price posting and license duration regulations to current industry practices, and since the World War II Era "whiskey dividend" rules are no longer utilized, there is expected to be no adverse impact to regulated small businesses. It is further anticipated that the rule amendments would have no impact on local governments.

Small business and local government participation:

As this package of rule amendments was originally proposed as a consensus rule making, comments on the proposed rule amendments were solicited from all segments of the industry, with one industry member responding that the original proposal to add a 30 day cutoff for breakage retention did not go far enough to relieve burdensome regulatory requirements. As a result, the consensus rule making package was withdrawn and the instant promulgation package was put forth featuring the complete repeal of breakage returns retention requirements from the Authority's rules. The Authority did not engage with any local governments because it is anticipated that the proposed amendments would have no impact on local governments.

Revised Rural Area Flexibility Analysis

Types and estimated numbers of rural areas:

The proposed amendments to Sections 65.5, and 65.11, as well as the repeal of Part 90 and Section 97.1, of Title 9, Subtitle B of the New York Codes, Rules and Regulations (N.Y.C.R.R.) would affect businesses throughout the state.

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

The proposed rule amendments would not impose any additional compliance requirements in a rural area. To the contrary, the repeal of breakage returns retention and storage requirements will remove the burden for industry members of needing to store broken bottle and case returns as proof of their business losses incurred thereby. Additionally, the proposed price posting amendments would merely conform Authority rules to current practices and the World War II Era "whiskey dividend" rules are no longer utilized. As a result, the proposed rule amendments would not impose any reporting, recordkeeping or other compliance requirements or professional services on rural areas.

Costs:

The proposed rule amendments would not impose any initial capital costs or continuing compliance costs for rural areas, since the proposed amendments would either relieve regulatory burdens on regulated businesses by repealing breakage returns retention and storage requirements, or merely seek to conform Authority rules to current industry practices.

Minimizing adverse impact:

Since the proposed rule amendments would either relieve regulatory burdens on regulated businesses by repealing breakage returns retention and storage requirements or merely conform regulations to current industry practices, there is expected to be no adverse impact to rural areas.

Rural area participation:

Among the businesses that would be positively affected by the proposed amendments would be bars, restaurants and package stores in rural areas. Rural area businesses will be afforded the opportunity to directly participate in public hearings regarding the proposed amendments via webcast from either of the Authority's upstate offices located in Albany or Buffalo.

Revised Job Impact Statement

This statement is being submitted pursuant to subdivision (2) of section 201-a of the State Administrative Procedure Act and in support of the New York State Liquor Authority's ("Authority") Notice of Proposed Rulemaking seeking to amend Sections 65.5, 65.11, as well as the repeal of Part 90 and section 97.1 of Title 9, Subtitle B of the New York Codes, Rules and Regulations of the State of New York (N.Y.C.R.R.).

It is apparent from the nature and purpose of these proposed amendments that they will have no impact on jobs or employment opportunities in New York. The proposed amendments would instead work to relieve regulatory burdens on regulated businesses by repealing breakage returns retention and storage requirements for industry members, and conform existing regulations to current industry and regulatory practices. No additional regulatory burden is proposed, and thus, the proposed amendments will not have an adverse impact on jobs or employment opportunities. As by definition the proposed amendments will have no impact on public or private jobs or employment opportunities, no further steps were needed to ascertain those facts, and none were taken by the Authority. Accordingly, a full Job Impact Statement is not required for any of the proposed amendments and none has been prepared.

Initial Review of Rule

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

Assessment of Public Comment

Since publication of a Notice of Proposed Rule Making in the August 30, 2017 State Register, 13 comments were received, one of which was from an elected legislator. Two responses commended the State Liquor Authority ("Authority") and expressed approval for the proposed amendments. The remaining responses all expressed similar concerns pertaining to the proposed amendments to part 65.4 and the Authority responses are set forth below:

*Repeal of $1.92 split case fee language could lead to wholesalers charging high fees for the purchase of less than a full case of wine or liquor by a retailer.

AUTHORITY RESPONSE: The Authority respectfully disagrees. The language that the Authority proposed to repeal in part 65.4 – including the $1.92 split case charge therein - is archaic and unenforceable. In recent years Authority policy has been to require wholesalers to post their split case charges on their statutorily required price postings every month, thereby giving retailers the ability to figure these costs into their purchasing decisions and giving Authority staff the ability to monitor compliance by comparing purchase invoices as delivered to retailers to contemporary posted prices. However, in an effort to ameliorate the concerns expressed by numerous retailers and an elected legislator relative to the proposed repeal of much of part 65.4, the Authority has removed part 65.4 from the rule package being adopted hereby. This is a non-substantive revision to the text, as the proposed repeal of part 65.4 was merely an effort by the Authority to clean up this unenforceable regulation from the written text of the rules.

*Repeal of $1.92 split case fee language could lead to wholesalers being unable to charge fees for the purchase of less than a full case of wine or liquor by a retailer.

AUTHORITY RESPONSE: The Authority respectfully disagrees. The portion of part 65.4 that the Authority sought to allow to remain would have stated that "[F]for each item of liquor listed in the schedule of liquor prices to retailers there shall be posted a bottle and a case price." Assuming the changes as proposed were to go into effect, wholesalers would still be required to post prices for cases and bottles for each brand of liquor or wine they sell, and the Authority would interpret the posted bottle price to also include any split case charges posted by wholesalers for any particular brand. However, in an effort to ameliorate the concerns expressed by numerous retailers and an elected legislator relative to the proposed repeal of much of part 65.4, the Authority has removed part 65.4 from the rule package being adopted hereby. This is a non-substantive revision to the text, as the proposed repeal of part 65.4 was merely an effort by the Authority to clean up this unenforceable regulation from the written text of the rules.

Office of Mental Health

ERRATUM

I.D. No. OMH-51-17-00001-P, pertaining to Operation of Licensed Housing Programs for Children and Adolescents with Serious Emotional

Disturbances, published in the December 20, 2017 issue of the *State Register*, indicated that public comment would be received until 45 days after publication of the Notice.

The public comment period for this Notice has been extended until February 20, 2018.

Office for People with Developmental Disabilities

ERRATUM

I.D. Nos.: PDD-51-17-00005-EP and PDD-51-17-00006-EP, pertaining to SNAP Benefit Offset, Site Based and Community Based Prevocational Services, published in the December 20, 2017 issue of the *State Register*, indicated that public comment would be received until 45 days after publication of the Notices.

The public comment periods for these Notices have been extended until February 20, 2018.

Public Service Commission

ERRATUM

I.D. Nos.: PSC-50-17-00016-P through PSC-50-17-00020-P, PSC-50-17-00022-P, and PSC-50-17-00023-P, pertaining to:

Joule Assets, Inc.'s Community Choice Aggregation Implementation Plan NewWave Energy Corp.'s Petition for Rehearing, Application of the Public Service Law to DER Suppliers, Transfer of Utility Property, Administrative Costs and Funding Sources for the RES and ZEC Programs, and Data Protection Rules for DER Suppliers, and Notice of Intent to Submeter Electricity, published in the December 13, 2017 issue of the *State Register*, indicated that public comment would be received until 45 days after publication of the Notices.

The public comment periods for these Notices have been extended until February 12, 2018.

I.D. Nos.: PSC-51-17-00007-P through PSC-50-17-00016-P, pertaining to:

Opt-Out Tariff Regarding Installation of Advanced Digital Metering Devices in Central Hudson's Service Territory, Petition to Submeter Electricity, Consideration of Con Edision's Proposed Implementation Plan, Transfer Certain Street Lighting Facilities to the Town of Owego, Petition for Recovery of Certain Costs Related to the Implementation of a Non-Wires Alternative Project, Rider T-Commercial Demand Response Program, Waiver of Certain Rules and Requirements Pertaining to Cable Television Franchise, Transfer of Control, Opt-Out Tariff Regarding Installation of Advanced Digital Metering Devices in Central Hudson's Service Territory, Petition for Waiver Request of Opinion No. 76-17 and 16 NYCRR Part 96, published in the December 20, 2017 issue of the *State Register*, indicated that public comment would be received until 45 days after publication of the Notices.

The public comment periods for these Notices have been extended until February 20, 2018.

I.D. Nos.: PSC-52-17-00014-P through PSC-52-17-00019-P, pertaining to:

Oversight and Support of Clean Energy Fund and Related NYSERDA Activities, Development of an Aggregation Standard for Release of Customer Usage Information That Protects the Privacy of Customers, SUEZ O-N's Rates of the Forest Part Systems for the Provision of Water, Waiver of PSC Regulations, 16 NYCRR, Sections 86.3(a)(2), (b)(2) and 88.4(a)(4), Daily Delivery Service (DDS) Program; Winter Bundled Sales Service (WBSS) and Managed Supply Service (MSS) Programs, Petition to Submeter Electricity, published in the December 27, 2017 issue of the *State Register*, indicated that public comment would be received until 45 days after publication of the Notices.

The public comment periods for these Notices have been extended until February 26, 2018.

EMERGENCY RULE MAKING

Transfer of Surplus Utility Property

I.D. No. PSC-04-18-00001-E
Filing Date: 2018-01-04
Effective Date: 2018-01-04

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

Action taken: On 1/4/18, the PSC adopted an order approving Orange and Rockland Utilities, Inc.'s petition to sell 75 50KVA overhead pole transformers to Noble Supply & Logistics to be used in connection with the relief efforts to restore power to Puerto Rico.

Statutory authority: Public Service Law, section 70

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

Specific reasons underlying the finding of necessity: On September 20, 2017, Hurricane Maria made landfall on the island of Puerto Rico, resulting in near total destruction to the island's electrical infrastructure, and knocking out power to the entire island. Ricardo Rossello, the Governor of Puerto Rico, has declared that a disaster exists in Puerto Rico and has made an official request for assistance from New York State. In response to the resulting humanitarian crises, and in connection with the state of emergency, massive government and private relief efforts have been mobilized to, among other concerns, restore electric service to the island as quickly as possible. Orange and Rockland Utilities, Inc. (O&R) has been actively participating in the relief efforts to help the people of Puerto Rico recover from Hurricane Maria's devastating impact. Because of the emergency conditions existing in Puerto Rico as a result of Hurricane Maria, and the urgent necessity to restore electrical service to the entire island as soon as possible, it is necessary to provide the surplus transformers immediately and therefore the immediate adoption of the proposed rule approving the immediate transfer of the specified utility assets from O&R to aid in the relief effort is necessary for the preservation of the public health, safety or general welfare and that compliance with the notice and comment requirements of SAPA § 202(1) would be contrary to the public interest.

Subject: Transfer of surplus utility property.

Purpose: To ensure customer reliability and financial interests are protected.

Substance of emergency rule: The Commission, on January 4, 2018, adopted an order approving the petition of Orange and Rockland Utilities, Inc. to transfer to Noble Supply & Logistics certain 50KVA overhead pole transformers to be used in connection with the massive relief effort to restore power to Puerto Rico in the wake of the destruction caused by Hurricane Maria, in the manner described in the Petition, subject to the terms and conditions set forth in the order.

This notice is intended to serve only as an emergency adoption, to be valid for 90 days or less. This rule expires April 3, 2018.

Text of rule may be obtained from: John Pitucci, Department of Public Service, 3 Empire State Plaza, Albany, NY 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.

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

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-0010EA1)

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Minor Rate Filing

I.D. No. PSC-04-18-00003-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 proposed tariff amendments, filed by Mohawk Municipal Commission, to P.S.C. No. 2—Electricity, to increase its total annual electric revenues by approximately $136,634, or 11.4%.

Statutory authority: Public Service Law, sections 65 and 66

Subject: Minor rate filing.

Purpose: To consider a proposal for an increase in total annual revenues of approximately $136,634, or 11.4%.

Substance of proposed rule: The Commission is considering proposed tariff amendments, filed by the Mohawk Municipal Commission to P.S.C. No. 2 – Electricity, to increase its total annual electric revenues by approximately $136,634, or 11.4%. Under the proposal, the monthly bill of a residential customer using 750 kilowatt-hours of electricity would increase from $39.21 to $43.61, or 11.22%. The proposed amendments have an effective date of June 1, 2018. The full text of the filing may be reviewed online at the Department of Public Service web page: www.dps.ny.gov. The Commission may adopt, reject or modify, in whole or in part, the relief proposed and may resolve related matters.

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

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

Public comment will be received until: March 25, 2018.

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

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

(17-E-0802SP1)

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Notice of Intent to Submeter Electricity

I.D. No. PSC-04-18-00004-P

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

Proposed Action: The Commission is considering the notice of intent of Murray Hill Marquis LLC to submeter electricity at 140 and 150 East 34th Street, New York, New York.

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

Subject: Notice of intent to submeter electricity.

Purpose: To consider the notice of intent of Murray Hill Marquis LLC to submeter electricity.

Substance of proposed rule: The Commission is considering the notice of intent of Murray Hill Marquis LLC, filed December 15, 2017, to submeter electricity at 140 and 150 East 34th Street, New York, New York, located in the service territory of Consolidated Edison Company of New York, Inc. (Con Edison). By stating its intent to submeter electricity, Murray Hill Marquis LLC has requested authorization to take electric service from Con Edison and then distribute and meter that electricity to tenants. Submetering of electricity to residential tenants is allowed so long as it complies with the protections and requirements of the Commission's regulations in 16 NYCRR Part 96. The full text of the notice of intent may be reviewed online at the Department of Public Service web page: www.dps.ny.gov. The Commission may adopt, reject or modify, in whole or in part, the relief proposed and may resolve related matters.

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

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

Public comment will be received until: March 25, 2018.

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

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

(17-E-0347SP2)

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Notice of Intent to Submeter Electricity

I.D. No. PSC-04-18-00005-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 the notice of intent of Montante/Morgan Gates Circle LLC to submeter electricity at 1285 and 1299 Delaware Avenue and 630 Linwood Avenue, Buffalo, New York.

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

Subject: Notice of intent to submeter electricity.

Purpose: To consider the notice of intent of Montante/Morgan Gates Circle LLC to submeter electricity.

Substance of proposed rule: The Commission is considering the notice of intent of Montante/Morgan Gates Circle LLC, filed November 3, 2017, to submeter electricity at 1285 Delaware Avenue, 1299 Delaware Avenue and 630 Linwood Avenue, Buffalo, New York, located in the service territory of Niagara Mohawk Power Corporation d/b/a National Grid (National Grid). By stating its intent to submeter electricity, Montante/Morgan Gates Circle LLC has requested authorization to take electric service from National Grid and then distribute and meter that electricity to tenants. Submetering of electricity to residential tenants is allowed so long as it complies with the protections and requirements of the Commission's regulations in 16 NYCRR Part 96. The full text of the notice of intent may be reviewed online at the Department of Public Service web page: www.dps.ny.gov. The Commission may adopt, reject or modify, in whole or in part, the relief requested 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: March 25, 2018.

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

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

(17-E-0664SP1)

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Consideration of the Central Hudson Gas and Electric Corporation Implementation Plan and Audit Recommendations

I.D. No. PSC-04-18-00006-P

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

Proposed Action: The Commission is considering the Management Audit Implementation Plan submitted by Central Hudson Gas and Electric Corporation and whether to order the implementation of audit recommendations.

Statutory authority: Public Service Law, section 66(19)

Subject: Consideration of the Central Hudson Gas and Electric Corporation Implementation Plan and audit recommendations.

Purpose: To consider Central Hudson Gas and Electric Corporation's Management Audit Implementation Plan.

Substance of proposed rule: The Public Service Commission is considering the Management and Operations Audit Implementation Plan (Implementation Plan) filed by Central Hudson Gas & Electric Corporation (Central Hudson) on December 14, 2017. Central Hudson's Implementation Plan addresses the 55 actionable recommendations contained in the Final Audit Report prepared by Overland Consulting Group as a result of its management and operations audit of the Company. The Implementa-

tion Plan may be reviewed online at the Department of Public Service web page: www.dps.ny.gov. The Commission is considering whether to adopt, reject or modify, in whole or in part, the relief proposed and may resolve related matters.

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

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

Public comment will be received until: March 25, 2018.

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

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

(16-M-0001SP1)

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Con Edison's Methodology for Reconciling the Gas POR Discount Rate Charge

I.D. No. PSC-04-18-00007-P

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

Proposed Action: The Commission is considering a petition to revise the methodology Consolidated Edison Company of New York, Inc. (Con Edison) uses to reconcile the gas purchase of receivables (POR) discount rate.

Statutory authority: Public Service Law, sections 65 and 66

Subject: Con Edison's methodology for reconciling the gas POR discount rate charge.

Purpose: To consider modifications to the manner in which reconciliations of the POR discount rate are collected or refunded.

Substance of proposed rule: The Commission is considering the petition filed by BBPC, LLC, d/b/a Great Eastern Energy, Direct Energy Services, LLC, East Coast Power & Gas, LLC, Robison Energy, LLC and Robison Energy (Commercial), LLC (collectively, Petitioners) seeking modification of the methodology used by Consolidated Edison Company of New York, Inc. (Con Edison) to reconcile the gas purchase of receivables (POR) discount rate. The POR discount rate is applied to the receivables of the participating Energy Services Company (ESCO) for their gas commodity sales in the Con Edison service territory. Under the current Rate Plan for Con Edison, ESCO receivables are discounted using a gas POR discount rate effective February 1st of each rate year. Petitioners claim that they recently learned that certain elements of the gas POR discount rate are estimated and subject to reconciliation in the future and that those reconciliations, positive or negative, are flowed back to Con Edison's customers through the Monthly Rate Adjustment clause (MRA). Therefore, the Petitioners request that the Commission direct that all reconciliations of the gas POR discount rate be rolled forward to the subsequent year's POR rate, rather than through the MRA. Petitioners claim that this modification would better align the true-up adjustments with the parties that are initially paying the charges and that such a change would be revenue neutral to Con Edison, will not adversely impact customers, and will promote fair and transparent markets. The full text of the petition may be reviewed online at the Department of Public Service web page: www.dps.ny.gov. The Commission may adopt, reject or modify, in whole or in part, the relief proposed and may resolve related matters.

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

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

Public comment will be received until: March 25, 2018.

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

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

(17-G-0794SP1)

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Waiver of Commission Requirements

I.D. No. PSC-04-18-00008-P

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

Proposed Action: The Commission is considering the petition of Lost Lake Resort for a waiver of the Commission's requirement that electric infrastructure in new residential developments be installed underground.

Statutory authority: Public Service Law, sections 31(4), 51, 65(1) and 66(1)

Subject: Waiver of Commission requirements.

Purpose: To consider a waiver of the Commission's electric infrastructure requirement.

Substance of proposed rule: The Commission is considering the petition of Lost Lake Resort (Lost Lake), filed on October 19, 2017, for a waiver of Commission regulation 16 NYCRR § 100.1, which requires that electric infrastructure in new residential developments be installed underground. Lost Lake is developing a housing subdivision in the Town of Forestburgh, NY Sullivan County (Town). The subdivision will be part of a larger development including a golf course, and other recreational facilities. Lost Lake argues that it is entitled to a waiver of the regulation because it will not be constructing the houses on the lots sold, and the Town does not require the electric infrastructure be underground. Alternatively, Lost Lake argues that underground facilities, specifically the above ground transformers that would be installed, would disrupt the intended rustic nature of the development and require greater disruption of the environment, on a linear foot basis, as compared to the installation of above ground utility poles. Lost Lake also argues that it is entitled to a waiver because the cost of underground facilities is significantly greater than above ground, and that the transformers, if installed, would draw power even if no homes were build, a cost that would be borne by all utility customers. Also, an overhead system would be more easily upgraded as the subdivision expands. The full text of the petition may be reviewed online at the Department of Public Service web page: www.dps.ny.gov. The Commission may adopt, reject or modify, in whole or in part, the relief proposed and may resolve related matters.

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

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

Public comment will be received until: March 25, 2018.

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

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

(17-E-0653SP1)

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Notice of Intent to Submeter Electricity

I.D. No. PSC-04-18-00009-P

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

Proposed Action: The Commission is considering the notice of intent of 20 Broad Street Owner LLC to submeter electricity at 20 Broad Street, New York, New York.

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

Subject: Notice of intent to submeter electricity.

Purpose: To consider the notice of intent of 20 Broad Street Owner LLC to submeter electricity.

Substance of proposed rule: The Commission is considering the notice of intent of 20 Broad Street Owner LLC, filed November 15, 2017, to submeter electricity at 20 Broad Street, New York, New York, located in the service territory of Consolidated Edison Company of New York, Inc. (Con Edison). By stating its intent to submeter electricity, 20 Broad Street Owner LLC has requested authorization to take electric service from Con Edison and then distribute and meter that electricity to tenants. Submetering of electricity to residential tenants is allowed so long as it complies with the protections and requirements of the Commission's regulations in 16 NYCRR Part 96. The full text of the notice of intent may be reviewed online at the Department of Public Service web page: www.dps.ny.gov. The Commission may adopt, reject or modify, in whole or in part, the relief proposed and may resolve related matters.

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

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

Public comment will be received until: March 25, 2018.

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

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

(17-E-0703SP1)

Department of State

ERRATUM

I.D. No.: DOS-52-17-00013-EP, pertaining to Establishment of the Identify Theft Prevention and Mitigation Program, published in the December 27, 2017 issue of the *State Register*, indicated that public comment would be received until 45 days after publication of the Notice.

The public comment period for this Notice has been extended until February 26, 2018.

Department of Taxation and Finance

ERRATUM

I.D. No. TAF-51-17-00002-EP, pertaining to Metropolitan Transportation Business Tax Surcharge, published in the December 20, 2017 issue of the *State Register*, indicated that public comment would be received until 45 days after publication of the Notice.

The public comment period for this Notice has been extended until February 20, 2018.