RULE MAKING ACTIVITIES

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

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

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

Department of Agriculture and Markets

NOTICE OF ADOPTION

NIST Handbook 44 (2018 Edition)

I.D. No. AAM-13-18-00013-A
Filing No. 594
Filing Date: 2018-06-26
Effective Date: 2018-07-11

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

Action taken: Amendment of section 220.2 of Title 1 NYCRR.

Statutory authority: Agriculture and Markets Law, sections 16, 18 and 179

Subject: NIST Handbook 44 (2018 edition).

Purpose: To incorporate NIST Handbook 44 (2018 edition).

Text or summary was published in the March 28, 2018 issue of the Register, I.D. No. AAM-13-18-00013-P.

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

Text of rule and any required statements and analyses may be obtained from: Mike Sikula, Director, Bureau of Weights & Measures, NYS Department of Agriculture and Markets, 10B Airline Drive, Albany, NY 12235, (518) 457-3146, email: Mike.Sikula@agriculture.ny.gov

Assessment of Public Comment
The agency received no public comment.

State Board of Elections

NOTICE OF ADOPTION

Establishing a Process for the State Board to Publish the Campaign Website Addresses of Certain Candidates on Its Website

I.D. No. SBE-15-18-00010-A
Filing No. 599
Filing Date: 2018-06-26
Effective Date: 2018-07-11

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

Action taken: Amendment of sections 6215.2 and 6215.8; addition of section 6215.9 to Title 9 NYCRR.

Statutory authority: Election Law, sections 3-102(1), (17), 4-123; L. 2017, ch. 307

Subject: Establishing a process for the state board to publish the campaign website addresses of certain candidates on its website.

Purpose: To allow voters to easily find a candidate's campaign website and obtain more information about candidates for public office.

Text or summary was published in the April 11, 2018 issue of the Register, I.D. No. SBE-15-18-00010-EP.

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

Text of rule and any required statements and analyses may be obtained from: Nicholas Cartagena, Esq., New York State Board of Election, 40 North Pearl Street, Suite 5, Albany, NY, (518) 474-2064, email: nicholas.cartagena@elections.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.

Department of Environmental Conservation

EMERGENCY RULE MAKING

Regulations Governing the Recreational and Commercial Fishing of Tautog (Blackfish)

I.D. No. ENV-16-18-00003-E
Filing No. 597
Filing Date: 2018-06-26
Effective Date: 2018-06-26

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

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

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

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

Specific reasons underlying the finding of necessity: This rule making is necessary to remain in compliance with the Atlantic States Marine Fisheries Commission's new Amendment to the Tautog (blackfish) Fishery Management Plan. These new restrictions were developed in response to the 2016 stock assessment update, which showed that the Long Island Sound and New York Bight tautog populations are overfished, and overfishing is occurring. The proposed amendment will apply more restrictive tautog fishing rules for both recreational and commercial fishers specific to each area. Reductions for each area will be achieved through changes to possession limits and/or open and closed seasons for both the recreational and commercial fisheries.

DEC is adopting these changes in order to protect the general welfare of New York state citizens by complying with the Atlantic States Marine Fisheries Commission (ASMFC) and maintaining the sustainability of an important recreational and commercial fishery. Current tautog regulations do not satisfy the latest reduction mandated by the ASMFC, and leaving them unchanged would likely result in over-harvest of tautog by New York fishers. If ASMFC determines that New York is non-compliant, it notifies the U.S. Secretary of Commerce. The Secretary could then promulgate and enforce a complete closure of New York's tautog fishery if they concur with the non-compliance determination.

The promulgation of this regulation on an emergency basis is necessary because the normal rule making process would not adopt these regulations in time to remain in compliance with the ASMFC's implementation schedule, and have new restrictions in place by the start of the recreational season opening, both of which occur on April 1, 2018.

Subject: Regulations governing the recreational and commercial fishing of Tautog (blackfish).

Purpose: To revise regulations concerning the recreational and commercial harvest of Tautog in New York State.

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

Paragraphs 40.1(a)(1) through (5) remain the same.

New paragraph 40.1(a)(6) is adopted to read as follows:

(6) The Tautog Management Regions are defined as follows:

(i) The Long Island Sound Region includes all marine and coastal district waters lying east of the Throgs Neck Bridge and west of a line that runs from Orient Point, NY to Watch Hill, RI.

(ii) The NY Bight Region includes all New York marine and coastal district waters lying outside of the Long Island Sound Tautog Management Region.

Existing subdivision 40.1(f) is amended to read as follows:

Species Striped bass through Red drum remain the same.

Species Tautog is amended to read as follows:

40.1(f) Table A – Recreational Fishing.

Species	Open Season	Minimum Length	Possession Limit
Tautog	[Oct. 5 - Dec. 14]	16″ TL	[4]
(Long Island Sound Management Region)	*April 1 - 30* *Oct. 11 - Dec. 9*	*16″ TL*	*2* *3*
Tautog (NY Bight Management Region)	*April 1 - 30* *Oct. 15 - Dec. 22*	*16″ TL* *16″ TL*	*2* *4*

Existing subdivision 40.1(i) is amended to read as follows:

Species Striped bass through Red drum remain the same.

Species Tautog is amended to read as follows:

40.1(i) Table B – Commercial Fishing.

Species	Open Season	Minimum Length	Possession Limit
Tautog	[April 8 to last day of Feb.]	15″ TL	25 per vessel (except, 10 per vessel when fishing lobster pot gear and more than six lobsters are in possession)
(Long Island Sound Management Region)	*May 7 - Jul 31* *Sept. 1 - Nov 23*	*15″ TL*	
Tautog (NY Bight Management Region)	*April 16 - Jan. 25*	*15″ TL*	*25 per vessel (except, 10 per vessel when fishing lobster pot gear and more than six lobsters are in possession)*

This notice is intended to serve only as a notice of emergency adoption. This agency intends to adopt the provisions of this emergency rule as a permanent rule, having previously submitted to the Department of State a notice of proposed rule making, I.D. No. ENV-16-18-00003-EP, Issue of April 18, 2018. The emergency rule will expire August 24, 2018.

Text of rule and any required statements and analyses may be obtained from: Rachel Sysak, Department of Environmental Conservation, 205 North Belle Mead Rd., Suite 1, East Setauket, NY 11733, (631) 444-0469, email: rachel.sysak@dec.ny.gov

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

Regulatory Impact Statement

1. Statutory authority:

Environmental Conservation Law (ECL) sections 11-0303, 13-0105, and 13-0340-d authorize the Department of Environmental Conservation (DEC or the department) to establish by regulation the open season, size, catch limits, possession and sale restrictions and manner of taking for tautog (blackfish).

2. Legislative objectives:

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

3. Needs and benefits:

This rule making is necessary for New York State to reduce the harvest of tautog and remain in compliance with the Atlantic States Marine Fisheries Commission's new amendment to the Tautog fishery management plan. These new restrictions were developed in response to the 2016 stock assessment update, which showed that the Long Island Sound and New York Bight tautog populations are overfished, and overfishing is occurring.

The proposed amendment will apply more restrictive tautog fishing rules for both recreational and commercial fishers specific to each area. Reductions for each area will be achieved through changes to possession limits and/or open and closed seasons for both the recreational and commercial fisheries.

DEC is adopting these changes in order to protect the general welfare of New York state citizens by complying with the Atlantic States Marine Fisheries Commission (ASMFC) and maintaining the sustainability of an important recreational and commercial fishery. Current tautog regulations do not satisfy the latest reduction mandated by ASMFC, and leaving them unchanged would likely result in over-harvest of tautog by New York fishers. If ASMFC determines that New York is non-compliant, it notifies the U.S. Secretary of Commerce. The Secretary could then promulgate and enforce a complete closure of New York's tautog fishery if they concur with the non-compliance determination.

4. Costs:

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

5. Local government mandates:

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

6. Paperwork:

None.

7. Duplication:

The amendment does not duplicate any state or federal requirement.

8. Alternatives:

New York State marine recreational and commercial fishers had an opportunity to comment upon Amendment 1 to the Tautog Fishery Management Plan, including the measures proposed in this rulemaking, during the Atlantic States Marine Fisheries Commission's public comment period from May 15, 2017 through July 14, 2017. New York's fishers also had the opportunity to attend a public hearing on the amendment at the Division of Marine Resources office in East Setauket on June 20, 2017. Alternative management measures, which included various combinations of possession limits and seasons for both recreational and commercial fisheries, were suggested and discussed. While some fishers questioned the need to reduce harvest at all, support was in favor of the measures included in this rule making when compared to alternative reduction options. The proposed regulations in this rule making were agreed to by consensus of the Marine Resource Advisory Council members on November 8, 2017 and January 23, 2018.

"No action" alternative: If New York were to not adopt regulations that reduced recreational and commercial tautog fishing in 2018, the State would be out of compliance with Atlantic States Marine Fisheries Commission requirements, which could result in the complete closure of New York's tautog fishery.

9. Federal standards:

The amendments to Part 40 are in compliance with the Atlantic States Marine Fisheries Commission's Tautog Fishery Management Plan.

10. Compliance schedule:

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

Regulatory Flexibility Analysis

1. Effect of rule:

This rule making will reduce the harvest of tautog in New York by implementing more restrictive fishing rules for both recreational and commercial tautog fishers. The proposed amendment will adopt the following provisions: defining the boundaries for the new Long Island Sound and New York Bight tautog management regions. It will also modify the recreational season and possession limits by changing the open season for recreational tautog fishing for the Long Island Sound management region to Apr. 1 – 30 with a possession limit of 2 fish, and Oct. 11 – Dec. 9 with a possession limit of 3 fish. It changes the open season for recreational tautog fishing for the New York Bight management region to Apr. 1 – 30 with a possession limit of 2 fish and Oct. 15 – Dec. 22 with a possession limit of 4 fish. The commercial season is also modified for both management regions. The proposed amendment changes the open season for commercial tautog fishing for the Long Island Sound management region to May 7 – Jul 31 and September 1 – November 23. It also changes the open season for commercial tautog fishing for the New York Bight management region to April 16 – Jan 25. The commercial possession limit remains the same.

The proposed rule is more restrictive than last year's regulations. In 2017, there were 977 Food Fish license holders, 503 Food Fish and Crustacea Shipper/Dealers license holders, and 508 licensed party and charter business in New York State. There were also a number of retail and wholesale marine bait and tackle shop businesses operating in New York. Data available from 2016 New York State Vessel Trip Reports shows that there were 2,591 commercial fishing trips that caught and kept tautog, and 640 party and charter trips that caught and kept tautog. These statistics do not include federally permitted commercial and recreational vessels operating out of New York State. The National Oceanic and Atmospheric Administration's Marine Recreational Information Program estimates that there were 165,129 recreational trips targeting tautog in New York. The proposed amendment decreases the number of days both recreational and commercial fishers can fish for tautog, and the amount of tautog that can be kept. This could result in a loss of revenue for an unknown portion of Food Fish and Food Fish and Crustacea Shipper/Dealer license holders, bait and tackle shops, and some party charter businesses. These effects could be more pronounced in the Long Island Sound tautog management region, which is facing larger reductions than the New York Bight management region.

2. Compliance requirements:

None.

3. Professional services:

None.

4. Compliance costs:

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

5. Economic and technological feasibility:

The proposed regulations do not require any expenditure on the part of affected businesses in order to comply with the changes. The proposed regulations may decrease the income of commercial fishers, commercial food fish dealers and shippers, party and charter businesses, marinas and marine bait and tackle shops that depend heavily upon the recreational tautog fishery, especially in the Long Island Sound management area.

6. Minimizing adverse impact:

This rule making is necessary for New York State to reduce the harvest of tautog and remain in compliance with the Atlantic States Marine Fisheries Commission's (ASMFC) new Amendment to the Fishery Management Plan for Tautog. These new restrictions were developed in response to the 2016 stock assessment update, which showed that the Long Island Sound and New York Bight tautog populations are overfished, and overfishing is occurring. The proposed amendment is consistent with the required restrictions to tautog fishing rules for both recreational and commercial fishers specific to each area, and DEC anticipates that New York State will therefore remain in compliance with the ASMFC.

Ultimately, the maintenance of long-term sustainable fisheries will have a positive effect on employment for the fisheries in question, including Food Fish and Food Fish and Crustacea Shipper/Dealer license holders, party and charter boat fisheries, as well as wholesale and retail bait and tackle shops and other support industries for recreational fisheries. Failure to comply and take required actions to protect our natural resources could cause the collapse of a stock and have a severe, adverse impact on the commercial and recreational fisheries for that species as well as the supporting industries for those fisheries.

7. Small business and local government participation:

New York State marine recreational and commercial fishers had an opportunity to comment upon Amendment 1 to the tautog Fishery Management Plan, including the measures proposed in this rulemaking, during the Atlantic States Marine Fisheries Commission's public comment period from May 15, 2017 through July 14, 2017. New York's fishers also had the opportunity to attend a public hearing on the amendment at the Division of Marine Resources office in East Setauket on June 20, 2017. Alternative management measures, which included various combinations of possession limits and seasons for both recreational and commercial fisheries, were suggested and discussed. While some fishers questioned the need to reduce harvest at all, support was in favor of the measures included in this rule making when compared to alternative reduction options. The proposed regulations in this rule making were agreed to by consensus of the Marine Resource Advisory Council members on November 8, 2017 and January 23, 2018.

8. For rules that either establish or modify a violation or penalties associated with a violation:

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

9. Initial review of the rule, pursuant to SAPA § 207 as amended by L. 2012, ch. 462:

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

Rural Area Flexibility Analysis

The Department of Environmental Conservation has determined that this rule will not impose an adverse impact on rural areas. This rule making only affects the marine and coastal district of the State; there are no rural areas within the marine and coastal district. The tautog fishery is entirely located within the marine and coastal district, and is not located adjacent to any rural areas of the State. The proposed rule will not impose any reporting, record keeping, or other compliance requirements on public or private entities in rural areas. Since no rural areas will be affected by the proposed amendments of 6 NYCRR Part 40, DEC has determined that a Rural Area Flexibility Analysis is not required.

Job Impact Statement

1. Nature of impact:

This rule making will reduce the harvest of tautog in New York by implementing more restrictive fishing rules for both recreational and commercial tautog fishers. The proposed amendment will adopt the following provisions: defining the boundaries for the new Long Island Sound and New York Bight tautog management regions. It will also modify the recreational season and possession limits by changing the open season for recreational tautog fishing for the Long Island Sound management region to April 1 – April 30 with a possession limit of 2 fish, and October 11 – December 9 with a possession limit of 3 fish. It changes the open season for recreational tautog fishing for the New York Bight management region to April 1 – April 30 with a possession limit of 2 fish and October 15 – December 22 with a possession limit of 4 fish. The commercial season is also modified for both management regions. The proposed amendment changes the open season for commercial tautog fishing for the Long Island

Sound management region to May 7 – July 31 and September 1 – November 23. It also changes the open season for commercial tautog fishing for the New York Bight management region to April 16 – January 25. The commercial possession limit remains the same.

2. Categories and numbers affected:

In 2017, there were 977 Food Fish license holders, 503 Food Fish and Crustacea Shipper/Dealers license holders, and 508 licensed party and charter business in New York State. There were also a number of retail and wholesale marine bait and tackle shop businesses operating in New York. Data available from 2016 New York State vessel trip reports and dealer purchase reports show that there were 2,591 commercial fishing trips that caught and kept tautog in 2016, with an estimated value of $500,369. These statistics do not include federally permitted commercial and recreational vessels operating out of New York State. The National Oceanic and Atmospheric Administration's (NOAA) Marine Recreational Information Program estimates that there were 165,129 recreational trips targeting tautog in New York in 2016. NOAA's 2014 report on The Economic Contribution of Marine Angler Expenditures on Durable Goods in the United States estimates that there were 693,000 total recreational anglers that year. The report estimates that 2014 recreational angler expenditures contributed 7,417 jobs to the state's economy, and $567 million to the states gross domestic product, an unknown portion of which was the result of recreational tautog fishing.

3. Regions of adverse impact:

The proposed regulation is more restrictive and will likely impact recreational and commercial fishers and associated businesses throughout most of New York's Marine and Coastal District in a negative manner. The proposed amendment decreases the number of days both recreational and commercial fishers can fish for tautog, and the amount of tautog that can be kept. This could result in a loss of revenue for an unknown portion of commercial permit holders, retail and wholesale bait and tackle shops, and some party charter businesses. These effects could be more pronounced in the Long Island Sound tautog management region, which is facing larger reductions than the New York Bight management region.

4. Minimizing adverse impact:

New York State marine recreational and commercial fishers had an opportunity to comment upon Amendment 1 to the Tautog Fishery Management Plan, including the measures proposed in this rulemaking, during the Atlantic States Marine Fisheries Commission's public comment period from May 15, 2017 through July 14, 2017. New York's fishers also had the opportunity to attend a public hearing on the amendment at the Division of Marine Resources office in East Setauket on June 20, 2017. Alternative management measures, which included various combinations of possession limits and seasons for both recreational and commercial fisheries, were suggested and discussed. While some fishers questioned the need to reduce harvest at all, support was in favor of the measures included in this rule making when compared to alternative reduction options. The proposed regulations in this rule making were agreed to by consensus of the Marine Resource Advisory Council members on November 8, 2017 and January 23, 2018.

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

5. Self-employment opportunities:

Commercial fishers, party and charter boat businesses, bait and tackle shops, and marinas are, for the most part, small businesses, owned and often operated by a single owner. The recreational and commercial fishing industries are mostly self-employed. This rule will likely have a negative effect upon opportunities for businesses related to the harvest of tautog. However, failing to adopt this rulemaking and comply with the Atlantic States Marine Fisheries Commission's requirements could lead to a complete closure of New York's tautog fishery.

6. Initial review of the rule, pursuant to SAPA § 207 as amended by L. 2012, ch. 462:

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

EMERGENCY RULE MAKING

Regulations Governing the Recreational Fishing of Scup and Summer Flounder (Fluke)

I.D. No. ENV-16-18-00004-E

Filing No. 598

Filing Date: 2018-06-26

Effective Date: 2018-06-26

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

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

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

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

Specific reasons underlying the finding of necessity: This rule making is necessary to remain in compliance with the Atlantic States Marine Fisheries Commission's new Amendment to the Tautog (blackfish) Fishery Management Plan. These new restrictions were developed in response to the 2016 stock assessment update, which showed that the Long Island Sound and New York Bight tautog populations are overfished, and overfishing is occurring. The proposed amendment will apply more restrictive tautog fishing rules for both recreational and commercial fishers specific to each area. Reductions for each area will be achieved through changes to possession limits and/or open and closed seasons for both the recreational and commercial fisheries.

DEC is adopting these changes in order to protect the general welfare of New York state citizens by complying with the Atlantic States Marine Fisheries Commission (ASMFC) and maintaining the sustainability of an important recreational and commercial fishery. Current tautog regulations do not satisfy the latest reduction mandated by the ASMFC, and leaving them unchanged would likely result in over-harvest of tautog by New York fishers. If ASMFC determines that New York is non-compliant, it notifies the U.S. Secretary of Commerce. The Secretary could then promulgate and enforce a complete closure of New York's tautog fishery if they concur with the non-compliance determination.

The promulgation of this regulation on an emergency basis is necessary because the normal rule making process would not adopt these regulations in time to remain in compliance with the ASMFC's implementation schedule, and have new restrictions in place by the start of the recreational season opening, both of which occur on April 1, 2018.

Subject: Regulations governing the recreational fishing of scup and summer flounder (fluke).

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

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

Paragraphs 40.1(a)(1) through (5) remain the same.

New paragraph 40.1(a)(6) is adopted to read as follows:

(6) The Tautog Management Regions are defined as follows:

(i) The Long Island Sound Region includes all marine and coastal district waters lying east of the Throgs Neck Bridge and west of a line that runs from Orient Point, NY to Watch Hill, RI.

(ii) The NY Bight Region includes all New York marine and coastal district waters lying outside of the Long Island Sound Tautog Management Region.

Existing subdivision 40.1(f) is amended to read as follows:

Species Striped bass through Red drum remain the same.

Species Tautog is amended to read as follows:

40.1(f) Table A – Recreational Fishing.

Species	Open Season	Minimum Length	Possession Limit
Tautog	[Oct. 5 - Dec. 14]	16″ TL	[4]
(Long Island Sound Management Region)	*April 1 - 30* *Oct. 11 - Dec. 9*	*16″ TL*	*2* *3*
Tautog (NY Bight Management Region)	*April 1 - 30* *Oct. 15 - Dec. 22*	*16″ TL* *16″ TL*	*2* *4*

Existing subdivision 40.1(i) is amended to read as follows:

Species Striped bass through Red drum remain the same.

Species Tautog is amended to read as follows:

40.1(i) Table B – Commercial Fishing.

Species	Open Season	Minimum Length	Possession Limit

Tautog *(Long Island Sound Management Region)*	[April 8 to last day of Feb.] *May 7 - Jul 31* *Sept. 1 - Nov 23*	15″ TL *15″ TL*	25 per vessel (except, 10 per vessel when fishing lobster pot gear and more than six lobsters are in possession)
Tautog (NY Bight Management Region)	*April 16 - Jan. 25*	*15″ TL*	*25 per vessel (except, 10 per vessel when fishing lobster pot gear and more than six lobsters are in possession)*

This notice is intended to serve only as a notice of emergency adoption. This agency intends to adopt the provisions of this emergency rule as a permanent rule, having previously submitted to the Department of State a notice of proposed rule making, I.D. No. ENV-16-18-00004-EP, Issue of April 18, 2018. The emergency rule will expire August 24, 2018.

Text of rule and any required statements and analyses may be obtained from: Rachel Sysak, Department of Environmental Conservation, 205 North Belle Mead Rd., Suite 1, East Setauket, NY 11733, (631) 444-0469, email: rachel.sysak@dec.ny.gov

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

Regulatory Impact Statement

1. Statutory authority:

Environmental Conservation Law (ECL) sections 11-0303, 13-0105, and 13-0340-d authorize the Department of Environmental Conservation (DEC or the department) to establish by regulation the open season, size, catch limits, possession and sale restrictions and manner of taking for tautog (blackfish).

2. Legislative objectives:

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

3. Needs and benefits:

This rule making is necessary for New York State to reduce the harvest of tautog and remain in compliance with the Atlantic States Marine Fisheries Commission's new amendment to the Tautog fishery management plan. These new restrictions were developed in response to the 2016 stock assessment update, which showed that the Long Island Sound and New York Bight tautog populations are overfished, and overfishing is occurring.

The proposed amendment will apply more restrictive tautog fishing rules for both recreational and commercial fishers specific to each area. Reductions for each area will be achieved through changes to possession limits and/or open and closed seasons for both the recreational and commercial fisheries.

DEC is adopting these changes in order to protect the general welfare of New York state citizens by complying with the Atlantic States Marine Fisheries Commission (ASMFC) and maintaining the sustainability of an important recreational and commercial fishery. Current tautog regulations do not satisfy the latest reduction mandated by ASMFC, and leaving them unchanged would likely result in over-harvest of tautog by New York fishers. If ASMFC determines that New York is non-compliant, it notifies the U.S. Secretary of Commerce. The Secretary could then promulgate and enforce a complete closure of New York's tautog fishery if they concur with the non-compliance determination.

4. Costs:

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

5. Local government mandates:

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

6. Paperwork:

None.

7. Duplication:

The amendment does not duplicate any state or federal requirement.

8. Alternatives:

New York State marine recreational and commercial fishers had an opportunity to comment upon Amendment 1 to the Tautog Fishery Management Plan, including the measures proposed in this rulemaking, during the Atlantic States Marine Fisheries Commission's public comment period from May 15, 2017 through July 14, 2017. New York's fishers also had the opportunity to attend a public hearing on the amendment at the Division of Marine Resources office in East Setauket on June 20, 2017. Alternative management measures, which included various combinations of possession limits and seasons for both recreational and commercial fisheries, were suggested and discussed. While some fishers questioned the need to reduce harvest at all, support was in favor of the measures included in this rule making when compared to alternative reduction options. The proposed regulations in this rule making were agreed to by consensus of the Marine Resource Advisory Council members on November 8, 2017 and January 23, 2018.

"No action" alternative: If New York were to not adopt regulations that reduced recreational and commercial tautog fishing in 2018, the State would be out of compliance with Atlantic States Marine Fisheries Commission requirements, which could result in the complete closure of New York's tautog fishery.

9. Federal standards:

The amendments to Part 40 are in compliance with the Atlantic States Marine Fisheries Commission's Tautog Fishery Management Plan.

10. Compliance schedule:

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

Regulatory Flexibility Analysis

1. Effect of rule:

This rule making will reduce the harvest of tautog in New York by implementing more restrictive fishing rules for both recreational and commercial tautog fishers. The proposed amendment will adopt the following provisions: defining the boundaries for the new Long Island Sound and New York Bight tautog management regions. It will also modify the recreational season and possession limits by changing the open season for recreational tautog fishing for the Long Island Sound management region to Apr. 1 – 30 with a possession limit of 2 fish, and Oct. 11 – Dec. 9 with a possession limit of 3 fish. It changes the open season for recreational tautog fishing for the New York Bight management region to Apr. 1 – 30 with a possession limit of 2 fish and Oct. 15 – Dec. 22 with a possession limit of 4 fish. The commercial season is also modified for both management regions. The proposed amendment changes the open season for commercial tautog fishing for the Long Island Sound management region to May 7 – Jul 31 and September 1 – November 23. It also changes the open season for commercial tautog fishing for the New York Bight management region to April 16 – Jan 25. The commercial possession limit remains the same.

The proposed rule is more restrictive than last year's regulations. In 2017, there were 977 Food Fish license holders, 503 Food Fish and Crustacea Shipper/Dealers license holders, and 508 licensed party and charter business in New York State. There were also a number of retail and wholesale marine bait and tackle shop businesses operating in New York. Data available from 2016 New York State Vessel Trip Reports shows that there were 2,591 commercial fishing trips that caught and kept tautog, and 640 party and charter trips that caught and kept tautog. These statistics do not include federally permitted commercial and recreational vessels operating out of New York State. The National Oceanic and Atmospheric Administration's Marine Recreational Information Program estimates that there were 165,129 recreational trips targeting tautog in New York. The proposed amendment decreases the number of days both recreational and commercial fishers can fish for tautog, and the amount of tautog that can be kept. This could result in a loss of revenue for an unknown portion of Food Fish and Food Fish and Crustacea Shipper/Dealer license holders, bait and tackle shops, and some party charter businesses. These effects could be more pronounced in the Long Island Sound tautog management region, which is facing larger reductions than the New York Bight management region.

2. Compliance requirements:

None.

3. Professional services:

None.

4. Compliance costs:

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

5. Economic and technological feasibility:

The proposed regulations do not require any expenditure on the part of affected businesses in order to comply with the changes. The proposed

regulations may decrease the income of commercial fishers, commercial food fish dealers and shippers, party and charter businesses, marinas and marine bait and tackle shops that depend heavily upon the recreational tautog fishery, especially in the Long Island Sound management area.

6. Minimizing adverse impact:

This rule making is necessary for New York State to reduce the harvest of tautog and remain in compliance with the Atlantic States Marine Fisheries Commission's (ASMFC) new Amendment to the Fishery Management Plan for Tautog. These new restrictions were developed in response to the 2016 stock assessment update, which showed that the Long Island Sound and New York Bight tautog populations are overfished, and overfishing is occurring. The proposed amendment is consistent with the required restrictions to tautog fishing rules for both recreational and commercial fishers specific to each area, and DEC anticipates that New York State will therefore remain in compliance with the ASMFC.

Ultimately, the maintenance of long-term sustainable fisheries will have a positive effect on employment for the fisheries in question, including Food Fish and Food Fish and Crustacea Shipper/Dealer license holders, party and charter boat fisheries, as well as wholesale and retail bait and tackle shops and other support industries for recreational fisheries. Failure to comply and take required actions to protect our natural resources could cause the collapse of a stock and have a severe, adverse impact on the commercial and recreational fisheries for that species as well as the supporting industries for those fisheries.

7. Small business and local government participation:

New York State marine recreational and commercial fishers had an opportunity to comment upon Amendment 1 to the tautog Fishery Management Plan, including the measures proposed in this rulemaking, during the Atlantic States Marine Fisheries Commission's public comment period from May 15, 2017 through July 14, 2017. New York's fishers also had the opportunity to attend a public hearing on the amendment at the Division of Marine Resources office in East Setauket on June 20, 2017. Alternative management measures, which included various combinations of possession limits and seasons for both recreational and commercial fisheries, were suggested and discussed. While some fishers questioned the need to reduce harvest at all, support was in favor of the measures included in this rule making when compared to alternative reduction options. The proposed regulations in this rule making were agreed to by consensus of the Marine Resource Advisory Council members on November 8, 2017 and January 23, 2018.

8. For rules that either establish or modify a violation or penalties associated with a violation:

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

9. Initial review of the rule, pursuant to SAPA § 207 as amended by L. 2012, ch. 462:

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

Rural Area Flexibility Analysis

The Department of Environmental Conservation has determined that this rule will not impose an adverse impact on rural areas. This rule making only affects the marine and coastal district of the State; there are no rural areas within the marine and coastal district. The tautog fishery is entirely located within the marine and coastal district, and is not located adjacent to any rural areas of the State. The proposed rule will not impose any reporting, record keeping, or other compliance requirements on public or private entities in rural areas. Since no rural areas will be affected by the proposed amendments of 6 NYCRR Part 40, DEC has determined that a Rural Area Flexibility Analysis is not required.

Job Impact Statement

1. Nature of impact:

This rule making will reduce the harvest of tautog in New York by implementing more restrictive fishing rules for both recreational and commercial tautog fishers. The proposed amendment will adopt the following provisions: defining the boundaries for the new Long Island Sound and New York Bight tautog management regions. It will also modify the recreational season and possession limits by changing the open season for recreational tautog fishing for the Long Island Sound management region to April 1 – April 30 with a possession limit of 2 fish, and October 11 – December 9 with a possession limit of 3 fish. It changes the open season for recreational tautog fishing for the New York Bight management region to April 1 – April 30 with a possession limit of 2 fish and October 15 – December 22 with a possession limit of 4 fish. The commercial season is also modified for both management regions. The proposed amendment changes the open season for commercial tautog fishing for the Long Island Sound management region to May 7 – July 31 and September 1 – November 23. It also changes the open season for commercial tautog fishing for the New York Bight management region to April 16 – January 25. The commercial possession limit remains the same.

2. Categories and numbers affected:

In 2017, there were 977 Food Fish license holders, 503 Food Fish and Crustacea Shipper/Dealers license holders, and 508 licensed party and charter business in New York State. There were also a number of retail and wholesale marine bait and tackle shop businesses operating in New York. Data available from 2016 New York State vessel trip reports and dealer purchase reports show that there were 2,591 commercial fishing trips that caught and kept tautog in 2016, with an estimated value of $500,369. These statistics do not include federally permitted commercial and recreational vessels operating out of New York State. The National Oceanic and Atmospheric Administration's (NOAA) Marine Recreational Information Program estimates that there were 165,129 recreational trips targeting tautog in New York in 2016. NOAA's 2014 report on The Economic Contribution of Marine Angler Expenditures on Durable Goods in the United States estimates that there were 693,000 total recreational anglers that year. The report estimates that 2014 recreational angler expenditures contributed 7,417 jobs to the state's economy, and $567 million to the states gross domestic product, an unknown portion of which was the result of recreational tautog fishing.

3. Regions of adverse impact:

The proposed regulation is more restrictive and will likely impact recreational and commercial fishers and associated businesses throughout most of New York's Marine and Coastal District in a negative manner. The proposed amendment decreases the number of days both recreational and commercial fishers can fish for tautog, and the amount of tautog that can be kept. This could result in a loss of revenue for an unknown portion of commercial permit holders, retail and wholesale bait and tackle shops, and some party charter businesses. These effects could be more pronounced in the Long Island Sound tautog management region, which is facing larger reductions than the New York Bight management region.

4. Minimizing adverse impact:

New York State marine recreational and commercial fishers had an opportunity to comment upon Amendment 1 to the Tautog Fishery Management Plan, including the measures proposed in this rulemaking, during the Atlantic States Marine Fisheries Commission's public comment period from May 15, 2017 through July 14, 2017. New York's fishers also had the opportunity to attend a public hearing on the amendment at the Division of Marine Resources office in East Setauket on June 20, 2017. Alternative management measures, which included various combinations of possession limits and seasons for both recreational and commercial fisheries, were suggested and discussed. While some fishers questioned the need to reduce harvest at all, support was in favor of the measures included in this rule making when compared to alternative reduction options. The proposed regulations in this rule making were agreed to by consensus of the Marine Resource Advisory Council members on November 8, 2017 and January 23, 2018.

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

5. Self-employment opportunities:

Commercial fishers, party and charter boat businesses, bait and tackle shops, and marinas are, for the most part, small businesses, owned and often operated by a single owner. The recreational and commercial fishing industries are mostly self-employed. This rule will likely have a negative effect upon opportunities for businesses related to the harvest of tautog. However, failing to adopt this rulemaking and comply with the Atlantic States Marine Fisheries Commission's requirements could lead to a complete closure of New York's tautog fishery.

6. Initial review of the rule, pursuant to SAPA § 207 as amended by L. 2012, ch. 462:

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

EMERGENCY/PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Regulations Governing the Recreational Fishing of Black Sea Bass

I.D. No. ENV-28-18-00001-EP
Filing No. 588
Filing Date: 2018-06-20
Effective Date: 2018-06-20

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

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

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

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

Specific reasons underlying the finding of necessity: This rule making is necessary to bring New York State's recreational black sea bass regulations into compliance with requirements of the Atlantic States Marine Fisheries Commission (ASMFC). The ASMFC Black Sea Bass Management Board voted on February 8, 2018 to approve Addendum XXX to the Black Sea Bass Fishery Management Plan. The northern management region, which includes New York, Connecticut, Rhode Island, and Massachusetts, originally faced a 12 percent reduction under this new addendum and immediately appealed the Board's vote. A successful appeal would have resulted in the northern region facing a 6 percent reduction (reduced from 12 percent). During the review of the appeal, New York continued to work with the ASMFC to avoid any reduction since regulations in New York are already highly restrictive, the black sea bass population is healthy, and the recreational community has objected to a reduction of any magnitude. The regulations included in this proposal were developed as an alternative, and do not require New York to face any reductions to recreational harvest levels. These management measures include a 2 percent increase to black sea bass harvest through an earlier season opening date, and a maximum possession limit of 7 fish established by Addendum XXX during the fall. These alternative measures were approved by the ASMFC on May 3, 2018.

DEC is adopting these changes in order to protect the general welfare by complying with the ASMFC requirements. Current black sea bass regulations are not in compliance with ASMFC Addendum XXX requirements. Under the provisions of the Atlantic Coastal Fisheries Cooperative Management Act, the ASMFC determines if states have implemented the requirements of the Black Sea bass fishery management plan. If ASMFC determines that New York is non-compliant, it will report such non-compliance to the U.S. Secretary of Commerce. The Secretary could then promulgate and enforce a complete closure of New York's black sea bass fishery.

The promulgation of this regulation on an emergency basis is necessary because the normal rule making process would not implement these changes by the start of the recreational fishing season on June 23, 3018. These rules must be in place by the start of the fishing season to remain in compliance with the ASMFC requirements, and to give New York recreational fishers and associated industries the maximum benefit of an earlier season opening.

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

Purpose: To revise regulations concerning the recreational harvest of black sea bass in New York State.

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

Species Striped bass (except the Hudson River north of the George Washington Bridge) through Species Scup (porgy) all other anglers remain the same.

Species Black sea bass is amended to read as follows:

40.1(f) Table A – Recreational Fishing.

Species	Open Season	Minimum Length	Possession Limit
Black sea bass	June [27]*23* - Aug. 31	15″ TL	3
	[Sept. 1 - Oct. 31]	[15″ TL]	[8]
	[Nov. 1 - Dec. 31]	[15″ TL]	[10]
	Sept. 1 - Dec. 31	*15″ TL*	*7*

This notice is intended: to serve as both a notice of emergency adoption and a notice of proposed rule making. The emergency rule will expire September 17, 2018.

Text of rule and any required statements and analyses may be obtained from: Rachel Sysak, Department of Environmental Conservation, 205 North Belle Mead Rd., Suite 1, East Setauket, NY 11733, (631) 444-0469, email: Rachel.Sysak@dec.ny.gov

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

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

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

Regulatory Impact Statement

1. Statutory authority:

Environmental Conservation Law (ECL) sections 11-0303, 13-0105, and 13-0340-f authorize the Department of Environmental Conservation (DEC or the department) to establish by regulation the open season, size, catch limits, possession and sale restrictions, and manner of taking for black sea bass.

2. Legislative objectives:

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

3. Needs and benefits:

This rule making is necessary to bring New York State's recreational black sea bass regulations into compliance with requirements of the Atlantic States Marine Fisheries Commission (ASMFC). The ASMFC approved Addendum XXX to the Black Sea Bass Fishery Management Plan on February 8, 2018. New York worked with ASMFC to avoid the potential 12 percent reduction in the addendum since regulations in New York are already highly restrictive, the black sea bass population is healthy, and the recreational community has objected to a reduction of any magnitude. The regulations included in this proposal were developed as an alternative, and include a 2 percent increase to black sea bass harvest through an earlier season opening date, and a maximum possession limit of 7 fish established by Addendum XXX during the fall.

DEC is adopting these changes in order to protect the general welfare by complying with the ASMFC requirements, while implementing a small liberalization for an important recreational fishery. Current black sea bass regulations are not in compliance with ASMFC Addendum XXX requirements. Under the provisions of the Atlantic Coastal Fisheries Cooperative Management Act, the ASMFC determines if states have implemented the requirements of the Black Sea bass fishery management plan. If ASMFC determines that New York is non-compliant, it will report such non-compliance to the U.S. Secretary of Commerce. The Secretary could then promulgate and enforce a complete closure of New York's black sea bass fishery if he concurs with ASMFC's non-compliance determination.

4. Costs:

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

5. Local government mandates:

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

6. Paperwork:

None.

7. Duplication:

The amendment does not duplicate any state or federal requirement.

8. Alternatives:

New York State marine recreational fishers had an opportunity to comment upon Addendum XXX to the Black Sea Bass Fishery Management Plan at an ASMFC public hearing on January 11, 2018 and again during a DEC public meeting on March 27, 2018. Alternative management measures, which included various combinations of potential reductions, possession limits, size limits, and seasons, were presented. The recreational community universally communicated that they do not support any reductions to the recreational black sea bass fishery, citing the health of black sea bass populations and the inequity with regulations in Connecticut and New Jersey. Following this feedback, New York successfully negotiated with ASMFC for an alternative management strategy that did not entail any reductions to harvest.

"No action" alternative: If New York were to not adopt regulations that reduced the maximum possession limit for black sea bass recreational fishing in 2018, the State would be out of compliance with ASMFC requirements, which could result in federal action to close New York's

black sea bass fishery. In addition, New York recreational fishers and related industries would be denied the benefit of an earlier season opening.

9. Federal standards:

The amendments to Part 40 are in compliance with the ASMFC and Mid-Atlantic Fishery Management Council Black Sea Bass Fishery Management Plans.

10. Compliance schedule:

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

Regulatory Flexibility Analysis

1. Effect of rule:

This rule making will increase the recreational harvest of black sea bass in New York. The proposed amendment will adopt the following provisions: the season will open 4 days earlier on June 23, and the possession limit will be reduced to 7 fish from September 1 through December 31. The minimum size limit (15 inches) remains the same. The combination of these measures will result in a modest overall increase in black sea bass harvest for New York.

The proposed rule is slightly less restrictive than last year's regulations. In 2017, there were 508 licensed party and charter businesses, and a number of retail and wholesale marine bait and tackle shops operating in New York State. Data available from 2016 New York State Vessel Trip Reports shows that there were 1,296 party and charter trips that caught and kept black sea bass. These statistics do not include federally permitted recreational vessels operating out of New York State. The National Oceanic and Atmospheric Administration's Marine Recreational Information Program estimates that there were 385,476 trips targeting black sea bass in New York during 2016. The proposed amendment increases the number of days recreational fishers can fish for black sea bass, but decreases the number of fish that can be kept per fisher from September 1 through Dec 31. A review of reported trips shows that few people take more than 7 fish during this time period, so there should be minimal or no impact on the recreational fishing industry. The small increase in fishing days will create more recreational fishing opportunities for recreational fishers in New York.

2. Compliance requirements:

None.

3. Professional services:

None.

4. Compliance costs:

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

5. Economic and technological feasibility:

The proposed regulations do not require any expenditure on the part of affected businesses in order to comply with the changes. The proposed regulations may increase the income of some party and charter businesses, marinas, and marine bait and tackle shops that depend upon the recreational scup and summer flounder fisheries.

6. Minimizing adverse impact:

This rulemaking is necessary for New York State to liberalize the harvest of black sea bass by the start of the recreational season, and remain in compliance with the Atlantic States Marine Fisheries Commission (ASMFC). The ASMFC approved Addendum XXX to the Black Sea Bass Fishery Management Plan on February 8, 2018. New York worked with ASMFC to avoid the potential 12 percent reduction in the addendum since regulations in New York are already highly restrictive, the black sea bass population is healthy, and the recreational community has objected to a reduction of any magnitude. The regulations included in this proposal were developed as an alternative, and were approved by the ASMFC on May 3, 2018. The proposed amendment is consistent with the requirements of Addendum XXX, and DEC anticipates that New York State will therefore remain in compliance with ASMFC.

Ultimately, the maintenance of long-term sustainable fisheries will have a positive effect on employment for those who rely upon them: party and charter boat operators, wholesale and retail bait and tackle shops, marinas, and other support industries for recreational fisheries. Failure to comply and take required actions to protect our natural resources could cause the collapse of a stock and have a severe, adverse impact on both the recreational and commercial fisheries for that species as well as supporting industries.

7. Small business and local government participation:

New York State marine recreational fishers had an opportunity to comment upon Addendum XXX to the Black Sea Bass Fishery Management Plan at an ASMFC public hearing on January 11, 2018 and again during a DEC public meeting on March 27, 2018. Alternative management measures, which included various combinations of potential reductions, possession limits, size limits, and seasons, were presented. The recreational community universally communicated that they do not support any reductions to the recreational black sea bass fishery, citing the health of black sea bass populations and the inequity with regulations in Connecticut and New Jersey. Following this feedback, New York successfully negotiated with ASMFC for an alternative management strategy that did not entail any reductions to harvest.

8. For rules that either establish or modify a violation or penalties associated with a violation:

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

9. Initial review of the rule, pursuant to SAPA § 207 as amended by L. 2012, ch. 462:

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

Rural Area Flexibility Analysis

The Department of Environmental Conservation has determined that this rule will not impose an adverse impact on rural areas. This rule making only affects the marine and coastal district of the State; there are no rural areas within the marine and coastal district. The black sea bass fishery is entirely located within the marine and coastal district, and is not located adjacent to any rural areas of the State. The proposed rule will not impose any reporting, record keeping, or other compliance requirements on public or private entities in rural areas. Since no rural areas will be affected by the proposed amendments of 6 NYCRR Part 40, DEC has determined that a Rural Area Flexibility Analysis is not required.

Job Impact Statement

1. Nature of impact:

This rule making will increase the recreational harvest of black sea bass in New York. The proposed amendment will adopt the following provisions: the season will open 4 days earlier on June 23, and the possession limit will be reduced to 7 fish from September 1 through December 31. The minimum size limit (15 inches) remains the same. The minimum size limit (15 inches) remains the same. The combination of these measures will result in a modest overall increase in black sea bass harvest for New York.

2. Categories and numbers affected:

In 2017 there were 508 licensed party and charter businesses, and a number of retail and wholesale marine bait and tackle shops operating in New York State. Data available from 2016 New York State Vessel Trip Reports shows that there were 1,296 party and charter trips that caught and kept black sea bass. These statistics do not include federally permitted recreational vessels operating out of New York State. The National Oceanic and Atmospheric Administration's (NOAA) Marine Recreational Information Program estimates that there were 385,476 trips targeting black sea bass in New York during 2016. NOAA's 2014 report on The Economic Contribution of Marine Angler Expenditures on Durable Goods in the United States estimates that there were 693,000 total New York recreational anglers that year. The report estimates that 2014 recreational angler expenditures contributed 7,417 jobs to the state's economy, and $567 million to the states gross domestic product, an unknown portion of which was the result of recreational black sea bass fishing.

3. Regions of adverse impact:

The black sea bass fishery is located entirely within New York's marine and coastal district. The proposed rule is slightly less restrictive than last year's black sea bass regulations. The proposed amendment increases the number of days recreational fishers can fish for black sea bass, but decreases the number of fish that can be kept per fisher from September 1 through Dec 31. A review of reported trips shows that few people take more than 7 fish during this time period, so there should be minimal or no impact on the recreational fishing industry. The small increase in fishing days will create more recreational fishing opportunities for recreational fishers in New York. Moreover, this rulemaking is necessary to maintain ASMFC compliance and avoid the potential for federal closure of New York's black sea bass fishery. Closure of the fishery would be much more detrimental financially to New York fishers than the reduced catch limit proposed in this rulemaking.

4. Minimizing adverse impact:

New York State marine recreational fishers had an opportunity to comment upon Addendum XXX to the Black Sea Bass Fishery Management Plan at an ASMFC public hearing on January 11, 2018 and again during a DEC public meeting on March 27, 2018. Alternative management measures, which included various combinations of potential reductions, possession limits, size limits, and seasons, were presented. The recreational community universally communicated that they do not support any reductions to the recreational black sea bass fishery, citing the health of black

sea bass populations and the inequity with regulations in Connecticut and New Jersey. Following this feedback, New York successfully negotiated with ASMFC for an alternative management strategy that did not entail any reductions to harvest. The regulations included in this proposal were developed as an alternative, and were approved by the ASMFC on May 3, 2018. The proposed amendment is consistent with the requirements of Addendum XXX and will maintain New York's compliance with ASMFC.

Ultimately, the maintenance of long-term sustainable fisheries will have a positive effect on employment for those who rely upon them: party and charter boat operators, wholesale and retail bait and tackle shops, marinas, and other support industries for recreational fisheries.

5. Self-employment opportunities:

Party and charter boat businesses, bait and tackle shops, and marinas are, for the most part, small businesses, owned and often operated by a single owner. The recreational fishing industry is mostly self-employed. This rule will likely have both positive and negative effects for businesses related to the recreational harvest of black sea bass. Recreational fishers will be unable to keep as many fish from September 1 – December 31 compared to 2017, but some of these losses will be recuperated by providing more opportunities to fish with an earlier season opening.

6. Initial review of the rule, pursuant to SAPA § 207 as amended by L. 2012, ch. 462:

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

Department of Financial Services

NOTICE OF EMERGENCY ADOPTION AND REVISED RULE MAKING NO HEARING(S) SCHEDULED

Minimum Standards for Form, Content and Sale of Health Insurance, Including Standards of Full and Fair Disclosure

I.D. No. DFS-25-17-00002-ERP

Filing No. 591

Filing Date: 2018-06-21

Effective Date: 2018-06-21

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

Action Taken: Amendment of Part 52 (Regulation 62) of Title 11 NYCRR.

Statutory authority: Financial Services Law, sections 202, 302; Insurance Law, sections 301, 2606, 2607, 2608, 3201, 3221(h), 3231(a), 3232(g), (h), 3240(b), (d), 4303(ll), 4317(a), 4318(g), (h) and 4328(b)(1)

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

Specific reasons underlying the finding of necessity: There is a movement underway in Congress to repeal and replace the federal Affordable Care Act ("ACA"), including the requirement that issuers cover essential health benefits ("EHB"), such as benefits for maternity and newborn care and mental health and substance use disorder services, and the prohibition against discrimination in the issuance and rating of accident and health insurance because of factors such as race, color, national origin, sex, age, and disability. This rule would require every individual and small group accident and health insurance policy or contract (other than a grandfathered health plan) delivered or issued for delivery in New York that provides hospital, surgical, or medical expense coverage and every student accident and health insurance policy or contract delivered or issued for delivery in New York to provide coverage of at least the enumerated ten categories of EHB if the EHB provisions in 42 U.S.C. § 18022 and 45 C.F.R. 156.100 et seq. are no longer in effect or are modified as determined by the Superintendent of Financial Services. This will ensure that people covered under individual, small group, and student accident and health insurance policies and contracts will continue to have coverage for these important benefits.

In addition, the rule would, with regard to a small or large group or individual accident and health insurance policy that provides hospital, surgical, or medical expense coverage and a student accident and health insurance policy or contract delivered or issued for delivery in New York State, reaffirm that an issuer is prohibited from discriminating because of race, color, creed, national origin, sex, age, marital status, disability, or a preexisting condition, and clarify the scope of such prohibitions.

For the public health and general welfare, the Department is promulgating this rule on an emergency basis in the event that Congress repeals the ACA.

Subject: Minimum Standards for Form, Content and Sale of Health Insurance, Including Standards of Full and Fair Disclosure.

Purpose: To ensure essential health benefits coverage in all individual, small and large group, and student accident and health policies.

Text of emergency/revised rule: A new subdivision 52.1(q) is added as follows:

(q)(1) The federal Patient Protection and Affordable Care Act ("ACA") requires all individual and small group accident and health insurance policies delivered or issued for delivery in this State that provide hospital, surgical, or medical expense coverage and are not grandfathered health plans, and all student accident and health insurance policies delivered or issued for delivery in this State to include coverage for ten categories of essential health benefits. The essential health benefits provide a set of minimum standards that ensure that all individual and small group accident and health insurance policies that provide hospital, surgical, or medical expense coverage and are not grandfathered health plans, and all student accident and health insurance policies provide their insureds with comprehensive coverage for medically necessary care. Independent of the ACA, the Insurance Law and this Title include broad protections to ensure that all accident and health insurance coverage sold in this State is comprehensive and that insurers shall not discriminate against residents of this State based on race, color, creed, national origin, sex, age, marital status, disability, or preexisting condition.

(2) It is the policy of this State that all individual and small group accident and health insurance policies that provide hospital, surgical, or medical expense coverage and are not grandfathered health plans, and all student accident and health insurance policies provide insureds with essential health benefits and that insurers shall not discriminate against residents of this State based on race, color, creed, national origin, sex, age, marital status, disability, or preexisting condition, whether in issuing policies or setting premiums. Accordingly, irrespective of any changes to the essential health benefit rules in the ACA, as set forth in section 52.71 of this Part, this State will continue to require that individual and small group accident and health insurance policies that provide hospital, surgical, or medical expense coverage and are not grandfathered health plans, and student accident and health insurance policies cover the same essential health benefits and be subject to the same benchmark plan and model contract rules as currently apply. Similarly, irrespective of any changes to the anti-discrimination rules in the ACA, as set forth in section 52.72 of this Part, this State will continue to ensure that all New York insureds covered by small or large group or individual accident and health insurance policies that provide hospital, surgical, or medical expense coverage and student accident and health insurance policies are not subject to discrimination based on race, color, creed, national origin, sex, age, marital status, disability, or preexisting condition.

A new section 52.71 is added as follows:

§ 52.71 Essential health benefits.

(a) Every individual and small group accident and health insurance policy that provides hospital, surgical, or medical expense coverage and is not a grandfathered health plan, and every student accident and health insurance policy shall provide coverage of at least the following essential health benefits:

(1) ambulatory patient services, such as office visits, ambulatory surgical services, dialysis, radiology services, chemotherapy, infertility treatment, abortion services, hospice care, and diabetic equipment, supplies and self-management education;

(2) emergency services, such as emergency room services, urgent care services, and ambulance services;

(3) hospitalization, such as preadmission testing, inpatient physician and surgical services, hospital care, skilled nursing facility care, and hospice care;

(4) maternity and newborn care, such as delivery, prenatal and postnatal care, and breastfeeding education and equipment;

(5) mental health and substance use disorder services, including behavioral health treatment, such as inpatient and outpatient services for the diagnosis and treatment of mental, nervous and emotional disorders including maternal depression, screening, diagnosis and treatment for autism spectrum disorder, and inpatient and outpatient services for the diagnosis and treatment of substance use disorder;

(6) prescription drugs, such as coverage for generic, brand name and specialty drugs, enteral formulas, contraceptive drugs and devices, abortifacient drugs, and orally administered anti-cancer medication;

(7) rehabilitative and habilitative services and devices, such as durable medical equipment, medical supplies, prosthetic devices, hearing aids, chiropractic care, physical therapy, occupational therapy, speech therapy, and home health care;

(8) laboratory services, such as diagnostic testing;

(9) preventive and wellness services and chronic disease management, such as well child visits, immunizations, mammography, gynecological exams including cervical cytology screening, bone density measurements or testing, and prostate cancer screening; and

(10) pediatric services, including oral and vision care, such as preventive and routine pediatric vision and dental care, and prescription lenses and frames.

(b) The scope of the minimum benefits covered as essential health benefits pursuant to subdivision (a) of this section shall be equal to the benefits provided by the benchmark plan selected by the superintendent as the New York Benchmark Plan in accordance with this section.

(c) Subject to subdivisions (d) and (e) of this section, the superintendent may select the New York Benchmark Plan in consultation with the commissioner of health from any of the following plans:

(1) Small group market health plan. The largest health plan by enrollment in any of the three largest small group insurance products by enrollment in the small group market in this state;

(2) State employee health benefit plan. Any of the largest three employee health benefit plan options by enrollment offered and generally available to state employees in this state;

(3) FEHBP plan. Any of the largest three national Federal Employees Health Benefits Program (FEHBP) plan options by aggregate enrollment that is offered to all health-benefits-eligible federal employees under 5 U.S.C. section 8903;

(4) HMO. The coverage plan with the largest insured commercial non-Medicaid enrollment offered by a health maintenance organization operating in this State;

(5) Any other plan identified by the superintendent as a typical employer plan providing the coverage of essential health benefits required by this section;

(6) An essential health benefit benchmark plan that another state used for the 2017 plan year;

(7) Replacing one or more categories of essential health benefits in the New York Benchmark Plan used for the 2017 plan year with the same category or categories of essential health benefits from a benchmark plan that another state used for the 2017 plan year; or

(8) Any other set of benefits that the superintendent selects that would become the New York Benchmark Plan.

(d)(1) In order to be eligible to be selected as the New York Benchmark Plan, a plan shall provide coverage of at least the categories of benefits identified in subdivision (a) of this section.

(2) Coverage in each benefit category. A plan not providing any coverage in one or more of the categories described in paragraph (1) of this subdivision may be selected as the New York Benchmark Plan if the plan is supplemented as follows:

(i) General supplementation methodology. A plan that does not include items or services within one or more of the categories described in subdivision (a) of this section shall be supplemented by the addition of the entire category of such benefits offered under any other benchmark plan option described in subdivision (c) of this section unless otherwise described in this subdivision.

(ii) Supplementing pediatric oral services. A plan lacking the category of pediatric oral services shall be supplemented by the addition of the entire category of pediatric oral benefits from one of the following:

(a) The Federal Employees Dental/Vision Program ("FEDVIP") dental plan with the largest national enrollment that is described in and offered to federal employees under 5 U.S.C. section 8952; or

(b) The benefits available under that State's separate Children's Health Insurance Program ("CHIP") plan, if a separate CHIP plan exists, to the eligibility group with the highest enrollment.

(iii) Supplementing pediatric vision services. A plan lacking the category of pediatric vision services shall be supplemented by the addition of the entire category of pediatric vision benefits from one of the following:

(a) The FEDVIP vision plan with the largest national enrollment that is offered to federal employees under 5 U.S.C. section 8982; or

(b) The benefits available under the State's separate CHIP plan, if a separate CHIP plan exists, to the eligibility group with the highest enrollment.

(e) The superintendent may issue model contract language identifying the coverage requirements for all individual and small group accident and health insurance policies that provide hospital, surgical, or medical expense coverage and all student accident and health insurance policies delivered or issued for delivery in this State.

(f) The model language issued by the superintendent summarizes the federal and state laws and rules that are applicable to health insurance policies delivered or issued for delivery in this State, including the requirement that the policies include coverage for essential health benefits required by the federal Patient Protection and Affordable Care Act. Every individual and small group accident and health insurance policy that provides hospital, surgical, or medical expense coverage and every student accident and health insurance policy delivered or issued for delivery in this State shall comply with the federal and state laws and rules that are applicable to health insurance policies issued in New York State as set forth in the model language.

(g) Except for subdivisions (e) and (f) of this section, the provisions of this section shall not be applicable unless and until the essential health benefits provision in 42 U.S.C. section 18022 and 45 C.F.R. 156.100 et seq. are no longer in effect or are modified as determined by the superintendent.

A new section 52.72 is added as follows:

§ 52.72 Nondiscrimination on the basis of race, color, creed, national origin, sex, age, marital status, disability, or preexisting condition.

(a) With regard to a small or large group or individual accident and health insurance policy that provides hospital, surgical, or medical expense coverage and a student accident and health insurance policy delivered or issued for delivery in this State, no insurer shall, because of race, color, creed, national origin, sex, age, marital status, disability, or preexisting condition:

(1) make any distinction or discrimination between persons as to the premiums or rates charged for the policy or in any other manner whatever;

(2) demand or require a greater premium from any person than it requires at that time from others in similar cases;

(3) make or require any rebate, discrimination or discount upon the amount to be paid or the service to be rendered on any policy;

(4) insert in the policy any condition, or make any stipulation, whereby the insured binds his or herself, or his or her heirs, executors, administrators or assigns, to accept any sum or service less than the full value or amount of such policy in case of a claim thereon except such conditions and stipulations as are imposed upon others in similar cases; and any such stipulation or condition so made or inserted shall be void;

(5) reject any application for a policy issued or sold by it;

(6) cancel or refuse to issue, renew or sell such policy after appropriate application therefor; or

(7) fix any lower rate or discriminate in the fees or commissions of insurance agents or insurance brokers for writing or renewing such a policy.

(b) For the purposes of this section, "disability" shall have the same meaning set forth in Executive Law section 292(21).

(c)(1) Discrimination because of national origin shall include discrimination based on an individual's, or his or her ancestor's, place of origin (such as country or world region) or an individual's manifestation of the physical, cultural, or linguistic characteristics of a national origin group.

(2) Discrimination because of sex shall include discrimination on the basis of pregnancy, false pregnancy, termination of pregnancy, or recovery therefrom, childbirth or related medical conditions, sex stereotyping, sexual orientation, gender identity or expression, and transgender status.

This notice is intended to serve as both a notice of emergency adoption and a notice of revised rule making. The notice of proposed rule making was published in the *State Register* on June 21, 2017, I.D. No. DFS-25-17-00002-EP. The emergency rule will expire August 19, 2018.

Emergency rule compared with proposed rule: Substantial revisions were made in sections 52.1(q)(2), 52.71(c), 52.72(a) and (c).

Text of rule and any required statements and analyses may be obtained from: Nathaniel Dorfman, New York State Department of Financial Services, One State Street, New York, NY 10004, (212) 709-5538, email: Nathaniel.Dorfman@dfs.ny.gov

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

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

Revised Regulatory Impact Statement

1. Statutory authority: Financial Services Law §§ 202 and 302 and Insurance Law §§ 301, 2606, 2607, 2608, 3201, 3217, 3221(h), 3231(a), 3232(g) and (h), 3240(b) and (d), 4303(ll), 4317(a), 4318(g) and (h), and 4328(b)(1).

Financial Services Law § 202 establishes the office of the Superintendent of Financial Services ("Superintendent"). Financial Services Law § 302 and Insurance Law § 301, in material part, authorize the Superintendent to effectuate any power accorded to the Superintendent by the Financial Services Law, Insurance Law, or any other law, and to prescribe regulations interpreting the Insurance Law.

Insurance Law § 2606 prohibits discrimination because of race, color, creed, national origin, or disability, Insurance Law § 2607 prohibits discrimination because of sex or marital status, and Insurance Law § 2608 prohibits discrimination because of treatment for a mental disability.

Insurance Law § 3201 requires a policy form delivered or issued for delivery in New York to be filed with and approved by the Superintendent.

Insurance Law § 3217 requires the Superintendent to issue such regula-

tions as the Superintendent deems necessary or desirable to establish minimum standards for the form, content and sale of accident and health insurance policies and subscriber contracts offered by a corporation authorized under Insurance Law Article 43 and entities licensed pursuant to Public Health Law article 43.

Insurance Law §§ 3221(h), 3240(d), 4303(ll), and 4328(b)(1) require an individual or small group health insurance policy or contract delivered or issued for delivery in New York, including a health maintenance organization ("HMO") contract (other than a grandfathered health plan), that provides hospital, medical or surgical expense coverage, and a student accident and health policy or contract delivered or issued for delivery in New York, to provide coverage for essential health benefits ("EHB") as defined in 42 U.S.C. § 18022(b).

Insurance Law §§ 3231(a) and 4317(a) require an individual and small group health insurance policy or contract, including an HMO contract, to be community rated.

Insurance Law §§ 3232(g) and (h), 3240(b), and 4318(g) and (h) prohibit an issuer (i.e., insurer or HMO) from imposing any preexisting condition exclusion in any individual, group or blanket health insurance policy or contract, including an HMO contract, that provides hospital, medical or surgical expense coverage and is not an individual grandfathered health plan and any student accident and health insurance policy or contract.

2. Legislative objectives: Insurance Law §§ 3221(h), 3240(d), 4303(ll), and 4328(b)(1) require an individual or small group policy or contract delivered or issued for delivery in New York (other than a grandfathered health plan) that provides coverage for hospital, medical or surgical expense, and a student accident and health insurance policy or contract delivered or issued for delivery in New York, to provide coverage for EHB defined in 42 U.S.C. § 18022(b). In addition, Insurance Law §§ 3232(g) and (h), 3240(b), and 4318(g) and (h) prohibit an issuer from imposing any preexisting condition exclusion in any individual, group or blanket health insurance policy or contract that provides hospital, medical or surgical expense coverage and is not a grandfathered health plan and in any student accident and health insurance policy or contract. Insurance Law Article 26 prohibits discrimination because of race, color, creed, national origin, disability, sex, or marital status.

This rule accords with the public policy objectives that the Legislature sought to advance in Insurance Law §§ 3221(h), 3240(d), 4303(ll), 4328(b)(1) by requiring every individual and small group accident and health insurance policy or contract delivered or issued for delivery in New York that provides hospital, surgical, or medical expense coverage (other than a grandfathered health plan), and every student accident and health insurance policy or contract delivered or issued for delivery in New York, to provide coverage of at least the enumerated ten categories of EHB if the EHB provision in 42 U.S.C. § 18022 and 45 C.F.R. 156.100 et seq. are no longer in effect or are modified as determined by the Superintendent.

This rule also accords with the public policy objectives that the Legislature sought to advance in Insurance Law Article 26, which prohibits an issuer from discriminating because of race, color, creed, national origin, sex, age, marital status, disability, or a preexisting condition with respect to a small or large group or individual accident and health insurance policy or contract that provides hospital, surgical, or medical expense coverage or a student accident and health insurance policy or contract.

3. Needs and benefits: There is movement underway in Congress to repeal and replace the federal Affordable Care Act ("ACA"), including the requirement that issuers cover EHB, such as benefits for maternity and newborn care and mental health and substance use disorder services, and the prohibition against discrimination in the issuance and rating of accident and health insurance because of factors such as race, color, national origin, sex, age, and disability. This rule would require every individual and small group accident and health insurance policy or contract (other than a grandfathered health plan) delivered or issued for delivery in New York that provides hospital, surgical, or medical expense coverage and every student accident and health insurance policy or contract delivered or issued for delivery in New York to provide coverage of at least the enumerated ten categories of EHB if the EHB provisions in 42 U.S.C. § 18022 and 45 C.F.R. 156.100 et seq. are no longer in effect or are modified as determined by the Superintendent. This will ensure that people covered under individual, small group, and student accident and health insurance policies and contracts will continue to have coverage for these important benefits.

In addition, the rule would, with regard to a small or large group or individual accident and health insurance policy that provides hospital, surgical, or medical expense coverage and a student accident and health insurance policy or contract delivered or issued for delivery in New York State, reaffirm that an issuer is prohibited from discriminating because of race, color, creed, national origin, sex, age, marital status, disability, or a preexisting condition and to clarify the scope of such prohibitions.

4. Costs: This rule will not impose compliance costs on issuers because it only continues the existing protections provided under the ACA.

The Department will not incur costs for the implementation and continuation of this rule.

This rule does not impose compliance costs on state or local governments.

5. Local government mandates: This rule does not impose any program, service, duty, or responsibility upon a county, city, town, village, school district, fire district, or other special district.

6. Paperwork: This rule does not impose any reporting requirements, including forms and other paperwork.

7. Duplication: With regard to the section in the rule that pertains to EHB, it does not duplicate or conflict with any existing state or federal rules or other legal requirements because it only applies if Congress repeals the ACA. With regard to the section in the rule that pertains to nondiscrimination, there is some duplication and overlap with Insurance Law Article 26.

8. Alternatives: The Department considered not promulgating the rule. However, the Department is concerned about the negative impact on consumers if the protections under the ACA are repealed. As a result, the Department determined that it is necessary to promulgate this rule requiring coverage of EHB for the individual and small group health insurance markets and for student accident and health insurance and to reaffirm the continued prohibition against certain types of discrimination for the small and large group and individual health insurance markets and for student accident and health insurance, while clarifying the scope of such prohibition.

Another alternative considered by the Department was to implement the amendment immediately. However, if the ACA remains in effect in its current form, then there is no need to implement mandating the EHB benefits in the regulation.

In the original proposed rule and earlier iterations of the emergency rule, the prohibitions against certain types of discrimination only specified individual and small group accident and health insurance policies or contracts delivered or issued for delivery in New York that provide hospital, surgical, or medical expense coverage and every student accident and health insurance policy or contract delivered or issued for delivery in New York, consistent with the prohibitions on discrimination in the ACA. However, the prohibitions regarding certain discrimination in Insurance Law Article 26 apply regardless of group size. Therefore, to prevent any implication that the scope and nature of the prohibitions against discrimination specified in this regulation do not apply also to large group policies, the regulation now makes clear that the prohibitions and scope apply to small and large group and individual accident and health insurance policies or contracts delivered or issued for delivery in New York that provide hospital, surgical, or medical expense coverage and every student accident and health insurance policy or contract delivered or issued for delivery in New York, consistent with New York law.

In the original proposed rule and earlier iterations of the emergency, the Superintendent could select from five options in choosing the New York Benchmark Plan. The rule was amended to add three additional EHB benchmark plan selection options. On April 17, 2018, the Department of Health and Human Services amended 45 C.F.R. Part 156 to add a new section 45 C.F.R. 156.111, which added three new EHB benchmark plan selection options for plan years beginning on or after January 1, 2020. These options include: an EHB benchmark plan that another State used for the 2017 plan year; replacing one or more categories of EHB in the New York Benchmark Plan used for the 2017 plan year with the same category or categories of EHB from a benchmark plan that another State used for the 2017 plan year; or any other set of benefits that the superintendent selects that would become the New York Benchmark Plan. Consistent with the federal rule, this rule is being amended to add these new EHB benchmark plan selection options. The Department considered not amending the EHB benchmark plan selection options in this rule to include the new EHB benchmark plan selection options but decided to add them because they provide greater flexibility when selecting an EHB benchmark plan selection options.

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

10. Compliance schedule: The Department is promulgating this rule on an emergency basis in the event that Congress repeals the ACA.

Revised Regulatory Flexibility Analysis

1. Effect of the rule:

Small businesses: This amendment to Part 52 applies to insurers and health maintenance organizations ("HMOs") (collectively, "issuers") in New York State that provide comprehensive hospital, surgical, and medical care coverage. Although most issuers are not small businesses, industry has asserted previously that certain issuers subject to the regulation are small businesses but has not provided the Department of Financial Services ("Department") with the names of specific issuers or the number of such entities.

Local governments: The rule does not impose any impact, including

any adverse impact, or reporting, recordkeeping, or other compliance requirements on any local governments. The basis for this finding is that this rule is directed at insurers and HMOs.

2. Compliance requirements: The rule applies across the board to all issuers. However, this rule will not impose new compliance requirements on issuers because it only continues the existing protections provided under the ACA and reaffirms existing requirements under the Insurance Law.

No local government will have to undertake any reporting, recordkeeping, or other affirmative acts to comply with the amendment.

3. Professional services: It is not anticipated that any issuer that is a small business affected by this amendment will need to retain professional services, such as lawyers or auditors, to comply with this amendment.

4. Compliance costs: This rule will not impose compliance costs on issuers because it only continues the existing protections provided under the ACA and reaffirms existing requirements under the Insurance Law.

5. Economic and technological feasibility: No issuer that is a small business affected by this amendment should experience any economic or technological impact as a result of the amendment.

6. Minimizing adverse impact: The Department considered the criteria in State Administrative Procedures Act ("SAPA") Section 202-b(1) but the Department could not design the amendment to minimize any adverse impact on issuers that are small businesses. The requirements must apply equally to all issuers.

7. Small business and local government participation: Issuers will have an opportunity to comment on the revised proposed rule.

Revised Rural Area Flexibility Analysis

1. Types and estimated numbers of rural areas: Insurers and health maintenance organizations ("HMOs") (collectively, "issuers") affected by this rule operate in every county in this state, including rural areas as defined by State Administrative Procedure Act § 102(10).

2. Reporting, recordkeeping and other compliance requirements; and professional services: The rule does not impose additional reporting, recordkeeping, and other compliance requirements on issuers located in rural areas. An issuer in a rural area should not need to retain professional services to comply with this rule.

3. Costs: This rule will not impose compliance costs on issuers, including issuers in rural areas.

4. Minimizing adverse impact: This rule uniformly affects issuers that are located in both rural and non-rural areas of New York State. The rule should not have an adverse impact on rural areas.

5. Rural area participation: The Department of Financial Services ("Department") is promulgating this rule on an emergency basis in the event that Congress repeals the ACA. Issuers in rural areas will have an opportunity to participate in the rule making process when the proposed rule is published in the State Register and posted on the Department's website.

Revised Job Impact Statement

This rule should not adversely impact jobs or employment opportunities in New York State. This rule would require every individual and small group accident and health insurance policy or contract (other than a grandfathered health plan) delivered or issued for delivery in New York that provides hospital, surgical, or medical expense coverage and every student accident and health insurance policy or contract delivered or issued for delivery in New York to continue providing coverage of at least the enumerated ten categories of essential health benefits ("EHB") if the EHB provisions in 42 U.S.C. § 18022 and 45 C.F.R. 156.100 et seq. are no longer in effect or are modified as determined by the Superintendent of Financial Services. This will ensure that people covered under individual, small group, and student accident and health insurance policies and contracts will continue to have coverage for these important benefits.

In addition, the rule would, with regard to a small or large group or individual accident and health insurance policy that provides hospital, surgical, or medical expense coverage and a student accident and health insurance policy or contract delivered or issued for delivery in New York State, reaffirm that an issuer (i.e., insurer or health maintenance organization ("HMO")) is prohibited from discriminating because of race, color, creed, national origin, sex, age, marital status, disability, or a preexisting condition and to clarify the scope of such prohibitions.

Assessment of Public Comment

The Department of Financial Services ("Department") received several comments with respect to the 49th amendment to Insurance Regulation 62. Generally, the comments broadly supported the goals and purposes of the amendment but addressed specific areas of concern.

A municipal agency suggested that language throughout section 52.71(a)(1)-(10) be revised to make clear that the listed services were mandatory and not just suggestions; specifically, the agency asked that "such as" be changed to "including."

The listed services are intended as examples of the services to be provided under the various categories of benefits and reflect what is in the current benchmark plan. Other provisions of New York law mandate specific benefits and the conditions or criteria that apply to those benefits. Any plan would have to comply with those New York mandates.

The agency also recommended that the proposed list of essential health benefits in section 52.71(a) contain more explicit parameters regarding services included within the ambit of preventive health services. Specifically, to reference services designated by the United States Preventive Services Task Force and certain other entities.

Other provisions of the Insurance Law and regulations contain explicit parameters for preventive health services. See for example Insurance Law sections 3216(i)(17), 3221(l)(8) and 4303(j). Any plan would have to comply with those and other requirements that may apply.

The agency also recommended that all protected classes under federal and state law be specified in the regulation, which would also include gender identity and sexual orientation, as well as association with members of a protected class. Other commenters likewise urged expansion of the regulation to address discrimination based on sexual orientation, gender expression and transgender status.

The regulation does not reiterate every protection that may already be afforded under state or federal law. All applicable requirements under other laws would apply.

The Department believes that the prohibition against discrimination based on sex in the Insurance Law encompasses discrimination based on gender expression, sexual identity, transgender status and other similar statuses. However, because there was concern that this is not the case, the regulation is amended to explicitly state that discrimination because of sex includes discrimination on the basis of pregnancy, false pregnancy, termination of pregnancy, or recovery therefrom, childbirth or related medical conditions, sex stereotyping, sexual orientation, gender expression, transgender status, and gender identity.

With respect to discrimination based upon an individual's association with a member of a protected class, the Department is not aware of any practical issue in this regard. If someone had a complaint, the Department would review it to determine whether the issuer was engaging in an unfair or deceptive act or practice.

A comment was also received that the regulation should bar discrimination based on alienage or citizenship status.

The Department believes that alienage status is already addressed by the discrimination bar for national origin. With respect to citizenship status, though, any protections would have to be afforded under existing law. Thus, no change is made with respect to this comment.

The agency also recommended that the proposed rule include language access requirements for individuals with limited English proficiency and communication and accessibility requirements for individuals with disabilities.

These are important issues but not within the scope of this amendment. Certain access issues are already addressed under the law. Further study would be needed on these issues and thus no change in the proposed rule is made.

One commenter urged that a prohibition against discrimination in the regulation with respect to transgender, gender non-conforming and intersex people (TGNCI) should also apply to grandfathered plans.

The anti-discrimination provisions of the Insurance Law and regulations already apply to grandfathered plans so no change is needed.

One commenter urged the Department to make the regulation clear that aged-based restrictions in benefits can be discriminatory; for example, with respect to transgender-related surgery exclusions for minors.

The Department would not approve a policy provision that contained an explicit age restriction. Where medically necessary, coverage should be provided. Any issuer's denial would be reviewed pursuant to medical necessity standards and subject to external appeal pursuant to Insurance Law Article 49.

One commenter requested that the regulation be clarified with respect to dental benefits. Specifically, the request was made to revise the regulation to make clear that a qualified health plan would not fail to be certified by the exchange if it chooses not to offer the pediatric dental benefit so long as a stand-alone dental plan in the exchange offers the required pediatric dental benefit.

The pediatric dental benefit is an essential health benefit. However, the manner and methods by which it is to be provided on the Insurance Exchange is a matter for the Insurance Exchange's rules and is not within the scope of this regulation.

A conference representing certain religious entities raised several objections to the regulation. Specifically:

--that abortion or abortifacient drugs is not an essential health benefit under the federal law and that there is no statutory authority for New York to compel health insurance plans to cover those costs;

--that in vitro fertilization is not an essential health benefit under the federal law and that the Insurance Law does not mandate coverage for

infertility treatments such as in vitro fertilization, and that there is no statutory authority for New York to compel health insurance plans to cover those costs;

--that the regulations offer no protections for religious organizations and compel them to participate in abortion on demand, in vitro fertilization procedures and other procedures contrary to their religious and moral beliefs.

The regulation does not mandate additional or expand existing abortion or infertility requirements not already contained in New York law and regulations. For example, contraception is addressed in Insurance Law sections 3221(l)(16) and 4303(cc). The religious employer exception for contraception is specified in Insurance law sections 3221(l)(16)(A) and 4303(cc)(1). Similarly, 11 NYCRR 52.16(o) contains requirements with respect to abortions that are medically necessary but subdivision (o)(2) contains a religious employer exception. With respect to infertility, Insurance Law sections 3216(i)(13), 3221(k)(6) and 4303(s) establish the requirements. The provisions of this amendment are subject to those requirements. As is the case with other requirements, medical necessity remains the appropriate standard for providing coverage under a policy.

The conference was also concerned --that the rule would permit the Superintendent to take arbitrary actions because the regulation permits the Superintendent to act in implementing section 52.71 if the federal essential health benefits are "modified as determined by the superintendent".

The Department believes that the regulation is consistent with the Superintendent's authority under the law. Any action to be taken by the Superintendent would be in furtherance of ensuring that insureds be able to obtain coverage for essential health care benefits. In this, as in all things, the Superintendent must implement her actions in a manner that is neither arbitrary nor capricious and consistent with the public policy of the State and legislative goals.

Department of Health

NOTICE OF ADOPTION

Hospital Policies and Procedures for Individuals with Substance Use Disorders

I.D. No. HLT-02-18-00002-A
Filing No. 592
Filing Date: 2018-06-22
Effective Date: 2018-07-11

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

Action taken: Amendment of Parts 405 and 407 of Title 10 NYCRR.

Statutory authority: Public Health Law, sections 2803 and 2803-u(4)

Subject: Hospital Policies and Procedures for Individuals with Substance Use Disorders.

Purpose: To require hospitals to establish policies and procedures to identify, assess and refer individuals with substance use disorders.

Text or summary was published in the January 10, 2018 issue of the Register, I.D. No. HLT-02-18-00002-P.

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

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

Initial Review of Rule

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

Assessment of Public Comment

The New York State Department of Health (the Department) received two sets of comments regarding the proposed amendments to Parts 405 and 407 of Title 10 of the Official Compilation of Codes, Rules and Regulations of the State of New York.

Comment: The Greater New York Hospital Association (GNYHA) recommended that implementation of the regulation allow hospitals flexibility in determining appropriate approaches to identify and assess individuals for substance use disorders. First, GNYHA noted that while Screening, Brief Intervention, and Referral to Treatment (SBIRT) is used in various settings, some hospitals have reported having difficulty obtaining Medicaid reimbursement for SBIRT services. Second, GNYHA suggested that the Department recognize consultation with the State's prescription monitoring program (PMP) database as an acceptable approach for identification and assessment of substance use disorders. Third, GNYHA recommended that the Department permit hospitals to rely on health homes, community-based organizations providing care management services, and other care coordination entities to help connect providers of substance use disorder treatment services with eligible patients after discharge.

Response: First, the Department notes that the Regulatory Impact Statement filed with the regulation mentions that SBIRT is one example of an approach that can be used, but hospitals have the flexibility to use any other available, evidence-based approach. The Department has contacted GNYHA to assist in resolving SBIRT reimbursement issues as appropriate. Second, while the PMP may contain information in some cases that suggests an individual may have a substance use disorder, in most cases it will be necessary to consider additional information as part of the evidence-based assessment required under the regulations. Third, the regulation provides that hospitals are required to refer individuals in need of substance use disorder services to appropriate programs and coordinate with such programs. A referral to a health home or other entity could satisfy this requirement if it connects the individual with needed services. No change to the regulation is necessary.

Comment: One comment was received from a provider of substance use disorder services certified by the New York State Office of Alcoholism and Substance Abuse Services (OASAS). The commenter supported the overall intent of the regulations in seeking to address the misuse of opioids, but noted that private practices often do not have time to properly assist more complex patients. Medication assisted treatment should be accompanied by intensive counseling services, and addiction requires a lifelong approach involving the individual's family. The commenter stressed the importance of compliance by providers, especially in making referrals and conducting follow-up.

Response: The comments were shared with OASAS. No change to the regulation is necessary.

Office for People with Developmental Disabilities

EMERGENCY RULE MAKING

Care Coordination Organizations

I.D. No. PDD-17-18-00001-E
Filing No. 595
Filing Date: 2018-06-26
Effective Date: 2018-06-26

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

Action taken: Amendment of Subpart 635-11 of Title 14 NYCRR.

Statutory authority: Mental Hygiene Law, sections 13.07, 13.09(b), 13.15(a) and 16.00; Social Services Law, section 365-l

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

Specific reasons underlying the finding of necessity: The emergency adoption of amendments that allow individuals to be enrolled into Care Coordination Organizations (CCO), through certain parties, in situations where there is no other person to make that election for them, is necessary to protect the health, safety, and welfare of individuals who are eligible to receive enhanced care coordination services in the OPWDD system. CCOs provide two care coordination services for individuals who receive OPWDD-certified Home and Community Based Services (HCBS). The first service is a federally-authorized Medicaid Health Home service, which provides enhanced care coordination for individuals who want coordination of health and developmental disability services funded by Medicaid. Individuals who just want coordination their OPWDD-certified HCBS services may enroll in the Basic HCBS Plan Support services offered by the CCO. Persons who are unable to enroll themselves in a CCO will be unfairly precluded from participation OPWDD-certified HCBS services, as care management is required to receive these services, and CCOs will assume the care management role for individuals receiving these services.

The emergency amendments amend Title 14 NYCRR Subpart 635-11 to allow individuals, who lack capacity and a guardian, the ability to be enrolled in a CCO. The regulations must be filed on an emergency basis to ensure that individuals eligible for CCOs are not unfairly precluded from participation in cross-system care coordination that will meet their needs. Also, it is necessary for individuals to be enrolled into CCOs as the OPWDD system is shifting to the new model of care coordination and will be discontinuing Medicaid Service Coordination and Plan of Care Support Services, which are the services that currently serve individuals receiving OPWDD-certified HCBS. Individuals must be enrolled in a care coordination service to be eligible for HCBS services. In addition to the desire to provide enhanced care coordination services for individuals in the OPWDD system, this transition is necessary in order for the OPWDD system to comply with federal conflict of interest regulations and standards set by the Centers for Medicare and Medicaid Services.

Subject: Care Coordination Organizations.

Purpose: To allow individuals to be enrolled in a CCO when individuals are unable to enroll themselves.

Text of emergency rule: Subpart 635-11 is amended as follows:

• Enrollment in Medicare Prescription Drug Plans*, Care Coordination Organizations,* and Fully Integrated Duals Advantage Plans for Individuals with Intellectual and Developmental Disabilities (FIDA-IDD)

• New subparagraph 635-11.1(a)(1)(iii) is added as follows:

(iii) services provided by a Care Coordination Organization (CCO) designated by the New York State Department of Health pursuant to section 365-l of the Social Services Law; or

• Existing paragraph 635-11.1(a)(2) is amended as follows:

(2) who can pursue grievances, complaints, exceptions and appeals in such plans *or services*.

• New paragraph 635-11.1(b)(1) is added, and all remaining paragraphs are renumbered accordingly.

(1) Act in the CCO review process means doing any of the following within a CCO:

(i) filing a grievance;

(ii) submitting a complaint to the quality improvement organization or to federal or state government regulatory agencies;

(iii) filing and requesting appeals and dealing with, or participating in, any part of the appeals process;

• New paragraph 635-11.1(b)(4) is added, and all remaining paragraphs are renumbered accordingly.

(4) CCO means a Care Coordination Organization which is designated by the New York State Department of Health, in conjunction with the Office for People With Developmental Disabilities, pursuant to section 365-l of the Social Services Law to provide Medicaid health home care coordination services or Basic HCBS Plan Support.

• Existing subparagraph 635-11.1(b)(5)(i) is amended as follows:

(i) a PDP; [and/or]

• Existing subparagraph 635-11.1(b)(5)(ii) is amended as follows:

(ii) a FIDA-IDD plan[.]*; or*

• New subparagraph 635-11.1(b)(5)(iii) is added as follows:

(iii) a CCO.

• New section 635-11.8 is added as follows:

Section 635-11.8. CCO enrollment and reviews for persons residing in a residential facility operated or certified by OPWDD or a family care home.

(a) If a person has the ability to choose a CCO on his or her own, or with the assistance of supported decision making, the person may:

(1) enroll himself or herself in a CCO Plan;

(2) act in the CCO review process;

(3) disenroll himself or herself from a CCO;

(4) appoint another party to take actions on his or her behalf; or

(5) seek assistance with the above decisions and actions.

(b) If a person lacks the ability to enroll in a CCO, disenroll from a CCO, or act in the CCO review process, but has a guardian lawfully empowered to enroll him or her in a CCO, the guardian may take any of the actions enumerated in subdivision (a) of this Subpart.

(c) If a person lacks the ability to choose a CCO and does not have a guardian lawfully empowered to enroll him or her in a CCO, then any of the following parties, in the order stated, may take any of the actions enumerated in subdivision (a) of this subpart:

(1) an actively involved (see section 633.99 of this Title) spouse;

(2) an actively involved parent;

(3) an actively involved adult child;

(4) an actively involved adult sibling;

(5) an actively involved adult family member;

(6) the Consumer Advisory Board for the Willowbrook Class members, but only for members of the Willowbrook Class.

(d) If the first surrogate on the list in subdivision (c) is not reasonably available and willing to make enrollment decisions and enroll the individual in a CCO or act in the CCO review process, and is not expected to become reasonably available and willing to make an enrollment decision and enroll the individual in a CCO or act in the CCO review process, the surrogate who has the highest priority on the list and who is willing and available shall have the authority to make enrollment decisions and enroll the individual in a CCO or act in the CCO review process.

(e) If a person lacks the ability to choose a CCO, does not have a guardian lawfully empowered to enroll him or her in a CCO, and there are no parties identified in (c) above, then the chief executive officer (CEO) (see section 635-99.1 of this Part) of the agency operating the person's residential facility or sponsoring the family care home, or a designee of the CEO, may take any of the actions enumerated in subdivision (a) of this subpart. For the purposes of this subsection only, if the person's residential facility is operated by OPWDD, the CEO of the agency is the director of the DDSOO that operates the residential facility.

(f) If a party specified in subdivisions (a) through (e) of this section, in the order so specified, makes a decision to enroll in a CCO; not to enroll in a CCO; or to disenroll from a CCO; that decision shall be considered the final decision of the affected individual and any party in a subordinate position, as specified in subdivisions (a) through (e) of this section, may not change that enrollment decision. The party that enrolls the individual shall also be the party authorized to act in the CCO review process.

(g) If the CEO enrolls the person in the CCO or acts in the CCO review process, he or she shall give written notice of such enrollment and/or action to (1) the person's correspondent or advocate, if one is available; (2) the person's Medicaid service coordinator, or other person identified as that person's care coordinator; (3) the DDRO director for the region encompassing the person's residence.

(h) For each individual eligible to enroll in a CCO, the individual's care management provider for OPWDD-certified services shall identify a decision-maker who has the authority to make enrollment decisions for the individual pursuant to this section. If there is no care management provider assigned to the individual at the time of the eligibility, the DDRO director for the region encompassing the person's current residence, or his or her designee, shall identify a decision-maker pursuant to this section.

(i) The care management provider or DDRO director shall notify the following parties of the decision-maker identified to make enrollment decisions:

(1) the identified decision-maker; and

(2) OPWDD, if necessary.

(j) The care management provider or DDRO director shall maintain documentation of the current decision-maker identified pursuant to this subsection, including documentation of attempts to reach unavailable individuals, and shall confirm the identification of the current decision maker as necessary, but at least annually.

• New section 635-11.9 is added as follows:

Section 635-11.9. CCO Enrollment and reviews for persons not residing in a residential facility or a family care home.

(a) If a person has the ability to choose a CCO on his or her own, or with the assistance of supported decision making, the person may:

(1) enroll himself or herself in a CCO;

(2) act in the CCO review process;

(3) disenroll himself or herself from a CCO;

(4) appoint another party to take actions on his or her behalf; or

(5) seek assistance with the above decisions and actions.

(b) If a person lacks the ability to choose a CCO, but has a guardian lawfully empowered to enroll him or her in a CCO, the guardian may take any of the actions enumerated in subdivision (a) of this Subpart.

(c) If a person lacks the ability to choose a CCO and does not have a guardian lawfully empowered to enroll him or her in a CCO, then any of the following parties, in the order stated, may take any of the actions enumerated in subdivision (a) of this subpart:

(1) an actively involved (see section 633.99 of this Title) spouse;

(2) an actively involved parent;

(3) an actively involved adult child;

(4) an actively involved adult sibling;

(5) an actively involved adult family member;

(6) the Consumer Advisory Board for the Willowbrook Class members, but only for the members of the Willowbrook Class.

(d) If the first surrogate on the list in subdivision (c) is not reasonably available and willing to make enrollment decisions and enroll the individual in a CCO or act in the CCO review process, and is not expected to become reasonably available and willing to make an enrollment decision and enroll the individual in a CCO or act in the CCO review process, the surrogate who has the highest priority on the list and who is willing and available shall have the authority to make enrollment decisions and enroll the individual in a CCO or act in the CCO review process.

(e) If a person lacks the ability to choose a CCO: does not have a guardian lawfully empowered to enroll him or her in a CCO; and there are no parties identified in (c) above, the DDRO director for the region encom-

passing the person's residence, or his or her designee may take any of the actions enumerated in subdivision (a) of this subpart. If the DDRO director or designee enrolls the person in the CCO, acts in the CCO review process, or disenrolls the individual from a CCO, he or she shall give written notice of such enrollment, disenrollment and/or action to the person's correspondent or advocate, if one is available.

(f) If a party specified in subdivisions (a) through (e) of this section, in the order so specified, makes a decision to enroll in a CCO; not to enroll in a CCO; or to disenroll from a CCO; that decision shall be considered the final decision of the affected individual and any party in a subordinate position, as specified in subdivisions (a) through (e) of this section, may not change that enrollment decision. The party that enrolls the individual shall also be the party authorized to act in the CCO review process.

(g) For each individual eligible to enroll in a CCO, the individual's care management provider for OPWDD-certified services shall identify a decision-maker who has the authority to make enrollment decisions for the individual pursuant to this section. If there is no care management provider assigned to the individual at the time of the eligibility, the DDRO director for the region encompassing the person's current residence, or his or her designee, shall identify a decision-maker pursuant to this section.

(h) The care management provider or DDRO director shall notify the following parties of the decision-maker identified to make enrollment decisions:

(1) the identified decision-maker; and

(2) OPWDD, if necessary.

(i) The care management provider or DDRO director shall maintain documentation of the current decision-maker identified pursuant to this subsection, including documentation of attempts to reach unavailable individuals, and shall confirm the identification of the current decision maker as necessary, but at least annually.

• A new Section 635-11.10 is added as follows:

Section 635-11.10. Other responsibilities and rights of CEOs and DDSOO and DDRO directors or designees regarding CCO enrollment and reviews.

(a) No CEO or DDRO or DDSOO director or designee shall solicit, accept or receive from a CCO or Managed Care Plan operator, or an agent of the CCO or Managed Care Plan, for personal use or benefit (other than for the personal use or benefit of the person being enrolled), any payment, discount or other remuneration in consideration of, or as a result of, enrolling the person in a CCO or Managed Care Plan.

(b) No CEO or DDRO or DDSOO director or designee shall charge, accept or receive payment from the person, family or anyone else for enrolling the person in a CCO or Managed Care Plan, for providing advice and assistance in choosing a CCO or Managed Care Plan or for acting for the person in the CCO or Managed Care Plan review process.

(c) When a CEO or DDRO or DDSOO director or designee is authorized to act by this section or appointed to act in the CCO or Managed Care Plan review process for a person, the director or designee may appoint a party outside of the agency to act in the CCO or Managed Care Plan review process for the person.

(d) When a CEO or DDRO or DDSOO director or designee enrolls a person in a CCO or Managed Care Plan, disenrolls a person from a CCO or Managed Care Plan, or acts in the CCO or Managed Care Plan review process for a person he or she shall act based on the best interests of the person, and shall fully document the reasons for such enrollment decision or action.

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. PDD-17-18-00001-EP, Issue of April 25, 2018. The emergency rule will expire August 24, 2018.

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

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

Regulatory Impact Statement

1. Statutory Authority:

a. OPWDD has the statutory responsibility to provide and encourage the provision of appropriate programs, supports, and services in the areas of care, treatment, habilitation, rehabilitation, and other education and training of persons with developmental disabilities, as stated in the New York State (NYS) Mental Hygiene Law Section 13.07.

b. OPWDD has the authority to adopt rules and regulations necessary and proper to implement any matter under its jurisdiction as stated in the NYS Mental Hygiene Law Section 13.09(b).

c. OPWDD has the authority to plan, promote, establish, develop, coordinate, evaluate, and conduct programs and services for prevention, diagnosis, examination, care treatment, rehabilitation, training, and research for the benefit of individuals with developmental disabilities and has the authority to take all actions necessary, desirable, or proper to implement the purposes of the Mental Hygiene Law and to carry out the purposes and objectives of OPWDD within available funding, as stated in the NYS Mental Hygiene Law Section 13.15(a).

d. OPWDD has the statutory authority to adopt regulations concerned with the operation of programs and the provision of services, as stated in the NYS Mental Hygiene Law Section 16.00.

e. OPWDD, in conjunction with the New York State Department of Health, has the statutory authority to establish standards for the provision of health home services to Medicaid enrollees with chronic conditions, as stated in the NYS Social Services Law Subdivisions 365-l.

2. Legislative Objectives: The regulations further legislative objectives embodied in sections 13.07, 13.09(b), 13.15(a) and 16.00 of the Mental Hygiene Law and 365-l of the NYS Social Services Law. The regulations authorize certain parties to enroll individuals with developmental disabilities in entities called Care Coordination Organizations (CCOs), designated by the New York State Department of Health, in conjunction with OPWDD, pursuant to section 365-l of the Social Services Law, when those individuals lack capacity to enroll themselves. CCOs provide two care coordination services for individuals with developmental disabilities, as that term is defined under Section 1.03(22) of the Mental Hygiene Law, who receive OPWDD-certified Home and Community Based Services (HCBS). The first service is a federally-authorized Medicaid Health Home service, which provides enhanced care coordination for individuals who want coordination of health and developmental disability services funded by Medicaid. Individuals who just want coordination of their OPWDD-certified HCBS services may enroll in the Basic HCBS Plan Support services offered by the CCO.

3. Needs and Benefits: The regulations amend Title 14 NYCRR Part 635-11 to allow individuals to be enrolled in a CCO, through certain parties, in situations where there is no other to make that election for them, such as lack of a guardian or incapacity. Without such action, individuals who are unable to enroll themselves in a CCO will be unfairly precluded from participation OPWDD-certified HCBS services. This is because care management is required to receive these services, and the OPWDD system will be discontinuing current care management services, Medicaid Service Coordination and Plan of Care Support Services, in order to transition to the services offered by CCOs. In addition to the desire to provide enhanced care coordination services for individuals in the OPWDD system, this transition is necessary in order for the OPWDD system to comply with federal conflict of interest regulations and standards set by the Centers for Medicare and Medicaid Services.

The regulations in 635-11.8 pertain to individuals who reside in a residential facility operated or certified by OPWDD, or a family care home. That section would allow a surrogate to enroll an individual in a CCO or to participate in the CCO review process, if that individual did not have the capacity to enroll himself or herself. The section sets forth a hierarchy of individuals that may serve as a surrogate for these purposes, which includes an actively involved spouse, parent, adult child, adult sibling, adult family member or the Consumer Advisory Board for the Willowbrook Class (for class members only). In all other situations, the CEO of the agency that operates the individual's residence may enroll an individual and act on their behalf in the CCO plan review process. For individuals residing in a facility operated by OPWDD, the CEO of the agency is deemed to be the director of the Developmental Disabilities State Operations Office that encompasses the location of the residence. This section also places notification requirements on a CEO that enrolls an individual in a CCO plan, and requires the care management provider for that individual's OPWDD-certified services to identify the appropriate decision-maker for the individual.

The regulations in 635-11.9 pertain to those individuals not residing in an OPWDD-certified or operated residential facility or family care home. That section would also allow a surrogate to enroll an individual in a CCO or to participate in the CCO review process, if that individual did not have the capacity to enroll himself or herself. The section sets forth a hierarchy of individuals that may serve as a surrogate for these purposes, which includes an actively involved spouse, parent, adult child, adult sibling, adult family member, or the Consumer Advisory Board for the Willowbrook Class (for Class members only). In all other situations, the director of the OPWDD Developmental Disabilities Regional Office for the region in which the individual resides may enroll the individual and act on their behalf in the CCO review process. This section also requires the care management provider for that individual's OPWDD-certified services to identify the appropriate decision-maker for the individual.

The regulations in 635-11.10 adds rights and responsibilities of CEOs, DDSOO and DDRO directors and designees regarding CCO plan enrollment and reviews.

4. Costs:

a. Costs to the Agency and to the State and its local governments:

There is no anticipated impact on Medicaid expenditures as a result of the regulations. The regulations merely allow individuals to be enrolled in CCOs, through certain parties, in situations where there is no other to make that election for them, such as lack of a guardian or incapacity.

These regulations will not have any fiscal impact on local governments, as the contribution of local governments to Medicaid has been capped. Chapter 58 of the Laws of 2005 places a cap on the local share of Medicaid costs and local governments are already paying for Medicaid at the capped level.

There are no anticipated costs to OPWDD in its role as a provider of services to comply with the new requirements. The regulations may result in cost savings because individuals affected by the regulations will not have to seek guardianship to participate in a CCO.

b. Costs to private regulated parties:

There are no anticipated costs to regulated providers to comply with the regulations. The amendments merely allow individuals to be enrolled in a CCO, through certain parties, in situations where there is no other to make that election for them, such as lack of a guardian or incapacity.

5. Local Government Mandates: There are no new requirements imposed by the rule on any county, city, town, village; or school, fire, or other special district.

6. Paperwork: Providers will not experience an increase in paperwork as a result of the regulations.

7. Duplication: The regulations do not duplicate any existing State or Federal requirements on this topic.

8. Alternatives: OPWDD did not consider any other alternatives to the regulations. The regulations are necessary to allow individuals to be enrolled in a CCO, through certain parties, in situations where there is no other to make that election for them, such as lack of a guardian or incapacity.

9. Federal Standards: The amendments do not exceed any minimum standards of the federal government for the same or similar subject areas.

10. Compliance Schedule: OPWDD is planning to adopt the amendments as soon as possible within the timeframes mandated by the State Administrative Procedure Act. The regulations were discussed with and reviewed by representatives of providers in advance of this proposal. OPWDD expects that providers will be in compliance with the requirements at the time of their effective date.

Regulatory Flexibility Analysis

A regulatory flexibility analysis for small businesses and local governments is not being submitted because these amendments will not impose any adverse economic impact or reporting, record keeping or other compliance requirements on small businesses. There are no professional services, capital, or other compliance costs imposed on small businesses as a result of these amendments.

The regulations amend Title 14 NYCRR Subpart 635-11 to allow individuals to be enrolled in a Care Coordination Organizations (CCO), through certain parties, in situations where there is no other person to make that election for them, such as lack of a guardian or incapacity. The amendments will not result in costs or new compliance requirements for regulated parties and consequently, the amendments will not have any adverse effects on providers of small business and local governments.

Rural Area Flexibility Analysis

A Rural Area Flexibility Analysis for these amendments is not being submitted because the amendments will not impose any adverse impact or significant reporting, record keeping or other compliance requirements on public or private entities in rural areas. There are no professional services, capital, or other compliance costs imposed on public or private entities in rural areas as a result of the amendments.

The regulations amend Title 14 NYCRR Subpart 635-11 to allow individuals to be enrolled in a Care Coordination Organizations (CCO), through certain parties, in situations where there is no other person to make that election for them, such as lack of a guardian or incapacity. The amendments will not result in costs or new compliance requirements for regulated parties and consequently, the amendments will not have any adverse effects on providers in rural areas and local governments.

Job Impact Statement

A Job Impact Statement for the 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.

The regulations amend Title 14 NYCRR Subpart 635-11 to allow individuals to be enrolled in a Care Coordination Organizations (CCO), through certain parties, in situations where there is no other person to make that election for them, such as lack of a guardian or incapacity. The amendments will not result in costs, including staffing costs, or new compliance requirements for providers and consequently, the amendments will not have a substantial impact on jobs or employment opportunities in New York State.

NOTICE OF EMERGENCY ADOPTION AND REVISED RULE MAKING NO HEARING(S) SCHEDULED

Enrollment in Medicare Prescription Drug Plans and Fully Integrated Duals Advantage Plans for IDD

I.D. No. PDD-07-18-00001-ERP
Filing No. 590
Filing Date: 2018-06-20
Effective Date: 2018-06-20

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

Action Taken: Amendment of Subpart 635-11 of Title 14 NYCRR.

Statutory authority: Mental Hygiene Law, sections 13.07, 13.09(b), 13.15(a) and 16.00

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

Specific reasons underlying the finding of necessity: The emergency adoption of amendments that allow individuals to be enrolled into the Medicare Prescription Drug Plans and Fully Integrated Duals Advantage Plans for Individuals with Intellectual and Developmental Disabilities (FIDA-IDD) plan, through certain parties, in situations where there is no other person to make that election for them, is necessary to protect the health, safety, and welfare of individuals who are eligible to receive enhanced care coordination services in the OPWDD system. FIDA-IDD plans provide enhanced care coordination for individuals who need coordination of both Medicare health benefits and developmental disability services funded by Medicaid. Persons who are unable to enroll themselves in a FIDA-IDD plan will be unfairly precluded from participation in this dual care coordination program.

The emergency amendments amend Title 14 NYCRR Subpart 635-11 to allow individuals, who lack capacity and a guardian, the ability to be enrolled in FIDA-IDD plans. The regulations must be filed on an emergency basis to ensure that individuals eligible for FIDA-IDD plans are not unfairly precluded from participation in cross-system care coordination that will meet their needs.

Subject: Enrollment in Medicare Prescription Drug Plans and Fully Integrated Duals Advantage Plans for IDD.

Purpose: To allow individuals to be enrolled in a FIDA-IDD plan when individuals are unable to enroll themselves.

Substance of emergency/revised rule (Full text is posted at the following State website: https://opwdd.ny.gov/regulations_guidance/opwdd_regulations/emergency): OPWDD's regulations allow individuals to be enrolled into the Medicare Prescription Drug Plans and Fully Integrated Duals Advantage Plans for Individuals with Intellectual and Developmental Disabilities (FIDA-IDD) plan, through certain parties, in situations where there is no other person to make that election for them, is necessary to protect the health, safety, and welfare of individuals who are eligible to receive enhanced care coordination services in the OPWDD system.

The regulations specify rules concerning who can enroll beneficiaries or individuals in a Medicare Part D prescription drug plan or in a Medicare Advantage plan with prescription drug coverage and who can pursue grievances, complaints, exceptions and appeals in such plans.

The regulations specify that a complaint can be submitted to the quality improvement organization or to federal or state government regulatory agencies.

The regulations specify the definition of "act in the FIDA-IDD plan review process."

The regulations add the definitions of enroll and enrollment, FIDA-IDD and FIDA-IDD plan, party, and PDP.

The regulations specify that for the purposes of this section only, if the person's residential facility is operated by OPWDD, the CEO of the agency is the director of the DDSOO that operates the residential facility.

The regulations specify that if a CEO or designee enrolls a person into a PDP, he or she shall give written notice to, among others, the person's Medicaid service coordinator or other person identified as that person's care coordinator.

The regulations specify that if the agency or sponsoring agency does

not agree with the request for a different PDP, the agency or sponsoring agency shall, among other things, inform the advocate or correspondent that he or she may appeal directly to the OPWDD Commissioner.

The regulations create a new Section that deals with the FIDA-IDD enrollment and reviews for persons residing in a residential facility operated or certified by OPWDD or a family care home and a new section that deals with FIDA-IDD Plan enrollment and reviews for persons not residing in a residential facility or family care home.

The regulations specify that a person may enroll himself or herself into a FIDA-IDD Plan or appoint another party to enroll him or her. A person may act in the FIDA-IDD review process for himself or herself or appoint another party to act in the FIDA-IDD review process for him or her.

The regulations specify that if a person lacks the ability to choose a FIDA-IDD plan or act in the FIDA-IDD review process, a guardian lawfully empowered to enroll a person in a FIDA-IDD plan may enroll the person in a FIDA-IDD Plan or appoint another party to enroll the person.

The regulations specify that if an appointed party or guardian is unwilling or unavailable to enroll the person or act in the FIDA-IDD review process then an actively involved spouse, an actively involved parent, an actively involved adult child, an actively involved adult sibling, an actively involved adult family member, or the Consumer Advisory Board for the Willowbrook Class (but only for members of the Willowbrook Class) may act in the FIDA-IDD review process or appoint another party to act in the FIDA-IDD review process.

The regulations specify that if the person resides in a residential facility the chief executive officer (CEO) of the agency operating the person's residential facility or sponsoring the family care home, or designee of the CEO, may enroll the person or act in the FIDA-IDD review process. If the person does not reside in a residential facility, the CEO (or designee) of the agency providing service coordination for the person, may enroll the person or act in the FIDA-IDD review process. If the CEO enrolls the person in the FIDA-IDD plan or acts in the FIDA-IDD review process, he or she shall give written notice of such enrollment to the person's correspondent or advocate, the person's Medicaid service coordinator, or other person identified as that person's care coordinator, or the director for the region encompassing the person's residence.

The regulations create a new Section that deals with other responsibilities and rights of agencies and sponsoring agencies regarding PDP enrollment and reviews.

The regulations specify that no CEO, officer, designee, or employee of an agency or sponsoring agency shall solicit, accept or receive from a PDP, pharmacy or contractor of a PDP or pharmacy, for personal use or benefit any payment, discount, or other remuneration in consideration of, or as a result of, enrolling the person in a PDP.

The regulations specify that no CEO, officer, designee, or employee of an agency or sponsoring agency shall charge, accept or receive payment from the person, family, or anyone else for enrolling the person in a PDP, providing advice and assistance in choosing a PDP or for acting for the person in the Part D review process.

The regulations specify that when a CEO or designee is acting in the Part D review process, the CEO or designee may appoint a party outside of the agency to act in the Part D review process for the person.

The regulations specify that when a CEO or designee enrolls a person he or she shall choose a PDP based on the best interests of the person.

The regulations create a new Section that deals with other responsibilities and rights of CEOs and DDSOO and DDRO directors or designees regarding FIDA-IDD plan enrollment and reviews.

The regulations specify that no CEO, DDRO or DDSOO director or designee shall solicit, accept or receive from a FIDA-IDD plan operator, or an agent of the plan, for person use or benefit any payment, discount or other remuneration in consideration of, or as a result of, enrolling the person in a FIDA-IDD plan.

The regulations specify that no CEO, DDRO or DDSOO director or designee shall charge, accept or receive payment from the person, family or anyone else for enrolling the person in a FIDA-IDD plan, for providing advice, and assistance in choosing a FIDA-IDD plan or for acting for the person in the FIDA-IDD review process.

The regulations specify that when a CEO, or DDRO or DDSOO director is acting in the FIDA-IDD review process for a person, the director or designee may appoint a party outside of the agency to act in the FIDA-IDD review process for the person.

The regulations specify that when a CEO, or DDRO or DDSOO director or designee enrolls a person in a FIDA-IDD plan or acts in the FIDA-IDD review process for a person he or she shall act based on the best interests of the person.

The regulations specify nothing in this Subpart shall diminish or remove the authority of a physician to request a coverage determination or an expedited redetermination on behalf of a beneficiary.

This notice is intended to serve as both a notice of emergency adoption and a notice of revised rule making. The notice of proposed rule making was published in the *State Register* on February 14, 2018, I.D. No. PDD-07-18-00001-EP. The emergency rule will expire August 18, 2018.

Emergency rule compared with proposed rule: Substantial revisions were made in sections 635-11.2(d)(2), 635-11.4 and 635-11.5.

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

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

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

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

Revised Regulatory Impact Statement

1. Statutory Authority:

a. OPWDD has the statutory responsibility to provide and encourage the provision of appropriate programs, supports, and services in the areas of care, treatment, habilitation, rehabilitation, and other education and training of persons with developmental disabilities, as stated in the New York State (NYS) Mental Hygiene Law Section 13.07.

b. OPWDD has the authority to adopt rules and regulations necessary and proper to implement any matter under its jurisdiction as stated in the NYS Mental Hygiene Law Section 13.09(b).

c. OPWDD has the authority to plan, promote, establish, develop, coordinate, evaluate, and conduct programs and services for prevention, diagnosis, examination, care treatment, rehabilitation, training, and research for the benefit of individuals with developmental disabilities and has the authority to take all actions necessary, desirable, or proper to implement the purposes of the Mental Hygiene Law and to carry out the purposes and objectives of OPWDD within available funding, as stated in the NYS Mental Hygiene Law Section 13.15(a).

d. OPWDD has the statutory authority to adopt regulations concerned with the operation of programs and the provision of services, as stated in the NYS Mental Hygiene Law Section 16.00.

2. Legislative Objectives: The regulations further legislative objectives embodied in sections 13.07, 13.09(b), 13.15(a) and 16.00 of the Mental Hygiene Law. The regulations authorize certain parties to enroll individuals in the Medicare Prescription Drug Plans and Fully Integrated Duals Advantage Plans for Individuals with Intellectual and Developmental Disabilities (FIDA-IDD) when the individuals lack capacity to enroll themselves. FIDA-IDD plans provide enhanced care coordination for individuals who need coordination of both Medicare health benefits and Medicaid developmental disability services.

3. Needs and Benefits: Regulations amend Title 14 NYCRR Part 635-11 to allow individuals to be enrolled in a FIDA-IDD plan, through certain parties, in situations where there is no other to make that election for them, such as lack of a guardian or incapacity. Without such action, individuals would not have the opportunity to enroll in this program.

The regulations also make ministerial amendments to the Part D enrollment and review process to capture OPWDD's current organizational structure.

The regulations in 635-11.4 pertain to individuals who reside in a residential facility operated or certified by OPWDD, or a family care home. That section would allow a surrogate to enroll an individual in a FIDA-IDD plan or to participate in the FIDA-IDD plan review process, if that individual did not have the capacity to enroll himself or herself. The section sets forth a hierarchy of individuals that may serve as a surrogate for these purposes, which includes an actively involved spouse, parent, adult child, adult sibling, adult family member or the Consumer Advisory Board for the Willowbrook Class (but only for members of the Willowbrook Class). In all other situations, the CEO of the agency that operates the individual's residence may enroll an individual and act on their behalf in the FIDA-IDD plan review process. For individuals residing in a facility operated by OPWDD, the CEO of the agency is deemed to be the director of the Developmental Disabilities State Operations Office that encompasses the location of the residence. This section also places notification requirements on a CEO that enrolls an individual in a FIDA-IDD plan.

The regulations in 635-11.5 pertains to those individuals not residing in an OPWDD-certified or operated residential facility or family care home. That section would also allow a surrogate to enroll an individual in a FIDA-IDD plan or to participate in the FIDA-IDD plan review process, if that individual did not have the capacity to enroll himself or herself. The section sets forth a hierarchy of individuals that may serve as a surrogate for these purposes, which includes an actively involved spouse, parent, adult child, adult sibling, adult family member, or the Consumer Advisory Board for the Willowbrook Class (but only for members of the Wil-

lowbrook Class). In all other situations, the CEO of the agency that provides service coordination for the individual may enroll an individual and act on their behalf in the FIDA-IDD plan review process. This section would also impose notification requirements when a CEO enrolled an individual in a FIDA-IDD plan.

The regulations in 635-11.7 adds rights and responsibilities of CEOs, DDSOO and DDRO directors and designees regarding FIDA-IDD plan enrollment and reviews.

The regulations correct a mistake in 635-11.2 that allowed the DDSOO director, when exercising a review function for a beneficiary in a PDP, to appeal to himself or herself under certain circumstances. The regulation has been amended to allow the individual to appeal directly to the OPWDD Commissioner. The regulation also permits the appointment of an individual outside the agency to conduct the appeal.

The regulations permit the Consumer Advisory Board, Willowbrook Class to make enrollment decisions and act in plan review processes for all Willowbrook class members according to the process described in the regulation, as a last resort prior to defaulting to enrollment by the applicable CEO.

4. Costs:

a. Costs to the Agency and to the State and its local governments: There is no anticipated impact on Medicaid expenditures as a result of the regulations. The regulations merely allow individuals to be enrolled in a FIDA-IDD plan, through certain parties, in situations where there is no other to make that election for them, such as lack of a guardian or incapacity.

These regulations will not have any fiscal impact on local governments, as the contribution of local governments to Medicaid has been capped. Chapter 58 of the Laws of 2005 places a cap on the local share of Medicaid costs and local governments are already paying for Medicaid at the capped level.

There are no anticipated costs to OPWDD in its role as a provider of services to comply with the new requirements. The regulations may result in cost savings because individuals affected by the regulations will not have to seek guardianship to participate in the FIDA-IDD plan.

b. Costs to private regulated parties: There are no anticipated costs to regulated providers to comply with the regulations. The amendments merely allow individuals to be enrolled in a FIDA plan, through certain parties, in situations where there is no other to make that election for them, such as lack of a guardian or incapacity.

5. Local Government Mandates: There are no new requirements imposed by the rule on any county, city, town, village; or school, fire, or other special district.

6. Paperwork: Providers will not experience an increase in paperwork as a result of the regulations.

7. Duplication: The regulations do not duplicate any existing State or Federal requirements on this topic.

8. Alternatives: OPWDD did not consider any other alternatives to the regulations. The regulations are necessary to allow individuals to be enrolled in a FIDA plan, through certain parties, in situations where there is no other to make that election for them, such as lack of a guardian or incapacity.

9. Federal Standards: The amendments do not exceed any minimum standards of the federal government for the same or similar subject areas.

10. Compliance Schedule: OPWDD is planning to adopt the amendments as soon as possible within the timeframes mandated by the State Administrative Procedure Act. The regulations were discussed with and reviewed by representatives of providers in advance of this proposal. OPWDD expects that providers will be in compliance with the requirements at the time of their effective date.

Revised Regulatory Flexibility Analysis

A regulatory flexibility analysis for small businesses and local governments is not being submitted because these amendments will not impose any adverse economic impact or reporting, record keeping or other compliance requirements on small businesses. There are no professional services, capital, or other compliance costs imposed on small businesses as a result of these amendments.

The regulations amend Title 14 NYCRR Subpart 635-11 to allow individuals to be enrolled in a FIDA-IDD plan, through certain parties, in situations where there is no other person to make that election for them, such as lack of a guardian or incapacity. The amendments will not result in costs or new compliance requirements for regulated parties and consequently, the amendments will not have any adverse effects on providers of small business and local governments.

Revised Rural Area Flexibility Analysis

A Rural Area Flexibility Analysis for these amendments is not being submitted because the amendments will not impose any adverse impact or significant reporting, record keeping or other compliance requirements on public or private entities in rural areas. There are no professional services, capital, or other compliance costs imposed on public or private entities in rural areas as a result of the amendments.

The regulations amend Title 14 NYCRR Subpart 635-11 to allow individuals to be enrolled in a FIDA-IDD plan, through certain parties, in situations where there is no other person to make that election for them, such as lack of a guardian or incapacity. OPWDD expects that providers will be in compliance with the requirements at the time of their effective date. The amendments will not result in costs or new compliance requirements for regulated parties and consequently, the amendments will not have any adverse effects on providers in rural areas and local governments.

Revised Job Impact Statement

A Job Impact Statement for the 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.

The regulations amend Title 14 NYCRR Subpart 635-11 to allow individuals to be enrolled in a FIDA-IDD plan, through certain parties, in situations where there is no other person to make that election for them, such as lack of a guardian or incapacity. The amendments will not result in costs, including staffing costs, or new compliance requirements for providers and consequently, the amendments will not have a substantial impact on jobs or employment opportunities in New York State.

Assessment of Public Comment

This document contains responses to public comments submitted during the public comment period for proposed regulations that allow individuals to be enrolled into the Medicare Prescription Drug Plans and Fully Integrated Duals Advantage Plans for Individuals with Intellectual and Developmental Disabilities (FIDA-IDD) plan.

Comment: Commenters expressed concerns regarding the potential conflict of interest that may arise when the Chief Executive Officer (CEO) enrolls individuals into Medicare Part D Prescription Plans (PDP) or Fully Integrated Duals Advantage Plans for Individuals with Intellectual and Developmental Disabilities (FIDA-IDD) plans, but then has duty to pursue grievances, complaints, exceptions, and appeals on behalf of the individual enrolled in such plans.

Response: No change is made to the regulations. In the case of both a PDP and a FIDA-IDD, there is minimal risk of a conflict of interest due to the lack of overlap between PDPs, FIDA-IDD, and the OPWDD provider community. However, the regulation does institute protections for individuals who are enrolled by CEOs by requiring that those parties act in an individual's best interest when making enrollment decisions under the regulation. The regulation also forbids the acceptance of any remuneration in exchange for enrolling a person in a plan, which is behavior that is also subject to punishment under federal anti-kickback laws. It also should be noted that the situation in which a CEO may enroll an individual is treated as a last resort under the regulations, and is only possible if there is no actively involved family member available to make a decision.

Comment: Commenters have stated that the regulations mistakenly allow the DDSOO director, when exercising a review function for a beneficiary in a PDP, to appeal to himself or herself under certain circumstances.

Response: The regulation has been amended to allow the individual to appeal directly to the OPWDD Commissioner. The regulation also permits the appointment of an individual outside the agency to conduct the appeal.

Comment: Commenters stated that the regulation restricts the Consumer Advisory Board, Willowbrook Class (CAB) from rightfully acting on behalf of all Willowbrook class members regardless of their CAB-representational status.

Response: The regulation has been amended to permit the CAB to make enrollment decisions and act in plan review processes for all Willowbrook class members according to the process described in the regulation, as a last resort prior to defaulting to enrollment by the applicable CEO. However, OPWDD does not comment on the CAB's general claims regarding the permissible scope of its involvement under the terms of the Willowbrook Permanent Injunction, and the amendment of the regulation should not be considered to be an acceptance of those jurisdictional claims by CAB.

Comment: A commenter stated that the terms "unavailable" and "unwilling," regarding enrollment into the Part D program, are not needed and confusing.

Response: No change is made to the regulations. An individual should be allowed access to the types of services available in a specialized managed care plan, and should not be effectively denied access due to lack of an appointed guardian.

Comment: A commenter stated that the regulation should define "actively involved" and include in the definition, a family member that has signed off on the individual's most recent ISP as an "advocate."

Response: The regulations were amended to make reference to the definition of "actively involved" found in 14 NYCRR 633.99.

Public Service Commission

NOTICE OF ADOPTION

Submetering of Electricity and Waiver Request

I.D. No. PSC-39-17-00008-A
Filing Date: 2018-06-20
Effective Date: 2018-06-20

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

Action taken: On 6/14/18, the PSC adopted an order approving Waverly Owner I LLC's (Waverly) petition to submeter electricity at 555 Waverly Avenue, Brooklyn, New York and request for waiver of 16 NYCRR section 96.5(k)(3).

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

Subject: Submetering of electricity and waiver request.

Purpose: To approve Waverly's petition to submeter electricity and request for waiver of 16 NYCRR section 96.5(k)(3).

Substance of final rule: The Commission, on June 14, 2018, adopted an order approving Waverly Owner I LLC's petition to submeter electricity at 555 Waverly Avenue, Brooklyn, New York, located in the service territory of Consolidated Edison Company of New York, Inc., and request for waiver of the energy audit and energy efficiency plan requirements in 16 NYCRR § 96.5(k)(3), subject to the terms and conditions set forth in the order.

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

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

Assessment of Public Comment

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

(17-E-0242SA1)

NOTICE OF ADOPTION

Submetering of Electricity

I.D. No. PSC-08-18-00007-A
Filing Date: 2018-06-20
Effective Date: 2018-06-20

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

Action taken: On 6/14/18, the PSC adopted an order approving 160 Leroy LLC's (160 Leroy) notice of intent to submeter electricity at 160 Leroy 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: Submetering of electricity.

Purpose: To approve 160 Leroy's notice of intent to submeter electricity.

Substance of final rule: The Commission, on June 14, 2018, adopted an order approving 160 Leroy LLC's notice of intent to submeter electricity at 160 Leroy Street, New York, New York, located in the service territory of Consolidated Edison Company of New York, Inc., subject to the terms and conditions set forth in the order.

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

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

Assessment of Public Comment

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

(18-E-0026SA1)

NOTICE OF ADOPTION

Submetering of Electricity and Waiver Request

I.D. No. PSC-13-18-00017-A
Filing Date: 2018-06-20
Effective Date: 2018-06-20

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

Action taken: On 6/14/18, the PSC adopted an order approving 125 East 144 Street Holdings LLC's (125 East 144) notice of intent to submeter electricity at 414 Gerard Avenue, Bronx, New York and request for waiver of 16 NYCRR section 96.5(k)(3).

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

Subject: Submetering of electricity and waiver request.

Purpose: To approve 125 East 144's notice of intent to submeter electricity and request for waiver of 16 NYCRR section 96.5(k)(3).

Substance of final rule: The Commission, on June 14, 2018, adopted an order approving 125 East 144 Street Holdings LLC's notice of intent to submeter electricity at 414 Gerard Avenue, Bronx, New York, located in the service territory of Consolidated Edison Company of New York, Inc., and request for waiver of the energy audit and energy efficiency plan requirements in 16 NYCRR § 96.5(k)(3), subject to the terms and conditions set forth in the order.

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

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

Assessment of Public Comment

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

(18-E-0089SA1)

NOTICE OF ADOPTION

Submetering of Electricity and Waiver Request

I.D. No. PSC-13-18-00018-A
Filing Date: 2018-06-20
Effective Date: 2018-06-20

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

Action taken: On 6/14/18, the PSC adopted an order approving 417 Gerard Avenue Holdings LLC's (417 Gerard) notice of intent to submeter electricity at 445 Gerard Avenue, Bronx, New York and request for waiver of 16 NYCRR section 96.5(k)(3).

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

Subject: Submetering of electricity and waiver request.

Purpose: To approve 417 Gerard's notice of intent to submeter electricity and request for waiver of 16 NYCRR section 96.5(k)(3).

Substance of final rule: The Commission, on June 14, 2018, adopted an order approving 417 Gerard Avenue Holdings LLC's notice of intent to submeter electricity at 445 Gerard Avenue, Bronx, New York, located in the service territory of Consolidated Edison Company of New York, Inc., and request for waiver of the energy audit and energy efficiency plan requirements in 16 NYCRR § 96.5(k)(3), subject to the terms and conditions set forth in the order.

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

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

Assessment of Public Comment

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

(18-E-0090SA1)

NOTICE OF ADOPTION

Submetering of Electricity

I.D. No. PSC-13-18-00019-A
Filing Date: 2018-06-20
Effective Date: 2018-06-20

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

Action taken: On 6/14/18, the PSC adopted an order approving City Centre Associates, LLC's (City Centre) notice of intent to submeter electricity at 301 East State Street, Ithaca, New York.

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

Subject: Submetering of electricity.

Purpose: To approve City Centre's notice of intent to submeter electricity.

Substance of final rule: The Commission, on June 14, 2018, adopted an order approving City Centre Associates, LLC's notice of intent to submeter electricity at 301 East State Street, Ithaca, New York, located in the service territory of New York State Electric and Gas Corporation, subject to the terms and conditions set forth in the order.

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

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

Assessment of Public Comment

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

(18-E-0134SA1)

NOTICE OF ADOPTION

Submetering of Electricity

I.D. No. PSC-13-18-00022-A
Filing Date: 2018-06-20
Effective Date: 2018-06-20

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

Action taken: On 6/14/18, the PSC adopted an order approving 138 Willoughby LLC's (138 Willoughby) notice of intent to submeter electricity at 138 Willoughby Street, Brooklyn, New York.

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

Subject: Submetering of electricity.

Purpose: To approve 138 Willoughby's notice of intent to submeter electricity.

Substance of final rule: The Commission, on June 14, 2018, adopted an order approving 138 Willoughby LLC 's notice of intent to submeter electricity at 138 Willoughby Street, Brooklyn, New York, located in the service territory of Consolidated Edison Company of New York, Inc., subject to the terms and conditions set forth in the order.

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

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

Assessment of Public Comment

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

(18-E-0137SA1)

PROPOSED RULE MAKING
NO HEARING(S) SCHEDULED

2017 Outcome-Based EAM Collaborative Report

I.D. No. PSC-28-18-00004-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 2017 Outcome-Based EAM Collaborative Report filed by Consolidated Edison Company of New York, Inc. on August 23, 2017.

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

Subject: 2017 Outcome-based EAM Collaborative Report.

Purpose: To ensure the establishment of fair and equitable metrics, targets and associated incentive levels.

Substance of proposed rule: The Commission is considering the 2017 Outcome-Based EAM Collaborative Report (Report), filed by Consolidated Edison Company of New York, Inc. (Con Edison) on August 23, 2017, a consensus report that seeks to establish specific metrics, targets and associated incentive levels for certain outcome-based earnings adjustment mechanisms (EAMs) for calendar year 2018. EAMs are performance-based incentive measures designed to encourage utilities to undertake efforts to develop market-enabling tools and achieve savings related to increased system efficiency and reduced energy consumption. This filing provides updated metrics, target and incentive levels from those approved in Con Edison's most recent rate proceedings for calendar year 2017. The full text of the report and the full record of the proceeding may be reviewed online at the Department of Public Service web page: www.dps.ny.gov. The Commission may adopt, reject or modify, in whole or in part, the action proposed and may resolve related matters.

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

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

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

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

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

(16-E-0060SP7)

PROPOSED RULE MAKING
NO HEARING(S) SCHEDULED

Petition to Submeter Electricity

I.D. No. PSC-28-18-00005-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 petition of Greystone Realty Spring LLC to submeter electricity at 75 Spring 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: Petition to submeter electricity.

Purpose: To ensure adequate submetering equipment and energy efficiency protections are in place.

Substance of proposed rule: The Commission is considering the petition, filed by Greystone Realty Spring LLC (Owner) on June 5, 2018, to submeter electricity at 75 Spring 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, the Owner has requested authorization to take electric service from Con Edison and then distribute and meter that electricity to tenants. Submetering of electricity to direct-metered commercial tenants is allowed so long as it complies with the protections and requirements of the Commission's Opinion No.

79-24. 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 action proposed and may resolve related matters.

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

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

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

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

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

(18-E-0340SP1)

PROPOSED RULE MAKING
NO HEARING(S) SCHEDULED

Roadmap Recommendations for the Installation of Qualified Energy Storage Systems

I.D. No. PSC-28-18-00006-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 New York State Energy Storage Roadmap and Department of Public Service/New York State Energy Research and Development Authority Staff Recommendations filed on June 21, 2018.

Statutory authority: Public Service Law, sections 5, 65, 66 and 74

Subject: Roadmap recommendations for the installation of qualified energy storage systems.

Purpose: To encourage energy storage deployment and establish a 2030 target and deployment program.

Substance of proposed rule: The Public Service Commission is considering the New York State Energy Storage Roadmap and Department of Public Service/New York State Energy Research and Development Authority Staff Recommendations (Roadmap) filed on June 21, 2018. The roadmap analyzes various plausible energy storage "use-cases" and suggests policies, regulations, and initiatives that the Public Service Commission (Commission) could implement in order to meet an installed energy storage system target of 1,500 megawatts by 2025, and for the Commission to consider when determining a 2030 energy storage deployment program target. The roadmap identifies actions to encourage deployment in three market segments: customer-sited, distribution system, and the bulk system. The full text of the roadmap and the full record of the proceeding may be reviewed online at the Department of Public Service web page: www.dps.ny.gov. The Commission may adopt, reject or modify, in whole or in part, the action proposed and may resolve related matters.

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

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

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

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

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

(18-E-0130SP1)

PROPOSED RULE MAKING
NO HEARING(S) SCHEDULED

Proposed Rate Filing to Increase Annual Revenues

I.D. No. PSC-28-18-00007-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 proposal filed by Dudley Water Supply, Inc. to increase its annual revenues by about $14,538 or 33.56%.

Statutory authority: Public Service Law, sections 4(1), 5(1)(f), 89-c(1), (3), (10)(a), (b) and (f)

Subject: Proposed rate filing to increase annual revenues.

Purpose: To ensure safe and adequate service at just and reasonable rates charged to customers without undue preferences.

Substance of proposed rule: The Commission is considering a proposal filed by Dudley Water Supply, Inc. (Dudley or the Company), on June 15, 2018, to amend its tariff entitled P.S.C. No. 4–Water, to increase its annual revenues by approximately $14,538 or 33.56%. Dudley Water Supply, Inc. serves customers under Service Classification (SC) No. 1, in the Village of Meridian, and under SC No. 2, the Village of Cato, New York, and Dudley Water Service, Ltd., Cayuga County. The Company states the need for the increase is driven by the increased operating costs since rates were last set in 1992. The proposed amendments have an effective date of November 1, 2018. The full text of the minor rate filing and the full record of the proceeding may be reviewed online at the Department of Public Service web page: www.dps.ny.gov. The Commission may adopt, reject or modify, in whole or in part, the action proposed and may resolve related matters.

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

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

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

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

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

(18-W-0382SP1)

PROPOSED RULE MAKING
NO HEARING(S) SCHEDULED

New York State Standardized Interconnection Requirements (SIR) for Small Distributed Generators

I.D. No. PSC-28-18-00008-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 a petition, filed by members of the Interconnection Policy Working Group and Interconnection Technical Working Group, requesting clarification of the revised New York State Standardized Interconnection Requirements (SIR).

Statutory authority: Public Service Law, sections 65(1), (2), (3), 66(1), (2), (3), (5), (8) and (10)

Subject: New York State Standardized Interconnection Requirements (SIR) for Small Distributed Generators.

Purpose: To clarify specific elements of the revised SIR issued on April 19, 2018.

Substance of proposed rule: The Public Service Commission is considering a petition, filed on June 8, 2018, by Consolidated Edison Company of New York, Inc. and Orange and Rockland Utilities, Inc., Central Hudson Gas and Electric Corporation, Niagara Mohawk Power Corporation d/b/a National Grid, New York Solar Energy Industries Association, BQ Energy, LLC, Clean Energy Collective, Monolith Solar Associates, Cypress Creek Renewables, Borrego Solar Systems, Inc., CleanChoice Energy, Distrib-

uted Sun LLC, Oya Solar Inc., Clean Coalition, Entersolar, and Hudson Valley Clean Energy, Inc. d/b/a Hudson Solar and Suncommon (collectively, Interconnection Policy Working Group (IPWG) and Interconnection Technical Working Group (ITWG) Commenters). The petition by the IPWG/ITWG Commenters for Clarification of Order Modifying Standardized Interconnection Requirements (SIR) requests that the Public Service Commission (Commission) clarify specific elements of the revised SIR issued with the April 19, 2018 Order Modifying Standardized Interconnection Requirements and implement certain non-material edits to improve the overall effectiveness of the revised SIR. The IPWG/ITWG Commenters seek clarification regarding: when the revised SIR is effective; replacing the terms "applicant" and "generator-owner" with the term "Interconnection Customer;" expanding the definition of "moratorium" to include de facto moratorium; replacing the term "compensation rate" with "compensation eligibility;" appropriately labelling the sections applicable to energy storage systems (ESS); clarifying the applicability of Section I.D. to only applications greater than 50kW; updating Section I.C to reflect payment and construction milestones; updating Appendix F to indicate that a signed copy of the standard contract may be submitted by the Interconnection Customer only for systems 50 kW or less; clarifying Protection and Control Review is only necessary after an applicant passes the Preliminary or Supplemental Screening, and only if control or protection systems provide operating characteristic limitations; putting the deleted net energy metering cost responsibilities back into Appendix E; clarifying Appendix G screening results; continuing to define the 25 percent down payment control in IPWG meetings; addressing how to proceed if minor upgrades are required even if the Preliminary and Supplemental screens are passed; and finally, editing headers, table of contents, and numbers. The full text of the petition and the full record of the proceeding may be reviewed online at the Department of Public Service web page: www.dps.ny.gov. The Commission may adopt, reject or modify, in whole or in part, the action proposed and may resolve related matters.

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

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

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

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

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

(18-E-0018SP1)

PROPOSED RULE MAKING
NO HEARING(S) SCHEDULED

Notice of Intent to Submeter Electricity

I.D. No. PSC-28-18-00009-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 2255 Broadway Property Owner, L.L.C. to submeter electricity at 250 West 81st 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 ensure adequate submetering equipment and consumer protections are in place.

Substance of proposed rule: The Commission is considering the notice of intent filed by 2255 Broadway Property Owner, L.L.C. on June 15, 2018, to submeter electricity at 250 West 81st 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, 2255 Broadway Property, L.L.C. 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 at 16 NYCRR Part 96. The full text of the notice of intent and the full record of the proceeding may be reviewed online at the Department of Public Service web page: www.dps.ny.gov. The Commission may adopt, reject or modify, in whole or in part, the action proposed and may resolve related matters.

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

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

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

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

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

(18-E-0381SP1)

PROPOSED RULE MAKING
NO HEARING(S) SCHEDULED

Transfer of Utility Pole Ownership

I.D. No. PSC-28-18-00010-P

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

Proposed Action: The Public Service Commission is considering a petition filed by Orange and Rockland Utilities, Inc. for the transfer of 1,688 utility poles to Verizon Communications Corporation.

Statutory authority: Public Service Law, sections 65, 66 and 70

Subject: Transfer of utility pole ownership.

Purpose: To ensure just and fair share of the cost required to install and maintain the joint use poles for both companies and customers.

Substance of proposed rule: The Public Service Commission (Commission) is considering the petition filed by Orange and Rockland Utilities, Inc. (O&R) on May 24, 2018, requesting the Commission's approval to transfer ownership of 1,688 utility poles to Verizon Communications Corporation. The utility poles are joint use poles, used by both companies in their provision of service. According to the petition, the transfer will ensure that each company and/or its customers will bear its fair share of the cost required to install and maintain the joint use poles. The full text of the petition and the full record of the proceeding may be reviewed online at the Department of Public Service web page: www.dps.ny.gov. The Commission may adopt, reject or modify, in whole or in part, the action proposed and may resolve related matters.

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

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

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

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

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

(18-E-0327SP1)

PROPOSED RULE MAKING
NO HEARING(S) SCHEDULED

Storm Hardening Collaborative Report

I.D. No. PSC-28-18-00011-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 2017 Storm Hardening Collaborative Report filed on April 16, 2018 by The Brooklyn Union Gas Company d/b/a National Grid NY and KeySpan Gas East Corporation d/b/a National Grid.

Statutory authority: Public Service Law, sections 65 and 66

Subject: Storm Hardening Collaborative Report.

Purpose: To ensure safe and adequate gas service.

Substance of proposed rule: The Commission is considering the 2017 Storm Hardening Collaborative Report (Report) filed on April 16, 2018 by The Brooklyn Union Gas Company d/b/a National Grid NY and KeySpan Gas East Corporation d/b/a National Grid (collectively, Companies) in Cases 16-G-0058 and 16-G-0059. The report explains the recommendation of the Storm Hardening Collaborative, which the Commission commenced in its Order Adopting Terms of Joint Proposal and Establishing Gas Rate Plans, issued in Cases 16-G-0058 and 16-G-0059 on December 16, 2016. The report includes recommendations for changes intended to improve the reliability and resilience of the Companies' gas systems when encountering storms and flooding. The recommendations include (1) integrating updated floodplain data into the Companies' siting of new regulator stations and the prioritization modeling for resiliency upgrades to existing pressure regulating and transfer stations; (2) expanding the use of flooding risk in the Companies' leak prone pipe replacement prioritization; (3) improving coordination of capital projects in floodplains with New York City; and (4) updating the Companies' written policies and procedures to include operating practices to mitigate climate-related risks. The report also facilitates further studies and analysis of the vulnerability of certain critical assets to flooding risk and to better assess potential solutions and future investment needs. The full text of the report and the full record of the proceeding may be reviewed online at the Department of Public Service web page: www.dps.ny.gov. The Commission may adopt, reject or modify, in whole or in part, the action proposed and may resolve related matters.

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

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

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

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

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

(16-G-0059SP5)

PROPOSED RULE MAKING
NO HEARING(S) SCHEDULED

Transfer of Certain Street Lighting Facilities

I.D. No. PSC-28-18-00012-P

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

Proposed Action: The Public Service Commission is considering a petition filed by Central Hudson Gas & Electric Corporation for the transfer of street lighting facilities located in the Town of Red Hook, Dutchess County, New York to the Town of Red Hook.

Statutory authority: Public Service Law, section 70

Subject: Transfer of certain street lighting facilities.

Purpose: To transfer street lighting facilities for the benefit of ratepayers.

Substance of proposed rule: The Public Service Commission is considering a petition filed on May 24, 2018 by Central Hudson Gas & Electric Corporation (Central Hudson) regarding the transfer of certain streetlights located in the Town of Red Hook, Dutchess County, New York to the Town of Red Hook, a municipal corporation and political subdivision of the State of New York. Central Hudson requests the Commission's approval of the transaction, as the original cost of the proposed assets to be transferred is greater than $100,000. The gross proceeds available to Central Hudson as a result of the sale of certain streetlights is approximately $76,191 and will be applied to Account 108 – accumulated depreciation reserve for electric plant. The transfer will not impact the reliability, safety, operation, or maintenance of Central Hudson's electric distribution system. The full text of the petition and the full record of the proceeding may be reviewed online at the Department of Public Service web page: www.dps.ny.gov. The Commission may adopt, reject or modify, in whole or in part, the action proposed and may resolve related matters.

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

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

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

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

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

(18-E-0326SP1)

PROPOSED RULE MAKING
NO HEARING(S) SCHEDULED

Notice of Intent to Submeter Electricity

I.D. No. PSC-28-18-00013-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 Woolworth 100 Owner LLC, to submeter electricity at 2 Park Place, 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 ensure adequate submetering equipment and consumer protections are in place.

Substance of proposed rule: The Commission is considering the notice of intent, filed by Woolworth 100 Owner LLC on May 25, 2018, to submeter electricity at 2 Park Place, 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, Woolworth 100 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 at 16 NYCRR Part 96. The full text of the notice of intent and the full record of the proceeding may be reviewed online at the Department of Public Service web page: www.dps.ny.gov. The Commission may adopt, reject or modify, in whole or in part, the action proposed and may resolve related matters.

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

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

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

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

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

(18-E-0328SP1)

State University of New York

PROPOSED RULE MAKING
NO HEARING(S) SCHEDULED

State Basic Financial Assistance for the Operating Expenses of Community Colleges Under the Program of SUNY and CUNY

I.D. No. SUN-28-18-00002-P

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

Proposed Action: This is a consensus rule making to amend section 602.8(c) of Title 8 NYCRR.

Statutory authority: Education Law, sections 355(1)(c), 6304(1)(b); L. 2018, ch. 53

Subject: State basic financial assistance for the operating expenses of community colleges under the program of SUNY and CUNY.

Purpose: To modify limitations formula for basic State financial assistance and conform to the Education Law and the 2018-19 Budget Bill.

Text of proposed rule: Subdivision (c) of section 602.8 of said Title 8 is amended to read as follows, subject to the approval of the Director of the Budget:

(c) Basic State financial assistance.

(1) Full opportunity colleges. The basic State financial assistance for community colleges, implementing approved full opportunity programs, shall be the lowest of the following:

(i) two-fifths (40%) of the net operating budget of the college, or campus of a multiple campus college, as approved by the State University trustees;

(ii) two-fifths (40%) of the net operating costs of the college, or campus of a multiple campus college; or

(iii) for the current college fiscal year the total of the following:

(a) the budgeted or actual number (whichever is less) of full-time equivalent students enrolled in programs eligible for State financial assistance multiplied by [$2,747] *$2,847*; and

(b) up to one-half (50%) of rental costs for physical space.

(2) Non-full opportunity colleges. The basic State financial assistance for community colleges not implementing approved full opportunity programs shall be the lowest of the following:

(i) one-third (33%) of the net operating budget of the college, or campus of a multiple campus college, as approved by the State University trustees;

(ii) one-third (33%) of the net operating costs of the college, or campus of a multiple campus college; or

(iii) for the college fiscal year current, the total of the following:

(a) the budgeted or actual number (whichever is less) of full-time equivalent students enrolled in programs eligible for State financial assistance multiplied by [$2,290] *$2,373*; and

(b) up to one-half (50%) of rental cost for physical space.

(3) Notwithstanding the provisions of paragraphs (1) and (2) of this subdivision, a community college or a new campus of a multiple campus community college in the process of formation shall be eligible for basic State financial assistance in the amount of one-third of the net operating budget or one-third of the net operating costs, whichever is the lesser, for those colleges not implementing an approved full opportunity program plan, or two-fifths of the net operating budget or two-fifths of the net operating costs, whichever is the lesser, for those colleges implementing an approved full opportunity program, during the organization year and the first two fiscal years in which students are enrolled.

Text of proposed rule and any required statements and analyses may be obtained from: Lisa S. Campo, State University of New York, State University Plaza, Albany, NY 12246, (518) 320-1400, email: Lisa.Campo@SUNY.edu

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

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

Consensus Rule Making Determination

The State University of New York has determined that no person is likely to object to this rule as written because it provides timely State operating assistance to public community colleges of the State and City Universities of New York and adopts amendments to the tuition regulations for community colleges under the program of the State University of New York for the 2018-2019 fiscal year.

Job Impact Statement

No job impact statement is submitted with this notice because the adoption of this rule does not impose any adverse economic impact on existing jobs, employment opportunities, or self-employment. This rule making governs the financing of community colleges operating under the program of the State University and will not have any adverse impact on the number of jobs or employment opportunities in the state.

PROPOSED RULE MAKING
NO HEARING(S) SCHEDULED

State University of New York Tuition and Fees Schedule

I.D. No. SUN-28-18-00003-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 302.1(b) of Title 8 NYCRR.

Statutory authority: Education Law, section 355(2)(d) and (h)

Subject: State University of New York Tuition and Fees Schedule.

Purpose: To amend the Tuition and Fees Schedule to increase tuition for students in all programs of the State University of New York.

Text of proposed rule: Section 302.1. Tuition and fees at State-operated units of State University.

* * * * *

(b) Tuition charges as listed in the following table for categories of students, terms and programs, and as modified, amplified or explained in footnotes 1 through 12 are effective with the 201[7]8 fall term and thereafter.

		Charge per Semester		Charge per Semester credit hour[1] Special Students	
		New York State residents	Out-of-State residents	New York State residents	Out-of-State residents
(1)	Students enrolled in degree-granting undergraduate programs leading to an associate degree and non-degree granting programs of at least one regular academic term in duration which have been approved as eligible for Tuition Assistance Program Awards	[$3,335] *$3,435* $3,235[2]	[$8,160] *$8,325* [$4,870] *$5,370*[3] $5,420[4] $5,430[5] $5,660[6] [$8,160] *$8,325*[7] [$4,000] *$4,120*[8]	[$278] *$286* [$278] *$286*[9]	[$680] *$694* [$406] *$448*[3] $452[4] $453[5] $472[6] [$680] *$694*[7] [$333] *$343*[8] [$278] *$286*[9]
(2)	Students enrolled in degree-granting undergraduate programs leading to a baccalaureate degree and non-degree granting programs of at least one regular academic term in duration which have been approved as eligible for Tuition Assistance Program Awards	[$3,335] *$3,435* *$3,235*[2]	[$8,160] *$8,325* [$4,000] *$4,120*[8] [$12,090] *$12,270*[10] [$10,775] *$11,855*[11] [$5,055] *$5,155*[12]	[$278] *$286*	[$680] *$694* [$333[7]] *$343*[8] [$1,008] *$1,023*[10] [$898] *$988*[11] [$417] *$430*[12]
(3)	Students enrolled in graduate programs (other than Masters of Business Administration, Architecture, Social Work or Physician Assistant) leading to a Master's, Doctor's or equivalent degree	[$5,435] *$5,545*	[$11,105] *$11,325* [$6,520] *$6,655*[8] [$8,155] *$8,320*[12]	[$453] *$462*	[$925] *$944* [$543] *$555*[8] [$680] *$693*[12]
(4)	Students enrolled in a graduate program leading to a Doctorate of Audiology	*$5,600*	*$11,440*	*$467*	*$953*
(5)	Students enrolled in a graduate program leading to a Masters of Business Administration (MBA)	[$7,350] *$7,425*	$12,195 [$8,820] *$8,910*[8]	[$613] *$619*	$1,016 [$735] *$743*[8]
(6)	Students enrolled in a graduate program leading to a Masters of Architecture	[$6,890] *$7,095*	[$11,895] *$12,250*	[$574] *$591*	[$991] *$1,021*
(7)	Students enrolled in a graduate program leading to a Masters of Social Work	$6,540	$11,105 $7,850[8]	$545	$925 $654[8]

(8)	Students enrolled in the professional program of pharmacy	[$12,920] *$13,225*	[$18,225] *$18,570*	[$1,077] *$1,105*	[$1,519] *$1,548*
(9)	Students enrolled in the professional program of law	$12,705	$14,750	$1,059	$1,229
(10)	Students enrolled in the professional program of medicine	[$20,885] *$21,510*	$32,580	[$1,740] *$1,793*	$2,715
(11)	Students enrolled in the professional program of dentistry	[$17,565] *$17,915*	$31,475	[$1,464] *1,493*	$2,623
(12)	Students enrolled in the professional programs of physical therapy	$12,195	$15,350	$1,016	$1,279
(13)	Students enrolled in the professional program of optometry	[$14,195] *$14,620*	[$24,825] *$25,075*	[$1,183] *1,218*	[$2,069] *$2,090*
(14)	Students enrolled in the professional program of physician assistant	[$7,360] *$7,725*	$14,695	[$613] *$644*	$1,225
(15)	Students enrolled in the professional programs of doctor of nursing practice	[$12,195] *$12,560*	$16,080 [$14,635] *$15,070*[8]	[$1,016] *$1,047*	$1,340 [$1,220] *$1,256*[8]

[1] The Chancellor shall determine the equivalent of a credit hour.

[2] In accordance with Part HHH of Chapter 59 of the Laws of 2017, students who are both eligible for, and recipients of, an Excelsior Scholarship from the State of New York are to be charged the resident undergraduate rate of tuition approved by the Board of Trustees in the 2016/17 academic year.

[3] In accordance with Chapter 309 of the Laws of 1996, and enabling action by the Board of Trustees, the Colleges of Technology at Alfred, Canton, Cobleskill, Delhi, and Morrisville are authorized to charge a lower rate for non-resident students enrolled in degree-granting programs leading to an associate degree or in non-degree granting programs. This reduced rate does not apply to those students enrolled in degree-granting programs leading to a baccalaureate degree. Alfred is authorized to charge the rate noted effective with the fall 201[7]*8* term.

[4] In accordance with Chapter 309 of the Laws of 1996, and enabling action by the Board of Trustees, the Colleges of Technology at Alfred, Canton, Cobleskill, Delhi, and Morrisville are authorized to charge a lower rate for non-resident students enrolled in degree-granting programs leading to an associate degree or in non-degree granting programs. This reduced rate does not apply to those students enrolled in degree-granting programs leading to a baccalaureate degree. Delhi is authorized to charge the rate noted effective with the fall 201[7]*8* term.

[5] In accordance with Chapter 309 of the Laws of 1996, and enabling action by the Board of Trustees, the Colleges of Technology at Alfred, Canton, Cobleskill, Delhi, and Morrisville are authorized to charge a lower rate for non-resident students enrolled in degree-granting programs leading to an associate degree or in non-degree granting programs. This reduced rate does not apply to those students enrolled in degree-granting programs leading to a baccalaureate degree. Canton is authorized to charge the rate noted effective with the fall 201[7]*8* term.

[6] In accordance with Chapter 309 of the Laws of 1996, and enabling action by the Board of Trustees, the Colleges of Technology at Alfred, Canton, Cobleskill, Delhi, and Morrisville are authorized to charge a lower rate for non-resident students enrolled in degree-granting programs leading to an associate degree or in non-degree granting programs. This reduced rate does not apply to those students enrolled in degree-granting programs leading to a baccalaureate degree. Morrisville is authorized to charge the rate noted effective with the fall 201[7]*8* term.

[7] In accordance with Chapter 309 of the Laws of 1996, and enabling action by the Board of Trustees, the Colleges of Technology at Alfred, Canton, Cobleskill, Delhi, and Morrisville are authorized to charge a lower rate for non-resident students enrolled in degree-granting programs leading to an associate degree or in non-degree granting programs. This reduced rate does not apply to those students enrolled in degree-granting programs leading to a baccalaureate degree. Cobleskill is authorized to charge the rate noted effective with the fall 201[7]*8* term.

[8] In accordance with Chapter 437 of the laws of 2015, the Board of Trustees is authorized to establish a new category of tuition for non-resident students enrolled in distance learning courses at SUNY.

[9] In accordance with Chapter 309 of the Laws of 1996, and enabling action by the Board of Trustees, the Colleges of Technology at Alfred, Canton, Cobleskill, Delhi, and Morrisville are authorized to charge this lower rate for special students (part-time) enrolled in degree-granting programs leading to an associate degree or in non-degree granting programs, and taking classes at off-campus locations or during the summer or winter intercessions. This reduced rate does not apply to those students enrolled in degree-granting programs leading to a baccalaureate degree.

[10] In accordance with Chapter 54 of the laws of 2016, the University Centers at Buffalo and Stony Brook are authorized to charge this rate for non-resident undergraduate students.

[11] In accordance with Chapter 54 of the laws of 2016, the University Centers at Binghamton and Albany are authorized to charge this rate for non-resident undergraduate students.

[12] As authorized by the Board of Trustees (2010-081), Maritime College is authorized to charge up to this rate for non-resident students from states and commonwealths considered to be in-region (Alabama, Connecticut, Delaware, Florida, Georgia, Louisiana, Mississippi, Maryland, New Jersey, North Carolina, Pennsylvania, Puerto Rico, Rhode Island, South Carolina, Virginia, and Washington D.C.).

Text of proposed rule and any required statements and analyses may be obtained from: Lisa S. Campo, State University of New York, State University Plaza, Albany, NY 12246, (518) 320-1400, email: Lisa.Campo@SUNY.edu

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

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

Regulatory Impact Statement

1. Statutory Authority: Education Law, Sections 355(2)(b) and 355(2)(h). Section 355(2)(b) authorizes the State University Trustees to make and amend rules and regulations for the overall governance of the State University and institutions therein. Section 355(2)(h) authorizes the State University Trustees to regulate the admission of students, tuition charges, other fees and charges, curricula, and all other matters pertaining to the operation and administration of each State-operated institution of the State University.

2. Legislative Objectives: The present measure will provide the State-operated campuses limited additional financial support for investment in programmatic offerings, faculty, and a tuition credit, in accordance with Part JJJ of Chapter 59 of the Laws of 2017.

3. Needs and Benefits: The present measure adjusts a series of tuition rates in the various degree programs at the State-operated campuses.

Undergraduate Programs

- Resident undergraduate tuition for students enrolled in an associate or baccalaureate degree, but not eligible for the program Excelsior Scholarship Award provided in Section 669-h(2)(b) of Education Law, would increase by $200 (3.0%) to $6,870. For resident undergraduate students who receive the Excelsior Scholarship and are enrolled in an associate or baccalaureate degree, tuition will remain at the 2016/17 rate of $6,470 per Section 669-h(2)(b) of Education Law.
- Non-resident undergraduate tuition at the University Centers would increase by $2,160 (10.0%) to $23,710 for non-resident students at Albany and Binghamton and would increase by $360 (1.5%) to $24,540 for non-resident students at Buffalo and Stony Brook.
- The standard non-resident undergraduate tuition would increase by $330 (2.0%) to $16,650 for all undergraduate students at the Comprehensive Colleges, Environmental Science and Forestry, Downstate Health Science Center, Upstate Health Science Center, Farmingdale, SUNY Polytechnic, Maritime, and for students enrolled in baccalaureate programs at Alfred, Canton, Cobleskill, Delhi, and Morrisville.
- Non-resident undergraduate tuition for students enrolled in an associates degree or non-degree granting program at Alfred and Cobleskill would increase by $1,000 (10.3%) to $10,740 and $330 (2.0%) to $16,650, respectively.
- Non-resident undergraduate tuition would not increase for students enrolled in an associates degree or non-degree granting program at the College of Technology at Delhi, remaining at $10,840; the College of Technology at Canton, remaining at $10,860; or the College of Technology at Morrisville, remaining at $11,320.
- Non-resident undergraduate tuition for students taking exclusively distance learning courses leading to an associates, baccalaureate, or non-degree granting program, would increase by $240 (3.0%) to $8,240. In accordance with Chapter 37 of the Laws of 2015, the Board of Trustees was authorized to establish a new category of tuition for non-resident students enrolled in distance learning courses at SUNY.
- Maritime College tuition for non-resident students who are from a state or territory defined as "in-region" (Alabama, Connecticut, Delaware, Florida, Georgia, Louisiana, Mississippi, Maryland, New Jersey, North Carolina, Pennsylvania, Puerto Rico, Rhode Island, South Carolina, Virginia, or Washington D.C.) would increase by $300 (3.0%) to $10,310. Tuition for students not from one of the states identified above would increase by $330 to the standard non-resident rate of $16,650.

Graduate Programs

- For students enrolled in graduate programs not separately identified,

the standard tuition would increase by $220 (2.0%) to $11,090 for residents and $440 (2.0%) to $22,650 for non-residents.

• Non-resident graduate tuition for students taking exclusively distance learning courses leading to a standard graduate degree would increase by $270 (2.1%) to $13,310. In accordance with Chapter 37 of the Laws of 2015, the Board of Trustees was authorized to establish a new category of tuition for non-resident students enrolled in distance learning courses at SUNY.

• For students enrolled in programs leading to a Masters in Business Administration degree, tuition would increase by $150 (1.0%) to $14,850 for resident students and would remain at $24,390 for non-resident students.

• Non-resident graduate tuition for students taking exclusively distance learning courses leading to a Masters in Business Administration degree would increase by $180 (1.0%) to $17,820. In accordance with Chapter 37 of the Laws of 2015, the Board of Trustees was authorized to establish a new category of tuition for non-resident students enrolled in distance learning courses at SUNY.

• For students enrolled in programs leading to a Masters in Architecture degree, tuition would increase by $410 (3.0%) to $14,190 for resident students and by $710 (3.0%) to $24,500 for non-resident students.

• For students enrolled in programs leading to a Masters in Social Work degree, tuition would remain at $13,080 for resident students and $22,210 for non-resident students.

• Non-resident graduate tuition for students taking exclusively distance learning courses leading to a Masters in Social Work degree would remain flat at $15,700. In accordance with Chapter 37 of the Laws of 2015, the Board of Trustees was authorized to establish a new category of tuition for non-resident students enrolled in distance learning courses at SUNY.

• For students enrolled in programs leading to a Doctor of Audiology degree, tuition would increase by $330 (3.0%) to $11,200 for resident students and by $670 (3.0%) $22,880 for non-resident students. Students in this degree were previously charged the standard tuition rate for graduate programs.

• Tuition for the Physicians Assistant graduate masters program at Stony Brook, Downstate, and Upstate would increase by $730 (5.0%) to $15,450 for resident students, and would remain at $29,390 for non-resident students.

• Maritime College tuition for non-resident students who are from a state or territory defined as "in-region" (Alabama, Connecticut, Delaware, Florida, Georgia, Louisiana, Mississippi, Maryland, New Jersey, North Carolina, Pennsylvania, Puerto Rico, Rhode Island, South Carolina, Virginia, or Washington D.C.) would increase by $330 (2.0%) to $16,640. Tuition for students not from one of the states identified would increase by $440 to the standard non-resident rate of $22,650.

Professional Programs

• For students enrolled in the Medical Professional Program at the four health science centers, tuition would increase by $1,250 (3.0%) to $43,020 for residents and would remain at $65,160 for non-residents.

• Tuition for the Dental Professional Program at the universities at Stony Brook and Buffalo would increase by $700 (2.0%) to $35,830 for residents and would remain at $62,950 for non-residents.

• Tuition for the Optometry Program at the College of Optometry would increase by $850 (3.0%) to $29,240 for residents and by $500 (1.0%) to $50,150 for non-residents.

• Tuition at the Law School of the University at Buffalo would remain at $25,410 for resident students and $29,500 for non-residents.

• Tuition for the School of Pharmacy Professional Program at Binghamton and the University at Buffalo would increase by $610 (2.4%) to $26,450 and $690 (1.9%) to $37,140 for non-residents.

• Tuition for the Doctor of Physical Therapy Program would remain at $24,390 for residents and $30,700 for non-residents.

• Tuition for the Doctor of Nursing Practice Program would increase by $730 (3.0%) to $25,120 for residents and would remain flat at $32,160 for non-residents.

• Non-resident professional tuition for students taking exclusively distance learning courses leading to a Doctor of Nursing Practice Program degree would increase by $870 (3.0%) to $30,140. In accordance with Chapter 37 of the Laws of 2015, the Board of Trustees was authorized to establish a new category of tuition for non-resident students enrolled in distance learning courses at SUNY.

The recommended modifications do not detrimentally impact the competitiveness of State-operated rates compared to peer institutions in other public university systems.

The tuition rates were last increased in the fall 2017.

4. Costs: Students: Tuition rate modifications for students enrolled in these programs of SUNY will range from remaining flat to an increase of $2,160 for non-resident undergraduate students at Albany and Binghamton. In setting the new tuition schedule, SUNY has examined its appropriation levels, the prevailing tuition rates charged by other public universities, and the status of various State and Federal student financial aid programs.

SUNY: Changes to resident undergraduate rates that will impact students not in receipt of an Excelsior Scholarship will increase the existing SUNY Tuition Assistance Program (SUNY TAP or SUNY Tuition Credit) costs by approximately $7M to a total projected cost of nearly $73M annually.

5. Local Government Mandates: There are no local government mandates. The amendment does not affect students enrolled in the community colleges operating under the program of the State University of New York.

6. Paperwork: No parties will experience any new reporting responsibilities. SUNY publications and documents containing notices regarding costs of attendance will need to be revised to reflect these changes.

7. Duplication: None.

8. Alternatives: Other modification levels were considered, however, there is no acceptable alternative to the proposed changes when considering competitiveness, programmatic needs, and anticipated costs.

9. Federal Standards: None.

10. Compliance Schedule: The amendment to the tuition schedule will go into effect for the fall 2018 semester.

Regulatory Flexibility Analysis

No regulatory flexibility analysis is submitted with this notice because the proposed rule does not impose any requirements on small businesses and local governments. This proposed rule making will not impose any adverse economic impact on small businesses and local governments or impose any reporting, recordkeeping or other compliance requirements on small businesses and local governments.

Rural Area Flexibility Analysis

No rural area flexibility analysis is submitted with this notice because the proposed rule does not impose any requirements on rural areas. The rule will not impose any adverse economic impact on rural areas or impose any reporting, recordkeeping, professional services or other compliance requirements on rural areas.

Job Impact Statement

No job impact statement is submitted with this notice because the proposed rule does not impose any adverse economic impact on existing jobs, employment opportunities, or self-employment. This regulation governs tuition charges for State University of New York and will not have any adverse impact on the number of jobs or employment.

Urban Development Corporation

NOTICE OF ADOPTION

Regional Revolving Loan Trust Fund

I.D. No. UDC-14-18-00008-A
Filing No. 593
Filing Date: 2018-06-25
Effective Date: 2018-07-11

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

Action taken: Amendment of Part 4209 of Title 21 NYCRR.

Statutory authority: L. 1987, ch. 839, section 6

Subject: Regional Revolving Loan Trust Fund.

Purpose: Update procedures for the administration of the Regional Revolving Loan Trust Fund.

Text or summary was published in the April 4, 2018 issue of the Register, I.D. No. UDC-14-18-00008-P.

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

Text of rule and any required statements and analyses may be obtained from: Thomas Regan, Urban Development Benefit Corporation, 625 Broadway, Albany NY 12245, (518) 292-5123, email: thomas.regan@esd.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.