RULE MAKING ACTIVITIES

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

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

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

Department of Agriculture and Markets

EMERGENCY/PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Spotted Lanternfly ("SL")

I.D. No. AAM-41-18-00001-EP
Filing No. 937
Filing Date: 2018-09-19
Effective Date: 2018-09-19

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

Proposed Action: Addition of Part 142 to Title 1 NYCRR.

Statutory authority: Agriculture and Markets Law, sections 18, 164 and 167

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

Specific reasons underlying the finding of necessity: The Spotted Lanternfly (Lycorma delicatula) is an insect nonindigenous to the United States. It was first detected in Berks County, Pennsylvania, in September, 2014, and since then has spread to the Commonwealth of Virginia and the States of Delaware and New Jersey. The proposed rule will require each person who wants to import, into New York, an article that is capable of being infested by or with Spotted Lanternfly, and that has originated from or passed through certain counties in Delaware, New Jersey, Pennsylvania, or Virginia, to obtain a "certificate of inspection" from an appropriate state official, before importation into New York.

The proposed rule has been adopted, as an emergency rule, to protect the public welfare. The Spotted Lanternfly infests different types of trees, including fruit trees, as well as plants, including grape plants and hops plants. Once infested, a tree or plant is deprived of nutrients, is incapable of producing fruit to the extent it had prior to infestation, and is not useful as a source of wood. The proposed rule is designed to prevent the Spotted Lanternfly from entering the State and thereby jeopardizing its forest-based industries and its fruit-based industries which, in sum, contribute approximately $7 billion to the State's economy, annually.

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

Subject: Spotted Lanternfly ("SL").

Purpose: To prevent SL-infested articles originating in or moving through areas in other states where SL is present from entering NYS.

Text of emergency/proposed rule: 1 NYCRR is amended by adding thereto a new Part 142, to read as follows:

PART 142. EXTERIOR QUARANTINE OF SPOTTED LANTERNFLY (LYCORMA DELICATULA)

§ 142.1 Definitions.

For this Part, the following words, names and terms shall be construed respectively, to mean:

(a) AML. The Agriculture and Markets Law.

(b) Certificate of inspection. A valid form issued by the certifying authority of a state, certifying that a regulated article may be moved into the State of New York, pursuant to the provisions of this Part.

(c) Certifying Authority. A State Plant Regulatory Official (SPRO) or an individual authorized by a SPRO to issue a certificate of inspection.

(d) Commissioner. The Commissioner of the Department of Agriculture and Markets of the State of New York, or his or her duly authorized representative.

(e) DEC. The Department of Environmental Conservation of the State of New York.

(f) Department. The Department of Agriculture and Markets of the State of New York.

(g) Firewood. Wood, cut or not cut, split or not split, regardless of length, which is either in a form and size appropriate for use as fuel, or intended for use as fuel. Firewood does not include: (1) kiln dried dimensional lumber; (2) wood that has been chipped; and (3) logs or wood being transported to or possessed by the following operations and facilities for use in their primary manufacturing process:

(i) sawmills for dimensional lumber;
(ii) pulp and/or paper mills;
(iii) wood pellet manufacturing facilities;
(iv) plywood manufacturing facilities;
(v) wood biomass-using refineries or power plants;
(vi) re-constituted wood or wood composite product manufacturing plants; and
(vii) facilities treating firewood in accordance with Department regulations.

(h) Inspector. An inspector of the Department, or cooperator from DEC or the United States Department of Agriculture (USDA), when authorized by the Department to act in that capacity.

(i) Move; movement. Shipped, offered or received for shipment, carried, transported, or relocated into or through any area of the State of New York.

(j) Nursery stock. All trees, shrubs, plants and vines and parts thereof.

(k) Person. An individual, organization, corporation or partnership, public authority, county, town, village, city, municipal agency or public corporation, or any other legal entity other than the DEC or the Department and its respective authorized agents.

(l) Spotted lanternfly or SLF. The insect known as Spotted lanternfly, Lycorma delicatula, in any life stage.

(m) State. One of the fifty constituent political entities of the United States.

(n) Regulated Article. An article listed in Section 142.3 of the Part.

§ 142.2 Quarantine area.

The quarantine area consists of the following counties:

(a) In the Commonwealth of Pennsylvania, the counties of Berks, Bucks, Carbon, Chester, Delaware, Lancaster, Lebanon, Lehigh, Monroe, Montgomery, Northampton, Philadelphia, and Schuylkill.

(b) In the Commonwealth of Virginia, the county of Frederick.

(c) In the State of New Jersey, the counties of Hunterdon, Mercer, and Warren.

(d) In the State of Delaware, the county of New Castle.

§ 142.3 Regulated articles.

The following articles are regulated when originating from, located within, or moved through the area as described in Section 142.2 of this Part:

(a) Any living life stage of the Spotted lanternfly.

(b) Brush, debris, bark, or yard waste.

(c) Landscaping, remodeling, or construction waste.

(d) Logs, stumps, or any tree parts.

(e) Firewood of any species.

(f) Packing materials, such as wood crates or boxes.

(g) All plants and plant parts including but not limited to nursery stock, green lumber, fruit and produce and other material living, dead, cut, fallen (including stumps), roots, branches, mulch, and composted and uncomposted chips.

(h) Outdoor household articles, including, but not limited to, recreational vehicles, lawn tractors and mowers, mower decks, grills, grill and furniture covers, tarps, mobile homes, tile, stone, deck boards, mobile fire pits, and any equipment associated therewith, and trucks or vehicles not stored indoors.

(i) Any other article, commodity, item, or product that has or that is reasonably believed to be infested with or harboring Spotted lanternfly.

§ 142.4 Restrictions on movement of regulated articles originating from or moved through a quarantine area, into the State of New York.

(a) No person shall move a regulated article that has originated from a quarantine area into the State of New York unless:

(1) such regulated article is accompanied by a certificate of inspection or will be moved into the State of New York for experimental or scientific purposes, on such conditions and under such safeguards as may be prescribed in writing by the Department; and

(2) such regulated article has been loaded, handled, or shipped in a manner reasonably designed to prevent it from becoming infested with or harboring Spotted lanternfly; and

(3) the regulated article is accompanied by a waybill that sets forth its point of origin and intended destination.

(b) No person shall move a regulated article that has not originated from a quarantine area but has moved through a quarantine area, into the State of New York unless:

(1) such regulated article is accompanied by a waybill that sets forth its point of origin and intended destination; and

(2) such regulated article has moved directly through a quarantine area without stopping except for refueling and traffic conditions.

§ 142.5 Conditions governing the issuance of a certificate of inspection.

(a) The Department will not accept or recognize a certificate of inspection, nor a substantially revised certificate of inspection, unless a copy thereof is furnished to the Department for its approval, prior to use.

(b) The Department will not accept or recognize a certificate of inspection unless the certificate of inspection provides, and clearly and convincingly indicates, that:

(1)(i) The regulated article has been inspected and found to be free of Spotted lanternfly; or (ii) the regulated article has been treated, fumigated, or processed by an approved method; or (iii) the regulated article has been grown, produced, manufactured, stored, or handled in such a manner that it would be free of Spotted lanternfly; and

(2) The regulated article is eligible for unrestricted movement under all other state plant quarantines and regulations.

§ 142.6 Inspection and disposition of shipments.

(a) The Department may inspect any container, conveyance, package, or vehicle reasonably believed to contain a regulated article.

(b) When a regulated article has been moved into the State of New York in violation of the provisions of this Part, an inspector may take such action as deemed necessary to eliminate the danger of introduction and/or spread of the Spotted lanternfly.

(c) If a regulated article is found to be infested with or harboring Spotted lanternfly, such regulated article must be rendered free of infestation without cost to the State of New York.

§ 142.7 Other laws and regulations.

No provision of this Part relieves any person from the obligation to comply with any other applicable federal, state, county, regional, or local law or regulation.

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 December 17, 2018.

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

Regulatory Impact Statement

1. Statutory authority:

Section 18 of the Agriculture and Markets Law provides, in part, that the Commissioner of Agriculture and Markets ("Commissioner") may enact, amend, and repeal necessary rules which shall provide generally for the exercise of the powers and performance of the duties of the Department of Agriculture and Markets ("Department") as prescribed in the Agriculture and Markets Law ("AML") and the laws of the State and for the enforcement of their provisions and the provisions of the rules that have been enacted.

Section 164 of the AML provides, in part, that the Commissioner shall take such action as he or she may deem necessary to control or eradicate any injurious insects, noxious weeds, or plant diseases existing within the State.

Section 167 of the AML provides, in part, that the Commissioner is authorized to make, issue, promulgate and enforce such order, by way of quarantines or otherwise, as he or she may deem necessary or fitting to carry out the purposes of AML Article 14. AML Section 167 also provides that the Commissioner may adopt and promulgate such rules and regulations to supplement and give full effect to the provisions of AML Article 14.

2. Legislative objectives:

The proposed rule will amend 1 NYCRR by adding a new Part 142, entitled "Exterior Quarantine of Spotted Lanternfly". The proposed rule, will, generally require each person who wants to move a "regulated article" that originated from, is located in, or has moved through certain counties in Delaware, New Jersey, Pennsylvania or Virginia into the State to obtain a certificate of inspection before doing so that indicates that such article is free of Spotted Lanternfly ("SLF") before moving the regulated article into the State.

The proposed rule will further the legislature's objective to help ensure that injurious insects, such as SLF, are not allowed to enter the State.

3. Needs and benefits:

The proposed rule regulates the movement of articles capable of transporting SLF which is an insect not currently found in the State that can cause serious damage to healthy trees and plants by feeding on the sap of over seventy different plants. This SLF activity results in loss of nutrients, and ultimately results in the low to no yield in fruiting plants and can possibly lead to death. The average adult SLF is an inch long and ½ an inch wide. Its forewings are grayish with black spots. The early instar nymphs are black with white spots with the final instar being red with black and white spots. Adult insects are visible late July into the fall. Gravid females will lay egg masses of up to 30 eggs per mass. The female will lay her eggs on any object. This activity makes the spread of the insect easy if left unchecked. The nymphs emerge once temperatures become warm enough, and the life cycle begins anew. Evidence of the presence of the SLF includes weeping from feeding sites, the presence of honeydew (an excretion from the insects feeding), and sooty mold.

Preferred materials at risk of attack and infestation by the SLF include the Grape (both wild and cultivated), Walnut, Porcelain Berry, and Tree of Heaven. In addition, spotted lanternfly will feed on over seventy different plants including many important hardwoods and important fruit trees and vines.

SLF was first discovered in Berks County, Pennsylvania in September 2014, and has since spread to the Commonwealth of Virginia and the States of Delaware and New Jersey. Although the State of New York has not had any infestations, one dead SLF was reported by a pharmaceutical company in Delaware County. It is believed the insect was moved to the facility inadvertently with a shipment of bottles from an area in Pennsylvania that the Commonwealth has placed under quarantine.

The proposed rule is needed to better ensure that the SLF does not enter the State and cause the damage referred to above.

4. Costs:

(a) Costs to regulated parties for the implementation of and continuing compliance with the rule: A person who wants to import a "regulated article" into the State of New York that originates from, is located in, or has been moved through certain counties in Delaware, New Jersey, Pennsylvania or Virginia will be required to obtain a certificate of inspection from an appropriate State authority, attesting that the article is free of

SLF; presently, no State authority imposes a fee for the issuance of such a certificate. The proposed rule provides that the Department of Agriculture and Markets will recognize a certificate if it indicates, inter alia, that a regulated article has been "treated, fumigated, or processed by an approved method" so as to be free of SLF; the cost of such treatment, fumigation, or processing is dependent upon the nature of the article being so treated, fumigated, or processed; the extent of infestation, if any; and the treatment, fumigation, or processing procedure actually used.

(b) Costs to the agency, the State and local governments for the implementation and continuation of the rule: Local governments, the Department of Agriculture and Markets, and the State will not incur any additional expenses due to the proposed rule.

(c) The information, including the sources of such information and the methodology upon which the cost analysis is based: The costs analysis set forth above is based upon observations of the industry and state regulatory agencies.

5. Local government mandate:

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

6. Paperwork:

Regulated articles inspected and certified to be free of SLF moving from the quarantine area established by the rule would have to be accompanied by a certificate of inspection.

7. Duplication:

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

8. Alternatives:

The alternative of no action was considered. However, this option is not feasible, given the threat SLF poses to the State's forests, agriculture, and tourism industries. Additionally, certain states with infestations have not implemented rules designed to eradicate or control SLF; this lack of regulatory oversight leaves New York State vulnerable to spread and serious economic losses in the industries described above. Considering these factors, there does not appear to be any viable alternative to the adoption of the proposed rule.

9. Federal standards:

There are no federal standards regulating the movement of articles infested, or capable of being infested with SLF.

10. Compliance schedule:

It is anticipated that regulated parties would be able to comply with the proposed rule immediately.

Regulatory Flexibility Analysis

1. Effect of rule:

The proposed rule requires a person who wants to move a "regulated article" (that is, an item that is capable of harboring the invasive insect, Spotted Lanternfly) that originates from or has moved through a designated county in Delaware, New Jersey, Pennsylvania or Virginia ("a designated county") to obtain a certificate from an appropriate state regulatory agency, attesting that such article is free of Spotted Lanternfly.

It is impossible to determine if, and the number of, small businesses that will want to move "regulated articles" from a designated county into the State.

It is anticipated that no local government would be involved in moving a regulated article from a designated county into the State; as such, this analysis addresses the impact of the proposed rule only upon small businesses.

2. Compliance requirements:

Each small business that wants to move a regulated article from a designated county ("a regulated party") will be required to obtain a certificate of inspection to ship a regulated article into the State from a state agency authorized to issue such a certificate or by a person duly-designated by such an agency.

3. Professional services:

The proposed rule provides that the Department of Agriculture and Markets will not recognize a certificate of inspection unless the regulated article to be moved into the State has been found to be free of Spotted Lanternfly or rendered free of that pest by having been properly treated, fumigated, or processed by an approved method – those procedures could require utilization of a professional service in the event the party still desires to move the regulated article into the State.

4. Compliance costs:

A regulated party will need to ensure that the article to be moved is free of Spotted Lanternfly or has been treated, fumigated, or processed by an approved method to render it free of such pest; the cost of such treatment, fumigation, or processing would be dependent upon the nature of the article being so treated, fumigated, or processed; the extent of the infestation, if any; and the treatment, fumigation, or processing procedure actually used.

In order to move a regulated article into the State, a regulated party will need to obtain a certificate of inspection from an appropriate state agency; this service is available from the state in which the shipment has originated from or has passed through. Presently, each state that issues such a certificate does not charge a fee therefor.

5. Economic and technological feasibility:

Small businesses will be economically and technically able to comply with the proposed rule. The technology exists to render an infested article free of Spotted Lanternfly. Furthermore, a small business that wants to move a regulated article into the State from a designated county will be able to obtain a certificate of inspection from the State in which such county is located, attesting that the article is free of Spotted Lanternfly, at no charge.

6. Minimizing adverse impact:

The Department has designed the proposed rule to minimize adverse economic impact on small businesses. The rule is aimed at protecting the State of New York's agriculture and tourism industries; those industries consist, in large part, of small businesses. Each small business engaged in agriculture or tourism would be adversely affected by the movement of the Spotted Lanternfly into the State.

7. Small business and local government participation:

The Department informed a number of organizations, consisting in part of small businesses, of its intent to promulgate the proposed rule; such organizations consist of the Empire State Forest Products Association, the Invasive Species Advisory Committee, the New York State Turfgrass Association, the New York Farm Bureau, the New York State Trucking Association, and the Catskill Regional Invasive Species Partnership. The Department received input from those organizations and took into account their concerns while drafting the proposed rule.

Rural Area Flexibility Analysis

1. Type and estimated numbers of rural areas:

The proposed rule requires a person who wants to move a "regulated article" (that is, an item that is capable of harboring the invasive insect, Spotted Lanternfly) that originates from or has moved through a designated county in Delaware, New Jersey, Pennsylvania or Virginia ("a designated county") to obtain a certificate from an appropriate state regulatory agency, attesting that such article is free of Spotted Lanternfly.

It is impossible to determine if residents of out-of-State rural areas will want to move "regulated articles" from a designated county into the State and, if so, the number of residents of such areas who will want to do so.

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

Each resident of a rural area who wants to move a regulated article from a designated county into the State will be required to obtain a certificate of inspection from a state agency authorized to issue such a certificate or by a person duly-designated by such an agency.

3. Costs:

The proposed rule requires that a regulated article may not be moved into the State unless it has been inspected and a certificate of inspection has been issued that indicates the article is free of Spotted Lanternfly; this service is available from the state in which the shipment has originated from or has passed through and, presently, each state that issues such a certificate does not charge a fee therefor.

The proposed rule will require that the Department of Agriculture and Markets ("Department") recognize a certificate of inspection only if the regulated article has been found to be free of Spotted Lanternfly. If a regulated article has come into contact with Spotted Lanternfly, this certification can be made only if the article has been properly treated, fumigated, or processed by an approved method – the cost of these procedures would depend upon the nature of the article being so treated, fumigated, or processed; the extent of infestation, if any; and the treatment, fumigation, or processing procedure actually used.

4. Minimizing adverse impact:

In conformance with State Administrative Procedure Act section 202-bb(2), the Department has designed the rule to minimize adverse economic impact on persons and businesses located in rural areas. If Spotted Lanternfly were to become endemic in the State, residents of, and businesses in, rural areas would suffer disproportionally, both economically and otherwise.

5. Rural area participation:

The Department informed a number of organizations, consisting in large measure of businesses located in, and residents of, rural areas, of its intent to promulgate the proposed rule; such organizations consist of the Empire State Forest Products Association, the Invasive Species Advisory Committee, the New York State Turfgrass Association, the New York Farm Bureau, the New York State Trucking Association, and the Catskill Regional Invasive Species Partnership. The Department received input from these organizations and took into account their concerns while drafting the proposed rule.

Job Impact Statement

The proposed rule will provide for the addition of a new Part 142 to 1 NYCRR, requiring that a person who wants to move a designed article

from or through certain counties of Delaware, New Jersey, Pennsylvania or Virginia, into New York, will be required to obtain a "certificate of inspection" that indicates that the article is free of "Spotted Lanternfly", before doing so. Spotted Lanternfly is an invasive insect that can cause serious damage to grapes, hops, and various types of trees including fruit trees and deciduous trees.

The proposed rule will not have an adverse impact on jobs or employment opportunities and, in fact, will likely aid in protecting jobs and employment opportunities now and in the future. Forest related activities in New York State provide employment for approximately 70,000 people. Of that number, 55,000 jobs are associated with the wood-based forest economy, including manufacturing. The forest-based economy generates payrolls of more than $2 billion. New York State's fruit industry is the largest on the east coast excluding citrus. New York State's fruit crop is valued at over $400 million annually. The two largest components of that is apples and grapes. New York State ranks 2nd nationally in production of apples and ranks 3rd nationally in the production of grapes. New York State's apple industry has 694 commercial apple orchards that directly employ 10,000 people and indirectly employ 7,500 people. New York State produces 29.5 million bushels of apples per year. The New York State grape and wine industry has 1,631 vineyards and over 400 wineries. New York State produces over 175 million bottles of wine annually. The grape, wine, and juice industry generates over $4.8 billion annually. The New York State tourism industry employs over 780,000 people generating $64 billion in direct sales and $34.6 billion in salary.

Implementation of the proposed rule will aid in preventing the further spread of this pest into the State. A spread of the infestation would have very adverse economic consequences. Additionally, a spread of the infestation could result in the imposition of more restrictive quarantines by the federal government, other states and foreign countries, which would have a detrimental impact upon the financial well-being of these industries.

By helping to prevent the spread of Spotted Lanternfly, the proposed rule helps prevent such adverse economic consequences, which protects the jobs and employment opportunities associated with the State's nursery, fruit growing, craft beverage, tourism, and forestry industries.

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

Shell Eggs; Acidified Foods

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

This regulatory impact statement, regulatory flexibility analysis, rural area flexibility analysis and/or job impact statement pertain(s) to a notice of Emergency rule making, I.D. No. AAM-40-18-00021-EP, printed in the *State Register* on October 3, 2018.

Regulatory Impact Statement

1. Statutory authority:

Agriculture and Markets Law ("AML") section 16 authorizes the Commissioner of Agriculture and Markets ("Commissioner") to execute the laws of the State relative to the marketing and distribution of food. AML section 18 authorizes the Commissioner to enact rules necessary for the exercise of his power to execute such laws. AML section 214-b allows the Commissioner to promulgate regulations that aid in the prevention of the sale and distribution of misbranded or adulterated food.

2. Legislative objectives:

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

3. Needs and benefits:

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

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

4. Costs:

a. Costs to regulated parties:

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

b. Costs to State and local governments:

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

5. Local government mandates:

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

6. Paperwork:

None. The rule does not require any additional paperwork on regulated parties.

7. Duplication:

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

8. Alternatives:

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

9. Federal standards:

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

10. Compliance schedule:

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

Regulatory Flexibility Analysis

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

Rural Area Flexibility Analysis

The proposed rule will repeal Part 261 of 1 NYCRR and "readopt" three sections currently set forth therein; i.e., sections 261.8, 261.9, and 261.11 which incorporate by reference certain federal regulations governing the handling and/or manufacture of shell eggs and acidified foods respectively. The proposed rule imposes no new regulatory burden upon regulated parties and will not, therefore, have an adverse impact upon rural areas because it imposes no new reporting, recordkeeping or other compliance requirements on public or private entities in rural areas. Accordingly, no rural area flexibility has been prepared in connection with the proposed rule, pursuant to SAPA section 202-bb(4)(a).

Department of Civil Service

PROPOSED RULE MAKING
NO HEARING(S) SCHEDULED

Jurisdictional Classification

I.D. No. CVS-41-18-00006-P

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

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

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

Subject: Jurisdictional Classification.

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

Text of proposed rule: Amend Appendix 2 of the Rules for the Classified Service, listing positions in the non-competitive class, in the Department of Audit and Control, by adding thereto the positions of Affirmative Action Administrator 1 (2).

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

Data, views or arguments may be submitted to: Marc Hannibal, Counsel, NYS Department of Civil Service, Empire State Plaza, Agency Building 1, Albany, NY 12239, (518) 473-2624, email: public.comments@cs.ny.gov

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

Regulatory Impact Statement

A regulatory impact statement is not submitted with this notice because this rule is subject to a consolidated regulatory impact statement that was previously printed under a notice of proposed rule making, I.D. No. CVS-12-18-00012-P, Issue of March 21, 2018.

Regulatory Flexibility Analysis

A regulatory flexibility analysis is not submitted with this notice because this rule is subject to a consolidated regulatory flexibility analysis that was previously printed under a notice of proposed rule making, I.D. No. CVS-12-18-00012-P, Issue of March 21, 2018.

Rural Area Flexibility Analysis

A rural area flexibility analysis is not submitted with this notice because this rule is subject to a consolidated rural area flexibility analysis that was previously printed under a notice of proposed rule making, I.D. No. CVS-12-18-00012-P, Issue of March 21, 2018.

Job Impact Statement

A job impact statement is not submitted with this notice because this rule is subject to a consolidated job impact statement that was previously printed under a notice of proposed rule making, I.D. No. CVS-12-18-00012-P, Issue of March 21, 2018.

PROPOSED RULE MAKING
NO HEARING(S) SCHEDULED

Jurisdictional Classification

I.D. No. CVS-41-18-00007-P

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

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

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

Subject: Jurisdictional Classification.

Purpose: To classify a position in the non-competitive class.

Text of proposed rule: Amend Appendix 2 of the Rules for the Classified Service, listing positions in the non-competitive class, in the Department of Environmental Conservation, by adding thereto the position of øDirector Division Law Enforcement (1).

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

Data, views or arguments may be submitted to: Marc Hannibal, Counsel, NYS Department of Civil Service, Empire State Plaza, Agency Building 1, Albany, NY 12239, (518) 473-2624, email: public.comments@cs.ny.gov

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

Regulatory Impact Statement

A regulatory impact statement is not submitted with this notice because this rule is subject to a consolidated regulatory impact statement that was previously printed under a notice of proposed rule making, I.D. No. CVS-12-18-00012-P, Issue of March 21, 2018.

Regulatory Flexibility Analysis

A regulatory flexibility analysis is not submitted with this notice because this rule is subject to a consolidated regulatory flexibility analysis that was previously printed under a notice of proposed rule making, I.D. No. CVS-12-18-00012-P, Issue of March 21, 2018.

Rural Area Flexibility Analysis

A rural area flexibility analysis is not submitted with this notice because this rule is subject to a consolidated rural area flexibility analysis that was previously printed under a notice of proposed rule making, I.D. No. CVS-12-18-00012-P, Issue of March 21, 2018.

Job Impact Statement

A job impact statement is not submitted with this notice because this rule is subject to a consolidated job impact statement that was previously printed under a notice of proposed rule making, I.D. No. CVS-12-18-00012-P, Issue of March 21, 2018.

PROPOSED RULE MAKING
NO HEARING(S) SCHEDULED

Jurisdictional Classification

I.D. No. CVS-41-18-00008-P

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

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

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

Subject: Jurisdictional Classification.

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

Text of proposed rule: Amend Appendix 2 of the Rules for the Classified Service, listing positions in the non-competitive class, in the Executive Department under the subheading "Division of Criminal Justice Services," by adding thereto the positions of Multimedia Production Program Specialist 1 (2).

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

Data, views or arguments may be submitted to: Marc Hannibal, Counsel, NYS Department of Civil Service, Empire State Plaza, Agency Building 1, Albany, NY 12239, (518) 473-2624, email: public.comments@cs.ny.gov

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

Regulatory Impact Statement

A regulatory impact statement is not submitted with this notice because this rule is subject to a consolidated regulatory impact statement that was previously printed under a notice of proposed rule making, I.D. No. CVS-12-18-00012-P, Issue of March 21, 2018.

Regulatory Flexibility Analysis

A regulatory flexibility analysis is not submitted with this notice because this rule is subject to a consolidated regulatory flexibility analysis that was previously printed under a notice of proposed rule making, I.D. No. CVS-12-18-00012-P, Issue of March 21, 2018.

Rural Area Flexibility Analysis

A rural area flexibility analysis is not submitted with this notice because this rule is subject to a consolidated rural area flexibility analysis that was previously printed under a notice of proposed rule making, I.D. No. CVS-12-18-00012-P, Issue of March 21, 2018.

Job Impact Statement

A job impact statement is not submitted with this notice because this rule is subject to a consolidated job impact statement that was previously printed under a notice of proposed rule making, I.D. No. CVS-12-18-00012-P, Issue of March 21, 2018.

PROPOSED RULE MAKING
NO HEARING(S) SCHEDULED

Jurisdictional Classification

I.D. No. CVS-41-18-00009-P

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

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

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

Subject: Jurisdictional Classification.

Purpose: To delete positions from and classify positions in the exempt class.

Text of proposed rule: Amend Appendix 1 of the Rules for the Classified Service, listing positions in the exempt class, in the Department of Environmental Conservation, by decreasing the number of positons of Assistant Commissioner from 4 to 1 and by increasing the number of positions of Deputy Commissioner from 7 to 10.

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

Data, views or arguments may be submitted to: Marc Hannibal, Counsel, NYS Department of Civil Service, Empire State Plaza, Agency Building 1, Albany, NY 12239, (518) 473-2624, email: public.comments@cs.ny.gov

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

Regulatory Impact Statement

A regulatory impact statement is not submitted with this notice because this rule is subject to a consolidated regulatory impact statement that was previously printed under a notice of proposed rule making, I.D. No. CVS-12-18-00012-P, Issue of March 21, 2018.

Regulatory Flexibility Analysis

A regulatory flexibility analysis is not submitted with this notice because this rule is subject to a consolidated regulatory flexibility analysis that was previously printed under a notice of proposed rule making, I.D. No. CVS-12-18-00012-P, Issue of March 21, 2018.

Rural Area Flexibility Analysis

A rural area flexibility analysis is not submitted with this notice because this rule is subject to a consolidated rural area flexibility analysis that was previously printed under a notice of proposed rule making, I.D. No. CVS-12-18-00012-P, Issue of March 21, 2018.

Job Impact Statement

A job impact statement is not submitted with this notice because this rule is subject to a consolidated job impact statement that was previously printed under a notice of proposed rule making, I.D. No. CVS-12-18-00012-P, Issue of March 21, 2018.

PROPOSED RULE MAKING
NO HEARING(S) SCHEDULED

Jurisdictional Classification

I.D. No. CVS-41-18-00010-P

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

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

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

Subject: Jurisdictional Classification.

Purpose: To classify a position in the non-competitive class.

Text of proposed rule: Amend Appendix 2 of the Rules for the Classified Service, listing positions in the non-competitive class, in the Department of Corrections and Community Supervision, by adding thereto the position of Correctional Industries Marketing Specialist 2 (1).

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

Data, views or arguments may be submitted to: Marc Hannibal, Counsel, NYS Department of Civil Service, Empire State Plaza, Agency Building 1, Albany, NY 12239, (518) 473-2624, email: public.comments@cs.ny.gov

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

Regulatory Impact Statement

A regulatory impact statement is not submitted with this notice because this rule is subject to a consolidated regulatory impact statement that was previously printed under a notice of proposed rule making, I.D. No. CVS-12-18-00012-P, Issue of March 21, 2018.

Regulatory Flexibility Analysis

A regulatory flexibility analysis is not submitted with this notice because this rule is subject to a consolidated regulatory flexibility analysis that was previously printed under a notice of proposed rule making, I.D. No. CVS-12-18-00012-P, Issue of March 21, 2018.

Rural Area Flexibility Analysis

A rural area flexibility analysis is not submitted with this notice because this rule is subject to a consolidated rural area flexibility analysis that was previously printed under a notice of proposed rule making, I.D. No. CVS-12-18-00012-P, Issue of March 21, 2018.

Job Impact Statement

A job impact statement is not submitted with this notice because this rule is subject to a consolidated job impact statement that was previously printed under a notice of proposed rule making, I.D. No. CVS-12-18-00012-P, Issue of March 21, 2018.

PROPOSED RULE MAKING
NO HEARING(S) SCHEDULED

Jurisdictional Classification

I.D. No. CVS-41-18-00011-P

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

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

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

Subject: Jurisdictional Classification.

Purpose: To classify a position in the non-competitive class.

Text of proposed rule: Amend Appendix 2 of the Rules for the Classified Service, listing positions in the non-competitive class, in the Department of Environmental Conservation, by adding thereto the position of Junior Superintendent Construction (1).

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

Data, views or arguments may be submitted to: Marc Hannibal, Counsel, NYS Department of Civil Service, Empire State Plaza, Agency Building 1, Albany, NY 12239, (518) 473-2624, email: public.comments@cs.ny.gov

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

Regulatory Impact Statement

A regulatory impact statement is not submitted with this notice because this rule is subject to a consolidated regulatory impact statement that was previously printed under a notice of proposed rule making, I.D. No. CVS-12-18-00012-P, Issue of March 21, 2018.

Regulatory Flexibility Analysis

A regulatory flexibility analysis is not submitted with this notice because this rule is subject to a consolidated regulatory flexibility analysis that was previously printed under a notice of proposed rule making, I.D. No. CVS-12-18-00012-P, Issue of March 21, 2018.

Rural Area Flexibility Analysis

A rural area flexibility analysis is not submitted with this notice because this rule is subject to a consolidated rural area flexibility analysis that was previously printed under a notice of proposed rule making, I.D. No. CVS-12-18-00012-P, Issue of March 21, 2018.

Job Impact Statement

A job impact statement is not submitted with this notice because this rule is subject to a consolidated job impact statement that was previously printed under a notice of proposed rule making, I.D. No. CVS-12-18-00012-P, Issue of March 21, 2018.

PROPOSED RULE MAKING
NO HEARING(S) SCHEDULED

Jurisdictional Classification

I.D. No. CVS-41-18-00012-P

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

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

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

Subject: Jurisdictional Classification.

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

Text of proposed rule: Amend Appendix 2 of the Rules for the Classified Service, listing positions in the non-competitive class, in the Department of Family Assistance under the subheading "Office of Children and Family Services," by deleting therefrom the position of Native American Program Aide (1) and by adding thereto the position of Program Aide (Native American) (1).

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

Data, views or arguments may be submitted to: Marc Hannibal, Counsel, NYS Department of Civil Service, Empire State Plaza, Agency Building 1, Albany, NY 12239, (518) 473-2624, email: public.comments@cs.ny.gov

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

Regulatory Impact Statement

A regulatory impact statement is not submitted with this notice because this rule is subject to a consolidated regulatory impact statement that was previously printed under a notice of proposed rule making, I.D. No. CVS-12-18-00012-P, Issue of March 21, 2018.

Regulatory Flexibility Analysis

A regulatory flexibility analysis is not submitted with this notice because this rule is subject to a consolidated regulatory flexibility analysis that was previously printed under a notice of proposed rule making, I.D. No. CVS-12-18-00012-P, Issue of March 21, 2018.

Rural Area Flexibility Analysis

A rural area flexibility analysis is not submitted with this notice because this rule is subject to a consolidated rural area flexibility analysis that was previously printed under a notice of proposed rule making, I.D. No. CVS-12-18-00012-P, Issue of March 21, 2018.

Job Impact Statement

A job impact statement is not submitted with this notice because this rule is subject to a consolidated job impact statement that was previously printed under a notice of proposed rule making, I.D. No. CVS-12-18-00012-P, Issue of March 21, 2018.

PROPOSED RULE MAKING
NO HEARING(S) SCHEDULED

Jurisdictional Classification

I.D. No. CVS-41-18-00013-P

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

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

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

Subject: Jurisdictional Classification.

Purpose: To classify positions in the exempt class.

Text of proposed rule: Amend Appendix 1 of the Rules for the Classified Service, listing positions in the exempt class, in the Executive Department under the subheading "Office of Indigent Legal Services," by increasing the number of positons of Special Assistant from 8 to 10.

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

Data, views or arguments may be submitted to: Marc Hannibal, Counsel, NYS Department of Civil Service, Empire State Plaza, Agency Building 1, Albany, NY 12239, (518) 473-2624, email: public.comments@cs.ny.gov

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

Regulatory Impact Statement

A regulatory impact statement is not submitted with this notice because this rule is subject to a consolidated regulatory impact statement that was previously printed under a notice of proposed rule making, I.D. No. CVS-12-18-00012-P, Issue of March 21, 2018.

Regulatory Flexibility Analysis

A regulatory flexibility analysis is not submitted with this notice because this rule is subject to a consolidated regulatory flexibility analysis that was previously printed under a notice of proposed rule making, I.D. No. CVS-12-18-00012-P, Issue of March 21, 2018.

Rural Area Flexibility Analysis

A rural area flexibility analysis is not submitted with this notice because this rule is subject to a consolidated rural area flexibility analysis that was previously printed under a notice of proposed rule making, I.D. No. CVS-12-18-00012-P, Issue of March 21, 2018.

Job Impact Statement

A job impact statement is not submitted with this notice because this rule is subject to a consolidated job impact statement that was previously printed under a notice of proposed rule making, I.D. No. CVS-12-18-00012-P, Issue of March 21, 2018.

PROPOSED RULE MAKING
NO HEARING(S) SCHEDULED

Jurisdictional Classification

I.D. No. CVS-41-18-00014-P

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

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

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

Subject: Jurisdictional Classification.

Purpose: To classify a position in the exempt class.

Text of proposed rule: Amend Appendix 1 of the Rules for the Classified Service, listing positions in the exempt class, in the Executive Department under the subheading "Office of General Services," by increasing the number of positions of Assistant Counsel from 2 to 3.

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

Data, views or arguments may be submitted to: Marc Hannibal, Counsel, NYS Department of Civil Service, Empire State Plaza, Agency Building 1, Albany, NY 12239, (518) 473-2624, email: public.comments@cs.ny.gov

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

Regulatory Impact Statement

A regulatory impact statement is not submitted with this notice because this rule is subject to a consolidated regulatory impact statement that was previously printed under a notice of proposed rule making, I.D. No. CVS-12-18-00012-P, Issue of March 21, 2018.

Regulatory Flexibility Analysis

A regulatory flexibility analysis is not submitted with this notice because this rule is subject to a consolidated regulatory flexibility analysis that was previously printed under a notice of proposed rule making, I.D. No. CVS-12-18-00012-P, Issue of March 21, 2018.

Rural Area Flexibility Analysis

A rural area flexibility analysis is not submitted with this notice because this rule is subject to a consolidated rural area flexibility analysis that was previously printed under a notice of proposed rule making, I.D. No. CVS-12-18-00012-P, Issue of March 21, 2018.

Job Impact Statement

A job impact statement is not submitted with this notice because this rule is subject to a consolidated job impact statement that was previously printed under a notice of proposed rule making, I.D. No. CVS-12-18-00012-P, Issue of March 21, 2018.

PROPOSED RULE MAKING
NO HEARING(S) SCHEDULED

Jurisdictional Classification

I.D. No. CVS-41-18-00015-P

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

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

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

Subject: Jurisdictional Classification.

Purpose: To classify a position in the exempt class.

Text of proposed rule: Amend Appendix 1 of the Rules for the Classified Service, listing positions in the exempt class, in the Department of Corrections and Community Supervision, by increasing the number of positions of Deputy Commissioner from 6 to 7.

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

Data, views or arguments may be submitted to: Marc Hannibal, Counsel, NYS Department of Civil Service, Empire State Plaza, Agency Building 1, Albany, NY 12239, (518) 473-2624, email: public.comments@cs.ny.gov

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

Regulatory Impact Statement

A regulatory impact statement is not submitted with this notice because this rule is subject to a consolidated regulatory impact statement that was previously printed under a notice of proposed rule making, I.D. No. CVS-12-18-00012-P, Issue of March 21, 2018.

Regulatory Flexibility Analysis

A regulatory flexibility analysis is not submitted with this notice because this rule is subject to a consolidated regulatory flexibility analysis that was previously printed under a notice of proposed rule making, I.D. No. CVS-12-18-00012-P, Issue of March 21, 2018.

Rural Area Flexibility Analysis

A rural area flexibility analysis is not submitted with this notice because this rule is subject to a consolidated rural area flexibility analysis that was previously printed under a notice of proposed rule making, I.D. No. CVS-12-18-00012-P, Issue of March 21, 2018.

Job Impact Statement

A job impact statement is not submitted with this notice because this rule is subject to a consolidated job impact statement that was previously printed under a notice of proposed rule making, I.D. No. CVS-12-18-00012-P, Issue of March 21, 2018.

PROPOSED RULE MAKING
NO HEARING(S) SCHEDULED

Jurisdictional Classification

I.D. No. CVS-41-18-00016-P

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

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

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

Subject: Jurisdictional Classification.

Purpose: To classify a position in the non-competitive class.

Text of proposed rule: Amend Appendix 2 of the Rules for the Classified Service, listing positions in the non-competitive class, in the Department of Health, by adding thereto the position of Laboratory Security Director (1).

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

Data, views or arguments may be submitted to: Marc Hannibal, Counsel, NYS Department of Civil Service, Empire State Plaza, Agency Building 1, Albany, NY 12239, (518) 473-2624, email: public.comments@cs.ny.gov

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

Regulatory Impact Statement

A regulatory impact statement is not submitted with this notice because this rule is subject to a consolidated regulatory impact statement that was previously printed under a notice of proposed rule making, I.D. No. CVS-12-18-00012-P, Issue of March 21, 2018.

Regulatory Flexibility Analysis

A regulatory flexibility analysis is not submitted with this notice because this rule is subject to a consolidated regulatory flexibility analysis that was previously printed under a notice of proposed rule making, I.D. No. CVS-12-18-00012-P, Issue of March 21, 2018.

Rural Area Flexibility Analysis

A rural area flexibility analysis is not submitted with this notice because this rule is subject to a consolidated rural area flexibility analysis that was previously printed under a notice of proposed rule making, I.D. No. CVS-12-18-00012-P, Issue of March 21, 2018.

Job Impact Statement

A job impact statement is not submitted with this notice because this rule is subject to a consolidated job impact statement that was previously printed under a notice of proposed rule making, I.D. No. CVS-12-18-00012-P, Issue of March 21, 2018.

PROPOSED RULE MAKING
NO HEARING(S) SCHEDULED

Jurisdictional Classification

I.D. No. CVS-41-18-00017-P

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

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

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

Subject: Jurisdictional Classification.

Purpose: To classify positions in the exempt class.

Text of proposed rule: Amend Appendix 1 of the Rules for the Classified Service, listing positions in the exempt class, in the Department of Civil Service, by increasing the number of positions of Special Assistant from 3 to 6.

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

Data, views or arguments may be submitted to: Marc Hannibal, Counsel, NYS Department of Civil Service, Empire State Plaza, Agency Building 1, Albany, NY 12239, (518) 473-2624, email:public.comments@cs.ny.gov.

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

Regulatory Impact Statement

A regulatory impact statement is not submitted with this notice because this rule is subject to a consolidated regulatory impact statement that was previously printed under a notice of proposed rule making, I.D. No. CVS-12-18-00012-P, Issue of March 21, 2018.

Regulatory Flexibility Analysis

A regulatory flexibility analysis is not submitted with this notice because this rule is subject to a consolidated regulatory flexibility analysis that was previously printed under a notice of proposed rule making, I.D. No. CVS-12-18-00012-P, Issue of March 21, 2018.

Rural Area Flexibility Analysis

A rural area flexibility analysis is not submitted with this notice because this rule is subject to a consolidated rural area flexibility analysis that was previously printed under a notice of proposed rule making, I.D. No. CVS-12-18-00012-P, Issue of March 21, 2018.

Job Impact Statement

A job impact statement is not submitted with this notice because this rule is subject to a consolidated job impact statement that was previously printed under a notice of proposed rule making, I.D. No. CVS-12-18-00012-P, Issue of March 21, 2018.

PROPOSED RULE MAKING
NO HEARING(S) SCHEDULED

Jurisdictional Classification

I.D. No. CVS-41-18-00018-P

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

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

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

Subject: Jurisdictional Classification.

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

Text of proposed rule: Amend Appendix 2 of the Rules for the Classified Service, listing positions in the non-competitive class, in the Department of Economic Development, by increasing the number of positions of Senior Certification Analyst from 16 to 22.

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

Data, views or arguments may be submitted to: Marc Hannibal, Counsel, NYS Department of Civil Service, Empire State Plaza, Agency Building 1, Albany, NY 12239, (518) 473-2624, email: public.comments@cs.ny.gov

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

Regulatory Impact Statement

A regulatory impact statement is not submitted with this notice because this rule is subject to a consolidated regulatory impact statement that was previously printed under a notice of proposed rule making, I.D. No. CVS-12-18-00012-P, Issue of March 21, 2018.

Regulatory Flexibility Analysis

A regulatory flexibility analysis is not submitted with this notice because this rule is subject to a consolidated regulatory flexibility analysis that was previously printed under a notice of proposed rule making, I.D. No. CVS-12-18-00012-P, Issue of March 21, 2018.

Rural Area Flexibility Analysis

A rural area flexibility analysis is not submitted with this notice because this rule is subject to a consolidated rural area flexibility analysis that was previously printed under a notice of proposed rule making, I.D. No. CVS-12-18-00012-P, Issue of March 21, 2018.

Job Impact Statement

A job impact statement is not submitted with this notice because this rule is subject to a consolidated job impact statement that was previously printed under a notice of proposed rule making, I.D. No. CVS-12-18-00012-P, Issue of March 21, 2018.

PROPOSED RULE MAKING
NO HEARING(S) SCHEDULED

Jurisdictional Classification

I.D. No. CVS-41-18-00019-P

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

Proposed Action: Amendment of Appendixes 1 and 2 of Title 4 NYCRR.

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

Subject: Jurisdictional Classification.

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

Text of proposed rule: Amend Appendix 1 of the Rules for the Classified Service, listing positions in the exempt class, in the Department of Audit and Control, by deleting therefrom the position of Director, Bureau of Specialized Investments and by increasing the number of positions of Special Investment Officer from 79 to 80; in the Department of Audit and Control under the subheading "Office of the Deputy Comptroller for New York City," by deleting therefrom the positions of Assistant Director of Financial Plan Evaluation and Director of Agency Analysis and by increasing the number of positions of Special Assistant from 1 to 3; in the Department of Labor under the subheading "State Insurance Fund," by deleting therefrom the positions of Assistant Director Investment Services (2) and by increasing the number of positions of Special Investment Officer from 24 to 26; and, in the Department of State, by deleting therefrom the position of Executive Deputy Director and by increasing the number of positions of Executive Director from 2 to 3; and

Amend Appendix 2 of the Rules for the Classified Service, listing positions in the non-competitive class, in the Executive Department under the subheading "Commission of Correction," by deleting therefrom the position of Assistant Director for Operations and Training (1) and by adding thereto the position of Assistant Director Operations (1); and, in the Executive Department under the subheading "Division of Criminal Justice Services," by deleting therefrom the position of Criminal Justice Policy Analyst 3 (1) and by adding thereto the position of Criminal Justice Policy Analyst 2 (1).

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

Data, views or arguments may be submitted to: Marc Hannibal, Counsel, NYS Department of Civil Service, Empire State Plaza, Agency Building 1, Albany, NY 12239, (518) 473-2624, email: public.comments@cs.ny.gov

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

Regulatory Impact Statement

A regulatory impact statement is not submitted with this notice because this rule is subject to a consolidated regulatory impact statement that was previously printed under a notice of proposed rule making, I.D. No. CVS-12-18-00012-P, Issue of March 21, 2018.

Regulatory Flexibility Analysis

A regulatory flexibility analysis is not submitted with this notice because this rule is subject to a consolidated regulatory flexibility analysis that was previously printed under a notice of proposed rule making, I.D. No. CVS-12-18-00012-P, Issue of March 21, 2018.

Rural Area Flexibility Analysis

A rural area flexibility analysis is not submitted with this notice because this rule is subject to a consolidated rural area flexibility analysis that was previously printed under a notice of proposed rule making, I.D. No. CVS-12-18-00012-P, Issue of March 21, 2018.

Job Impact Statement

A job impact statement is not submitted with this notice because this rule is subject to a consolidated job impact statement that was previously printed under a notice of proposed rule making, I.D. No. CVS-12-18-00012-P, Issue of March 21, 2018.

PROPOSED RULE MAKING
NO HEARING(S) SCHEDULED

Jurisdictional Classification

I.D. No. CVS-41-18-00020-P

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

Proposed Action: Amendment of Appendixes 1 and 2 of Title 4 NYCRR.

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

Subject: Jurisdictional Classification.

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

Text of proposed rule: Amend Appendix 1 of the Rules for the Classified Service, listing positions in the exempt class, in the Department of Audit and Control, by deleting therefrom the positions of Administrative Assistant (29) and by adding thereto the positions of Administrative Specialist 1 (29); in the Department of Audit and Control under the subheading "Office of the Deputy Comptroller for New York City," by deleting therefrom the position of Administrative Assistant and by adding thereto the position of Administrative Specialist 1; and, in the Executive Department under the subheading "State Board of Elections," by deleting therefrom the position of Administrative Assistant and by adding thereto the position of Administrative Specialist 1; and

Amend Appendix 2 of the Rules for the Classified Service, listing positions in the non-competitive class, in the Education Department, by deleting therefrom the positions of øSenior Administrative Assistant (2) and by adding thereto the positions of øAdministrative Specialist 2 (2); in the Executive Department under the subheading "Division of Homeland Security and Emergency Services," by deleting therefrom the positions of Administrative Assistant (5) and Senior Administrative Assistant (5) and by adding thereto the positions of Administrative Specialist 1 (5) and

Administrative Specialist 2 (5); in the Executive Department under the subheading "Division of Housing and Community Renewal," by deleting therefrom the positions of øAdministrative Assistant (2) and by adding thereto the positions of øAdministrative Specialist 1 (2); in the Department of Financial Services, by deleting therefrom the position of øAdministrative Assistant (1) and by adding thereto the position of øAdministrative Specialist 1 (1); in the Department of Labor under the subheading "State Insurance Fund," by deleting therefrom the position of øAdministrative Assistant (1) and by adding thereto the position of øAdministrative Specialist 1 (1); in the Department of Labor under the subheading "Workers' Compensation Board," by deleting therefrom the positions of øAdministrative Assistant (1) and øSenior Administrative Assistant (1) and by adding thereto the positions of øAdministrative Specialist 1 (1) and øAdministrative Specialist 2 (1); in the Department of Transportation, by deleting therefrom the position of øAdministrative Assistant (1) and by adding thereto the position of øAdministrative Specialist 1 (1); and, in the Lake George Park Commission, by deleting therefrom the position of øAdministrative Assistant (1) and by adding thereto the position of øAdministrative Specialist 1 (1).

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

Data, views or arguments may be submitted to: Marc Hannibal, Counsel, NYS Department of Civil Service, Empire State Plaza, Agency Building 1, Albany, NY 12239, (518) 473-2624, email: public.comments@cs.ny.gov

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

Regulatory Impact Statement

A regulatory impact statement is not submitted with this notice because this rule is subject to a consolidated regulatory impact statement that was previously printed under a notice of proposed rule making, I.D. No. CVS-12-18-00012-P, Issue of March 21, 2018.

Regulatory Flexibility Analysis

A regulatory flexibility analysis is not submitted with this notice because this rule is subject to a consolidated regulatory flexibility analysis that was previously printed under a notice of proposed rule making, I.D. No. CVS-12-18-00012-P, Issue of March 21, 2018.

Rural Area Flexibility Analysis

A rural area flexibility analysis is not submitted with this notice because this rule is subject to a consolidated rural area flexibility analysis that was previously printed under a notice of proposed rule making, I.D. No. CVS-12-18-00012-P, Issue of March 21, 2018.

Job Impact Statement

A job impact statement is not submitted with this notice because this rule is subject to a consolidated job impact statement that was previously printed under a notice of proposed rule making, I.D. No. CVS-12-18-00012-P, Issue of March 21, 2018.

Department of Financial Services

EMERGENCY RULE MAKING

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

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

Filing No. 933

Filing Date: 2018-09-19

Effective Date: 2018-09-19

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 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 sur-

gical 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 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. DFS-25-17-00002-ERP, Issue of July 11, 2018. The emergency rule will expire November 17, 2018.

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

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 regulations 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.

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.

2. 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.

3. 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.

4. 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.

5. 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.

6. 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.

7. 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.

8. Small business and local government participation: Issuers will have an opportunity to participate in the rule making process when the rule is published in the State Register and posted on the Department's website.

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 rule is published in the State Register and posted on the Department's website.

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 agency received no public comment.

Department of Labor

EMERGENCY RULE MAKING

Home Care Aide Hours Worked

I.D. No. LAB-17-18-00005-E
Filing No. 939
Filing Date: 2018-09-20
Effective Date: 2018-09-27

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

Action taken: Amendment of sections 142-2.1(b), 142-3.1(b) and 142-3.7 of Title 12 NYCRR.

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

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

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

Subject: Home Care Aide Hours Worked.

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

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

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

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

(1) New York City for

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

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

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

(3) Remainder of state (outside of New York City and Nassau, Suffolk and Westchester counties)
$9.70 per hour on and after December 31, 2016;
$10.40 per hour on and after December 31, 2017;
$11.10 per hour on and after December 31, 2018;
$11.80 per hour on and after December 31, 2019;
$12.50 per hour on and after December 31, 2020.
(4) If a higher wage is established by Federal law pursuant to 29 U.S.C. section206 or its successors, such wage shall apply.
(b) The minimum wage shall be paid for the time an employee is permitted to work, or is required to be available for work at a place prescribed by the employer, and shall include time spent in traveling to the extent that such traveling is part of the duties of the employee. However, a residential employee--one who lives on the premises of the employer--shall not be deemed to be permitted to work or required to be available for work: (1) during his or her normal sleeping hours solely because he is required to be on call during such hours; or (2) at any other time when he or she is free to leave the place of employment. *Notwithstanding the above, this subdivision shall not be construed to require that the minimum wage be paid for meal periods and sleep times that are excluded from hours worked under the Fair Labor Standards Act of 1938, as amended, in accordance with sections 785.19 and 785.22 of 29 C.F.R. for a home care aide who works a shift of 24 hours or more.*
§ 142-3.1 Basic minimum hourly wage rate.
(a) The basic minimum hourly wage rate shall be, for each hour worked in:
(1) New York City for
(i) Large employers of eleven or more employees
$11.00 per hour on and after December 31, 2016;
$13.00 per hour on and after December 31, 2017;
$15.00 per hour on and after December 31, 2018;
(ii) Small employers of ten or fewer employees
$10.50 per hour on and after December 31, 2016;
$12.00 per hour on and after December 31, 2017;
$13.50 per hour on and after December 31, 2018;
$15.00 per hour on and after December 31, 2019;
(2) Remainder of downstate (Nassau, Suffolk and Westchester counties)
$10.00 per hour on and after December 31, 2016;
$11.00 per hour on and after December 31, 2017;
$12.00 per hour on and after December 31, 2018;
$13.00 per hour on and after December 31, 2019;
$14.00 per hour on and after December 31, 2020;
$15.00 per hour on and after December 31, 2021,
(3) Remainder of state (outside of New York City and Nassau, Suffolk and Westchester counties)
$9.70 per hour on and after December 31, 2016;
$10.40 per hour on and after December 31, 2017;
$11.10 per hour on and after December 31, 2018;
$11.80 per hour on and after December 31, 2019;
$12.50 per hour on and after December 31, 2020.
(4) If a higher wage is established by Federal law pursuant to 29 U.S.C. section 206 or its successors. Such wage shall apply.
(b) The minimum wage shall be paid for the time an employee is permitted to work, or is required to be available for work at a place prescribed by the employer, and shall include time spent in traveling to the extent that such traveling is part of the duties of the employee. However, a residential employee--one who lives on the premises of the employer--shall not be deemed to be permitted to work or required to be available for work:
(1) during his or her normal sleeping hours solely because such employee is required to be on call during such hours; or
(2) at any other time when he or she is free to leave the place of employment.
Notwithstanding the above, this subdivision shall not be construed to require that the minimum wage be paid for meal periods and sleep times that are excluded from hours worked under the Fair Labor Standards Act of 1938, as amended, in accordance with sections 785.19 and 785.22 of 29 C.F.R. for a home care aide who works a shift of 24 hours or more.
§ 143.7 An hour.
The term an hour shall include each hour an employee is permitted to work, or is required to be available for work at a place prescribed by the employer, and shall include time spent in traveling to the extent that such traveling is part of the duties of the employee. However, a residential employee one who lives on the premises of the employer shall not be deemed to be permitted to work or required to be available for work:
(a) during such employee's normal sleeping hours solely because he or she is required to be on call during such hours;
(b) at any other time when he or she is free to leave the place of employment.
Notwithstanding the above, the term an hour shall not be construed to include meal periods and sleep times that are excluded from hours worked under the Fair Labor Standards Act of 1938, as amended, in accordance with sections 785.19 and 785.22 of 29 C.F.R. for a home care aide who works a shift of 24 hours or more.

This notice is intended to serve only as a notice of emergency adoption. This agency intends to adopt 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. LAB-17-18-00005-P, Issue of April 25, 2018. The emergency rule will expire November 18, 2018.

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

Regulatory Impact Statement

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

Legislative Objectives: In enacting the Minimum Wage Law (Labor Law Article 19) in 1960 the Legislature mandated that the minimum wage be paid "for each hour worked" (Labor Law § 652(1)), without defining that phrase (Labor Law § 651), and delegated authority to the Commissioner of Labor ("Commissioner") to promulgate regulations as she "deems necessary or appropriate to carry out the purposes of this article and to safeguard the minimum wage" (L. 1960, Ch. 619, § 2, at Labor Law § 652(2) & (4)), to order "such modifications of or additions to any regulations as he may deem appropriate to effectuate the purposes of this article" (Labor Law § 659(2)), and to investigate hours worked (Labor Law §§ 660(b)(1) & 661). While Labor Law § 659(2) provides for rulemaking after a hearing, emergency adoption of this rulemaking is authorized "[n]otwithstanding any other law" by SAPA § 202(6).

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

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

Administrative interpretations accompany statutory expansions. The above-referenced legislative expansions in 1972 and 2010 were each preceded by Commissioner's interpretations in the late 1960s and early 1980s that construed the statutory exclusions of domestic service and companions "in the home of the employer" to be inapplicable to domestic service and companions who were employed by agencies and placed in the home of a client. Such interpretations were affirmed by the Board of Standards and Appeals and its successor the Industrial Board of Appeals, and eventually by the Courts (see e.g., Settlement Home Care v. Industrial Board of Appeals, 151 A.D. 580 (2d Dept. 1989)). As the scope of minimum wage coverage expanded through administrative interpretations and legislative enactments, the Commissioner continued to interpret the statutory requirement to pay minimum wages for "each hour worked" to exclude sleep and meal periods of various categories of newly covered workers who were employed by agencies to work in the home of a client for extended periods of time. Those interpretations were set forth in investigators' manuals, formal guidelines, legal opinions, and Commissioner's determinations starting in the early 1970s, and were relied upon by the New York State Department of Health and by private agencies that employed home care aides. While the Commissioner did not amend the Wage Order's regulations to expressly codify those interpretations, she did amend it in 1986 to provide for overtime to be calculated "in the manner

and methods provided for in and subject to the exemptions of" the federal Fair Labor Standards Act (FLSA) (12 NYCRR §§ 142-2.2 & 142-3.2) and, in so doing, grew to increasingly look to, and rely upon, federal FLSA regulations interpreting hours worked (29 CFR Part 785) to address meal periods (29 CFR §§ 785.18-19) and sleeping time (29 CFR §§ 785.20-23) so that hours worked were calculated consistently at the state and federal level for overtime (and other) purposes.

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

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

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

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

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

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

Alternatives: There were no significant alternatives considered.

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

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

Regulatory Flexibility Analysis

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

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

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

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

Economic and Technological Feasibility: The regulation does not require any use of technology to comply.

Minimizing Adverse Impact: The Department does not anticipate that this regulation will adversely impact small businesses or local governments. Since no adverse impact to small businesses or local governments will be realized, it was unnecessary for the Department to consider approaches for minimizing adverse economic impacts as suggested in State Administrative Procedure Act § 202-b(1).

Small Business and Local Government Participation: The Department does not anticipate that this rule will have an adverse economic impact upon small businesses or local governments, nor will it impose new reporting, recordkeeping, or other compliance requirements upon them. Nevertheless, the Department will ensure that small businesses and local governments have an opportunity to participate in the rulemaking process. In connection with a final revision to the regulation, the Department will elicit input from small businesses and local governments during the public comment period, and through a publicly scheduled hearing in accordance with Labor Law §§ 659 and 656.

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

Rural Area Flexibility Analysis

Types and estimated numbers of rural areas: The Department anticipates that this regulation will have a positive or neutral impact upon all areas of the state; there is no adverse impact anticipated upon any rural area of the state resulting from adoption of this regulation.

Reporting, recordkeeping and other compliance requirements: This regulation will not impact reporting, recordkeeping or other compliance requirements.

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

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

Minimizing adverse impact: The Department does not anticipate that this regulation will have an adverse impact upon any region of the state. As such, different requirements for rural areas were not necessary.

Rural area participation: The Department does not anticipate that the regulation will have an adverse economic impact upon rural areas nor will it impose new reporting, recordkeeping, or other compliance requirements. Nevertheless, the Department will ensure that rural areas in the state have an opportunity to participate in the rulemaking process. In connection with a final revision to the regulation, the Department has elicited input from rural areas of the state during the public comment period, and through a publicly scheduled hearing in accordance with Labor Law §§ 659 and 656.

Job Impact Statement

Nature of impact: The Department of Labor (hereinafter "Department") projects there will be no adverse impact on jobs or employment opportunities in the State of New York as a result of this emergency rulemaking. Rather, this regulation will help to limit or eliminate any negative impact on jobs from recent court decisions affecting the home care industry. This regulation amends existing regulations to codify the Commissioner's longstanding and consistent interpretation of Article 19 of the Labor Law and clarify that the amended regulations shall not be construed to require that the minimum wage be paid for meal periods and sleep times that are excluded from hours worked under federal minimum wage laws and regulations for home care aides who work shifts of 24 hours or more. The nature and purpose of this regulation is such that it will not have an adverse impact on jobs or employment opportunities.

Categories and numbers affected: The Department does not anticipate that this regulation will have an adverse impact on jobs or employment opportunities in any category of employment. This regulation will help to ensure the stability of the jobs of home care workers who work shifts of 24 hours or more in New York State. According to the Department's Division of Research and Statistics, there are an estimated 330,650 home care aides employed across the state.

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

Minimizing adverse impact: Since the Department does not anticipate any adverse impact upon jobs or employment opportunities resulting from this regulation, no measures to minimize any unnecessary adverse impact on existing jobs or to promote the development of new employment opportunities are required.

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

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

Assessment of Public Comment

The agency received no public comment since publication of the last assessment of public comment.

Department of Law

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Arbitration Program Regulations for Defective Farm Equipment

I.D. No. LAW-41-18-00021-P

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

Proposed Action: Addition of Part 303 to Title 13 NYCRR.

Statutory authority: General Business Law, section 697-a

Subject: Arbitration program regulations for defective farm equipment.

Purpose: To set forth the procedures for the operation of an alternative arbitration mechanism for defective farm equipment disputes.

Substance of proposed rule (Full text is posted at the following State website: https://www.ag.ny.gov/consumer-frauds/lemon-law): These regulations are promulgated pursuant to General Business Law (''GBL''), Article 33-B, section 697-a, added by chapter 662 of the Laws of 2005 as amended by Chapter 706 of the Laws of 2006. They set forth the procedures for the operation of an alternative arbitration mechanism as required by GBL section 697-a(c). These regulations are designed to promote the independent, speedy, efficient and fair disposition of disputes concerning defective farm equipment.

The Attorney General shall appoint an Administrator or Administrators to a definite term not to exceed two years. The Attorney General shall consider the following criteria in the selection of an Administrator: capability, objectivity, non-affiliation with a supplier's arbitration program, reliability, experience, financial stability, extent of geographic coverage, and fee structure.

To apply for arbitration, a consumer shall obtain, complete and submit the appropriate form to the Attorney General on a form prescribed and made available by the Attorney General. The consumer shall indicate on the form his/her choice of remedy (i.e., either refund or comparable replacement vehicle), in the event the arbitrator rules in favor of the consumer. If the form is accepted by the Attorney General, he or she shall refer it to the Administrator for processing. The Attorney General shall prescribe a filing fee and an arbitration fee to be paid by the consumer and the supplier, respectively. Such notice shall also advise the consumer to pay the prescribed filing fee directly to the Administrator. The date the Administrator receives the prescribed filing fee shall be considered the ''filing date.''

Each supplier of farm equipment sold to a New York consumer shall notify the Attorney General in writing, within 10 days after the effective date of these regulations, of the name, address and telephone number of the person designated to receive notices under the GBL Article 33-B Program. Such information shall be presumed correct unless updated by the supplier.

Within 5 days of the filing date, the Administrator shall send the supplier's designee a notice that a Request for Arbitration has been filed by the consumer and that the supplier must remit the prescribed arbitration fee to the Administrator within 10 days from the date of mailing by the Administrator. The date the prescribed arbitration fee is received by the Administrator is considered the ''commencement date.'' Within 5 days of the commencement date, the Administrator shall send the supplier's designee a copy of the consumer's completed Request for Arbitration form along with a notice that it may respond in writing. Such response shall be send in triplicate, within 15 days of the commencement date, to the Administrator, who shall promptly forward one copy to the consumer.

After the commencement date, the Administrator shall assign an arbitrator to hear and decide the case. Notice of assignment shall be mailed to the arbitrator and the parties along with a copy of these regulations and GBL Article 33-B. The arbitrator assigned shall not have any bias, any financial or personal interest in the outcome of the hearing, or any current connection to the sale, distribution or manufacture of farm equipment. Arbitrators shall undergo training established by the Administrator and the Attorney General.

The arbitration shall be conducted as an oral hearing unless the consumer has requested, on the ''Request for Arbitration'' form, a hearing on documents only and both parties agree to a documents only hearing; provided, however, that the parties may mutually agree in writing to change the mode of hearing.

The consumer may respond in writing to the supplier's submission within 25 days of the commencement date. Such response shall be sent in triplicate to the Administrator, who shall promptly forward a copy to the supplier.

An oral hearing, where appropriate, shall be scheduled no later than 35 days from the commencement date, unless a later date is agreed to by both parties. The Administrator shall notify both parties of the date, time and place of the hearing at least 8 days prior to its scheduled date. Hearings shall be scheduled to accommodate, where possible, time-of-day needs of the consumer and the supplier, including evening and weekend hours. Hearings shall also be scheduled to accommodate geographic needs of the consumer. Regular hearing sites shall be established at locations designated by the Administrator.

In unusual circumstances, a party may present its case by telephone, provided that adequate advance notice is given to the Administrator and to the other party. In such cases, the arbitrator and both parties shall be included and the party requesting the telephonic hearing shall pay all costs associated therewith.

Either party may make a request to reschedule the hearing. Upon a finding of good cause, the arbitrator may reschedule the hearing. In unusual circumstances, the arbitrator may reschedule the hearing at any time prior to its commencement.

A party, by application in writing to the Administrator, may request the arbitrator to direct the other party to produce any documents or information. The arbitrator shall, upon receiving such request, or on his or her own initiative, direct the production of documents or information which he or she believes will reasonably assist a party in presenting his or her case or assist the arbitrator in deciding the case. The arbitrator's direction for the production of documents and information shall allow a reasonable time for the gathering and production of such documents and information. Upon failure of a party to comply with the arbitrator 's direction to produce documents and/or information, the arbitrator may draw a negative inference concerning any issue involving such documents or information.

At the request of either party or on his or her own initiative, the arbitrator, when she or he believes it appropriate, may subpoena any witnesses to appear or documents to be presented at the hearing.

Any party may be represented by counsel or assisted by any third party.

Any party wishing an interpreter shall make the necessary arrangements and assume the costs for such service.

The conduct of the hearing shall afford each party a full and equal opportunity to present his/her case. The arbitrator shall administer an oath or affirmation to each individual who testifies. Formal rules of evidence shall not apply; the parties may introduce any relevant evidence. The arbitrator may request additional evidence after closing the hearing. All such evidence shall be submitted to the Administrator for transmission to the arbitrator and the parties.

If the hearing is on documents only, all documents shall be submitted to the Administrator no later than 30 days from the commencement date. The arbitrator shall render a timely decision based on all documents submitted.

Upon the failure of a party to appear at an oral hearing, the arbitrator shall nevertheless conduct the hearing and render a timely decision based on the evidence presented and documents contained in the file. If neither party appears at the hearing, the arbitrator shall return the case to the Administrator who shall close it and so notify the parties.

A consumer may withdraw his/her request for arbitration at any time prior to decision.

The arbitrator shall render a decision within 40 days from the commencement date which shall be in writing on a form prescribed by the Administrator and approved by the Attorney General. In his/her decision, the arbitrator shall determine whether the consumer qualifies for relief pursuant to GBL section 697-a. If the arbitrator finds that the consumer qualifies, (s)he shall award the specific remedies prescribed by the statute. The decision shall specify the monetary award where applicable. The decision shall, where applicable, require that any action required by the supplier be completed within 30 days from the date the Administrator notifies the supplier of the decision. The Administrator shall review the decision for technical completeness and accuracy and advise the arbitrator of any suggested technical corrections. After review, the Administrator shall, within 45 days of the commencement date, mail a copy of the final decision to both parties, the arbitrator and the Attorney General.

The arbitrator's decision is binding on both parties and is final, subject only to judicial review pursuant to CPLR, Article 75. The decision shall include a statement to this effect.

The Administrator shall keep all records pertaining to each arbitration for a period of at least two years and shall make the records of a particular arbitration available for inspection upon written request by a party to that arbitration, and shall make records of all arbitrations available to the Attorney General upon written request.

All communications between the parties and the arbitrator, other than at oral hearings, shall be directed to the Administrator.

Text of proposed rule and any required statements and analyses may be obtained from: Stewart Dearing, Department of Law, 28 Liberty Street, New York, New York 10005, (212) 416-8300, email: Stewart.Dearing@ag.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.

Regulatory Impact Statement

1. Statutory authority: General Business Law § 697-a authorizes the New York Attorney General to promulgate this rule.

2. Legislative objectives: The Legislature wanted to give consumers the option to submit a dispute concerning defective farm equipment to an independent arbitrator approved by the Attorney General. This rule sets forth the procedures for the operation of such arbitration mechanism.

3. Needs and benefits: General Business Law§ 697-a provides that the Attorney General shall promulgate regulations establishing an alternate arbitration mechanism for the resolution of disputes concerning defective farm equipment.

4. Costs: The rule may result in a minimal cost to the Office of the Attorney General. The consumer requesting arbitration will also be required to pay a filing fee and the supplier of farm equipment will be required to pay an arbitration fee. The Attorney General shall prescribe the amount of these fees.

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

6. Paperwork: The professional arbitration firm (''the Administrator '') the Attorney General will appoint to administer this arbitration program will be required to keep all records pertaining to each arbitration for at least two years. The Administrator will also be required to make the records of a particular arbitration available for inspection upon written request by a party to that arbitration and shall make records of all arbitrations available to the Attorney General upon request. The Administrator shall also maintain records and statistics for the arbitration program.

7. Duplication: N/A.

8. Alternatives: N/A.

9. Federal standards: This rule does not exceed any minimum standards of the federal government.

10. Compliance schedule: Each supplier of farm equipment sold to a New York consumer shall notify the Attorney General in writing, within 10 days after the effective date of these regulations, of the name, address and telephone number of the person designated to receive notices pertaining to arbitration.

Regulatory Flexibility Analysis

An RFA is not required because this rule will not impose any adverse economic impact or reporting, recordkeeping or other compliance requirements on small businesses or local governments. Specifically, local governments will not be affected by this rule. A small business might be a consumer who could elect arbitration under this rule. However, electing arbitration would be the consumer 's decision and only if the consumer believed that arbitration would be helpful to him or her.

Rural Area Flexibility Analysis

Consumers who purchase farm equipment are likely to live in rural areas. This rule will give these consumers the opportunity to submit claims for defective farm equipment to an independent arbitrator approved by the Attorney General as an alternative to the arbitration procedure made available through the supplier of farm equipment.

An RAFA is not required because this rule will not impose any adverse impact on rural areas or reporting,recordkeeping or other compliance requirements on public or private entities in rural areas.

Public Service Commission

NOTICE OF ADOPTION

Submetering of Electricity

I.D. No. PSC-17-18-00009-A
Filing Date: 2018-09-19
Effective Date: 2018-09-19

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

Action taken: On 9/12/18, the PSC adopted an order approving Harmony Mills Fallsview LLC's (Harmony Mills) petition to submeter electricity at 100 N. Mohawk Street, Cohoes, New York.

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

Subject: Submetering of electricity.

Purpose: To approve Harmony Mills' petition to submeter electricity.

Substance of final rule: The Commission, on September 12, 2018, adopted an order approving Harmony Mills Fallsview LLC's (Harmony Mills) petition to submeter electricity at 100 N. Mohawk Street, Cohoes, New York, located in the service territory of Niagara Mohawk Power Corporation d/b/a National Grid., subject to the terms and conditions set forth in the order.

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

Text of rule may be obtained from: John Pitucci, Public Service Commission, 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-0146SA1)

NOTICE OF ADOPTION

Submetering of Electricity

I.D. No. PSC-23-18-00012-A
Filing Date: 2018-09-19
Effective Date: 2018-09-19

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

Action taken: On 9/12/18, the PSC adopted an order approving 41-45 Property Owner, LLC's (41-45 Owner) petition to submeter electricity at 520 Park Avenue, 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 41-45 Owner's petition to submeter electricity.

Substance of final rule: The Commission, on September 12, 2018, adopted an order approving 41-45 Property Owner, LLC's (41-45 Owner) petition to submeter electricity at 520 Park Avenue, 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-0194SA1)

PROPOSED RULE MAKING
NO HEARING(S) SCHEDULED

Initial Tariff Schedule, P.S.C. No. 1—Water and Waiver of Rate Setting Authority

I.D. No. PSC-41-18-00003-P

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

Proposed Action: The Commission is considering a proposal filed by Three Bears Water Supply for approval of its Initial Tariff Schedule, P.S.C. No. 1—Water, effective February 1, 2019.

Statutory authority: Public Service Law, sections 4(1), 5(1)(f), (4) 89-c(1), (10)(a), 89-e(2) and 89-h

Subject: Initial Tariff Schedule, P.S.C. No. 1—Water and waiver of rate setting authority.

Purpose: To provide the rates, rules, and regulations under which water service will be provided to the customers of the system.

Substance of proposed rule: The Commission is considering a proposal filed by Three Bears Water Supply (Three Bears or the Company), on September 12, 2018, for approval of its initial tariff schedule contained in P.S.C. No. 1 – Water, which sets forth the rates, charges, rules and regulations under which the Company will operate, to become effective February 1, 2019. The Company will serve portions of the Mervin Garrison Development (Three Bears Subdivision) located in the Town of Schroon, Essex County.

Three Bears consists of 11 members that are in the process of obtaining title to the water plant and waterworks from a prior owner that inherited the system, and has been operating since 2012 in compliance with New York State Department of Health regulations. The Company's plant and waterworks will be controlled by owners of the waterworks as tenants in common for distributing water only to such owners having an interest and voice in the operation of the water system, and the Company requests approval of its initial tariff schedule and exemption from the rate setting provisions of Public Service Law Section 5(4).

The Company proposes an unmetered seasonal rate with operation and maintenance expenses divided equally among all members. The tariff defines when a bill will be delinquent and establishes a late payment charge. The restoration of service charge will be a rate agreed upon by the members and will appear on all written notices of discontinuation of service.

The full text of the initial tariff schedule 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-0600SP1)

PROPOSED RULE MAKING
NO HEARING(S) SCHEDULED

Internal Reorganization and Stock Transfer

I.D. No. PSC-41-18-00004-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 a petition filed by Suez Water New York Inc., Suez Water Westchester Inc., Suez Water Owego-Nichols Inc. and Suez Water Resources Inc. for reorganization and a transfer of 20% of the companies to a passive investor.

Statutory authority: Public Service Law, section 89-h

Subject: Internal reorganization and stock transfer.

Purpose: To determine if the proposed reorganization and stock transfer is in the public interest and beneficial to ratepayers.

Substance of proposed rule: The Commission is considering a petition, filed on September 7, 2018, by Suez Water New York Inc., Suez Water Westchester Inc., Suez Water Owego-Nichols Inc., and Suez Water Resources Inc. (collectively SUEZ) for internal reorganization and a transfer of 20% of the companies to a passive investor. SUEZ and Stichting Depositary PGGM (Stichting), a Dutch management firm for pension fund investments, requests Commission authorization for an internal reorganization of the SUEZ companies and transfer of 20 percent of SUEZ to Stichting.

SUEZ, which consists of the three New York utility companies and their immediate parent Suez Water Resources Inc., are in turn owned by SUEZ North America Inc., and ultimately by SUEZ GROUPE S.A.S. As an initial step, NewCo, a newly created Delaware "C" corporation, would be established and 100% of the stock of Suez Water Resources Inc. would be transferred to NewCo. Suez Water Resources Inc. would be converted from a corporation to an LLC to eliminate the need to pay income tax at that level of the corporate structure. Also, SUEZ Water New Jersey Inc., which is currently the immediate parent of SUEZ Water New York Inc., would be removed from the corporate structure, leaving the New York utility companies directly owned by Suez Water Resources Inc., which in turn is owned by NewCo. The petition states that these changes will have no effect on the operation or management of the New York utility companies. Subsequent to the above changes, Stichting would acquire a 20 percent passive interest in NewCo.

SUEZ and Stichting request that the Commission either declare the proposed transactions be outside the scope of Public Service Law (PSL) 89-h, or approve the transactions as being in the public interest. The petition cites past Commission proceedings that found up-stream transactions for the parents of lightly-regulated competitive electric generators were outside the scope of PSL § 70, which is the electric utility equivalent of PSL § 89-h, and argues that the proposed transactions are similarly "upstream," and should be treated similarly.

In the alternative, the petition argues that the internal reorganization is in the public interest because it will lead to greater administrative efficiency, and will allow for a planned merger of the New York utility companies into a single entity, and that the proposed stock transfer will improve SUEZ's access to capital, and a new shareholder that supports continued infrastructure investments, which will benefit ratepayers. The petition also states that no costs associated with the proposed actions will be passed on to ratepayers.

Stichting requests that the Commission declare that it will not be considered a water-works corporation under the PSL, again citing the Commission's treatment of lightly-regulated competitive electric generators as precedent, and the fact that it could not exercise control over the SUEZ utilities.

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 at www.dps.ny.gov. The Commission may approve or reject, 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-0567SP1)

PROPOSED RULE MAKING
NO HEARING(S) SCHEDULED

Authorization to Enter into a Long-Term Loan Agreement

I.D. No. PSC-41-18-00005-P

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

Proposed Action: The Commission is considering a petition filed by Fishers Island Water Works Corporation (Fishers Island) for authority to enter into a 20-year loan agreement to borrow $980,000 from CoBank, ACB of Colorado.

Statutory authority: Public Service Law, section 89-f

Subject: Authorization to enter into a long-term loan agreement.

Purpose: For system improvements and full repayment of existing loan.

Substance of proposed rule: The Commission is considering a petition, filed on September 9, 2018, by Fishers Island Water Works Corporation (FIWWC), which serves customers on Fishers Island, seeking authorization to enter into a 20-year loan agreement with CoBank, ACB of Colorado to borrow $980,000 (2018 Credit Facility) at a fixed interest rate to be based upon the prime rate at the start of the 2018 Credit Facility plus a margin.

As of May 14, 2018, CoBank estimates that a 20-year fixed interest rate would be approximately 5.95%. The FIWWC plans to use a substantial amount of the proceeds for system improvements with an estimated aggregate cost of $710,000 consisting of: 1) Installation of a new ground water filtration system, required by the Suffolk County Department of Health, at an estimated cost of $525,000; 2) Replacement of under-sized power cables serving the old ground water filtration plant in order to properly power the new plant, and replacement of faulty power cables to one of the production wells at an estimated cost of $85,000; 3) Installation of a system (Aqua Guard) on the FIWWC's recently reactivated well to ensure maximum production and extend the life of the well at an estimated cost of $15,000; and, 4) Replacement of all customer meters and installation of a remote meter reading system to eliminate revenue losses due to non-working meters and save the expense of labor and costs of human error in reading and recording meter data. Estimated cost: $85,000. According to FIWWC, the remaining $270,000 balance of the loan proceeds will be used for the repayment in full of the company's current credit facility with Bank Rhode Island.

The full text of the petition and the full record of the proceeding may be reviewed online at the Department of Public Service web page: www.dps.ny.gov. The Commission may adopt, reject or modify, in whole or in part, the action proposed and may resolve related matters.

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

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

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

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

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

(18-W-0566SP1)

Office of Temporary and Disability Assistance

EMERGENCY/PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Standard Utility Allowances (SUAs) for the Supplemental Nutrition Assistance Program (SNAP)

I.D. No. TDA-41-18-00002-EP

Filing No. 942

Filing Date: 2018-09-25

Effective Date: 2018-10-01

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

Proposed Action: Amendment of section 387.12(f)(3)(v)(a)-(b) of Title 18 NYCRR.

Statutory authority: Social Services Law, sections 17(a)-(b), (j), 20(3)(d), 95; 7 United States Code, section 2014(e)(6)(C); 7 Code of Federal Regulations, section 273.9 (d)(6)(iii)

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

Specific reasons underlying the finding of necessity: It is of great importance that the federally-mandated and most currently approved standard utility allowances for the Supplemental Nutrition Assistance Program (SNAP) are applied to SNAP benefit calculations effective October 1, 2018, and thereafter until new amounts eventually are approved by the United States Department of Agriculture (USDA). It is equally important that the new federally-approved standard utility allowance amounts be implemented by the October 1, 2018 deadline. If past standard utility allowances were to be used, in the absence of federal authority, in calculating ongoing SNAP benefits, thousands of SNAP households qualifying for the higher-level utility-based standard utility allowances would receive SNAP underpayments each month. Thousands of SNAP households throughout New York State could be adversely affected by such underpayments, which would constitute hardships to these households and impact their ability to purchase needed food. In addition, the use of standard utility allowances that are not authorized by the USDA could also result in severe fiscal sanctions by the federal government against the State. These emergency amendments protect the public health and general welfare by setting forth the federally-mandated and approved standard utility allowances effective as of October 1, 2018, and by helping to prevent such hardships.

As stated above, there is no federal authority to use past standard utility allowances after the October 1, 2018 effective date of the new federally-approved allowance amounts. For New York to continue the State option to use the standard utility allowance in lieu of the actual utility cost portion of SNAP household shelter expenses, new allowances must be in place. Otherwise, the State may be forced to use the actual utility cost portion of the shelter expenses of each SNAP household. This policy would result in all 58 social services districts in New York State having to require up to 1.6 million SNAP households to provide verification of the actual utility cost portions of their shelter expenses. This policy would create a tremendous burden on both social services districts as well as recipient households. In addition, as actual utility costs are generally significantly less than the standard utility allowances, SNAP households would have a much smaller shelter deduction resulting in a sizeable reduction in their SNAP benefits. This reduction in SNAP benefits for up to 1.6 million SNAP households would result in significant harm to the health and welfare of these households.

It is noted that the regulatory amendments are being promulgated pursuant to a combined Notice of Emergency Adoption and Proposed Rule Making, instead of a Notice of Proposed Rule Making, due to time constraints. On July 18, 2018, the USDA approved the Office of Temporary and Disability Assistance's (OTDA's) standard utility allowance calculation methodology and the resulting federal fiscal year 2018 adjustments to the standard utility allowances for heating/air conditioning and for basic utilities effective October 1, 2018. This did not provide sufficient time for OTDA to publish a Notice of Proposed Rule Making and for the new standard utility allowances to become effective on October 1, 2018. An emergency adoption is necessary to have the new standard utility allowances be effective on October 1, 2018. Although these regulations are being promulgated on an emergency basis to protect the public health and general welfare, OTDA will receive public comments on its combined Notice of Emergency Adoption and Proposed Rule Making until 60 days after publication of this notice.

Subject: Standard Utility Allowances (SUAs) for the Supplemental Nutrition Assistance Program (SNAP).

Purpose: These regulatory amendments set forth the federally-mandated and approved SUAs as of 10/1/18.

Text of emergency/proposed rule: Clauses (a)-(b) of subparagraph (v) of paragraph (3) of subdivision (f) of § 387.12 of Title 18 NYCRR are amended to read as follows:

(a) The standard allowance for heating/cooling consists of the costs for heating and/or cooling the residence, electricity not used to heat or cool the residence, cooking fuel, sewage, trash collection, water fees, fuel for heating hot water and basic service for one telephone. The standard allowance for heating/cooling is available to households which incur heating and/or cooling costs separate and apart from rent and are billed separately from rent or mortgage on a regular basis for heating and/or cooling their residence, or to households entitled to a Home Energy Assistance Program (HEAP) payment or other Low Income Home Energy Assistance Act (LIHEAA) payment. A household living in public housing or other rental housing which has central utility meters and which charges the household for excess heating or cooling costs only is not entitled to the standard allowance for heating/cooling unless they are entitled to a HEAP

or LIHEAA payment. Such a household may claim actual costs which are paid separately. Households which do not qualify for the standard allowance for heating/cooling may be allowed to use the standard allowance for utilities or the standard allowance for telephone. As of October 1, [2017] *2018*, but subject to subsequent adjustments as required by the United States Department of Agriculture ("USDA"), the standard allowance for heating/cooling for SNAP applicant and recipient households residing in New York City is [$791] *$800*; for households residing in either Suffolk or Nassau Counties, it is [$736] *$744*; and for households residing in any other county of New York State, it is [$654] *$661*.

(b) The standard allowance for utilities consists of the costs for electricity not used to heat or cool the residence, cooking fuel, sewage, trash collection, water fees, fuel for heating hot water and basic service for one telephone. It is available to households billed separately from rent or mortgage for one or more of these utilities other than telephone. The standard allowance for utilities is available to households which do not qualify for the standard allowance for heating/cooling. Households which do not qualify for the standard allowance for utilities may be allowed to use the standard allowance for telephone. As of October 1, [2017] *2018*, but subject to subsequent adjustments as required by the USDA, the standard allowance for utilities for SNAP applicant and recipient households residing in New York City is [$313] *$316*; for households residing in either Suffolk or Nassau Counties, it is [$289] *$292*; and for households residing in any other county of New York State, it is [$265] *$268*.

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 December 23, 2018.

Text of rule and any required statements and analyses may be obtained from: Richard P. Rhodes, Jr., Office of Temporary and Disability Assistance, 40 North Pearl Street, 16-C, Albany, NY 12243-0001, (518) 486-7503, email: richard.rhodesjr@otda.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.

Regulatory Impact Statement

1. Statutory authority:

The United States Code (U.S.C.), at 7 U.S.C. § 2014(e)(6)(C), provides that in computing shelter expenses for budgeting under the federal Supplemental Nutrition Assistance Program (SNAP), a State agency may use a standard utility allowance as provided in federal regulations.

The Code of Federal Regulations (C.F.R.), at 7 C.F.R. § 273.9(d)(6)(iii), provides for standard utility allowances in accordance with SNAP. Clause (A) of this subparagraph states that with federal approval from the Food and Nutrition Services (FNS) of the United States Department of Agriculture (USDA), a State agency may develop standard utility allowances to be used in place of actual costs in calculating a household's excess shelter deduction. Federal regulations allow for the following types of standard utility allowances: a standard utility allowance for all utilities that includes heating or cooling costs; a limited utility allowance that includes electricity and fuel for purposes other than heating or cooling, water, sewerage, well and septic tank installation and maintenance, telephone, and garbage or trash collection; and an individual standard for each type of utility expense. Clause (B) of the subparagraph provides that a State agency must review the standard utility allowances annually and adjust them to reflect changes in costs. State agencies also must provide the amounts of the standard utility allowances to the FNS when the standard utility allowances are changed and submit the methodologies used in developing and updating the standard utility allowances to the FNS for approval whenever the methodologies are developed or changed.

Social Services Law (SSL) § 17(a)-(b) and (j) provide, in part, that the Commissioner of the Office of Temporary and Disability Assistance (OTDA) shall "exercise such other powers and perform such other duties as may be imposed by law."

SSL § 20(3)(d) authorizes OTDA to promulgate regulations to carry out its powers and duties.

SSL § 95 authorizes OTDA to administer SNAP in New York State and to perform such functions as may be appropriate, permitted or required by or pursuant to federal law.

2. Legislative objectives:

It was the intent of the Legislature to implement the federal SNAP Act in New York State in order to provide SNAP benefits to eligible New York State residents.

3. Needs and benefits:

The regulatory amendments set forth the standard utility allowances within New York State as of October 1, 2018. OTDA is amending its standard utility allowances in 18 NYCRR § 387.12(f)(3)(v)(a)-(b) to reflect an increase in fuel and utility costs, which is indicated in the Consumer Price Index (CPI) fuel and utilities values (which includes components for water, sewage and trash collection).

The following chart sets forth the standard utility allowance categories; the past standard utility allowances ("Past SUA") that were in effect for federal fiscal year (FFY) 2018, from October 1, 2017 through September 31, 2018; and the new standard utility allowances ("New SUA") that are in effect for FFY 2019, effective October 1, 2018:

	New York City		Nassau/Suffolk Counties		Rest of State	
	Past SUA	New SUA	Past SUA	New SUA	Past SUA	New SUA
Heating/Air Conditioning SUA	$791	$800	$736	$744	$654	$661
Basic Utility SUA	$313	$316	$289	$292	$265	$268
Phone SUA	Past SUA: $30 (for all Counties) (Unchanged for all Counties)					

To determine the new standard utility allowance values for FFY 2019, the CPI Fuel and Utility value for June 2018 was compared to the same CPI value for June 2017, the CPI value that was used to determine the adjustment for the FFY 2018 standard utility allowance values. The percentage change between June 2017 and June 2018 was then applied to the FFY 2018 standard utility allowance figures. The June 2018 CPI Fuel and Utility value was 1.083% higher than the June 2017 value.

The June CPI values were used because they were the most recent month for which CPI values were available at the time when programming the new SUA values into the Welfare Management System (WMS) had to be done in order to comply with the October 1, 2018 effective date.

OTDA has all required approvals from the FNS pertaining to these changes and is required to apply the standard utility allowances for FFY 2019 in its SNAP budgeting effective October 1, 2018. As of October 1, 2018, OTDA does not have federal approval or authority to apply past standard utility allowances in its prospective SNAP budgeting.

It is of great importance that the federally-mandated and most currently approved standard utility allowances for the Supplemental Nutrition Assistance Program (SNAP) are applied to SNAP benefit calculations effective October 1, 2018, and thereafter until new amounts eventually are approved by the USDA. It is equally important that the new federally-approved standard utility allowance amounts be implemented by the October 1, 2018 deadline. If past standard utility allowances were to be used, in the absence of federal authority, in calculating ongoing SNAP benefits, thousands of SNAP households qualifying for the higher-level utility-based standard utility allowances would receive SNAP underpayments each month. Thousands of SNAP households throughout New York State could thus be adversely affected by such underpayments, which would constitute hardships to these households and impact their ability to purchase needed food. In addition, the use of standard utility allowances that are not authorized by the USDA could also result in severe fiscal sanctions by the federal government against the State. These emergency amendments protect the public health and general welfare by setting forth the federally-mandated and approved standard utility allowances effective as of October 1, 2018, and by helping to prevent such hardships.

As stated above, there is no federal authority to use past standard utility allowances after the October 1, 2018 effective date of the new federally approved allowance amounts. For New York to continue the State option to use the standard utility allowance in lieu of the actual utility cost portion of SNAP household shelter expenses, new allowances must be in place. Otherwise, the State may be forced to use the actual utility cost portion of the shelter expenses of each SNAP household. This policy would result in all 58 social services districts in New York State having to require up to 1.6 million SNAP households to provide verification of the actual utility cost portions of their shelter expenses. This policy would create a tremendous burden on both social services districts as well as recipient households. In addition, as actual utility costs are generally significantly less than the standard utility allowances, SNAP households would have a much smaller shelter deduction resulting in a sizeable reduction in their SNAP benefits. This reduction in SNAP benefits for up to 1.6 million SNAP households would result in significant harm to the health and welfare of these households.

4. Costs:

The regulatory amendments will not result in any impact to the State financial plan, they will not impose costs upon the social services districts because SNAP benefits are 100 percent federally-funded, and they comply with federal statute and regulation to implement federally-approved standard utility allowances.

5. Local government mandates:

The regulatory amendments do not impose any mandates upon social services districts since the amendments simply set forth the federally ap-

proved standard utility allowances, effective October 1, 2018. Additionally, the calculation of SNAP budgets, which incorporates the standard utility allowances, and the resulting issuances of SNAP benefits are mostly automated processes in New York City and the rest of the State using OTDA's WMS. To the extent that these processes are not automated, the regulatory amendments do not impose any additional requirements upon the social services districts in terms of calculating SNAP budgets.

6. Paperwork:

The regulatory amendments do not impose any new forms, new reporting requirements or other paperwork upon the State or the social services districts.

7. Duplication:

The regulatory amendments do not duplicate, overlap or conflict with any existing State or federal statutes or regulations.

8. Alternatives:

An alternative to the regulatory amendments would be to refrain from implementing the revised standard utility allowances. However, this alternative is not a viable option because if New York State were to opt not to implement the new standard utility allowances or were otherwise judicially precluded from doing so, then New York State would be out of compliance with federal statutory and regulatory requirements.

9. Federal standards:

The regulatory amendments do not conflict with or exceed minimum standards of the federal government.

10. Compliance schedule:

Since the regulatory amendments set forth the federally-approved standard utility allowances effective October 1, 2018, the State and all social services districts will be in compliance with the regulatory amendments upon the adoption date of the regulatory amendments.

Regulatory Flexibility Analysis

1. Effect of Rule:

The regulatory amendments will have no effect on small businesses. The regulatory amendments do not impose any mandates upon social services districts since the amendments simply set forth the federally approved standard utility allowance amounts, effective October 1, 2018. The calculation of Supplemental Nutrition Assistance Program (SNAP) budgets, which incorporates the standard utility allowances, and the resulting issuances of SNAP benefits are mostly automated processes in New York City and the rest of the State using the Office of Temporary and Disability Assistance's (OTDA's) Welfare Management System, and to the extent these processes are not automated, the regulatory amendments do not impose any additional requirements upon the social services districts in terms of calculating SNAP budgets.

2. Compliance Requirements:

The regulatory amendments do not impose any reporting, recordkeeping or other compliance requirements on social services districts.

3. Professional Services:

The regulatory amendments do not require social services districts to hire additional professional services to comply with the new regulations.

4. Compliance Costs:

The regulatory amendments do not impose initial costs or any annual costs upon social services districts because SNAP benefits are 100 percent federally funded, and these regulatory amendments also comply with federal statute and regulation to implement federally-approved standard utility allowances.

5. Economic and Technological Feasibility:

All social services districts have the economic and technological abilities to comply with the regulatory amendments.

6. Minimizing Adverse Impact:

The regulatory amendments will not have an adverse impact on social services districts.

7. Small Business and Local Government Participation:

On August 22, 2018, OTDA provided a General Information System (GIS) release to social services districts in New York State setting forth, in part, the new standard utility allowances for SNAP effective October 1, 2018 (see GIS 18 TA/DC027, Upstate and NYC – Updated Supplemental Nutrition Assistance Program [SNAP] Standards for October 2018). In past years, social services districts have not raised any concerns or objections related to the implementation of the new standard utility allowances. Since the release of OTDA's GIS reflecting the standard utility allowances effective October 1, 2018, social services districts have had an opportunity to contact OTDA with any concerns, questions, or other issues. To date, no social services districts have contacted OTDA. The GIS is also posted to OTDA's internet website.

Rural Area Flexibility Analysis

1. Types and estimated numbers of rural areas:

The regulatory amendments will have no effect on small businesses in rural areas. The regulatory amendments do not impose any mandates upon the 44 social services districts in rural areas of the State. Rather, the regulatory amendments simply set forth the federally-approved standard utility allowance amounts, effective October 1, 2018. The calculation of Supplemental Nutrition Assistance Program (SNAP) budgets, which incorporates the standard utility allowances, and the resulting issuances of SNAP benefits are mostly automated processes in New York City and the rest of the State using the Office of Temporary and Disability Assistance's (OTDA's) Welfare Management System. To the extent these processes are not automated, the regulatory amendments do not impose any additional requirements upon the social services districts in terms of calculating SNAP budgets.

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

The regulatory amendments do not impose any reporting, recordkeeping or other compliance requirements on the social services districts in rural areas. Social services districts in rural areas do not need to hire additional professional services to comply with the regulations.

3. Costs:

The regulatory amendments do not impose initial capital costs or any annual costs upon the social services districts in rural areas because SNAP benefits are 100 percent federally-funded, and these regulatory amendments comply with federal statute and regulation to implement federally-approved standard utility allowances.

4. Minimizing adverse impact:

The regulatory amendments will not have an adverse impact on the social services districts in rural areas.

5. Rural area participation:

On August 22, 2018, OTDA provided a General Information System (GIS) release to social services districts in New York State setting forth, in part, the new standard utility allowances for SNAP effective October 1, 2018 (see GIS 18 TA/DC027, Upstate and NYC – Updated Supplemental Nutrition Assistance Program [SNAP] Standards for October 2018). In past years, social services districts have not raised any concerns or objections related to the implementation of the new standard utility allowances. Since the release of OTDA's GIS reflecting the standard utility allowances effective October 1, 2018, social services districts have had an opportunity to contact OTDA with any concerns, questions or other issues. To date, no districts have contacted OTDA. The GIS is also posted to OTDA's internet website.

Job Impact Statement

A Job Impact Statement is not required for the regulatory amendments. It is apparent from the nature and the purpose of the regulatory amendments that they will not have a substantial adverse impact on jobs and employment opportunities in either the public or the private sectors in New York State. The regulatory amendments will have no effect on small businesses. The regulatory amendments will not affect, in any significant way, the jobs of the workers in the social services districts or the State. These regulatory amendments set forth the federally-approved standard utility allowances for the Supplemental Nutrition Assistance Program (SNAP) as of October 1, 2018. The calculation of SNAP budgets, which incorporates the standard utility allowances, and the resulting issuances of SNAP benefits are mostly automated processes in New York City and the rest of the State using the Office of Temporary and Disability Assistance's Welfare Management System. To the extent these processes are not automated, the regulatory amendments do not impose any additional requirements upon the social services districts in terms of calculating SNAP budgets. Thus, the regulatory amendments will not have any adverse impact on jobs and employment opportunities in either the public or private sectors of New York State.