

RULE MAKING ACTIVITIES

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

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

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

Department of Civil Service

NOTICE OF ADOPTION

Jurisdictional Classification

I.D. No. CVS-02-19-00002-A

Filing No. 185

Filing Date: 2019-03-13

Effective Date: 2019-04-03

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

Action taken: Amendment of Appendix 3 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 labor class.

Text or summary was published in the January 9, 2019 issue of the Register, I.D. No. CVS-02-19-00002-P.

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

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

Assessment of Public Comment

The agency received no public comment.

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Supplemental Military Leave Benefits

I.D. No. CVS-14-19-00003-P

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

Proposed Action: This is a consensus rule making to amend sections 21.15 and 28-1.17 of Title 4 NYCRR.

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

Subject: Supplemental military leave benefits.

Purpose: To extend the availability of supplemental military leave benefits for certain New York State employees until December 31, 2019.

Substance of proposed rule (Full text is posted at the following State website: <https://www.cs.ny.gov/commission/calendars/March19cal-web.pdf>): The proposed rule amends sections 21.15 and 28-1.17 of the Attendance Rules for Employees in New York State Departments and Institutions to continue the availability of the single grant of supplemental military leave with pay and further leave at reduced pay through December 31, 2019, and to provide for separate grants of the greater of 22 working days or 30 calendar days of training leave at reduced pay during calendar year 2019. Union represented employees already receive these benefits pursuant to memoranda of understanding (MOUs) negotiated with the Governor's Office of Employee Relations (GOER). The proposed rule merely amends section 21.15 of the Attendance Rules consistent with the current MOUs, and amends section 28-1.17 to extend equivalent benefits to employees serving in positions designated managerial or confidential (m/c).

Under current statute, section 242 of the New York State Military Law provides that public officers and employees who are members of the organized militia or any reserve force or reserve component of the armed forces of the United States may receive the greater of 22 working days or 30 calendar days of leave with pay to perform ordered military duty in the service of New York State or the United States during each calendar year or any continuous period of absence.

Following the events of September 11, 2001, certain State employees have been ordered to extended active military duty, or frequent periods of intermittent active military duty. These employees faced the loss of State salary, with attendant loss of benefits for their dependents, upon exhaustion of the annual grant of Military Law paid leave. Accordingly, supplemental military leave, leave at reduced pay and training leave at reduced pay were made available to such employees pursuant to MOUs negotiated with the employee unions. Corresponding amendments to the Attendance Rules were adopted extending equivalent military leave benefits to employees in m/c designated positions. While these benefits are intended to expire upon a date certain, the benefits described herein have been repeatedly renewed in the wake of the continuing war on terror, including homeland security activities, and the armed conflicts in Afghanistan and Iraq.

With respect to supplemental military leave, eligible State employees federally ordered, or ordered by the Governor, to active military duty (other than for training) in response to the war on terror receive a single, non-renewable grant of the greater of 22 working days or 30 calendar days of supplemental military leave with full pay.

With respect to military leave at reduced pay, upon exhaustion of the military leave benefit conferred by the Military Law, and the single grant of supplemental military leave with pay, and any available accruals (other than sick leave) which an employee elects to use, employees who continue to perform qualifying military duty are eligible to receive military leave at reduced pay. Compensation for such leave is based upon the employee's regular State salary as of his/her last day in full pay status (defined as base

pay, plus location pay, plus geographic differential) reduced by military pay (defined as base pay, plus food and housing allowances) received from the United States or New York State for military service, if the former exceeded the latter. While in leave at reduced pay status, employees are eligible to receive leave days due upon his/her personal leave anniversary if such anniversary date falls during a period of military leave at reduced pay, and can accumulate biweekly vacation and sick leave credits for any pay period in which they remain in full pay status for at least seven out of ten days (or a proportionate number of days for employees with work weeks of less than 10 days per bi-weekly pay period.) These leave benefits are available even for employees who do not receive supplemental pay because their military salaries (as defined) exceed their regular State pay.

With respect to training leave at reduced pay, many employees ordered to military duty in response to the war on terror also continue to perform other required military service unrelated to the war on terror. To support employees performing other military duty, including mandatory summer and weekend training and other activation, a new category of leave was established, entitled "training leave at reduced pay." Eligible employees receive the greater of 22 work days or 30 calendar days of training leave at reduced pay following qualifying military duty in response to the war on terror, and after depleting the annual Military Law grant of leave with pay and any leave credits (other than sick leave) that they elect to use. Training leave at reduced pay may then be used for any ordered military duty during the calendar year that is not related to the war on terror. Employees who have already utilized leave at reduced pay receive the same compensation for any periods of training leave at reduced pay. Employees who have not used leave at reduced pay prior to their initial use of training leave at reduced pay are paid according to the employee's regular State salary as of his or her last day in full pay status reduced by military pay received from the United States or New York State for military service, if the former exceeds the latter. Employees on training leave at reduced pay retain the same leave accrual benefits as apply to leave at reduced pay.

The proposed rule extends the availability of supplemental military leave with pay, leave at reduced pay and training leave at reduced pay through December 31, 2019. Employees must establish eligibility for supplemental military leave (provided they have not already depleted the single grant of such leave), leave at reduced pay and training leave at reduced pay during 2019 by performing qualifying military service.

Employees on leave at reduced pay or training leave at reduced pay on January 1, 2019, have their rate of pay calculated from their base State pay as of January 1, 2019, reduced by the military pay rate applied to their most recent period in either reduced pay category prior to 2019. For employees who have used leave at reduced pay or training leave at reduced pay prior to year 2019, their pay for either type of reduced pay leave at any point between January 1, 2019 and December 31, 2019, will be calculated from their base State pay as of their last day in full pay status after January 1, 2019, prior to their initial use of leave of reduced pay or training leave at reduced pay, offset by the rate of military pay from their most recent period of reduced pay leave, prior to 2019. Employees whose initial use of either reduced pay leave category occurs during 2019 will have their pay rate determined by their base State pay on their last day of full pay status, minus military pay. For all employees receiving leave at reduced pay or training leave at reduced pay in 2019, the initial pay calculation will apply to all subsequent periods of reduced pay leave.

The proposed amendment provides that in no event shall supplemental military leave, leave at reduced pay or training leave at reduced pay be granted for military service performed after December 31, 2019, nor shall such leaves be available to employees who have voluntarily separated from State service or who are terminated for cause.

Text of proposed rule and any required statements and analyses may be obtained from: Jennifer Paul, 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, 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.

Consensus Rule Making Determination

Section 6(1) of the Civil Service Law authorizes the State Civil Service Commission to prescribe and amend suitable rules and regulations concerning leaves of absence for employees in the Classified Service of the State.

Since September 11, 2001, certain State employees have been federally ordered, or ordered by the Governor, to active military duty. The New York State Military Law provides for the greater of 22 working days or 30 calendar days of military leave at full (State) pay for ordered service during each calendar year or continuous period of absence. Employees ordered to prolonged active duty, or repeatedly ordered to intermittent

periods of active duty, faced exhaustion of the Military Law leave with pay benefit. Further periods of military service would then subject these employees to economic hardship from the loss of their regular State salaries and deprive their dependents of needed benefits derived from State employment.

To support State employees called to military duty after September 11, 2001, the Governor's Office of Employee Relations (GOER) executed memoranda of understanding (MOUs) with the employee unions to provide for a supplemental grant of military leave with pay and leave at reduced pay. Subsequent MOUs established a new benefit entitled training leave at reduced pay. These military leave benefits have been repeatedly renewed in the wake of the ongoing War on Terror, including homeland security activities and military operations in Afghanistan and Iraq.

The Governor's Office of Employee Relations has executed new MOUs with the Classified Service employee unions extending the availability of the single grant of supplemental military leave with pay and leave at reduced pay, and training leave at reduced pay through December 31, 2019. The State Civil Service Commission shall amend the Attendance Rules in accordance with the MOUs and extend equivalent benefits to employees serving in m/c designated positions.

The Civil Service Commission has received no public comments after publication of prior amendments to the Attendance Rules establishing or re-authorizing the benefits now put forward for renewal. Previous re-adoptions of the proposed amendments have been proposed and adopted as consensus rules. As no person or entity is likely to object to the rule as written, the proposed rule is advanced as a consensus rule pursuant to State Administrative Procedure Act (SAPA) § 202(1)(b)(i).

Job Impact Statement

By amending Title 4 of the NYCRR to extend the availability of supplemental military leave, leave at reduced pay and training leave at reduced pay for eligible employees subject to the Attendance Rules for Employees in New York State Departments and Institutions, these rules will positively impact jobs or employment opportunities for eligible employees, as set forth in section 201-a(2)(a) of the State Administrative Procedure Act (SAPA). Therefore, a Job Impact Statement (JIS) is not required by section 201-a of such Act.

State Board of Elections

EMERGENCY/PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Establishing a Process for Transferring a Voter's Registration and Enrollment from One County to Another

I.D. No. SBE-14-19-00006-EP

Filing No. 235

Filing Date: 2019-03-18

Effective Date: 2019-03-25

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

Proposed Action: Amendment of section 6217.7 of Title 9 NYCRR.

Statutory authority: Election Law, sections 3-102(1), (17) and 5-208(9)

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

Specific reasons underlying the finding of necessity: The Commissioners determined that it is necessary for the preservation of the general welfare that this amendment be adopted on an emergency basis as authorized by section 202(6) of the State Administrative Procedure Act, effective immediately upon filing with the Department of State. This amendment is adopted as an emergency measure because time is of the essence, as Chapter 3 of the Laws of 2019 require that regulations be promulgated by March 25, 2019, and to adopt the regulation in the normal course of business would make it impossible to adopt such regulations by the March 25th deadline. Further, adopting such rules in the normal course of business would be contrary to the public interest as such regulations may not be in effect by the June primary. As such, these rules are effective March 25, 2019.

Subject: Establishing a process for transferring a voter's registration and enrollment from one county to another.

Purpose: To establish a process where a voter who moves from one county to another can transfer their voter registration.

Text of emergency/proposed rule: Section 6217.7 of Part 6217 is amended to read as follows:

Section 6217.7. Processing voters who move between counties
(a) NYSVoter shall identify as voters that have moved between counties those voters who have stated on their application that the last year they voted, or were registered to vote, was in a county other than where they are applying to register to vote and the voter provided the previous address at which they were registered.

(b) NYSVoter shall notify affected counties of an apparent duplicate voter record, and thus a possible move between counties based upon a match of an applicant's name[,] and date of birth.

(c) NYSVoter shall provide the capability for the county to verify that a voter has moved between counties based upon a match of the applicant's signature and either the New York State Department of Motor Vehicles driver license or non-driver number or last four digits of the voter's social security number or matching of the previous address of the voter.

(d) When a board of elections receives notice that a voter on the statewide list has moved to an address in such board of elections' county or city, the board of elections shall transfer the voter to the new address and send a transfer notice as provided for in Election Law, section 5-208(1)(5).

([d] e) NYSVoter shall notify the "from county" if a voter has moved their voter registration between the counties. After determining that the voter has moved, the "to county" will [activate a new record] effectuate the transfer and substitute the NYSVoter assigned unique identifier with [the] such unique identifier of the "from county". The NYSVoter system shall allow all information associated with the registration to be viewed by the "to" county.

([e] f) NYSVoter shall notify the "from county" if a voter has moved their voter registration between counties. In such cases, the "from county," upon determining that such records are for the same voter, shall cancel the voter record in their county and provide the required cancellation notice to the voter pursuant to Election Law, section 5-402. In such cases where the "from county" is unable to determine that the proposed duplicate records are from the same voter, after providing the required notice to the voter, the "from county" [will inactivate their voter record] shall place such voter in inactive status.

([f] g) NYSVoter shall facilitate the move process if the "to county" has been informed of the registrant's "from county" on the voter registration form or from the registrant.

([g] Effective date. Effective immediately except that subdivisions (a), (c), (d) and (f) of this section shall become effective on July 1, 2007.]

(h) The moving of voters from one county to another may occur as a result of a new voter registration form being processed or by any mechanism provided for in Election Law § 5-208.

(i) Applicable to Transfers. Any board of elections which receives information that a voter has moved to an address in another county in New York State which would have permitted such "from county" board to transfer the voter registration address within the county if the address indicated was an in-county change of address, shall send a copy of the address transfer information, including a voter registration number to the "to county" board of elections where the voter has moved. The "to county" shall, using such voter's information contained in NYSVoter, including enrollment and signature exemplar, along with the new address information, place the voter at the new address pursuant to Election Law § 5-208 and provide notice to the voter in the manner provided in this section. When the "from county" forwards transfer information to another county board of elections for further processing, the "from county" shall send a confirmation notice in a form approved by the State Board to the prior address of such voter in the "from county." Further list maintenance steps as required by this Part shall be undertaken upon notification by NYSVoter that the voter is registered at an address in another county in New York or upon notification received from the voter.

(j) If such registration or change of address information effectuating such transfer also reflects a change of enrollment as evidenced by the NYSVoter record, the "to county" Board of Elections shall also treat such as an application for a change of enrollment pursuant to Election Law 5-304.

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 June 15, 2019.

Text of rule and any required statements and analyses may be obtained from: Nicholas Cartagena, New York State Board of Elections, 40 North Pearl Street, Suite 5, Albany, NY 12207, (518) 474-2064, email: nicholas.cartagena@elections.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: Election Law § 3-102(1) gives the State Board of Elections the authority to promulgate rules relating to the administration

of the election process. Election Law § 3-102(17) authorizes the State Board of Elections to "perform such other acts as may be necessary to carry out the purposes of this chapter." Section 5-208(9) requires that the State Board of Elections to "promulgate regulations as to the procedures for transferring a voter from one county to another."

2. Legislative objectives: Per the Memorandum of Support for Chapter 3 of the Laws of 2019, this proposal "allow(s) a voter who moves anywhere within the State to vote in his or her new election district. Boards of elections (are to) automatically transfer registrations for such a voter, as they currently do for voters who move within their county or within the New York City."

3. Needs and benefits: This proposal achieves the legislative purpose outlined above, as it outlines the process of transferring a voter's registration and enrollment when such voter moves from one county to another, or moves to or from New York City.

4. Costs: The regulatory amendments are required by the Chapter 3 of the Laws of 2019. The implementation of the proposed regulations may result in additional costs to local county boards of election, as staff at the county boards are charged with transferring voters and notifying other county boards when receiving notices that voters have moved to another county. However, as current Election Law regulations require local boards of elections to carry out similar functions as those prescribed in these regulations, the scope of additional or increased costs is yet to be determined.

5. Local government mandates: County boards of elections are already obligated to update voter registration records when receiving notices that voters have moved. This proposal requires County boards of elections to transfer a voter's registration and enrollment when it receives a notice that a voter in the statewide voter registration system has moved into its county from another county. Further, this proposal requires that a County board of elections notify the appropriate County Board when it receives a notice that a voter has moved to an address in another county in New York State. Additionally, the proposal requires the "from" County to take certain steps to update the voter's information and perform required voter registration list maintenance.

6. Paperwork: This proposal imposes no new reporting or regulatory filing requirements.

7. Duplication: This proposal does not impose any duplicative regulatory burden or reporting requirements.

8. Alternatives: The alternative is to take no action; however, taking no action would be in violation of § 5-208(9) of the Election Law that explicitly directs the State Board of Elections to promulgate these regulations.

9. Federal standards: This rulemaking is unrelated to any Federal rule or standard.

10. Compliance schedule: Compliance can be immediate upon publication of Emergency Rulemaking.

Regulatory Flexibility Analysis

1. Effect of Rule

Local boards of elections will be affected by the proposed regulations. There are 58 local boards of elections.

2. Compliance Requirements

The proposed regulations implement Chapter 3 of the Laws of 2019, in that such law provides that voters' registration shall be transferred when a voter moves out of a county and into a new county in New York state.

3. Professional Services

It is anticipated that the requirements imposed by the proposed regulations will be implemented by existing local board of elections work staff.

4. Compliance Costs

The regulatory amendments are required by the Chapter 3 of the Laws of 2019. The implementation of the proposed regulations may result in additional costs to local county boards of election, as staff at the county boards are charged with transferring voters and notifying other county boards when receiving notices that voters have moved to another county. However, as current Election Law regulations require local boards of elections to carry out similar functions as those prescribed in these regulations, the scope of additional or increased costs is yet to be determined.

5. Economic and Technological Feasibility

The proposed regulations require the input and recording of transfers into the NYSVoter system (the statewide voter registration database) and any existing local county database.

6. Minimizing Adverse Impact

The standards set forth in the proposed regulations reflect requirements as prescribed in Chapter 3 of the Laws of 2019 and the Election Law.

7. Small Business and Local Government Participation

By e-mail dated, February 20, 2019, the State Board of Elections informed the commissioner of each local County Board of Elections in the State of New York of the amendments to the regulations that are necessitated by Chapter 3 of the Laws of 2019. The e-mail included a draft of the proposed amendments and a copy of Chapter 3 of the Laws of 2019.

Rural Area Flexibility Analysis

Under SAPA 202-bb(4)(a), when a rule does not impose an adverse economic impact on rural areas and the agency finds it would not impose reporting, recordkeeping, or other compliance requirements on public or private entities in rural areas, the agency may file a Statement in Lieu of. This rule has statewide application, providing a process for transferring a voter's registration and enrollment from one county to another. Accordingly, this rule has no adverse impact.

Job Impact Statement

Under SAPA 201-a(2)(a), when it is apparent from the nature and purpose of the rule that it will not have a substantial adverse impact on jobs and employment opportunities, the agency may file a Statement in Lieu of. This rulemaking, as is apparent from its nature and purpose, will not have an adverse impact on jobs or employment opportunities. The proposed amendment provides a process for transferring a voter's registration and enrollment from one county to another. This rulemaking imposes no regulatory burden on any facet of job creation or employment.

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

Pre-Registering Voters Who Are 16 and 17 Years Old

I.D. No. SBE-14-19-00005-P

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

Proposed Action: Amendment of section 6217.9 of Title 9 NYCRR.

Statutory authority: Election Law, sections 3-102(1), (17); L. 2019, ch. 2

Subject: Pre-registering voters who are 16 and 17 years old.

Purpose: To permit persons who are 16 and 17 years old to pre-register to vote.

Text of proposed rule: Part 6217.9(a)(4) of 9 NYCRR, as of January 1, 2020, is amended to read as follows:

(4) Pre-registered. The voter has met all the requirements to be an active voter but has not yet attained the age of 18. Pre-registered voters that will be 18 years old on or before the election date are included in the poll book and are eligible to vote in the election. The voter must *be at least 16 [17] years old to pre-register.*

Text of proposed rule and any required statements and analyses may be obtained from: Nicholas R. Cartagena, State Board of Elections, 40 North Pearl Street, Suite 5, Albany, NY 12207, (518) 474-2064, email: nicholas.cartagena@elections.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:** Election Law § 3-102(1) gives the State Board of Elections the authority to promulgate rules relating to the administration of the election process. Election Law § 3-102(17) authorizes the State Board of Elections to "perform such other acts as may be necessary to carry out the purposes of this chapter." Chapter 2 of the Laws of 2019 allows a person who is at least 16 years old, and is otherwise qualified to register to vote, to pre-register to vote.

2. **Legislative objectives:** Chapter 2 of the Laws of 2019 allows 16 and 17 year olds to pre-register to vote. Current regulations only allow 17 year olds to pre-register. The proposed regulation conforms Election Law regulations with current statute.

3. **Needs and benefits:** This proposal achieves the legislative purpose outlined above, as it permits a person who is at least 16 years old, and is otherwise qualified to register to vote, to pre-register to vote.

4. **Costs:** Under the Election Law, local county boards of elections are charged with registering voters. Under the proposed regulation, any person who is 16 or 17 years old and is otherwise qualified to vote is permitted to pre-register. County board staff are required to enter the voter's information on NYSVoter under a pre-registration status. While local county board of elections staff time is going to be used in performing this duty, local boards already have staff that registers voters. Additional staff is not needed to comply with the proposed amendments. As such, the State Boards believes that the proposed amendment is cost neutral.

5. **Local government mandates:** County boards of elections will be required to pre-register voters who are 16 or 17 years old.

6. **Paperwork:** This proposed rule imposes no new reporting or regulatory filing requirements not provided for by statute.

7. **Duplication:** There is no jurisdictional duplication created by this rulemaking.

8. **Alternatives:** This rulemaking amends existing regulations to conform to the requirements of Chapter 2 of the Laws of 2019. The alternative would be to not amend the regulations; however, if the regulations are not amended, then the regulations would not be in compliance with Chapter 2 of the Laws of 2019.

9. **Federal standards:** Not applicable.

10. **Compliance schedule:** Compliance would be had by January 1, 2020.

Regulatory Flexibility Analysis

1. **Effect of rule:** There is minimal impact on local government due to the proposed rule. There are 58 local county boards of elections. The Election Law charges local county boards of elections with registering voters. This rule provides that persons who are 16 will be permitted to pre-register to vote. Under current law, persons who are 17 may pre-register to vote. This rule will have a no impact on small business.

2. **Compliance requirements:** Under this rule, if a 16 or 17 year old person pre-registers to vote, the local county board of elections shall enter the voter's information on NYSVoter under a pre-registration status. This rule has no impact on small businesses.

3. **Professional services:** No professional services are required under the proposed regulations.

4. **Compliance costs:** Under current law, 17 year old voters are already permitted to pre-register to vote. The State Board does not believe additional staff will be required to pre-register 16 year old voters. As such, the State Board believes the proposed regulation is cost neutral.

5. **Economic and technological feasibility:** Local boards of elections already have the necessary technological infrastructure to comply with the proposed regulation.

6. **Minimizing adverse impact:** The rule requires no mitigation of impacts on local government as the State Board is of the opinion that to proposed amendment is cost neutral.

7. **Small business and local government participation:** The State Board of Elections has solicited and will continue to solicit public comment.

8. **For rules that either establish or modify a violation or penalties associated with a violation:** Not applicable.

9. **Initial review of the rule, pursuant to SAPA § 207:** Not applicable.

Rural Area Flexibility Analysis

Under SAPA § 202-bb(4)(a), when a rule does not impose an adverse economic impact on rural areas and the agency finds it would not impose reporting, recordkeeping, or other compliance requirements on public or private entities in rural areas, the agency may file a Statement in Lieu of. This rule has statewide application, as it permits persons who are 16 or 17 years old to pre-register to vote. The proposed rule does not create any new reporting, recordkeeping or other routine compliance requirements as they are already expressly required by law. Accordingly, this rule has no adverse impacts on any area.

Job Impact Statement

1. **Nature of impact:** This rule should have minimal or no impact on jobs as it as it permits persons who are 16 or 17 years old to pre-register to vote.

2. **Categories and numbers affected:** This rule will impact local county boards of elections. This rule will not create employment opportunities.

3. **Regions of adverse impact:** This rule has a statewide applicability, and has no disproportionate adverse impact on jobs or employment opportunities in any region.

4. **Minimizing adverse impact:** The State Board of Elections has not taken any measures to minimize adverse impact on existing jobs or promote the development of new employment opportunities because the State Board of Elections has determined this rule would not have an adverse impact on jobs.

5. **Self-employment opportunities:** Not applicable.

6. **Initial review of the rule, pursuant to SAPA § 207:** Not applicable.

Department of Health

**EMERGENCY
RULE MAKING**

Update Standards for Adult Homes and Standards for Enriched Housing Programs

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

Filing No. 237

Filing Date: 2019-03-19

Effective Date: 2019-03-19

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

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

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

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

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

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

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

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

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

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

(c) Penalties for Part 487 of this Title.

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

[(k)] (l) (1)	
[(k)] (l) (2)	25
[(1)] (m) (1)	10
(2)	10
[(m)] (n)	10
[(k)] (l)	NA
(ii)	1,000
(iii)	1,000
(iv)	1,000
[(n)] (o)	10
[(o)] (p) (1)	10
(2)	10
(3)	10
(4)	10
[(p)] (q)	10
[(q)] (r)	25

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

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

(2)	50
[(n)] (o)	25
[(o)] (p)	10
[(p)] (q)	10
[(q)] (r)	10
[(r)] (s)	10
[(s)] (t)	25

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

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

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

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

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

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

Section 487.4 Admission standards

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

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

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

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

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

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

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

Section 488.4 Admission and retention standards

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

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

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

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

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

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

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

Section 490.4 Admission and retention standards

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

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

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

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

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

Section 494.4 Admission and retention standards

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

This notice is intended to serve only as a notice of emergency adoption. This agency intends to adopt the provisions of this emergency rule as a permanent rule, having previously submitted to the Department of State a notice of proposed rule making, I.D. No. HLT-37-18-00008-P, Issue of September 12, 2018. The emergency rule will expire May 17, 2019.

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

Regulatory Impact Statement

Statutory Authority:

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

Legislative Objectives:

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

Needs and Benefits:

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

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

COSTS:

Costs to Private Regulated Parties:

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

Costs to State Government:

There will be no costs incurred by State government.

Costs to Local Governments:

There will be no costs incurred by local governments.

Local Government Mandates:

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

Paperwork:

There are no new reporting requirements imposed by the rule.

Duplication:

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

Alternatives:

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

Federal Standards:

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

Compliance Schedule:

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

Regulatory Flexibility Analysis

Effect of Rule:

The proposed regulations will apply to all adult homes, enriched housing, residences for adults, and assisted living programs in New York State. This regulation will not impact local governments or small business unless they operate such adult care facilities. In such case, the flexibility afforded by the regulations is expected to minimize any costs of compliance as described below.

Compliance Requirements:

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

Professional Services:

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

Compliance Costs:

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

Economic and Technological Feasibility:

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

Minimizing Adverse Impact:

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

Small Business and Local Government Participation:

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

Cure Period:

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

Rural Area Flexibility Analysis

Types and Estimated Numbers of Rural Areas:

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

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

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

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

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

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

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

Costs:

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

Minimizing Adverse Impact:

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

Rural Area Participation:

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

Job Impact Statement

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

Assessment of Public Comment

The agency received no public comment.

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

Managed Care Organizations (MCOs)

I.D. No. HLT-14-19-00001-P

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

Proposed Action: Amendment of section 98-1.11(e) of Title 10 NYCRR.

Statutory authority: Public Health Law, section 4403(2)

Subject: Managed Care Organizations (MCOs).

Purpose: To amend contingent reserve requirements for MCOs.

Text of proposed rule: Subparagraph (ii) of paragraph (1) of subdivision (e) of section 98-1.11 is amended to read as follows:

(ii) Notwithstanding the provisions of subparagraph (i) above, the contingent reserve applicable to net premium income generated from the Medicaid managed care, *Health and Recovery Plans (HARPs)* and HIV SNP programs shall be:

- (a) 7.25 percent of net premium income for 2011;
- (b) 7.25 percent of net premium income for 2012;
- (c) 7.25 percent of net premium income for 2013;
- (d) 7.25 percent of net premium income for 2014;
- (e) 7.25 percent of net premium income for 2015;
- (f) 7.25 percent of net premium income for 2016;
- (g) 7.25 percent of net premium income for 2017;
- (h) 7.25 percent of net premium income for 2018;
- (i) [8.25] 7.25 percent of net premium income for 2019;
- (j) [9.25] 7.25 percent of net premium income for 2020;
- (k) [10.25] 8.25 percent of net premium income for 2021;
- (l) [11.25] 9.25 percent of net premium income for 2022;
- (m) [12.5] 10.25 percent of net premium income for 2023.
- (n) [12.5] 11.25 percent of net premium income for [calendar years after 2023] 2024.
- (o) 12.5 percent of net premium income for 2025.
- (p) 12.5 percent of net premium income for calendar years after 2025.

[(iii)] The contingent reserve applicable to net premium income generated from the Health and Recovery Plans (HARPs) shall be the same percentages listed in subparagraph (ii), except that for years 2015, 2016 and 2017 the applicable contingent reserve shall be 5.0 percent of net premium income.]

[(iv)] (iii) Upon an HMO, PHSP or HIV SNP reaching its maximum contingent reserve of 12.5 percent of its net premium income for a calendar year, it must continue to maintain its contingent reserve at this level thereafter. Such contingent reserve requirement shall be deemed to have been met if the net worth of the HMO, PHSP or HIV SNP, based upon admitted assets, equals or exceeds the applicable contingent reserve requirement for such calendar year.

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

This rule was not under consideration at the time this agency submitted its Regulatory Agenda for publication in the Register.

Regulatory Impact Statement

Statutory Authority:

Public Health Law section 4403(2) states the Commissioner may adopt and amend rules and regulations pursuant to the state administrative procedures act to effectuate the purposes and provisions of Article 44, which governs the certification and operational requirements of Managed Care Organizations (MCOs).

Legislative Objectives:

10 NYCRR 98 was extensively amended in 2005 and consistently thereafter, to implement the Medicaid Redesign Team initiatives consistent with Article 44 of the Public Health Law. This includes the temporary reduction of the contingent reserve requirements applied to premium revenues from the Medicaid Managed Care (MMC) and HIV Special Needs Plan (SNP) programs due to inclusion of various new benefits and populations into Medicaid Managed Care, the addition of the Health and Recovery Plans (HARPs) and the 2% reduction in premium (pursuant to the MRT initiative #6). These changes necessitated maintaining the reserves at the current level as the premium rates are not adequate to allow for a planned increase in the contingent reserve requirements. This proposed amendment will allow the contingent reserve for the Medicaid, HARP and HIV SNP lines of business to remain at 7.25% for an additional two years (2019 and 2020).

Needs and Benefits:

The approved SFY 2011-2012 and SFY 2012-2013 NYS Budgets incorporated a proposal from the Medicaid Redesign Team that reduced the premium rates of MMC and HIV SNP managed care plans by 2%. This was accomplished by lowering the rate component for surplus/reserves from 3% to 1% effective April 1, 2011.

The actuarial firm employed by the Department of Health (DOH) must certify the actuarial soundness of the premium rates to Centers for Medicare and Medicaid Services (CMS). The reduction of the rate component for surplus/reserves by 2% would result in rates that were not actuarially sound, as such rates would be insufficient to support the contingent reserve requirement specified in § 98-1.11(e)(1). As a result, the contingent reserve requirement for Medicaid product lines was reduced from 10.5% to 7.25% of premium revenue. This change was implemented in regulations promulgated on an emergency basis effective July 7, 2011 and adopted permanently on February 15, 2012.

The new revision to 98-1.11(e) maintains the 7.25% contingent reserve requirement through calendar year 2020. This will permit DOH to maintain the 2% reduction in the premium rates and allow the State's actuary to certify the actuarial soundness of the premium rates to CMS.

Costs:

The amended regulation imposes no compliance costs on state or local governments. There will be no additional costs incurred by the Health Department or by the MCOs.

Local Government Mandates:

The regulation imposes no new programs, services, duties or responsibilities on any county, city, town, village, school district, fire district or other special district.

Paperwork:

Paperwork associated with filings to DOH or Department of Financial Services should be minimal and would be no more substantial than the current regulation requires.

Duplication:

These regulations do not duplicate, overlap, or conflict with existing State and federal regulations.

Alternatives:

Revisions to § 98-1.11(e) are needed to ensure the actuarial soundness of Medicaid Managed Care premium rates. No alternatives were considered since Medicaid premium rates are set by the State actuary and with a built-in profit of 1% which is not sufficient to accommodate reserve increases without jeopardizing the soundness of the rates.

Federal Standards:

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

Compliance Schedule:

Managed care organizations should be able to comply with the proposed regulations upon publication of the Notice of Adoption.

Regulatory Flexibility Analysis

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

Rural Area Flexibility Analysis

No rural area flexibility analysis is required pursuant to section 202-bb(4)(a) of the State Administrative Procedure Act. The proposed amend-

ment does not impose an adverse impact on facilities in rural areas, and it does not impose reporting, record keeping or other compliance requirements on facilities in rural areas.

Job Impact Statement

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

REVISED RULE MAKING NO HEARING(S) SCHEDULED

Medical Use of Marihuana

I.D. No. HLT-31-18-00005-RP

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

Proposed Action: Amendment of section 1004.2 of Title 10 NYCRR.

Statutory authority: Public Health Law, section 3369-a

Subject: Medical Use of Marihuana.

Purpose: To add additional serious conditions for which patients may be certified to use medical marihuana.

Text of revised rule: Section 1004.2 Practitioner issuance of certification.

(a) Requirements for Patient Certification. A practitioner who is registered pursuant to 1004.1 of this part may issue a certification for the use of an approved medical marihuana product by a qualifying patient subject to completion of subdivision (e) of this section. Such certification shall contain:

* * *

(8) the patient's diagnosis, limited solely to the specific severe debilitating or life-threatening condition(s) listed below;

* * *

(xi) any severe debilitating pain that the practitioner determines degrades health and functional capability; where the patient has contraindications, has experienced intolerable side effects, or has experienced failure of one or more previously tried therapeutic options; and where there is documented medical evidence of such pain having lasted three months or more beyond onset, or the practitioner reasonably anticipates such pain to last three months or more beyond onset; [or]

(xii) *post-traumatic stress disorder;*

(xiii) *pain that degrades health and functional capability where the use of medical marihuana is an alternative to opioid use, provided that the precise underlying condition is expressly stated on the patient's certification; or*

(xiv) *substance use disorder; or*

(xv) any other condition added by the commissioner.

(9) The condition or symptom that is clinically associated with, or is a complication of the severe debilitating or life-threatening condition listed in paragraph (8) of this subdivision. Clinically associated conditions, symptoms or complications, as defined in subdivision seven of section thirty-three hundred sixty of the public health law are limited solely to:

(i) Cachexia or wasting syndrome;

(ii) severe or chronic pain resulting in substantial limitation of function;

(iii) severe nausea;

(iv) seizures;

(v) severe or persistent muscle spasms; [or]

(vi) *post-traumatic stress disorder;*

(vii) *opioid use disorder; or*

(viii) such other conditions, symptoms or complications as added by the commissioner.

(10) a statement that by training or experience, the practitioner is qualified to treat the serious condition, which encompasses the severe debilitating or life-threatening condition listed pursuant to paragraph (8) of this subdivision and the clinically associated condition, symptom or complication listed pursuant to paragraph (9) of this subdivision;

(i) *for purposes of this subdivision, a practitioner must hold a federal Drug Addiction Treatment Act of 2000 (DATA 2000) waiver to be qualified to treat patients with substance use disorder or opioid use disorder.*

Revised rule compared with proposed rule: Substantial revisions were made in section 1004.2(a)(8), (xiii), (xiv), (xv), (9), (vii) and (10).

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

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

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

Revised Regulatory Impact Statement

Statutory Authority:

The Commissioner of Health is authorized pursuant to Section 3369-a of the Public Health Law (PHL) to promulgate rules and regulations necessary to effectuate the provisions of Title V-A of Article 33 of the PHL. The Commissioner of Health is also authorized pursuant to Section 3360(7) of the PHL to add serious conditions under which patients may qualify for the use of medical marihuana.

Legislative Objectives:

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

Needs and Benefits:

The regulatory amendments are necessary to conform the regulations to recent amendments to Section 3360(7) of the PHL that added post-traumatic stress disorder, pain that degrades health and functional capability where the use of medical marihuana is an alternative to opioid use, and substance use disorder, as serious conditions for which patients may be certified to use medical marihuana. This regulatory amendment will particularly benefit patients with these conditions as medical marihuana will now be an available treatment option. Requiring practitioners to expressly state the precise underlying condition will help the Department to better understand how medical marihuana can be used as an alternative or adjunctive therapy to prescription opioids.

In addition, adding substance use disorder as a severe debilitating or life-threatening condition and opioid use disorder as a clinically associated condition will allow individuals who are addicted to opioids to use medical marihuana as part of their treatment. This revised rulemaking removes the requirement that a patient be enrolled in a treatment program certified pursuant to Article 32 of the Mental Hygiene Law. The regulation would instead require practitioners certifying patients for substance use disorder and opioid use disorder to hold a federal Drug Addiction Treatment Act of 2000 (DATA 2000) waiver.

Costs:

Costs to the Regulated Entity:

Patients certified by their practitioner for the medical use of marihuana will have to pay a \$50 non-refundable application fee to obtain a registry identification card to register with the Medical Marihuana Program. However, the Department may waive or reduce this fee in cases of financial hardship, and is currently waiving this fee for all patients and caregivers. Patients will also have a cost associated with the fees charged by registered organizations for the purchase of medical marihuana products.

Costs to Local Government:

This amendment to the regulation does not require local governments to perform any additional tasks; therefore, it is not anticipated to have an adverse fiscal impact.

Costs to the Department of Health:

With the inclusion of these new serious conditions, additional patient registrations will need to be processed by the Department. In addition, there may be an increase in the number of practitioners who register with the program to certify patients who may benefit from the use of medical marihuana for these new serious conditions. This regulatory amendment may result in an increased cost to the Department for additional staffing to provide registration support for patients and practitioners as well as certification support for registered practitioners. However, any resulting cost of additional staffing is greatly outweighed by the benefit of making another treatment option available to practitioners who are treating patients suffering from severe pain or opioid use disorder.

Local Government Mandates:

This amendment does not impose any new programs, services, duties or responsibilities on local government.

Paperwork:

Registered practitioners who certify patients for the program will be required to maintain a copy of the patient's certification in the patient's medical record.

Duplication:

No relevant rules or legal requirements of the Federal and State governments duplicate, overlap or conflict with this rule.

Alternatives:

An alternative would be to not amend the regulation to align with Section 3360(7) of the PHL. However, this was not considered a viable alternative, as it would create confusion for registered practitioners and patients seeking to be certified for the medical use of marihuana.

Federal Standards:

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

Compliance Schedule:

There is no compliance schedule imposed by these amendments, which shall be effective upon publication of a notice of adoption in the State Register.

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

Changes made to the last published rule do not necessitate revision to the previously published Regulatory Flexibility Analysis, Rural Area Flexibility Analysis and Job Impact Statement.

Assessment of Public Comment

The Department of Health ("Department") received comments from various stakeholders, including practitioners, addiction treatment programs, and patients. Comments were received regarding the evidence surrounding marihuana as a treatment for opioid use disorder, the federal status of marihuana, and various other topics. These comments are summarized below along with the Department's responses.

COMMENT: Comments were received regarding the scientific evidence demonstrating the effectiveness of medical marihuana as an alternative treatment to opioid use disorder. Commenters noted the dangers associated with opioid use disorder and the need to ensure the safety of those patients recovering from opioid use disorder without the benefit of medication assisted treatment. Commenters were concerned that medical marihuana would be advertised as a first line of treatment or as a treatment for all patients with opioid use disorder, and asked the Department to conduct more public education around medical marihuana. Some commenters proposed conducting a pilot study before allowing medical marihuana to be added to the list of available treatments for opioid use disorder.

RESPONSE: The regulations conform to recent amendments to Section 3360 of the Public Health Law (PHL), which became effective on September 24, 2018, and that specifically included substance use disorder as a qualifying condition. Further, a practitioner must be registered with the Department and must be qualified by training or experience to treat the serious condition for which the patient's certification is being issued. When issuing the certification, the registered practitioner must comply with the requirements of certification, as provided in 10 NYCRR § 1004.2. In particular, practitioners must consult the prescription monitoring program registry to review the patient's controlled substance history, review past treatments to determine if the patient is likely to receive therapeutic or palliative benefit from primary or adjunctive treatment with medical marihuana, explain the potential risks and benefits to the patient, and document in the patient's medical record that the explanation has been provided. These steps ensure that appropriate safeguards are in place so that only patients who would benefit from medical marihuana receive certification. Allowing medical marihuana for opioid use disorder provides another tool in the toolkit for practitioners to use, in their clinical discretion, for their patients. No changes to the proposed regulations were made as a result of these comments.

COMMENT: Comments were received stating that medical marihuana is not a treatment option approved by the U.S. Food and Drug Administration (FDA).

RESPONSE: Although medical marihuana is not an FDA-approved treatment option, Title V-A of the Public Health Law makes marihuana available to patients who are suffering from a serious condition, as defined in the statute. Medication assisted treatment with FDA-approved medications, such as methadone, buprenorphine or naltrexone, in combination with counseling and behavioral therapies, continues to be the standard of care for opioid use disorder and has been proven to be clinically effective. Registered practitioners must weigh the risks versus the benefits for each patient when determining whether certification for medical marihuana is appropriate. No changes to the proposed regulations were made as a result of these comments.

COMMENT: Comments were received regarding the interplay between federal law and the proposed regulation. Commenters noted that any inconsistency with federal law may make treatment providers that receive federal funding uncomfortable with changing their policies.

RESPONSE: The Medical Marihuana Program and the Compassionate Care Act are firmly established in state law, as are many other medical marihuana programs around the nation. Possible ramifications with respect to federal law are not within the Department's purview. No changes to the proposed regulations were made as a result of these comments.

COMMENT: Comments were received regarding the proposed regulations' impact on local government programs and treatment centers that have traditionally prohibited marihuana use. Commenters stated that significant changes to these entities' policies would need to occur to accommodate medical marihuana patients in these programs.

RESPONSE: OASAS has published guidelines for the use of medical marihuana in OASAS programs, which is available here: <https://www.oasas.ny.gov/legal/documents/OASASFAQsMedicalMarihuana.pdf>. No changes to the proposed regulations were made as a result of these comments.

COMMENT: Numerous commenters questioned the effectiveness of medical marihuana as a treatment option for opioid use disorder. Concern was expressed about side effects as well as the effect on brain development in adolescents.

RESPONSE: The regulations conform to recent amendments to Section 3360 of the PHL, which became effective on September 24, 2018, and that specifically included substance use disorder as a qualifying condition. Moreover, preclinical studies have demonstrated that marihuana may help patients with opioid use disorder. As noted above, registered practitioners must weigh the risks versus the benefits for each patient when determining whether certification for medical marihuana is appropriate. When issuing the certification, the registered practitioner must comply with the requirements of certification, as provided in 10 NYCRR § 1004.2. Practitioners must consult the prescription monitoring program registry to review the patient's controlled substance history, review past treatments to determine if the patient is likely to receive therapeutic or palliative benefit from primary or adjunctive treatment with medical marihuana, explain the potential risks and benefits to the patient, and document in the patient's medical record that the explanation has been provided. These steps ensure that appropriate safeguards are in place so that only patients who would benefit from medical marihuana receive certification. Allowing medical marihuana for opioid use disorder provides another tool in the toolkit for practitioners to use, in their clinical discretion, for their patients. No changes were made to the proposed regulations as a result of these comments.

COMMENT: One commenter pointed out how there are now two serious conditions relating to pain, and how patients could be certified to use medical marihuana for both short-term pain management, as well as long-term pain management.

RESPONSE: As background, these regulations were amended in March 2017 to include chronic pain as a serious condition for which a practitioner could recommend medical marihuana. Those amendments defined chronic pain as "severe debilitating pain that the practitioner determines degrades health and functional capability; where the patient has contraindications, has experienced intolerable side effects, or has experienced failure of one or more previously tried therapeutic options." Additionally, chronic pain must also have lasted three months or be anticipated to last more than three months. The proposed regulation would add, as a serious condition, pain that degrades health and functional capability where the use of medical marihuana is an alternative to opioid use and substance use disorder as qualifying conditions. As noted above, these amendments conform to the recent statutory amendments to Section 3360(7) of the PHL, which were signed into law on September 24, 2018. Accordingly, the proposed regulations would permit medical marihuana to be recommended for any condition for which an opioid could be prescribed including, but not limited to: acute pain, post-operative pain management, severe or persistent muscle spasms, and opioid use disorder. No changes were made to the proposed regulations as a result of this comment.

COMMENT: A commenter suggested limiting the scope of the proposed regulation by allowing for the use of medical marihuana for opioid use disorder only pursuant to a research study approved by an Institutional Review Board (IRB).

RESPONSE: The regulations conform to recent amendments to Section 3360 of the PHL that specifically include substance use disorder as a qualifying condition, and which became effective on September 24, 2018. These statutory amendments do not contemplate approval by an IRB as a required step to access medical marihuana. No changes were made to the proposed regulations as a result of this comment.

COMMENT: Commenters expressed concern that practitioners would recommend medical marihuana without adequate knowledge about how it works.

RESPONSE: Every practitioner must complete a two- to four-hour course on the medical use of marihuana in order to register with the Department to certify patients for the medical use of marihuana. The practitioner must also be qualified by training or experience to treat the serious condition for which a patient's certification is being issued. Practitioners must explain the potential risks and benefits to the patient and document in the patient's medical record that the explanation has been provided. No changes to the proposed regulations were made as a result of these comments.

COMMENT: Commenters requested clarification on how practitioners should monitor Tetrahydrocannabinol (THC) levels and dosages in patients.

RESPONSE: These comments address issues beyond the scope of the regulatory amendment. However, the Department notes that appropriate

dosing depends on various factors, such as the cannabinoid content of THC and cannabidiol (CBD) in the product, as well as the patient's condition and prior history of cannabis use. No changes to the regulations were made as a result of these comments.

COMMENT: A comment was received regarding the security of marihuana at treatment programs certified pursuant to Article 32 of the Mental Hygiene law.

RESPONSE: OASAS has published guidance that includes information regarding secure storage of marihuana at treatment programs, which is available here: <https://www.oasas.ny.gov/legal/documents/OASASFAQsMedicalMarihuana.pdf>. Patients may hold and self-administer their medication in accordance with OASAS Local Services Bulletin No. 2012-04: Medication Administration Policies for the Administration of Medications in OASAS Intensive Residential Programs. An inpatient or residential treatment program certified pursuant to Article 32 of the Mental Hygiene Law may seek designation as a caregiver with the DOH Medical Marijuana Program, thereby permitting such facilities to hold and/or administer medical marihuana on behalf of a certified patient. No changes to the proposed regulations were made as a result of these comments.

COMMENT: Comments were received regarding the legalization of marihuana generally.

RESPONSE: These comments address issues beyond the intended scope of the regulation. No changes to the regulations were made as a result of these comments.

Public Service Commission

EMERGENCY/PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Tariff Amendments to Revise Demand-Based Innovative Price Pilot Rates Downward to Reflect Corrected Billing Determinants

I.D. No. PSC-14-19-00004-EP

Filing Date: 2019-03-18

Effective Date: 2019-03-18

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

Proposed Action: The Commission adopted an order on March 14, 2019 approving Consolidated Edison Company of New York, Inc.'s petition to correct and reduce the rates applicable to customers that will take service under the Innovative Pricing Pilot, Riders Z and AA, for Residential/Religious and Small Commercial customers, respectively, in Staten Island, the County of Westchester and Brooklyn.

Statutory authority: Public Service Law, sections 5, 65(1), (8), 66(1) and (12)

Finding of necessity for emergency rule: Preservation of general welfare. **Specific reasons underlying the finding of necessity:** Implementing the revised pricing prior to April 1, 2019, as proposed by Con Edison, will preserve the integrity of the Innovative Pricing Pilot (Pilot), which is to test new rate structures that are now possible because of Advanced Metering Infrastructure (AMI). While bill protection measures may ensure that customers are not financially harmed, the erroneous rates could result in distortion of the data collected under the Pilot, since some customers who see that the rates are set too high may exit the Pilot program. This unintended exit from the Pilot would frustrate the Commission's goal of using this first of its kind program to provide insights about customer acceptance, satisfaction and preferences, as well as the bill and peak demand impacts of the Pilot's innovative rate structures. The usefulness of the Pilot in developing a basis for time-based rates for mass market customers and the value of the Pilot would be thwarted without this action. Thus, waiting the 60-day notice and comment period required by SAPA § 202(1) would result in unduly delaying the correction of the Pilot rates in question, the rates applicable to customers that will take service under Riders Z and AA, and would therefore be contrary to the public interest and general welfare.

Subject: Tariff amendments to revise demand-based Innovative Price Pilot rates downward to reflect corrected billing determinants.

Purpose: To preserve the integrity of the Innovative Price Pilot so to ensure that the data collected will not be distorted.

Substance of emergency/proposed rule: The Public Service Commission is considering, in response to a petition filed March 1, 2019 by Consolidated Edison Company of New York, Inc. (Con Edison or the Company) seeking to amend certain Innovative Pricing Pilot rates through amendments to its electric tariff schedule, P.S.C. No. 10 to reduce the rates applicable to customers that will take service under its Innovative Pricing Pilot (Pilot), Riders Z and AA, for Residential/Religious and Small Commercial customers, respectively, in Staten Island, the County of Westchester and Brooklyn.

The Company states that it has conducted an additional analysis of customer interval usage data that indicates that the demand-based delivery rates should be adjusted downward by approximately 4.1 percent. Therefore, the Company proposes to adjust the demand-based Pilot rates downward to reflect the revised billing determinants so that the pilot will be based on accurate data. Without these tariff amendments, Pilot participants will be assessed rates that are higher than they should be. This could cause some customers to unnecessarily exit the Pilot, distorting its results, and impact the Pilot goals of determining customer acceptance and system impacts associated with mass market time-based rates.

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.

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 June 15, 2019.

Text of rule may be obtained from: John Pitucci, Public Service Commission, 3 Empire State Plaza, Albany, New York 12223-1350, (518) 486-2655, email: john.pitucci@dps.ny.gov

Data, views or arguments may be submitted to: Kathleen H. Burgess, Secretary, Department of Public Service, 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 amended rule is within the definition contained in section 102(2)(a)(ii) of the State Administrative Procedure Act.

(18-E-0397EP2)

NOTICE OF ADOPTION

Pole Attachment Rules

I.D. No. PSC-25-16-00024-A

Filing Date: 2019-03-14

Effective Date: 2019-03-14

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

Action taken: On 3/14/19, the PSC adopted an order approving, in part, CTIA - The Wireless Association's (CTIA) petition that current Commission pole attachment rules apply equally and consistently to wireless communications providers.

Statutory authority: Public Service Law, section 119-a

Subject: Pole attachment rules.

Purpose: To approve, in part, CTIA's petition for pole attachment rules to apply equally to wireless communications providers.

Substance of final rule: The Commission, on March 14, 2019, adopted an order approving, in part, CTIA - The Wireless Association's (CTIA) petition that current Commission pole attachment rules apply equally and consistently to wireless communications providers by establishing an interim pole attachment rate for wireless attachments, establishing timelines with respect to the processing of pole attachment applications and make-ready work and extending the Commission's existing dispute resolution process to wireless attachment applications, to become effective on August 1, 2019, subject to the terms and conditions set forth in the order.

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

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

Assessment of Public Comment

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

(16-M-0330SA1)

NOTICE OF ADOPTION

Amendments to the UBP-DERS

I.D. No. PSC-13-18-00014-A

Filing Date: 2019-03-14

Effective Date: 2019-03-14

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

Action taken: On 3/14/19, the PSC adopted an order adopting the amendments to the Uniform Business Practices for Distributed Energy Resource Suppliers (UBP-DERS), effective May 1, 2019.

Statutory authority: Public Service Law, sections 2, 5(1), (2), 22, 53, 65(1), (2), (3), 66(1), (2), (3), (5), (8), (9) and (12)

Subject: Amendments to the UBP-DERS.

Purpose: To adopt amendments to the UBP-DERS.

Substance of final rule: The Commission, on March 14, 2019, adopted an order adopting the amendments to the Uniform Business Practices for Distributed Energy Resource Suppliers (UBP-DERS), attached to the Order as Appendix A, are adopted with an effective date of May 1, 2019. Central Hudson Gas & Electric Corporation, Consolidated Edison Company of New York, Inc., KeySpan Gas East Corporation, The Brooklyn Union Gas Company, National Fuel Gas Distribution Corporation, New York State Electric & Gas Corporation, Niagara Mohawk Power Corporation d/b/a National Grid, Orange and Rockland Utilities, Inc., and Rochester Gas and Electric Corporation are directed to make filings updating the UBP-DERS included in their tariffs as addenda on not less than fifteen days' notice to become effective on May 1, 2019, subject to the terms and conditions set forth in the order.

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

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

Assessment of Public Comment

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

(15-M-0180SA5)

NOTICE OF ADOPTION

Joint Proposal Establishing Three-Year Gas Rate Plan

I.D. No. PSC-20-18-00008-A

Filing Date: 2019-03-14

Effective Date: 2019-03-14

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

Action taken: On 3/14/19, the PSC adopted the terms of a joint proposal executed by Orange and Rockland Utilities, Inc., et. al. (O&R) and established a three-year gas rate plan, effective January 1, 2019 to December 31, 2021.

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

Subject: Joint proposal establishing three-year gas rate plan.

Purpose: To adopt the terms of a joint proposal executed by O&R et. al. establishing a three-year gas rate plan.

Substance of final rule: The Commission, on March 14, 2019, adopted the terms of a joint proposal executed by Orange and Rockland Utilities, Inc. (O&R), Department of Public Service trial staff, the New York Power Authority, the New York Department of State, Consumer Protection Division, Utility Intervention Unit, the Pace Energy and Climate Center, the Environmental Defense Fund, the Public Utility Law Project of New York, Inc., the Towns of Clarkstown, Haverstraw, Orangetown, Ramapo and Stony Point, and the Rockland County Solid Waste Management Authority, the New York Geothermal Energy Organization, Bob Wyman, and Great Eastern Energy, LLC, and established a three-year gas rate plan, effective January 1, 2019 to December 31, 2021. The terms of the joint proposal dated November 9, 2018, which is appended to the Order as Attachment A, are adopted and incorporated as part of the order, with the

exception of Section O, paragraphs 5 through 13. O&R is directed to file cancellation supplements, effective on not less than one day's notice, on or before March 25, 2019, cancelling the tariff amendments and supplements listed in Attachment B to the order. O&R is directed to file, on not less than one day's notice, to become effective on a temporary basis, such further tariff amendments as are necessary to effectuate the terms of the Order. The amendments specified in the compliance filing shall not become effective on a permanent basis until approved by the Commission. O&R is also directed to file such tariff changes as are necessary to effectuate the terms of the order for Rate Years 2 and 3 on not less than 30 days' notice. Such tariff changes shall be effective only on a temporary basis until approved by the Commission, subject to the terms and conditions set forth in the order.

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

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

Assessment of Public Comment

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

(18-G-0068SA1)

NOTICE OF ADOPTION

Joint Proposal Establishing Three-Year Electric Rate Plan

I.D. No. PSC-20-18-00009-A

Filing Date: 2019-03-14

Effective Date: 2019-03-14

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

Action taken: On 3/14/19, the PSC adopted the terms of a joint proposal executed by Orange and Rockland Utilities, Inc., et. al. (O&R) and established a three-year electric rate plan, effective January 1, 2019 to December 31, 2021.

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

Subject: Joint proposal establishing three-year electric rate plan.

Purpose: To adopt the terms of a joint proposal executed by O&R et. al. establishing a three-year electric rate plan.

Substance of final rule: The Commission, on March 14, 2019, adopted the terms of a joint proposal executed by Orange and Rockland Utilities, Inc. (O&R), Department of Public Service trial staff, the New York Power Authority, the New York Department of State, Consumer Protection Division, Utility Intervention Unit, the Pace Energy and Climate Center, the Environmental Defense Fund, the Public Utility Law Project of New York, Inc., the Towns of Clarkstown, Haverstraw, Orangetown, Ramapo and Stony Point, and the Rockland County Solid Waste Management Authority, the New York Geothermal Energy Organization, Bob Wyman, and Great Eastern Energy, LLC, and established a three-year electric rate plan, effective January 1, 2019 to December 31, 2021. The terms of the joint proposal dated November 9, 2018, which is appended to the Order as Attachment A, are adopted and incorporated as part of the order, with the exception of Section O, paragraphs 5 through 13. O&R is directed to file cancellation supplements, effective on not less than one day's notice, on or before March 25, 2019, cancelling the tariff amendments and supplements listed in Attachment B to the order. O&R is directed to file, on not less than one day's notice, to become effective on a temporary basis, such further tariff amendments as are necessary to effectuate the terms of the Order. The amendments specified in the compliance filing shall not become effective on a permanent basis until approved by the Commission. O&R is also directed to file such tariff changes as are necessary to effectuate the terms of the order for Rate Years 2 and 3 on not less than 30 days' notice. Such tariff changes shall be effective only on a temporary basis until approved by the Commission, subject to the terms and conditions set forth in the order.

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

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

Assessment of Public Comment

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

(18-E-0067SA1)

NOTICE OF ADOPTION

Transfer of Assets and Dissolution

I.D. No. PSC-40-18-00016-A

Filing Date: 2019-03-18

Effective Date: 2019-03-18

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

Action taken: On 3/14/19, the PSC adopted an order approving Callicoon Water Company (Callicoon) and Town of Delaware's (Delaware) petition to transfer all of Callicoon's water supply assets to Delaware and the dissolution of the company.

Statutory authority: Public Service Law, sections 4(1), 89-c(1), (10), 89-h(1) and 108

Subject: Transfer of assets and dissolution.

Purpose: To approve Callicoon and Delaware's petition for the transfer of all assets and dissolution of the company.

Substance of final rule: The Commission, on March 14, 2019, adopted an order approving the Callicoon Water Company (Callicoon) and the Town of Delaware's (Delaware) petition to transfer all of Callicoon's water supply assets serving the Hamlet of Callicoon in the Town of Delaware, Sullivan County, to Delaware and the dissolution of the company, subject to the terms and conditions set forth in the order.

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

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

Assessment of Public Comment

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

(18-W-0556SA1)

NOTICE OF ADOPTION

Motion to Waive Commission Regulations Relating to Article VII Applications

I.D. No. PSC-44-18-00014-A

Filing Date: 2019-03-15

Effective Date: 2019-03-15

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

Action taken: On 3/14/19, the PSC adopted an order approving Deepwater Wind South Fork, LLC's (Deepwater) motion to waive certain Commission regulations relating to Public Service Law Article VII applications.

Statutory authority: Public Service Law, sections 4, 5 and 122

Subject: Motion to waive Commission regulations relating to Article VII applications.

Purpose: To approve Deepwater's motion to waive certain Commission regulations relating to Article VII applications.

Substance of final rule: The Commission, on March 14, 2019, adopted an order approving Deepwater Wind South Fork, LLC's motion to waive Commission regulations; 16 NYCRR § 86.3(a)(1), 86.3(a)(2), and 86.3(b)(2) relating to the filing of certain maps and aerial imagery, in connection with Public Service Law Article VII applications, as corrected January 1, 2019, subject to the terms and conditions set forth in the order.

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

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

Assessment of Public Comment

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

(18-T-0604SA1)

NOTICE OF ADOPTION**Gas Safety Equipment****I.D. No.** PSC-48-18-00005-A**Filing Date:** 2019-03-15**Effective Date:** 2019-03-15

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

Action taken: On 3/14/19, the PSC adopted an order authorizing Consolidated Edison Company of New York, Inc. (Con Edison) to purchase gas safety equipment for the benefit of the Westchester County Fire Departments.

Statutory authority: Public Service Law, section 25-a

Subject: Gas safety equipment.

Purpose: To authorize Con Edison to purchase gas safety equipment for the Westchester County Fire Departments.

Substance of final rule: The Commission, on March 14, 2019, adopted an order authorizing Consolidated Edison Company of New York, Inc. to purchase 254 Sensit HXG-2Ds, 250 QRae3s, 44 AutoRae Lite Calibration Units, 24 MultiRae 4 Gas with PIDs, and 12 AutoRae 2 Calibration Units and other gas safety equipment, if necessary, for the benefit of the Westchester County Fire Departments, subject to the terms and conditions set forth in the order.

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

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

Assessment of Public Comment

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

(14-G-0201SA2)

NOTICE OF ADOPTION**Appointment of Temporary Operator****I.D. No.** PSC-49-18-00006-A**Filing Date:** 2019-03-14**Effective Date:** 2019-03-14

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

Action taken: On 3/14/19, the PSC adopted an order appointing Suez Water New York, Inc. (Suez) as the temporary operator of Boniville Water Company, Inc. (Boniville) and Knolls Water Co., Inc. (Knolls).

Statutory authority: Public Service Law, sections 89-b, 89-c and 112-a

Subject: Appointment of temporary operator.

Purpose: To appoint Suez as the temporary operator of Boniville and Knolls.

Substance of final rule: The Commission, on March 14, 2019, adopted an order appointing Suez Water New York, Inc. (Suez) as the temporary operator of Boniville Water Company, Inc. (Boniville) and Knolls Water Co., Inc. (Knolls). As a temporary operator, Suez is authorized to operate and manage Boniville and Knolls in compliance with the tariffs approved and on file with the Commission and with statutory and regulatory requirements, in accordance with the discussion in the body of the Order Appointing Temporary Operator issued November 16, 2018 in this proceeding, subject to the terms and conditions set forth in the order.

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

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

Assessment of Public Comment

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

(18-W-0545SA1)

NOTICE OF ADOPTION**Waiver of a Tariff Provision****I.D. No.** PSC-50-18-00002-A**Filing Date:** 2019-03-15**Effective Date:** 2019-03-15

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

Action taken: On 3/14/19, the PSC adopted an order approving Sisters of Charity Housing Development Corporation (Sisters of Charity) and Vincent's Village Associates, LLC's (Vincent's) petition for a limited waiver of a metering tariff requirement.

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

Subject: Waiver of a tariff provision.

Purpose: To approve Sisters of Charity and Vincent's petition for a limited waiver.

Substance of final rule: The Commission, on March 14, 2019, adopted an order approving Sisters of Charity Housing Development Corporation and Vincent's Village Associates, LLC's petition for a limited waiver of Paragraph D of Section 3.4, Leaf 20, of SUEZ Water New York, Inc.'s Tariff, contained in PSC No. 1 – Water, which requires separate metering for water service for each individual unit within any apartment, co-operative or condominium development, subject to the terms and conditions set forth in the order.

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

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

Assessment of Public Comment

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

(18-W-0708SA1)

NOTICE OF ADOPTION**DLM Program Changes****I.D. No.** PSC-01-19-00003-A**Filing Date:** 2019-03-18**Effective Date:** 2019-03-18

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

Action taken: On 3/14/19, the PSC adopted an order adopting Dynamic Load Management (DLM) Program changes, with modifications, and directed Rochester Gas & Electric Corporation (RG&E) to file tariff amendments.

Statutory authority: Public Service Law, sections 5(1), (2), 65(1), (5), 66(1), (12), (14) and 74

Subject: DLM Program changes.

Purpose: To adopt DLM Program changes, with modifications and direct RG&E to file tariff amendments.

Substance of final rule: The Commission, on March 14, 2019, adopted an order adopting Dynamic Load Management Program changes, with modifications, and directed Rochester Gas & Electric Corporation (RG&E) to file tariff amendments, to become effective on not less than one day's notice, by May 1, 2019. RG&E shall report on the performance of Commercial System Relief Program participants during event hours as part of its 2019 Annual Report, subject to the terms and conditions set forth in the order.

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

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

Assessment of Public Comment

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

(15-E-0190SA5)

NOTICE OF ADOPTION**DLM Program Changes****I.D. No.** PSC-01-19-00005-A**Filing Date:** 2019-03-18**Effective Date:** 2019-03-18

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

Action taken: On 3/14/19, the PSC adopted an order adopting Dynamic Load Management (DLM) Program changes, with modifications, and directed Orange and Rockland Utilities, Inc. (O&R) to file tariff amendments.

Statutory authority: Public Service Law, sections 5(1), (2), 65(1), (5), 66(1), (12), (14) and 74

Subject: DLM Program changes.

Purpose: To adopt DLM Program changes, with modifications and direct O&R to file tariff amendments.

Substance of final rule: The Commission, on March 14, 2019, adopted an order adopting Dynamic Load Management Program changes, with modifications, and directed Orange and Rockland Utilities, Inc. (O&R) to file tariff amendments, to become effective on not less than one day's notice, by May 1, 2019. O&R shall report on the efficacy of the two-hour Distribution Load Relief Program Test Event as part of its November 15, 2019 Annual Report, subject to the terms and conditions set forth in the order.

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

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

Assessment of Public Comment

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

(15-E-0191SA6)

NOTICE OF ADOPTION**DLM Program Changes****I.D. No.** PSC-01-19-00006-A**Filing Date:** 2019-03-18**Effective Date:** 2019-03-18

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

Action taken: On 3/14/19, the PSC adopted an order adopting Dynamic Load Management (DLM) Program changes, with modifications, and directed New York State Electric & Gas Corporation (NYSEG) to file tariff amendments.

Statutory authority: Public Service Law, sections 5(1), (2), 65(1), (5), 66(1), (12), (14) and 74

Subject: DLM Program changes.

Purpose: To adopt DLM Program changes, with modifications and direct NYSEG to file tariff amendments.

Substance of final rule: The Commission, on March 14, 2019, adopted an order adopting Dynamic Load Management Program changes, with modifications, and directed New York State Electric & Gas Corporation (NYSEG) to file tariff amendments, to become effective on not less than one day's notice, by May 1, 2019. NYSEG shall report on the performance of Commercial System Relief Program participants during event hours as part of its 2019 Annual Report, subject to the terms and conditions set forth in the order.

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

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

Assessment of Public Comment

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

(15-E-0188SA5)

NOTICE OF ADOPTION**DLM Program Changes****I.D. No.** PSC-01-19-00008-A**Filing Date:** 2019-03-18**Effective Date:** 2019-03-18

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

Action taken: On 3/14/19, the PSC adopted an order adopting Dynamic Load Management (DLM) Program changes, with modifications, and directed Central Hudson Gas & Electric Corporation (Central Hudson) to file tariff amendments.

Statutory authority: Public Service Law, sections 5(1), (2), 65(1), (5), 66(1), (12), (14) and 74

Subject: DLM Program changes.

Purpose: To adopt DLM Program changes, with modifications and direct Central Hudson to file tariff amendments.

Substance of final rule: The Commission, on March 14, 2019, adopted an order adopting Dynamic Load Management Program changes, with modifications, and directed Central Hudson Gas & Electric Corporation to file tariff amendments, to become effective on not less than one day's notice, by May 1, 2019, subject to the terms and conditions set forth in the order.

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

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

Assessment of Public Comment

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

(15-E-0186SA6)

NOTICE OF ADOPTION**DLM Program Changes****I.D. No.** PSC-01-19-00011-A**Filing Date:** 2019-03-18**Effective Date:** 2019-03-18

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

Action taken: On 3/14/19, the PSC adopted an order adopting Dynamic Load Management (DLM) Program changes, with modifications, and directed Niagara Mohawk Power Corporation d/b/a National Grid (National Grid) to file tariff amendments.

Statutory authority: Public Service Law, sections 5(1), (2), 65(1), (5), 66(1), (12), (14) and 74

Subject: DLM Program changes.

Purpose: To adopt DLM Program changes, with modifications and direct National Grid to file tariff amendments.

Substance of final rule: The Commission, on March 14, 2019, adopted an order adopting Dynamic Load Management Program changes, with modifications, and directed Niagara Mohawk Power Corporation d/b/a National Grid to file tariff amendments, to become effective on not less than one day's notice, by May 1, 2019, subject to the terms and conditions set forth in the order.

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

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

Assessment of Public Comment

An assessment of public comment is not submitted with this notice because the rule is within the definition contained in section 102(2)(a)(ii) of the State Administrative Procedure Act. (15-E-0189SA7)

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

Residential Meter Reading

I.D. No. PSC-14-19-00008-P

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

Proposed Action: The Commission is considering a proposal filed by The Brooklyn Union Gas Company d/b/a National Grid to modify its gas tariff schedule, P.S.C. No. 12, regarding a new provision relating to residential meter reading.

Statutory authority: Public Service Law, sections 39(4), 65 and 66

Subject: Residential meter reading.

Purpose: To establish provisions for a special meter read for when service is discontinued to residential customers.

Substance of proposed rule: The Commission is considering a proposal filed by The Brooklyn Union Gas Company d/b/a National Grid (KEDNY) on March 11, 2019, to amend its gas tariff schedule, P.S.C. No. 12.

KEDNY proposes to modify its General Information Section to establish a new provision for meter reading for the discontinuation of utility service to residential customers in accordance with the recently enacted Public Service Law Section 39(4) which became effective on August 24, 2018. KEDNY proposes to include language in its tariff explaining a residential customer's ability to request a meter read on a date other than the customer's regularly scheduled meter read date. KEDNY also proposes to charge its existing special meter reading fee of \$20 for all special meter reads requested by the customer. The proposed amendment has an effective date of July 15, 2019.

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

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

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

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

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

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

(18-M-0679SP18)

Office of Temporary and Disability Assistance

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

Enforcement of Support Obligations and Issuance of Income Withholding Orders (IWOs)

I.D. No. TDA-14-19-00002-P

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

Proposed Action: Amendment of section 347.9(a)(2)(iv)(h)(12) of Title 18 NYCRR.

Statutory authority: 42 United States Code, sections 651, 654b, 666(a)(8)(B), (b)(6); Civil Practice Law and Rules, sections 5241, 5242; Social Services Law, sections 17(a)-(b), (j), 20(3)(d), 34(3)(f), 111-a and 111-b(14)

Subject: Enforcement of support obligations and issuance of income withholding orders (IWOs).

Purpose: To clarify the requirements for income withholding for persons served by the Title IV-D child support program (IV-D) to conform with changes to the federal IV-D IWO/Notice for Support form.

Text of proposed rule: Part 347 of Title 18 of the NYCRR is amended to read as follows:

Subclause (12) of clause (h) of subparagraph (iv) of paragraph (2) of subdivision (a) of § 347.9 of Title 18 of the NYCRR is amended to read as follows:

(12) where the income is compensation paid or payable to the debtor for personal services, the amount of the deductions to be withheld are not permitted to exceed [the following:

(i) where a debtor is currently supporting a spouse or dependent child other than the creditor, the amount of the deductions to be withheld may not exceed] 50 percent of the earnings of the debtor remaining after the deduction therefrom of any amounts required by law to be withheld (hereinafter referred to as disposable earnings), except that if any part of such deduction is to be applied to the reduction of arrears which have accrued more than 12 weeks prior to the beginning of the week for which such earnings are payable, the amount of such deduction cannot exceed 55 percent of disposable earnings];

(ii) where a debtor is not currently supporting a spouse or dependent child other than the creditor, the amount of the deduction to be withheld may not exceed 60 percent of the disposable earnings, except that if any part of such deductions is to be applied to the reduction of arrears which have accrued more than 12 weeks prior to the beginning of the week for which such earnings are payable, the amount of such deduction cannot exceed 65 percent of disposable earnings];

Text of proposed rule and any required statements and analyses may be obtained from: Richard P. Rhodes, Jr., New York State 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:

Title 42 of the United States Code (42 U.S.C.) §§ 651, 654b, 666(a)(8)(B)(iii), and 666(b)(1) and (6) set forth authority for the Title IV-D child support program (IV-D program), authorize States to use automated procedures, electronic processes, and computer-driven technology to the maximum extent feasible for the collection and disbursement of support payments, and describe the procedures required to be used by the States relative to child support orders initially issued in the State on or after January 1, 1994 and by employers and income payors relative to withholding from income of amounts payable as support.

Title 45 of the Code of Federal Regulations (C.F.R.) § 303.100(a)(3) and (5) provide limitations regarding the total amount of income that may be withheld to comply with an order of support.

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 "determine the policies and principles upon which public assistance, services and care shall be provided within the state both by the state itself and by the local governmental units ...", shall "make known his policies and principles to local social services officials and to public and private institutions and welfare agencies subject to his regulatory and advisory powers...", and 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 § 34(3)(f) requires the Commissioner of OTDA to establish regulations for the administration of public assistance and care within the State.

SSL § 111-a requires OTDA to promulgate regulations necessary to obtain and retain approval of its child support state plan, required to be submitted to the federal Department of Health and Human Services by Part D of Title IV of the federal Social Security Act.

SSL § 111-b(14) authorizes OTDA, or, pursuant to contract, its authorized fiscal agent, to collect and disburse any support paid pursuant to any order of child support or combined child and spousal support issued on or after January 1, 1994 pursuant to the provisions of Article 3-A or § 236 or § 240 of the Domestic Relations Law (DRL), or Article 4, 5, 5-A, or 5-B of the Family Court Act (FCA), for which a court has ordered such amounts to be paid pursuant to an income execution issued by the sheriff,

the clerk of the court, or the attorney for the creditor pursuant to § 5241(c) of the Civil Practice Law and Rules (CPLR) or an income deduction order issued pursuant to CPLR § 5242 (c).

2. Legislative objectives:

It was the intent of the Legislature, in enacting the above statutes, that OTDA establish rules, regulations and policies so that child support services are provided to eligible persons to help ensure that, to the greatest extent possible, parents provide financial support for their children.

3. Needs and benefits:

The proposed regulatory amendments to 18 NYCRR § 347.9 would update the current State regulations to clarify the maximum income withholding for persons served by the IV-D program, thereby conforming the State regulation with OTDA's implementation of the revised federal Income Withholding Order/Notice of Support (IWO) form. The proposed regulatory amendments would clarify that the federal Consumer Credit Protection Act limitations that OTDA would implement and apply when issuing IWOs are 50 percent for cases without qualifying arrears and 55 percent for cases with qualifying arrears, regardless whether a debtor is currently supporting a spouse or dependent child other than the creditor. Currently, the State regulation prescribes a 60 percent limit for cases without qualifying arrears and 65 percent for cases with qualifying arrears if the debtor is not currently supporting a spouse or dependent child other than the creditor.

4. Costs:

The proposed regulatory amendments would not require local social services districts (districts) to incur any initial capital costs or annual costs in order to comply with the adopted rule.

5. Local government mandates:

The proposed regulatory amendments are clarifying in nature and would be consistent with federal and State laws.

6. Paperwork:

The proposed regulatory amendments would not impose any new forms, new reporting requirements or other paperwork upon the State or the districts.

7. Duplication:

The proposed regulatory amendments would not duplicate, overlap, or conflict with any existing federal or State law or regulation.

8. Alternatives:

Possible alternatives to the proposed regulatory amendments would include refraining from advancing the regulatory proposal, or, alternatively, amending 18 NYCRR § 347.9 to apply 60 percent limitations to cases without qualifying arrears and 65 percent limitations to cases with qualifying arrears. However, information about whether a debtor is currently supporting a spouse or dependent child other than the creditor is typically incomplete in that the State automated child support system will only have information about cases receiving child support services. An accurate assessment would best be achieved with the full cooperation of the debtor on a case-by-case basis. Further, potential exists for a significant number of disputes by debtors, based not only upon a lack of information possessed by the IV-D program but also upon potential changes in the debtor's family circumstances. This scenario would translate to an increased burden on the districts because currently, debtors direct these challenges to the employer/income withholder, which is the entity that decides the percentage to apply; the federally-mandated IWO form now requires the issuer to specify the applicable withholding percentage rather than a range of percentages. Additionally, the federal Office of Child Support Enforcement has advocated for use of the 50 percent and 55 percent limits when the IV-D program does not know whether the debtor supports another family. Therefore, OTDA does not consider either of these alternatives to be viable options.

It should be noted that health care coverage is an important part of every child support order and the process for providing health care coverage will continue unchanged. When an IWO issues, a medical execution (MEDX) simultaneously issues requiring the employer to enroll the child in the noncustodial parent's health care coverage (if such coverage is provided by the employer). The employer also deducts the cost of the child's health insurance and remits the funds to the insurance provider.

9. Federal standards:

The proposed regulatory amendments would not conflict with federal standards for income withholding for child support or combined child and spousal support.

10. Compliance schedule:

OTDA anticipates that districts would already be in compliance with the proposed regulatory amendments upon their effective date, insofar as OTDA's Division of Child Support Services would continue to assume all administrative costs and responsibility for the systematic programming of the State's automated child support system, including generating IWOs. Programming to support the issuance of compliant IWOs is already in place.

Regulatory Flexibility Analysis

A RFASB&LG is not required for the proposed regulatory amendments because the proposed regulatory amendments to 18 NYCRR § 347.9

would neither have an adverse impact upon, nor impose reporting, recordkeeping, or other compliance requirements upon small businesses or social services districts (districts). Pursuant to the proposed regulatory amendments, the income withholding order (IWO) form would be automatically populated with the specific withholding percentage of 50 percent on cases without qualifying arrears or 55 percent on cases with qualifying arrears. Under the proposed regulatory amendments, employers would continue following the instructions of the IWO, but they would no longer be responsible for determining withholding percentages. As it is evident from the nature of the proposed regulatory amendments that they would not have an adverse impact upon or impose reporting, recordkeeping, or other compliance requirements upon small businesses or districts, no further measures were needed to ascertain those facts and, consequently, none were taken.

Rural Area Flexibility Analysis

A RAFA is not required for the proposed regulatory amendments to 18 NYCRR § 347.9 because the proposed regulatory amendments would neither have an adverse impact upon, nor impose reporting, recordkeeping, or other compliance requirements upon rural social services districts (rural districts) or private entities in rural areas. Pursuant to the proposed regulatory amendments, the income withholding order (IWO) form would be automatically populated with the specific withholding percentage of 50 percent on cases without qualifying arrears or 55 percent on cases with qualifying arrears. Under the proposed regulatory amendments, employers would continue following the instructions of the IWO, but they would no longer be responsible for determining withholding percentages. As it is evident that the proposed regulatory amendments would not have an adverse impact upon or impose reporting, recordkeeping, or other compliance requirements upon rural districts or private entities in rural areas, no further measures were needed to ascertain those facts and, consequently, none were taken.

Job Impact Statement

A JIS is not required for the proposed regulatory amendments. It is apparent from the nature and the purpose of the proposed regulatory amendments to 18 NYCRR § 347.9 that they would have no substantive impacts on jobs and employment opportunities in either the public or the private sectors of New York State. The proposed regulatory amendments are necessary to clarify the existing State regulatory provisions regarding the maximum withholding requirements for persons served by the Title IV-D child support program. Thus, the proposed regulatory amendments would not have any adverse impact on public or private sector jobs and employment opportunities in New York State.

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

Abandonment of Requests for Fair Hearings

I.D. No. TDA-14-19-00007-P

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

Proposed Action: Repeal of section 358-5.5; addition of new section 358-5.5 to Title 18 NYCRR.

Statutory authority: Social Services Law, sections 17(a)-(b), (j), 20(3)(d) and 22

Subject: Abandonment of requests for fair hearings.

Purpose: To require the issuance of letters to appellants who fail to appear at scheduled fair hearings involving Medical Assistance, also known as Medicaid, advising them how to request the rescheduling of such fair hearings.

Text of proposed rule: § 358-5.5 of Title 18 NYCRR is REPEALED, and a new § 358-5.5 is added to read as follows:

§ 358-5.5 *Abandonment of a request for a fair hearing.*

(a) *Except as provided in subdivision (b) of this section, OAH will consider a fair hearing request abandoned if neither the appellant nor the appellant's authorized representative appears at a fair hearing, and neither the appellant nor the appellant's authorized representative:*

(1) *contacts OAH to request that the fair hearing be rescheduled; and*
(2) *provides OAH with the good cause reason for failing to appear at the fair hearing on the scheduled date.*

(b) *OAH will consider a fair hearing request involving Medical Assistance abandoned if neither the appellant nor the appellant's authorized representative appears at a fair hearing, and the requirements of subdivision (a) of this section are not met within 10 calendar days of the postmark*

of a letter sent to the appellant and the appellant's authorized representative inquiring whether the appellant still wants a fair hearing.

(c) OAH will reopen an abandoned fair hearing request if, within one calendar year from the scheduled date of the fair hearing, the requirements of subdivision (a) of this section are met.

(d) If neither the appellant nor the appellant's authorized representative appears at a fair hearing that has been rescheduled or reopened pursuant to subdivision (a), (b) or (c) of this section, OAH will consider the fair hearing request abandoned and the letter described in subdivision (b) of this section will not be sent.

(e) If neither the appellant nor the appellant's authorized representative appears at a fair hearing that is subject to aid-continuing, such aid shall discontinue on the date the fair hearing request is abandoned.

(1) If the fair hearing request is thereafter reopened pursuant to subdivision (c) of this section based upon a request made within 60 days from the scheduled date of the fair hearing, aid-continuing will be restored retroactively to the date of abandonment.

(2) If the fair hearing request is thereafter reopened pursuant to subdivision (c) of this section based upon a request to do so made 60 days or more from the scheduled date of the fair hearing, aid-continuing will be restored prospectively from the date of the request to reopen.

(f) In no event will an abandoned fair hearing request be reopened if such request is made one calendar year or more from the scheduled date of the fair hearing.

Text of proposed rule and any required statements and analyses may be obtained from: Richard P. Rhodes, Jr., New York State Office of Temporary and Disability Assistance, 40 North Pearl Street, 16C, 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:

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 "determine the policies and principles upon which public assistance, services and care shall be provided within the state both by the state itself and by the local governmental units ...," shall "make known his policies and principles to local social services officials and to public and private institutions and welfare agencies subject to his regulatory and advisory powers ...," and 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 § 22, entitled "Appeals and fair hearings; judicial review," provides that applicants or recipients of public assistance and care, as set forth in subdivision 3 of this section, may request an appeal to OTDA for certain decisions of the social services districts (districts). Additionally, SSL § 22(8) requires OTDA to promulgate regulations, not inconsistent with federal or State law, as may be necessary to implement the fair hearings provisions.

2. Legislative objectives:

It was the intent of the Legislature in enacting the above statutes that OTDA establish rules, regulations, and policies necessary to provide fair hearings to persons entitled to appeals pursuant to SSL § 22.

3. Needs and benefits:

The proposed regulatory amendments to 18 NYCRR § 358-5.5 are necessary to comply with a federal court order concerning the due process rights of applicants and recipients of Medical Assistance, also known as Medicaid, in fair hearings administered by OTDA. OTDA conducts fair hearings involving applications for or denials, terminations, reductions or restrictions of Medicaid benefits on behalf of the New York State Department of Health (DOH).

Presently, under 18 NYCRR § 358-5.5, fair hearing requests are considered abandoned "if neither the appellant nor appellant's authorized representative appears at the fair hearing unless either the appellant or appellant's authorized representative" contacts the Office of Administrative Hearings (OAH) – the office established in OTDA for the purpose of conducting fair hearings under 18 NYCRR Part 358 – "to request that the fair hearing be rescheduled; and ... [provides] OAH with a good cause reason for failing to appear at the fair hearing on the scheduled date." In cases where neither the appellant nor the appellant's authorized representative appears at the scheduled fair hearing, the fair hearing will not be restored to the calendar if the request to do so is made one year or more from the date of default.

The proposed regulatory amendments to 18 NYCRR § 358-5.5 would deem a fair hearing request involving Medicaid abandoned if neither the appellant nor the appellant's authorized representative appears at the scheduled fair hearing and fails to notify OAH of the good cause reason

for failing to appear within 10 calendar days of the postmark of a written letter sent to the appellant and his or her authorized representative inquiring if the appellant still wants a fair hearing. The proposed regulatory amendments would preserve these appellants' right to request a reopening of their fair hearings within one year of the hearing date. The proposed regulatory amendments would also extend the right to aid-continuing for fair hearings involving Medicaid to the deadline to respond to the written letter without limitation of any other rights set forth in 18 NYCRR § 358-5.5.

The proposed regulatory amendments would update State regulations to reflect current practices. OTDA and the districts are already in compliance with the requirements set forth in the proposed regulatory amendments.

4. Costs:

Pursuant to the proposed regulatory amendments, the right to aid-continuing for fair hearings involving Medicaid would extend to the deadline to respond to the written letter inquiring whether the appellant still wants a fair hearing. As OTDA and the districts are already in compliance with the proposed regulatory amendments and the districts' share of Medicaid costs are statutorily capped, there would be no additional costs to the districts associated with the proposed regulatory amendments.

5. Local government mandates:

Pursuant to the proposed regulatory amendments, the right to aid-continuing for fair hearings involving Medicaid would extend to the deadline to respond to the written letter. This is consistent with current practices. The regulatory amendments would not impose programs, services, duties or responsibilities upon local government.

6. Paperwork:

There would be no additional reporting requirements or paperwork associated with the proposed regulatory amendments.

7. Duplication:

The proposed regulatory amendments would not duplicate, overlap, or conflict with any existing federal or State rules or regulations.

8. Alternatives:

An alternative would be to refrain from promulgating the proposed regulatory amendments. However, such inaction would be inconsistent with a federal court order requiring that OTDA "shall make a good faith effort to promulgate an amendment to 18 NYCRR § 358-5.5...". Consequently, OTDA does not consider inaction to be a viable alternative to the proposed regulatory amendments.

9. Federal standards:

The proposed regulatory amendments would not conflict with federal standards for fair hearings.

10. Compliance schedule:

A compliance schedule would not be required because the proposed regulatory amendments would not impose new substantive requirements; OTDA and the districts already comply with the requirements set forth in the proposed regulatory amendments.

Regulatory Flexibility Analysis

A RFASB&LG is not required because the proposed regulatory amendments would not impose any adverse economic impact or any reporting, recordkeeping, or other compliance requirements upon small businesses or local governments. The proposed amendments would update the State regulations to reflect the current practices of the Office of Temporary and Disability Assistance and the social services districts.

Rural Area Flexibility Analysis

A RAFA is not required because the proposed regulatory amendments would not impose any adverse impact on rural areas or any reporting, recordkeeping, or other compliance requirements upon public or private entities in rural areas. The proposed amendments would update the State regulations to reflect the current practices of the Office of Temporary and Disability Assistance and the social services districts.

Job Impact Statement

A JIS is not required because it is apparent from the nature and the purpose of the proposed regulatory amendments that they would not have a substantial adverse impact on jobs and employment opportunities in the private or public sectors. Since the proposed regulatory amendments would update the State regulations to reflect the current practices of the Office of Temporary and Disability Assistance and the social services districts, it is anticipated that they should have no impact on jobs and employment opportunities.

Triborough Bridge and Tunnel Authority

ERRATUM

A NOTICE OF ADOPTION to Establish a New Crossing Charge Schedule for Use of Bridges and Tunnels Operated by Triborough Bridge

and Tunnel Authority, I.D. No. TBA-49-18-00011-A, published in the March 20, 2019 issue of the *State Register* contained misspellings of “Verrazzano-Narrows.”

The Department of State apologizes for any inconvenience that may have been caused by this administrative error, which included only one “z” in the name. All incorrect indications of “Verrazano” in the Notice should be read as “Verrazzano.”