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-41-18-00006-A
Filing No. 1192
Filing Date: 2018-12-21
Effective Date: 2019-01-09

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

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

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

Subject: Jurisdictional Classification.

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

Text or summary was published in the October 10, 2018 issue of the Register, I.D. No. CVS-41-18-00006-P.

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

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

Assessment of Public Comment
The agency received no public comment.

NOTICE OF ADOPTION

Jurisdictional Classification

I.D. No. CVS-41-18-00007-A
Filing No. 1196
Filing Date: 2018-12-21
Effective Date: 2019-01-09

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

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

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

Subject: Jurisdictional Classification.

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

Text or summary was published in the October 10, 2018 issue of the Register, I.D. No. CVS-41-18-00007-P.

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

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

Assessment of Public Comment
The agency received no public comment.

NOTICE OF ADOPTION

Jurisdictional Classification

I.D. No. CVS-41-18-00008-A
Filing No. 1193
Filing Date: 2018-12-21
Effective Date: 2019-01-09

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

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

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

Subject: Jurisdictional Classification.

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

Text or summary was published in the October 10, 2018 issue of the Register, I.D. No. CVS-41-18-00008-P.

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

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

Assessment of Public Comment
The agency received no public comment.

NOTICE OF ADOPTION

Jurisdictional Classification

I.D. No. CVS-41-18-00009-A
Filing No. 1200
Filing Date: 2018-12-21
Effective Date: 2019-01-09

PURSUANT TO THE PROVISIONS OF THE State Administrative Procedure Act, NOTICE is hereby given of the following action:
Action taken: Amendment of Appendix 1 of Title 4 NYCRR.
Statutory authority: Civil Service Law, section 6(1)
Subject: Jurisdictional Classification.
Purpose: To delete positions from and classify positions in the exempt class.
Text or summary was published in the October 10, 2018 issue of the Register, I.D. No. CVS-41-18-00009-P.
Final rule as compared with last published rule: No changes.
Text of rule and any required statements and analyses may be obtained from: Jennifer Paul, NYS Department of Civil Service, Empire State Plaza, Agency Building 1, Albany, NY 12239, (518) 473-6598, email: commops@cs.ny.gov
Assessment of Public Comment
The agency received no public comment.

NOTICE OF ADOPTION

Jurisdictional Classification

I.D. No. CVS-41-18-00010-A
Filing No. 1189
Filing Date: 2018-12-21
Effective Date: 2019-01-09

PURSUANT TO THE PROVISIONS OF THE State Administrative Procedure Act, NOTICE is hereby given of the following action:
Action taken: Amendment of Appendix 2 of Title 4 NYCRR.
Statutory authority: Civil Service Law, section 6(1)
Subject: Jurisdictional Classification.
Purpose: To classify a position in the non-competitive class.
Text or summary was published in the October 10, 2018 issue of the Register, I.D. No. CVS-41-18-00010-P.
Final rule as compared with last published rule: No changes.
Text of rule and any required statements and analyses may be obtained from: Jennifer Paul, NYS Department of Civil Service, Empire State Plaza, Agency Building 1, Albany, NY 12239, (518) 473-6598, email: commops@cs.ny.gov
Assessment of Public Comment
The agency received no public comment.

NOTICE OF ADOPTION

Jurisdictional Classification

I.D. No. CVS-41-18-00012-A
Filing No. 1191
Filing Date: 2018-12-21
Effective Date: 2019-01-09

PURSUANT TO THE PROVISIONS OF THE State Administrative Procedure Act, NOTICE is hereby given of the following action:
Action taken: Amendment of Appendix 2 of Title 4 NYCRR.
Statutory authority: Civil Service Law, section 6(1)
Subject: Jurisdictional Classification.
Purpose: To delete a position from and classify a position in the non-competitive class.
Text or summary was published in the October 10, 2018 issue of the Register, I.D. No. CVS-41-18-00012-P.
Final rule as compared with last published rule: No changes.
Text of rule and any required statements and analyses may be obtained from: Jennifer Paul, NYS Department of Civil Service, Empire State Plaza, Agency Building 1, Albany, NY 12239, (518) 473-6598, email: commops@cs.ny.gov
Assessment of Public Comment
The agency received no public comment.

NOTICE OF ADOPTION

Jurisdictional Classification

I.D. No. CVS-41-18-00013-A
Filing No. 1190
Filing Date: 2018-12-21
Effective Date: 2019-01-09

PURSUANT TO THE PROVISIONS OF THE State Administrative Procedure Act, NOTICE is hereby given of the following action:
Action taken: Amendment of Appendix 1 of Title 4 NYCRR.
Statutory authority: Civil Service Law, section 6(1)
Subject: Jurisdictional Classification.
Purpose: To classify positions in the exempt class.
Text or summary was published in the October 10, 2018 issue of the Register, I.D. No. CVS-41-18-00013-P.
Final rule as compared with last published rule: No changes.
Text of rule and any required statements and analyses may be obtained from: Jennifer Paul, NYS Department of Civil Service, Empire State Plaza, Agency Building 1, Albany, NY 12239, (518) 473-6598, email: commops@cs.ny.gov
Assessment of Public Comment
The agency received no public comment.

NOTICE OF ADOPTION

Jurisdictional Classification

I.D. No. CVS-41-18-00014-A
Filing No. 1198
Filing Date: 2018-12-21
Effective Date: 2019-01-09

PURSUANT TO THE PROVISIONS OF THE State Administrative Procedure Act, NOTICE is hereby given of the following action:
Action taken: Amendment of Appendix 1 of Title 4 NYCRR.
Statutory authority: Civil Service Law, section 6(1)
Subject: Jurisdictional Classification.
Purpose: To classify a position in the exempt class.
Text or summary was published in the October 10, 2018 issue of the Register, I.D. No. CVS-41-18-00014-P.
Final rule as compared with last published rule: No changes.
Text of rule and any required statements and analyses may be obtained from: Jennifer Paul, NYS Department of Civil Service, Empire State Plaza, Agency Building 1, Albany, NY 12239, (518) 473-6598, email: commops@cs.ny.gov
Assessment of Public Comment
The agency received no public comment.

NOTICE OF ADOPTION

Jurisdictional Classification

I.D. No. CVS-41-18-00015-A
Filing No. 1195
Filing Date: 2018-12-21
Effective Date: 2019-01-09

PURSUANT TO THE PROVISIONS OF THE State Administrative Procedure Act, NOTICE is hereby given of the following action:
Action taken: Amendment of Appendix 1 of Title 4 NYCRR.
Statutory authority: Civil Service Law, section 6(1)
Subject: Jurisdictional Classification.
Purpose: To classify a position in the exempt class.
Text or summary was published in the October 10, 2018 issue of the Register, I.D. No. CVS-41-18-00015-P.
Final rule as compared with last published rule: No changes.

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

Assessment of Public Comment
The agency received no public comment.

NOTICE OF ADOPTION

Jurisdictional Classification

I.D. No. CVS-41-18-00016-A
Filing No. 1194
Filing Date: 2018-12-21
Effective Date: 2019-01-09

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

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

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

Subject: Jurisdictional Classification.

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

Text or summary was published in the October 10, 2018 issue of the Register, I.D. No. CVS-41-18-00016-P.

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

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

Assessment of Public Comment
The agency received no public comment.

NOTICE OF ADOPTION

Jurisdictional Classification

I.D. No. CVS-41-18-00017-A
Filing No. 1199
Filing Date: 2018-12-21
Effective Date: 2019-01-09

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

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

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

Subject: Jurisdictional Classification.

Purpose: To classify positions in the exempt class.

Text or summary was published in the October 10, 2018 issue of the Register, I.D. No. CVS-41-18-00017-P.

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

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

Assessment of Public Comment
The agency received no public comment.

NOTICE OF ADOPTION

Jurisdictional Classification

I.D. No. CVS-41-18-00018-A
Filing No. 1202
Filing Date: 2018-12-21
Effective Date: 2019-01-09

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

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

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

Subject: Jurisdictional Classification.

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

Text or summary was published in the October 10, 2018 issue of the Register, I.D. No. CVS-41-18-00018-P.

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

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

Assessment of Public Comment
The agency received no public comment.

NOTICE OF ADOPTION

Jurisdictional Classification

I.D. No. CVS-41-18-00019-A
Filing No. 1201
Filing Date: 2018-12-21
Effective Date: 2019-01-09

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

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

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

Subject: Jurisdictional Classification.

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

Text or summary was published in the October 10, 2018 issue of the Register, I.D. No. CVS-41-18-00019-P.

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

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

Assessment of Public Comment
The agency received no public comment.

NOTICE OF ADOPTION

Jurisdictional Classification

I.D. No. CVS-41-18-00020-A
Filing No. 1197
Filing Date: 2018-12-21
Effective Date: 2019-01-09

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

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

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

Subject: Jurisdictional Classification.

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

Text or summary was published in the October 10, 2018 issue of the Register, I.D. No. CVS-41-18-00020-P.

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

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

Assessment of Public Comment
The agency received no public comment.

PROPOSED RULE MAKING
NO HEARING(S) SCHEDULED

Jurisdictional Classification

I.D. No. CVS-02-19-00001-P

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

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

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

Subject: Jurisdictional Classification.

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

Text of proposed rule: Amend Appendix 2 of the Rules for the Classified Service, listing positions in the non-competitive class, in the Department of Mental Hygiene under the subheading "Office of Mental Health," by decreasing the number of positions of øMental Health Program Manager 2 from 2 to 1 and by increasing the number of positions of øMental Health Program Manager 1 from 12 to 13.

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

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

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

Consolidated Regulatory Impact Statement

1. Statutory Authority: The New York State Civil Service Commission is authorized to promulgate rules for the jurisdictional classification of offices within the classified service of the State by Section 6 of the Civil Service Law. In so doing, it is guided by the requirements of Sections 41, 42 and 43 of this same law.

2. Legislative Objectives: These rule changes are in accord with the statutory authority delegated to the Civil Service Commission to prescribe rules for the jurisdictional classification of the offices and positions in the classified service of the State.

3. Needs and Benefits: Article V, Section 6, of the New York State Constitution requires that, wherever practicable, appointments and promotions in the civil service of the State, including all its civil divisions, are to be made according to merit and fitness. It also requires that competitive examinations be used, as far as practicable, as a basis for establishing this eligibility. This requirement is intended to provide protection for those individuals appointed or seeking appointment to civil service positions while, at the same time, protecting the public by securing for it the services of employees with greater merit and ability. However, as the language suggests, the framers of the Constitution realized it would not always be possible, nor indeed feasible, to fill every position through the competitive process. This point was also recognized by the Legislature for, when it enacted the Civil Service Law to implement this constitutional mandate, it provided basic guidelines for determining which positions were to be outside of the competitive class. These guidelines are contained in Section 41, which provides for the exempt class; 42, the non-competitive class and 43, the labor class. Thus, there are four jurisdictional classes within the classified service of the civil service and any movement between them is termed a jurisdictional reclassification.

The Legislature further established a Civil Service Department to administer this Law and a Civil Service Commission to serve primarily as an appellant body. The Commission has also been given rulemaking responsibility in such areas as the jurisdictional classification of offices within the classified service of the State (Civil Service Law Section 6). In exercising this rule-making responsibility, the Commission has chosen to provide appendices to its rules, known as Rules for the Classified Service, to list those positions in the classified service which are in the exempt class (Appendix 1), non-competitive class (Appendix 2), and labor class (Appendix 3).

In effect, all positions, upon creation at least, are, by constitutional mandate, a part of the competitive class and remain so until removed by the Civil Service Commission, through an amendment of its rules upon showing of impracticability in accordance with the guidelines provided by the Legislature. The guidelines are as follows. The exempt class is to include those positions specifically placed there by the Legislature, together with all other subordinate positions for which there is no requirement that the person appointed pass a civil service examination. Instead, appointments rest in the discretion of the person who, by law, has determined the position's qualifications and whether the persons to be appointed possess those qualifications. The non-competitive class is to be comprised of those positions which are not in the exempt or labor classes and for which the Civil Service Commission has found it impracticable to determine an applicant's merit and fitness through a competitive examination. The qualifications of those candidates selected are to be determined by an examination which is sufficient to insure selection of proper and competent employees. The labor class is to be made up of all unskilled laborers in the service of the State and its civil divisions, except those which can be examined for competitively.

4. Costs: The removal of a position from one jurisdictional class and placement in another is descriptive of the proper placement of the position in question in the classified service, and has no appreciable economic impact for the State or local governments.

5. Local Government Mandates: These amendments have no impact on local governments. They pertain only to the jurisdictional classification of positions in the State service.

6. Paperwork: There are no new reporting requirements imposed on applicants by these rules.

7. Duplication: These rules are not duplicative of State or Federal requirements.

8. Alternatives: Within the statutory constraints of the New York State Civil Service Commission, it is not believed there is a viable alternative to the jurisdictional classification chosen.

9. Federal Standards: There are no parallel Federal standards and, therefore, this is not applicable.

10. Compliance Schedule: No action is required by the subject State agencies and, therefore, no estimated time period is required.

Regulatory Flexibility Analysis

The proposal does not affect or impact upon small businesses or local governments, as defined by Section 102(8) of the State Administrative Procedure Act, and, therefore, a regulatory flexibility analysis for small businesses is not required by Section 202-b of such act. In light of the fact that this proposal only affects jurisdictional classifications of State employees, it will not have any adverse impact on small businesses or local governments.

Rural Area Flexibility Analysis

The proposal does not affect or impact upon rural areas as defined by Section 102(13) of the State Administrative Procedure Act and Section 481(7) of the Executive Law, and, therefore, a rural area flexibility analysis is not required by Section 202-bb of such act. In light of the fact that this proposal only affects jurisdictional classifications of State employees, it will not have any adverse impact on rural areas.

Job Impact Statement

The proposal has no impact on jobs and employment opportunities. This proposal only affects the jurisdictional classification of positions in the Classified Civil Service.

PROPOSED RULE MAKING
NO HEARING(S) SCHEDULED

Jurisdictional Classification

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

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

Proposed Action: Amendment of 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 of proposed rule: Amend Appendix 3 of the Rules for the Classified Service, listing positions in the labor class, under the heading All State Departments and Agencies, by deleting therefrom the positions of Laborer, Maintenance Helper, Plant Utilities Helper and SUNY Campus Worker and by adding thereto the positions of Facility Operations Assistant 1 (Utilities).

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

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

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

Regulatory Impact Statement

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

Regulatory Flexibility Analysis

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

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

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

PROPOSED RULE MAKING
NO HEARING(S) SCHEDULED

Jurisdictional Classification

I.D. No. CVS-02-19-00003-P

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

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

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

Subject: Jurisdictional Classification.

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

Text of proposed rule: Amend Appendix 1 of the Rules for the Classified Service, listing positions in the exempt class, in the Executive Department under the subheading "Office of Information Technology Services," by deleting therefrom the positions of Deputy Commissioner (2) and Division Director Health Systems Management and by increasing the number of positions of Special Assistant from 30 to 33.

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

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

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

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

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

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

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

PROPOSED RULE MAKING
NO HEARING(S) SCHEDULED

Jurisdictional Classification

I.D. No. CVS-02-19-00004-P

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

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

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

Subject: Jurisdictional Classification.

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

Text of proposed rule: Amend Appendix 1 of the Rules for the Classified Service, listing positions in the exempt class, in the Education Department under the subheading "New York State Higher Education Services Corporation," by deleting therefrom the position of Executive Assistant and by decreasing the number of positions of Vice President HESC from 5 to 3; and, in the Department of Family Assistance under the subheading "Office of Children and Family Services," by increasing the number of positions of Executive Assistant from 1 to 2 and Special Assistant from 14 to 16.

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

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

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

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

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

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

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

PROPOSED RULE MAKING
NO HEARING(S) SCHEDULED

Jurisdictional Classification

I.D. No. CVS-02-19-00005-P

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

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

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

Subject: Jurisdictional Classification.

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

Text of proposed rule: Amend Appendix 2 of the Rules for the Classified Service, listing positions in the non-competitive class, in the Executive Department under the subheading "Office of Parks, Recreation and Historic Preservation," by increasing the number of positions of øPark Director 3 from 1 to 2 and by adding thereto the position of øPark Director 1 (Environmental) (1).

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

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

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

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

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

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

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

Division of Criminal Justice Services

ERRATUM

A Notice of Adoption, I.D. No. CJS-32-18-00004-A pertaining to Appendix H-10 Standard Specifications for Professional Probation Positions, which was filed on November 29, 2018 and published in the December 19, 2018 issue of the *State Register* contained an incorrect effective date. The correct effective date is 180 days after filing.

Department of Environmental Conservation

EMERGENCY/PROPOSED RULE MAKING HEARING(S) SCHEDULED

Low Emission Vehicle Greenhouse Gas Standards

I.D. No. ENV-02-19-00007-EP
Filing No. 1203
Filing Date: 2018-12-21
Effective Date: 2018-12-21

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

Proposed Action: Amendment of Parts 200 and 218 of Title 6 NYCRR.

Statutory authority: Environmental Conservation Law, sections 1-0101, 1-0303, 3-0301, 19-0103, 19-0105, 19-0107, 19-0301, 19-0303, 19-0305, 19-1101, 19-1103, 19-1105, 71-2103, 71-2105; and Federal Clean Air Act (42 USC 7507), section 177

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

Specific reasons underlying the finding of necessity: It is necessary for the preservation of the health and general welfare of the citizens of New York 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.

New York first adopted the California new motor vehicle standards in 1990 pursuant to provisions of section 177 of the federal Clean Air Act (42 USC 7507) and has maintained the program, including adoption of greenhouse gas (GHG) emissions standards and revision to the zero emissions vehicle portion since then. New York adopted this program in order to provide significant emissions reductions as compared to its federal emissions counterpart, including GHG emissions, and included it in its State Implementation Plan. These reductions are essential to providing clean air to the citizens of New York as further explained in the Regulatory Impact Statement. Failure to maintain the most stringent vehicle emissions standards possible will be detrimental to the health and general welfare of New Yorkers. In order to maintain the cleanest motor vehicle standards available to New York, we must adopt these standards now. This amendment is adopted as an emergency measure because time is of the essence.

Subject: Low emission vehicle greenhouse gas standards.

Purpose: Clarification of the deemed to comply provision.

Public hearing(s) will be held at: 1:00 p.m., March 11, 2019 at Department of Environmental Conservation, 625 Broadway, Public Assembly Rm. 129 A/B, Albany, NY.

Interpreter Service: Interpreter services will be made available to hearing impaired persons, at no charge, upon written request submitted within reasonable time prior to the scheduled public hearing. The written request must be addressed to the agency representative designated in the paragraph below.

Accessibility: All public hearings have been scheduled at places reasonably accessible to persons with a mobility impairment.

Text of emergency/proposed rule: (Sections 200.1 through 200.8 remain unchanged)

Section 200.9, Table 1 is amended to read as follows:

218-1.2(d)	California Code of Regulations, Title 13, Section 1962 (2-13-10)	** ***
218-1.2(e)	California Code of Regulations, Title 13, Section 1962 (2-13-10)	** ***
218-1.2(f)	Clean Air Act 42 U.S.C. Section 7543 (1988) as amended by Pub. L. 101-549 (1990)	**
	Clean Air Act 42 U.S.C. Section 7507 (1988) as amended by Pub. L. 101-549 (1990)	**
218-1.2(g)	California Health and Safety Code, Section 39003 (1975)	** †
218-1.2(j)	California Code of Regulations, Title 13, Section 1900 (10-8-15)	** ***
218-1.2(l)	California Code of Regulations, Title 13, Section 1962 (2-13-10)	** ***
218-1.2(m)	California Vehicle Code, Section 165 (2013)	** †
218-1.2(n)	California Code of Regulations, Title 13, Section 1900 (10-8-15)	** ***
218-1.2(q)	California Code of Regulations, Title 13, Section 1962.1 (1-1-16)	** ***
218-1.2(w)	California Code of Regulations, Title 13, Section 1900 (10-8-15)	** ***
218-1.2(y)	California Code of Regulations, Title 13, Section 1900 (10-8-15)	** ***
218-1.2(z)	California Code of Regulations, Title 13, Section 1900 (10-8-15)	** ***
218-1.2(ab)	California Code of Regulations, Title 13, Section 1900 (10-8-15)	** ***
218-1.2(ac)	California Code of Regulations, Title 13, Section 1900 (10-8-15)	** ***
218-1.2(ad)	California Code of Regulations, Title 13, Section 1905 (7-3-96)	** ***
218-1.2(af)	California Code of Regulations, Title 13, Section 1900 (10-8-15)	** ***
218-1.2(aj)	California Code of Regulations, Title 13, Section 1962 (2-13-10)	** ***
218-1.2(ak)	California Code of Regulations, Title 13, Section 1960.5 (10-16-02)	** ***
218-1.2(ap)	California Code of Regulations, Title 13, Section 1900 (10-8-15)	** ***
218-1.2(aq)	California Code of Regulations, Title 13, Section 1900 (10-8-15)	** ***
218-1.2(at)	40 CFR Section 86.1827-01 (2-26-07)	*
218-1.2(az)	California Code of Regulations, Title 13, Section 2112 (12-5-14)	** ***
218-1.2(bc)	California Code of Regulations, Title 13, Section 1962 (2-3-10)	** ***

218-1.2(bd)	California Code of Regulations, Title 13, Section 1900 (10-8-15)	** ***
218-1.2(be)	California Code of Regulations, Title 13, Section 2035 (11-9-07)	** ***
218-1.2(bf)	California Code of Regulations, Title 13, Section 2035 (11-9-07)	** ***
218-1.2(bg)	California Code of Regulations, Title 13, Section 2035 (11-9-07)	** ***
218-1.2(bh)	California Code of Regulations, Title 13, Section 2035 (11-9-07)	** ***
218-1.2(bi)	California Code of Regulations, Title 13, Section 1900 (10-8-15)	** ***
218-2.1(a)	California Code of Regulations, Title 13, Section 1956.8 (10-7-06)	** ***
	California Code of Regulations, Title 13, Section 1956.9 (3-6-96)	** ***
	California Code of Regulations, Title 13, Section 1960.1 (12-31-12)	** ***
	California Code of Regulations, Title 13, Section 1960.1.5 (9-30-91)	** ***
	California Code of Regulations, Title 13, Section 1960.5 (10-16-02)	** ***
	California Code of Regulations, Title 13, Section 1961 (12-31-12)	** ***
	California Code of Regulations, Title 13, Section 1961.2 [(10-8-15)] *(12-12-18)*	** ***
	California Code of Regulations, Title 13, Section 1962 (2-13-10)	** ***
	California Code of Regulations, Title 13, Section 1962.1 (1-1-16)	** ***
	California Code of Regulations, Title 13, Section 1964 (2-23-90)	** ***
	California Code of Regulations, Title 13, Section 1965 (10-8-15)	** ***
	California Code of Regulations, Title 13, Section 1968.1 (11-27-99)	** ***
	California Code of Regulations, Title 13, Section 1968.2 (7-31-13)	** ***
	California Code of Regulations, Title 13, Section 1976 (10-8-15)	** ***
	California Code of Regulations, Title 13, Section 1978 (10-8-15)	** ***
	California Code of Regulations, Title 13, Section 2047 (5-31-88)	** ***
	California Code of Regul ations, Title 13, Section 2065 (12-4-03)	** ***
	California Code of Regulations, Title 13, Section 2235 (8-8-12)	** ***
	Clean Air Act 42 U.S.C. Section 7521 (1988) as amended by Pub. L. 101-549 (1990)	**
218-2.1(b)(5)	Clean Air Act 42 U.S.C. Section 7401 et seq. (1988) as amended by Pub. L. 101-549 (1990)	**
218-2.1(b)(8)	California Health and Safety Code, Section 43656 (1975)	***
218-2.1(d)	Clean Air Act 42 U.S.C. Section 7507 (1988) as amended by Pub. L. 101-549 (1990)	**
218-2.4	California Health and Safety Code, Section 43014 (1976)	** †
218-3.1	California Code of Regulations, Title 13, Section 1960.1(g)(2) (12-31-12)	** ***
	California Code of Regulations, Title 13, Section 1961(b)(1) (12-31-12)	** ***
	California Code of Regulations, Title 13, Section 1961.2 [(10-8-15)] *(12-12-18)*	** ***
218-3.1(a)	California Code of Regulations, Title 13, Section 1960.1(g)(1) (12-31-12)	** ***
	California Code of Regulations, Title 13, Section 1961.2 [(10-8-15)] *(12-12-18)*	** ***
218-3.1(b)	California Code of Regulations, Title 13, Section 1960.1(g)(2) (12-31-12)	** ***
	California Code of Regulations, Title 13, Section 1961(b) (12-31-12)	** ***
	California Code of Regulations, Title 13, Section 1961.2 [(10-8-15)] *(12-12-18)*	** ***
218-4.1	California Code of Regulations, Title 13, Section 1962 (2-13-10)	** ***
	California Code of Regulations, Title 13, Section 1962.1 (1-1-16)	** ***
	California Code of Regulations, Title 13, Section 1962.2 (1-1-16)	** ***
218-5.1(a)	California Code of Regulations, Title 13, Section 2061 (10-23-96)	** ***
	California Code of Regulations, Title 13, Section 2062 (8-7-12)	** ***
	California Code of Regulations, Title 13, Section 2065 (12-4-03)	** ***
218-5.2(a)	California Code of Regulations, Title 13, Section 2065 (12-4-03)	** ***
	California Code of Regulations, Title 13, Section 2109 (12-30-83)	** ***
	California Code of Regulations, Title 13, Section 2110 (11-27-99)	** ***
218-5.2(b)(1)	California Code of Regulations, Title 13, Section 2106 (11-27-99)	** ***
218-5.3(b)	California Code of Regulations, Title 13, Section 2101 (11-27-99)	** ***
218-6.2	Clean Air Act 42 U.S.C. Section 7401 et seq. (1988) as amended by Pub. L. 101-549 (1990)	**
218-7.2(c)(1)	California Code of Regulations, Title 13, Section 2222 (4-17-17)	** ***
218-7.2(c)(2)	California Code of Regulations, Title 13, Section 2222 (4-17-17)	** ***
218-7.2(c)(8)	California Code of Regulations, Title 13, Section 2222 (4-17-17)	** ***
218-7.3(a)(1)	California Code of Regulations, Title 13, Section 2221 (12-30-83)	** ***
	California Code of Regulations, Title 13, Section 2224 (8-16-90)	** ***
218-7.3(a)(2)	California Code of Regulations, Title 13, Section 2224(a) (8-16-90)	** ***
218-7.4(b)(3)(i)	California Code of Regulations, Title 13, Section 2222 (4-17-17)	** ***
218-7.4(b)(3)(ii)	California Code of Regulations, Title 13, Section 2222 (4-17-17)	** ***
218-7.5(b)	California Code of Regulations, Title 13, Section 2222 (4-17-17)	** ***
218-8.1(a)	California Code of Regulations, Title 13, Section 1961.1 (8-7-12)	** ***
218-8.1(b)	California Code of Regulations, Title 13, Section 1961.1 (8-7-12)	** ***
218-8.2	California Code of Regulations, Title 13, Section 1961.1 (8-7-12)	** ***
	California Code of Regulations, Title 13, Section 1961.3 [(12-31-12)] *(12-12-18)*	** ***
218-8.3(a)	California Code of Regulations, Title 13, Section 1961.1 (8-7-12)	** ***

	California Code of Regulations, Title 13, Section 1961.3 [(12-31-12)] *(12-12-18)*	** ***
218-8.3(b)	California Code of Regulations, Title 13, Section 1961.1 (8-7-12)	** ***
	California Code of Regulations, Title 13, Section 1961.3 [(12-31-12)] *(12-12-18)*	** ***
218-8.3(c)	California Code of Regulations, Title 13, Section 1961.1 (8-7-12)	** ***
	California Code of Regulations, Title 13, Section 1961.3 [(12-31-12)] *(12-12-18)*	** ***
218-8.3(d)	California Code of Regulations, Title 13, Section 1961.1 (8-7-12)	** ***
	California Code of Regulations, Title 13, Section 1961.3 [(12-31-12)] *(12-12-18)*	** ***
218-8.4(a)	California Code of Regulations, Title 13, Section 1961.1 (8-7-12)	** ***
218-8.4(b)	California Code of Regulations, Title 13, Section 1961.1 (8-7-12)	** ***
218-8.5(c)	California Code of Regulations, Title 13, Section 1961.1 (8-7-12)	** ***
	California Code of Regulations, Title 13, Section 1961.3 [(12-31-12)] *(12-12-18)*	** ***
218-9.1	California Code of Regulations, Title 13, Section 2035 (11-9-07)	** ***
	California Code of Regulations, Title 13, Section 2037 (12-5-14)	** ***
	California Code of Regulations, Title 13, Section 2038 (8-7-12)	** ***
	California Code of Regulations, Title 13, Section 2039 (12-26-90)	** ***
	California Code of Regulations, Title 13, Section 2040 (12-26-90)	** ***
	California Code of Regulations, Title 13, Section 2041 (12-26-90)	** ***
	California Code of Regulations, Title 13, Section 2046 (2-16-79)	** ***
218-9.2	California Code of Regulations, Title 13, Section 2141 (12-8-10)	** ***
	California Code of Regulations, Title 13, Section 2142 (2-23-90)	** ***
	California Code of Regulations, Title 13, Section 2143 (11-27-99)	** ***
	California Code of Regulations, Title 13, Section 2144 (11-27-99)	** ***
	California Code of Regulations, Title 13, Section 2145 (8-7-12)	** ***
	California Code of Regulations, Title 13, Section 2146 (11-27-99)	** ***
	California Code of Regulations, Title 13, Section 2147 (12-5-14)	** ***
	California Code of Regulations, Title 13, Section 2148 (11-27-99)	** ***
	California Code of Regulations, Title 13, Section 2149 (2-23-90)	** ***
218-10.1	California Code of Regulations, Title 13, Section 2109 (12-30-83)	** ***
	California Code of Regulations, Title 13, Section 2110 (11-27-99)	** ***
	California Code of Regulations, Title 13, Section 2111 (12-8-10)	** ***
	California Code of Regulations, Title 13, Section 2112 (12-5-14)	** ***
	California Code of Regulations, Title 13, Section 2113 (1-26-95)	** ***
	California Code of Regulations, Title 13, Section 2114 (11-27-99)	** ***
	California Code of Regulations, Title 13, Section 2115 (1-26-95)	** ***
	California Code of Regulations, Title 13, Section 2116 (1-26-95)	** ***
	California Code of Regulations, Title 13, Section 2117 (1-26-95)	** ***
	California Code of Regulations, Title 13, Section 2118 (1-26-95)	** ***
	California Code of Regulations, Title 13, Section 2119 (11-27-99)	** ***
	California Code of Regulations, Title 13, Section 2120 (1-26-95)	** ***
	California Code of Regulations, Title 13, Section 2121 (1-26-95)	** ***
	California Code of Regulations, Title 13, Section 2122 (12-8-10)	** ***
	California Code of Regulations, Title 13, Section 2123 (1-26-95)	** ***
	California Code of Regulations, Title 13, Section 2124 (1-26-95)	** ***
	California Code of Regulations, Title 13, Section 2125 (1-26-95)	** ***
	California Code of Regulations, Title 13, Section 2126 (1-26-95)	** ***
	California Code of Regulations, Title 13, Section 2127 (1-26-95)	** ***
	California Code of Regulations, Title 13, Section 2128 (1-26-95)	** ***
	California Code of Regulations, Title 13, Section 2129 (1-26-95)	** ***
	California Code of Regulations, Title 13, Section 2130 (11-27-99)	** ***
	California Code of Regulations, Title 13, Section 2131 (1-26-95)	** ***
	California Code of Regulations, Title 13, Section 2132 (1-26-95)	** ***
	California Code of Regulations, Title 13, Section 2133 (1-26-95)	** ***
	California Code of Regulations, Title 13, Section 2134 (1-26-95)	** ***
	California Code of Regulations, Title 13, Section 2135 (1-26-95)	** ***
	California Code of Regulations, Title 13, Section 2136 (12-8-10)	** ***
	California Code of Regulations, Title 13, Section 2137 (12-28-00)	** ***
	California Code of Regulations, Title 13, Section 2138 (11-27-99)	** ***
	California Code of Regulations, Title 13, Section 2139 (12-5-14)	** ***
	California Code of Regulations, Title 13, Section 2140 (12-5-14)	** ***
218-10.2	California Code of Regulations, Title 13, Section 2141 (12-8-10)	** ***
	California Code of Regulations, Title 13, Section 2142 (2-23-90)	** ***
	California Code of Regulations, Title 13, Section 2143 (11-27-99)	** ***
	California Code of Regulations, Title 13, Section 2144 (11-27-99)	** ***
	California Code of Regulations, Title 13, Section 2145 (8-7-12)	** ***

	California Code of Regulations, Title 13, Section 2146 (11-27-99)	** ***
	California Code of Regulations, Title 13, Section 2147 (12-5-14)	** ***
	California Code of Regulations, Title 13, Section 2148 (11-27-99)	** ***
	California Code of Regulations, Title 13, Section 2149 (2-3-90)	** ***
218-11.1	California Code of Regulations, Title 13, Section 1965 (10-8-15)	** ***
218-11.2	California Code of Regulations, Title 13, Section 1965 (10-8-15)	** ***

Part 218 remains unchanged.

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 March 20, 2019.

Text of rule and any required statements and analyses may be obtained from: Jeff Marshall, P.E., NYSDEC, Division of Air Resources, 625 Broadway, Albany, NY 12233, (518) 402-8292, email: air.regs@dec.ny.gov

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

Public comment will be received until: March 18, 2019.

Additional matter required by statute: Pursuant to Article 8 of the State Environmental Quality Review Act, a Short Environmental Assessment Form, a Negative Declaration, and a Coastal Assessment Form have been prepared and are on file.

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

Summary of Regulatory Impact Statement (Full text is posted at the following State website:http://www.dec.ny.gov/regulations/propregulations.html#public):

1. Statutory authority

The statutory authority for this amendment is the Environmental Conservation Law (ECL) Sections 1-0101, 1-0303, 3-0301, 19-0103, 19-0105, 19-0107, 19-0301, 19-0303, 19-0305, 19-1101, 19-1103, 19-1105, 71-2103, 71-2105 and Section 177 of the federal Clean Air Act (42 USC 7507).

2. Legislative objectives

Articles 1 and 3 of the ECL set out the overall state policy goal of reducing air pollution and providing clean, healthy air for the citizens of New York. In addition to the general powers and duties of the Department and Commissioner to prevent and control air pollution found in Articles 1 and 3 of the ECL, Article 19 of the ECL was specifically adopted for the purpose of safeguarding the air resources of New York from pollution. The Department is "expressly authorized to promulgate extensive regulations limiting exhaust emissions from motor vehicles including adoption of California certification standards." (See MVMA v. Jorling, 152 Misc.2d 405 (N.Y. Sup. September 3, 1991.) This authority also specifically includes promulgating rules and regulations for preventing, controlling or prohibiting air pollution in such areas of the State as shall or may be affected by air pollution, and provisions establishing areas of the State and prescribing for such areas (1) the degree of air pollution or air contamination that may be permitted therein, and (2) the extent to which air contaminants may be emitted to the air by any air contamination source. In addition, this authority also includes the preparation of a general comprehensive plan for the control or abatement of existing air pollution and for the control or prevention of any new air pollution recognizing various requirements for different areas of the State.

The Department is proposing to revise existing greenhouse gas (GHG) standards which were originally adopted November 8, 2005 and revised periodically. This proposed revision will clarify that the deemed-to-comply (DTC) provision for model years 2021-2025 only applies to those federal standards which were last amended as part of the October 16, 2015 rulemaking. This regulation package will further the goals of reducing air pollution from motor vehicles by requiring cleaner California certified vehicles and engines be sold in New York. This is not a mandate on local governments pursuant to Executive Order 17.

3. Needs and benefits

New York has made considerable progress in improving its air quality; however, several areas of the State still do not meet federal health based national ambient air quality standards (NAAQS) for ozone and have been categorized as non-attainment areas[1]. The Department is also tasked with mitigating the effects of global warming. The Department has the obligation to regulate and mitigate criteria pollutant and greenhouse gas (GHG) emissions from mobile sources to safeguard the health of State residents and protect the State's environment.

On-road mobile sources in New York emit a substantial portion of ozone precursors. In 2014, on-road light-duty vehicles emitted approximately 65,600 tons of volatile organic compounds (VOC) and 72,600 tons of nitrogen oxides (NOx) annually[2]. In 2014, the transportation sector accounted for approximately 34 percent of all GHG emissions in New York State[3]. It is essential that the Department continue to adopt stringent mobile source emissions standards to protect human health and the environment.

Increased concentrations of ground-level ozone that is directly related to increased GHG emissions, can promote respiratory illness in children and the elderly, and exacerbate pre-existing respiratory illnesses. Ground-level ozone can also impair lung function in otherwise healthy people. This can result in significant hospitalization costs and mortality rates, both of which are higher in New York State than the national average. In 2011, the total cost of asthma related hospitalization in New York State was approximately $660 million[4]. Approximately 258 State residents per year died from asthma during the 2009 to 2011 timeframe[5].

Global warming may have adverse impacts on human health and the environment. These impacts include increased heat illnesses and mortality, respiratory illnesses from increased formation of ground-level ozone and the introduction or spread of vector-borne illnesses. Global warming may adversely impact New York State's shoreline, drinking water sources, agriculture, forests and wildlife diversity.

New York first adopted the California low emission vehicle program in Part 218 in 1990, and has updated Part 218 frequently to maintain identical standards for a given weight class as required under Section 177 of the Act. The Department initially adopted California GHG standards November 8, 2005. The GHG standards were revised June 6, 2010 to allow vehicle manufacturers the voluntary enforcement option to demonstrate compliance based on pooled vehicle sales rather than state-by-state vehicle sales.

DEC adopted the next GHG revision on November 2, 2010; it incorporated a DTC provision for model years 2012-2016. The DTC provision gives vehicle manufacturers the voluntary enforcement option of demonstrating compliance using less stringent federal GHG standards in lieu of existing California standards. DEC adopted updated California GHG standards for model years 2017-2025 on November 9, 2012 as part of the Advanced Clean Cars (ACC) standards. DEC adopted the latest GHG revision on October 16, 2015, which incorporated an extension of the DTC provision for model years 2017-2025[6].

Recently proposed revised federal GHG standards, and other actions, have necessitated a review of the DTC provision by California, New York, and other Section 177 states. The proposed federal GHG standards rollback the existing standards for model years 2021-2025. This results in federal standards that are significantly less stringent that California's standards adopted in 2012 as part of the ACC program.

The Department is proposing to amend Part 218 to incorporate California's latest clarifications to the GHG program. The proposed revisions clarify that the version of the federal program to which the DTC applies is the program included in federal regulations for model years 2021-2025 that were last amended on October 25, 2016. If U.S. EPA reduces the stringency of the federal standards as proposed, vehicle manufacturers will no longer be allowed to use the enforcement option of demonstrating compliance with less stringent federal GHG standards in lieu of California standards for 2021 and subsequent model years. All new 2021 and subsequent model year passenger cars, light-duty trucks, and medium-duty passenger vehicles up to 10,000 pounds gross vehicle weight rating (GVWR) delivered for sale in New York will be required to be certified to California GHG standards.

DEC estimated GHG emissions benefits of approximately 14 million metric tons in 2035 resulting from the California ACC standards adopted in 2012. While existing federal GHG standards for model years 2017-2025 are less stringent than comparable California standards, applying the reductions nationally would provide a nationwide benefit. The 2015 rulemaking estimated compliance using federal standards would result in approximately 4.5 percent less CO2 equivalent emission reductions in 2025 than would otherwise be achieved under California standards. California, New York, and other Section 177 states determined that the slight decrease in stringency was offset by the additional GHG reductions that would be achieved by nationwide implementation of federal GHG standards.

4. Costs

Potential Impact on Consumers.

The proposed amendments are not expected to result in additional costs for New York State consumers as California's current model year 2021-2025 standards would remain the same.

Potential Impact on Manufacturers

If the U.S. EPA weakens federal GHG standards, beginning with model

year 2021, vehicle manufacturers will be required to demonstrate compliance in California, New York, and other Section 177 states utilizing vehicles certified to California standards. They will be required to demonstrate compliance in remaining states utilizing vehicles certified to federal standards. This is identical to the situation that existed prior to adoption of the DTC provision in 2010. The California standards are duly enacted and enforceable under California's Section 209 waiver which was initially granted for these standards in 2009 before the negotiation and agreement that led to the 2012 adoption of the DTC provision[7], and subsequently in New York and other states that have adopted California standards under Section 177. However, this will provide a health and environmental benefit to New York.

Potential Impact on Business Competitiveness.

The proposed amendments apply equally to all vehicle manufacturers and affiliated businesses delivering new vehicles for sale in New York. There is currently no automotive manufacturing in New York involving the final assembly of vehicles. Affiliated businesses, such as dealerships and engineering and design facilities, are generally local businesses that compete within the State and are subject to minimal competition from out-of-state businesses. New York dealerships will be able to sell California certified vehicles to states bordering New York, as is currently the case. New York residents will not be able to buy noncompliant vehicles out of state since vehicles must be California certified to be registered in New York. This is currently the case with the existing LEV program and will not change with the proposed revisions. Surrounding states have adopted, or will adopt, identical requirements. The proposed regulation is not expected to impose a competitive disadvantage on New York State businesses.

Potential Impact on Employment.

The proposed amendments are not expected to cause a noticeable change in New York employment. The proposed changes are a clarification of the existing DTC provision.

Potential Impact on Business Creation, Elimination or Expansion.

The proposed regulations are not expected to have any impact on business creation, elimination, or expansion. The proposed changes are a clarification of the existing DTC provision. Failure to adopt this rulemaking, however, will harm New York State businesses that are part of the supply chain for lower emission vehicles, if there are any such businesses.

Potential Costs to Local and State Agencies.

The proposed amendments are not expected to result in any additional costs for local and state agencies. No additional paperwork or staffing requirements are expected.

5. Local government mandates

The proposed amendments do not impose a local government mandate. No additional paperwork or staffing requirements are expected. This is not a mandate on local governments pursuant to Executive Order 17. Local governments have no additional compliance obligations as compared to other subject entities.

6. Paperwork

The proposed revision will not result in any significant paperwork requirements for New York vehicle suppliers, dealers, or government. Implementation of the proposed GHG regulation is not expected to be burdensome in terms of paperwork to vehicle owners/operators.

7. Duplication

There are no relevant state or federal rules or other legal requirements that will duplicate, overlap or conflict with this.

8. Alternatives

New York could choose not to adopt the revisions to California's GHG program and revert to federal motor vehicle standards. The proposed federal rulemaking would freeze GHG standards at model year 2020 levels for model years 2021-2026. These proposed federal standards will be significantly less stringent than the previously adopted California GHG standards.

The option to revert to less stringent, and protective, federal motor vehicle emission standards was considered and ultimately rejected. The proposed federal standards are less protective of human health and the environment and will make it much harder, if not impossible, for New York to meet its GHG reduction goals reflected in Executive Order 166 and to meet and maintain its air quality goals under the National Ambient Air Quality Standards. Executive Order Number 166 calls for reducing New York's GHG emissions 40 percent by 2030 and 80 percent by 2050 from 1990 levels[8].

9. Federal standards

As mentioned above, the proposed federal standards are significantly less stringent than California's current standards. The reduced stringency, and resulting degradation to emissions reductions, makes the continued implementation of DTC standards unviable in New York State as it impedes the State's ability to attain and maintain its air quality goals. If the federal government finalizes its rulemaking, New York will require all new vehicles delivered for sale in New York to meet California's GHG standards commencing with the 2021 model year to safeguard the health of New York residents and the environment.

10. Compliance schedule

The proposed GHG regulation revisions will take effect 30 days after filing for 2021 and subsequent model year passenger cars, light-duty trucks, and medium-duty passenger vehicles.

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[1] U.S. Environmental Protection Agency. Nonattainment Areas for Criteria Pollutants (Green Book). September 30, 2017. https://www3.epa.gov/airquality/greenbook/hbstateb.html

[2] U.S. Environmental Protection Agency. National Emissions Inventory. https://www.epa.gov/air-emissions-inventories/2014-nei-data

[3] New York State Energy Research and Development Authority (NYSERDA). New York State Greenhouse Gas Inventory:1990-2014. December 2016, Revised February 2017. Pg S-3. https://www.nyserda.ny.gov/About/Publications/EA-Reports-and-Studies/Energy-Statistics

[4] New York State Department of Health. New York State Asthma Surveillance Summary Report. October 2013. Pg 16. http://www.health.ny.gov/statistics/ny_asthma/

[5] New York State Department of Health. New York State Asthma Surveillance Summary Report. October 2013. Pg 12. http://www.health.ny.gov/statistics/ny_asthma/

[6] 6 NYCRR Part 218-8.3(d)

[7] https://www.epa.gov/state-and-local-transportation/vehicle-emissions-california-waivers-and-authorizations

[8] https://www.governor.ny.gov/news/no-166-redoubling-new-yorks-fight-against-economic-and-environmental-threats-posed-climate

Regulatory Flexibility Analysis

1. Effect of rule:

The New York State Department of Environmental Conservation (Department) is proposing to amend 6 NYCRR Section 200.9 and 6 NYCRR Part 218 to incorporate California's latest revisions to its low emission vehicle (LEV) III greenhouse gas (GHG) program that clarify the deemed to comply provision for model years 2021-2025 into New York's existing LEV III program. These changes were proposed by California on August 7, 2018. These changes apply to vehicles purchased by consumers, businesses, and government agencies in New York and may impact businesses involved in manufacturing, selling, leasing, or purchasing passenger cars or trucks.

State and local governments are also consumers of vehicles that will be regulated under the proposed amendments. Therefore, local governments who own or operate vehicles in New York State are subject to the same requirements as owners of private vehicles in New York State; i.e., they must purchase California certified vehicles. This rulemaking is not a local government mandate pursuant to Executive Order 17.

The proposed changes are an addition to the current LEV III standards. The new motor vehicle emissions program has been in effect in New York State since model year 1993 for passenger cars and light-duty trucks, except for the 1995 model year, and the Department is unaware of any significant adverse impact to small businesses or local governments because of previous revisions. Section 177 of the federal Clean Air Act requires New York to maintain standards identical to California's to maintain the LEV program.

2. Compliance requirements:

There are no specific requirements in the proposed regulation which apply exclusively to small businesses or local governments. Reporting, recordkeeping and compliance requirements are effective statewide. Automobile dealers (some of which may be small businesses) selling new cars are required to sell, or offer for sale, only California certified vehicles. These proposed amendments will not result in any additional reporting requirements to dealerships other than the current requirements to maintain records demonstrating that vehicles are California certified. This documentation is the same documentation already required by the New York State Department of Motor Vehicles for vehicle registration. If local governments are buying new fleet vehicles they should make sure that the vehicles are California certified. This has been the case for more than two decades in New York.

3. Professional services:

There are no professional services needed by small business or local government to comply with the proposed rule.

4. Compliance costs:

New York State currently maintains personnel and equipment to administer the LEV program. It is expected that these personnel will be retained to administer the proposed revisions to this program. Therefore, no additional costs will be incurred by the State of New York for the administration of this program.

5. Economic and technological feasibility:

The proposed amendments are not expected to have any adverse impacts on automobile dealers. Dealerships will be required to ensure that the vehicles they sell are California certified. Starting with the 1993 model year, most manufacturers have included provisions in their ordering mechanisms to ensure that only California certified vehicles are shipped to New York dealers. Implementation of the proposed regulations is not expected to be burdensome in terms of additional reporting requirements for dealers. As stated previously, there would be no change in the competitive relationship with out-of-state businesses.

The deemed to comply provision currently allows vehicle manufacturers to demonstrate compliance utilizing federal greenhouse gas standards in lieu of California's more stringent standards. The proposed amendments will clarify the deemed to comply provision to address the U.S. Environmental Protection Agency's (EPA) proposed freeze and roll back of existing greenhouse gas standards for model years 2021-2025. The proposed revisions to Part 218 will apply to all 2021 through 2025 model year passenger cars, light-duty trucks, and medium-duty vehicles up to 14,000 pounds gross vehicle weight rating (GVWR).

6. Minimizing adverse impact:

The proposed amendments are not expected to have any impact on automobile dealers. Dealerships will be required to ensure that the vehicles they sell are California certified. Starting with the 1993 model year, most manufacturers have included provisions in their ordering mechanisms to ensure that only California certified vehicles are shipped to New York dealers. Implementation of the proposed amendments is not expected to be burdensome in terms of additional reporting requirements for dealers.

There will be no adverse impact on local governments who own or operate vehicles in the state because they are subject to the same requirements as those imposed on owners of private vehicles. In other words, state and local governments will be required to purchase California certified vehicles. This rulemaking is not a local government mandate pursuant to Executive Order 17.

This regulation contains exemptions for emergency vehicles, and military tactical vehicles and equipment.

7. Small business and local government participation:

The Department plans on holding public hearings at various locations throughout New York State after the amendments are proposed. Small businesses and local governments will have the opportunity to attend these public hearings. Additionally, there will be a public comment period in which interested parties can submit written comments.

8. Cure period:

In accordance with NYS State Administrative Procedures Act (SAPA) Section 202-b, this rulemaking does not include a cure period because the Department is undertaking this rulemaking to comply with changes California has made to its vehicle emissions program to maintain identicality with Section 177 of the Clean Air Act.

Rural Area Flexibility Analysis

1. Types and estimated numbers of rural areas:

The New York State Department of Environmental Conservation (Department) is proposing to amend 6 NYCRR Section 200.9 and 6 NYCRR Part 218 to incorporate California's latest revisions to its low emission vehicle (LEV) III greenhouse gas (GHG) program that clarify the deemed to comply provision for model years 2021-2025 into New York's existing LEV III program. These changes were proposed by California on August 7, 2018.

There are no requirements in the proposed regulation which apply only to rural areas. These changes apply to manufacturers' requirements for the manufacture and sale of vehicles sold in New York. The changes to these regulations may impact businesses involved in manufacturing, selling, purchasing, or repairing passenger cars or trucks.

The proposed changes are an addition to the current LEV III standards. The new motor vehicle emissions program has been in effect in New York State since model year 1993 for passenger cars and light-duty trucks, except for the 1995 model year, and the Department is unaware of any significant adverse impact to small businesses or local governments because of previous revisions. The beneficial emission reductions from the program accrue to all areas of the state.

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

There are no specific requirements in the proposed regulations which apply exclusively to rural areas. Reporting, recordkeeping and compliance requirements apply primarily to vehicle manufacturers, and to a lesser degree to automobile dealerships. Manufacturers reporting requirements mirror the California requirements, and are thus not expected to be burdensome. Dealerships do not have reporting requirements, but must maintain records to demonstrate that vehicles are California certified. This documentation is the same as documentation already required by the New York State Department of Motor Vehicles for vehicle registration. This has been the case for more than two decades in New York.

Professional services are not anticipated to be necessary to comply with the proposed rules.

3. Costs:

The proposed amendments are not expected to have any impact on consumers.

4. Minimizing adverse impact:

The proposed changes will not adversely impact rural areas.

5. Rural area participation:

The Department plans on holding public hearings at various locations throughout New York State once the regulation is proposed. Some of these locations will be convenient for persons from rural areas to participate. Additionally, there will be a public comment period in which interested parties can submit written comments.

Job Impact Statement

1. Nature of impact:

The New York State Department of Environmental Conservation (Department) is proposing to amend 6 NYCRR Section 200.9 and 6 NYCRR Part 218 to incorporate California's latest revisions to its low emission vehicle (LEV) III greenhouse gas (GHG) program that clarify the deemed to comply provision for model years 2021-2025 into New York's existing LEV III program. These changes were proposed by California on August 7, 2018.

The proposed amendments to the regulations are not expected to adversely impact jobs and employment opportunities in New York State. New York State has had a LEV program in effect since model year 1993 for passenger cars and light-duty trucks, except for model year 1995, and the Department is unaware of any significant adverse impact to jobs and employment opportunities because of previous revisions.

2. Categories and numbers affected:

The proposed changes to this regulation will not adversely impact businesses involved in manufacturing, selling or purchasing passenger cars or trucks. No final assembly of automobiles occurs in New York State. Dealerships will be able to sell California certified vehicles to buyers from states bordering New York. Since vehicles must be California certified to be registered in New York, New York residents will not be able to buy non-complying vehicles out-of-state, but may be able to buy complying vehicles out-of-state. These businesses compete within the state and generally are not subject to competition from out-of-state businesses. Therefore, the proposed regulation is not expected to impose a competitive disadvantage on affiliated businesses, and there would be no change from the current relationship with out-of-state businesses.

3. Regions of adverse impact:

None.

4. Minimizing adverse impact:

The proposed regulations are not expected to have adverse impacts on automobile dealers. Dealerships will be required to ensure that the vehicles they sell are California certified. Starting with the 1993 model year, most manufacturers have included provisions in their ordering mechanisms to ensure that only California certified vehicles are shipped to New York dealers. The implementation of the proposed regulations is not expected to be burdensome in terms of additional reporting requirements for dealers. There would be no change in the competitive relationship with out-of-state businesses.

The deemed to comply provision currently allows vehicle manufacturers to demonstrate compliance utilizing federal greenhouse gas standards in lieu of California's more stringent standards. The proposed amendments will clarify the deemed to comply provision to address the U.S. Environmental Protection Agency's (EPA) proposed freeze and roll back of existing greenhouse gas standards for model years 2021-2025. If EPA does not freeze, or roll back, existing standards then there will be no change to the current standards in Part 218. The proposed revisions to Part 218 will apply to all 2021 through 2025 model year passenger cars, light-duty trucks, and medium-duty vehicles up to 14,000 pounds gross vehicle weight rating (GVWR).

5. Self-employment opportunities:

None that the Department is aware of at this time.

Department of Financial Services

PROPOSED RULE MAKING
NO HEARING(S) SCHEDULED

Paid Family Leave Risk Adjustment Fund

I.D. No. DFS-02-19-00008-P

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

Proposed Action: Addition of Part 364 (Regulation 214) to Title 11 NYCRR.

Statutory authority: Financial Services Law, sections 202, 302; Insurance Law, sections 301, 4235; Workers' Compensation Law, sections 208(2) and 209(3)(b)

Subject: Paid Family Leave Risk Adjustment Fund.

Purpose: Establishment of the Paid Family Leave Risk Adjustment Fund.

Text of proposed rule: *Section 364.1 Preamble.*

(a) Pursuant to the authority granted in, among other things, Insurance Law section 4235(n), the superintendent previously determined that family leave benefits provided by issuers shall be subject to a risk adjustment mechanism for calendar year 2018. Additionally, pursuant to section 363.5(b) of this Title, the superintendent in consultation with the chair of the workers' compensation board may determine whether the family leave benefits coverage provided by issuers in subsequent years will be subject to a risk adjustment mechanism.

(b) It is necessary for the implementation of the risk adjustment mechanism established by section 363.5 of this Title that a fund be established to hold the risk adjustment pools required to receive the payments and make the disbursements called for by that section.

Section 364.2 Risk adjustment fund.

There is hereby established within the sole custody of the superintendent, a fund to be called the Paid Family Leave Risk Adjustment Fund, to receive transfers of funds from issuers for those years in which it is determined by the superintendent in consultation with the chair of the workers' compensation board that the family leave benefits coverage provided by issuers will be subject to the risk adjustment mechanism established by section 363.5 of this Title. The moneys so received and deposited in the Paid Family Leave Risk Adjustment Fund shall not be deemed State funds. The superintendent is authorized, in his or her sole discretion, to make disbursements without an appropriation from the Paid Family Leave Risk Adjustment Fund for the purpose of remitting to issuers any moneys due them as a result of the risk adjustment mechanism established by section 363.5 of this Title, and such disbursements shall be made pursuant to that section.

Text of proposed rule and any required statements and analyses may be obtained from: Eamon Rock, Department of Financial Services, One Commerce Plaza, Albany, NY 12257, (518) 474-4567, email: Eamon.Rock@dfs.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

1. Statutory authority: Financial Services Law Sections 202 and 302, Insurance Law Sections 301 and 4235, and Workers' Compensation Law Sections 208(2) and 209(3)(b).

FSL Section 202 establishes the office of the Superintendent of Financial Services ("Superintendent"). FSL Section 302 and IL Section 301, in pertinent part, authorize the Superintendent to prescribe regulations a group accident insurance policy, a group health insurance policy, and a group accident and health insurance policy.

IL Section 4235(n)(1) provides that on or before June 1, 2017, the Superintendent, by regulation, in consultation with the Chair of the Workers' Compensation Board ("Chair"), must determine whether the family leave benefits coverage of a group accident and health insurance policy providing disability and family leave benefits pursuant to WCL Article 9, including policies issued by the State Insurance Fund, will be experience rated or community rated, which may include subjecting the family leave benefits coverage of the policy to a risk adjustment mechanism.

IL Section 4235(n)(1) also requires the Superintendent to establish the rates for any community rated family leave benefits coverage and apply commonly accepted actuarial principles to establish community rated family leave benefits coverage rates that are not excessive, inadequate or unfairly discriminatory. It further requires the Superintendent, on June 1, 2017 and September 1 of each year thereafter, to publish all community rated family leave benefits rates for the policy period beginning on the following January 1.

IL Section 4235(n)(2) states that if the policy is subjected to a risk adjustment mechanism, then the Superintendent must promulgate regulations necessary for the implementation of Section 4235(n) in consultation with the Chair, and that the Superintendent, or a third party vendor selected by the Superintendent, must administer the risk adjustment mechanism in consultation with the Chair.

IL Section 4235(n)(3) defines "risk adjustment mechanism" to mean the process used to equalize the per member per month claim amounts among issuers in order to protect issuers from disproportionate adverse risks.

WCL Section 208(2) permits the Superintendent and Chair to require an issuer to file a report as to any claim whenever such information is deemed necessary, and states that the Chair and Superintendent may prescribe the format of such report and may promulgate regulations to effectuate WCL Article 9.

WCL Section 209(3)(b) states that on June 1, 2017 and annually thereafter on September 1, the Superintendent must set the maximum employee contribution, using sound actuarial principles and the reports provided in WCL Section 208. The maximum employee contribution applies to both insured employers and self-funded employers.

2. Legislative objectives: The proposed regulation establishes the Paid Family Leave Risk Adjustment Fund. This regulation is necessary to implement the Paid Family Leave risk adjustment mechanism as set forth in Part 363 of 11 NYCRR.

3. Needs and benefits: Pursuant to the authority granted in, among other things, Insurance Law Section 4235(n), the Superintendent previously determined that family leave benefits provided by issuers shall be subject to a risk adjustment mechanism for calendar year 2018. Additionally, the Superintendent may determine whether the family leave benefits coverage provided by issuers in subsequent years will be subject to a risk adjustment mechanism. Insurance Law Section 4235(n) also grants authority to the Superintendent to promulgate regulations necessary for the implementation of a risk adjustment mechanism, in consultation with the Chair of the Workers Compensation Board. In order to implement the risk adjustment mechanism established by 11 NYCRR 363.5, it is necessary to promulgate a regulation to establish a fund to hold the risk adjustment pools required to receive the payments and make the disbursements called for by that section.

4. Costs: The proposed regulation will impose no cost to the Department as it merely establishes a fund. The Department does not anticipate that the proposed regulation will have any cost impact on any party as Part 363 of 11 NYCRR already sets forth the risk adjustment program and how it will function.

5. Local government mandates: This regulation would impose no new mandates on any county, city, town, village, school district, fire district or other special district.

6. Paperwork: The proposed regulation does not require any additional reporting requirements or paperwork. Part 363 of 11 NYCRR already sets forth the risk adjustment program and how it will function; this regulation merely establishes the fund necessary to operate that mechanism.

7. Duplication: This rule does not duplicate or conflict with any existing state or federal rules or other legal requirements.

8. Alternatives: There are no viable alternatives to this regulation. In order to implement the risk adjustment mechanism described in Insurance Law Section 4235(n) and established by 11 NYCRR 363.5, this regulation must be promulgated to create a fund to hold the risk adjustment pools required to receive the payments and make the disbursements — that are necessary functions of any risk adjustment mechanism — and called for by 11 NYCRR 363.5. The proposed regulation merely establishes the necessary fund.

9. Federal standards: There are no minimum standards of the federal government for the same or similar subject areas.

10. Compliance schedule: As Part 363 of 11 NYCRR already establishes the risk adjustment mechanism and how it will function, and this regulation merely establishes, without imposing any requirements on any party, the fund necessary to hold the risk adjustment pools required to receive the payments and make the disbursements called for by Insurance Law Section 4235(n), there should be no time needed to come into compliance with the regulation.

Regulatory Flexibility Analysis

The Department finds that the proposed regulation will not impose any adverse economic impact or reporting, recordkeeping or other compliance requirements on small businesses or local governments in New York State. The proposed regulation merely creates the fund required to implement the risk adjustment mechanism referred to in Insurance Law Section 4235(n) and established by Part 363 of 11 NYCRR. In fact, the rules related to how moneys shall transfer through the fund have already been promulgated in Part 363 of 11 NYCRR. Thus this regulation will not have any impact on small businesses or local governments.

Rural Area Flexibility Analysis

The Department finds that the proposed regulation will not impose any adverse impact on rural areas or reporting, recordkeeping or other compliance requirements on public or private entities in rural areas in New York State. The proposed regulation merely creates the fund required to implement the risk adjustment mechanism referred to in Insurance Law Section 4235(n) and established by Part 363 of 11 NYCRR. In fact, the rules related to how moneys shall transfer through the fund have already been promulgated in Part 363 of 11 NYCRR. Thus this regulation will not have any impact on public or private entities in rural areas.

Job Impact Statement
The Department finds that the proposed regulation will not have a substantial adverse impact on jobs and employment opportunities as apparent from its nature and purpose in New York State. The proposed regulation merely creates the fund required to implement the risk adjustment mechanism referred to in Insurance Law Section 4235(n) and established by Part 363 of 11 NYCRR. In fact,the rules related to how moneys shall transfer through the fund have already been promulgated in 11 NYCRR 363. Thus this regulation will not have any impact on jobs or employment opportunities.

Department of Health

NOTICE OF ADOPTION

Emergency Medical Services (EMS) Initial Certification Eligibility Requirements

I.D. No. HLT-04-18-00010-A
Filing No. 1204
Filing Date: 2018-12-24
Effective Date: 2019-01-09

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

Action taken: Amendment of sections 800.6 and 800.12 of Title 10 NYCRR.

Statutory authority: Public Health Law, section 3002

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

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

Text or summary was published in the January 24, 2018 issue of the Register, I.D. No. HLT-04-18-00010-P.

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

Revised rule making(s) were previously published in the State Register on October 17, 2018.

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

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

Assessment of Public Comment
The agency received no public comment.

NOTICE OF ADOPTION

Patients' Bill of Rights

I.D. No. HLT-33-18-00017-A
Filing No. 1188
Filing Date: 2018-12-18
Effective Date: 2019-01-09

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

Action taken: Amendment of sections 405.7 and 751.9 of Title 10 NYCRR.

Statutory authority: Public Health Law, section 2803

Subject: Patients' Bill of Rights.

Purpose: Require general hospitals and diagnostic and treatment centers to update their statements of patient rights.

Text of final rule: Paragraph (2) of subdivision (b) of section 405.7 of Title 10 is amended to read as follows:

(2) treatment without discrimination as to race, color, religion, sex, *gender identity,* national origin, disability, sexual orientation, age, or source of payment;

Subdivision (c) of section 405.7 of Title 10 is amended to read as follows:

(c) Patients' Bill of Rights. For purposes of subdivision (a) of this section, the hospital shall utilize the following Patients' Bill of Rights:

Patients' Bill of Rights

As a patient in a hospital in New York State, you have the right, consistent with law, to:

(1) Understand and use these rights. If for any reason you do not understand or you need help, the hospital must provide assistance, including an interpreter.

(2) Receive treatment without discrimination as to race, color, religion, sex, *gender identity,* national origin, disability, sexual orientation, age, or source of payment.

(3) Receive considerate and respectful care in a clean and safe environment free of unnecessary restraints.

(4) Receive emergency care if you need it.

(5) Be informed of the name and position of the doctor who will be in charge of your care in the hospital.

(6) Know the names, positions, and functions of any hospital staff involved in your care and refuse their treatment, examination or observation.

(7) [A no smoking room.] *Identify a caregiver who will be included in your discharge planning and sharing of post-discharge care information or instruction.*

(8) Receive complete information about your diagnosis, treatment and prognosis.

(9) Receive all the information that you need to give informed consent for any proposed procedure or treatment. This information shall include the possible risks and benefits of the procedure or treatment.

(10) Receive all the information you need to give informed consent for an order not to resuscitate. You also have the right to designate an individual to give this consent for you if you are too ill to do so. If you would like additional information, please ask for a copy of the pamphlet ''Do Not Resuscitate Orders - A Guide for Patients and Families.''

(11) Refuse treatment and be told what effect this may have on your health.

(12) Refuse to take part in research. In deciding whether or not to participate, you have the right to a full explanation.

(13) Privacy while in the hospital and confidentiality of all information and records regarding your care.

(14) Participate in all decisions about your treatment and discharge from the hospital. The hospital must provide you with a written discharge plan and written description of how you can appeal your discharge.

(15) Review your medical record without charge and obtain a copy of your medical record for which the hospital can charge a reasonable fee. You cannot be denied a copy solely because you cannot afford to pay.

(16) Receive an itemized bill and explanation of all charges.

(17) View a list of the hospital's standard charges for items and services and the health plans the hospital participates with.

(18) Challenge an unexpected bill through the Independent Dispute Resolution process.

[(17)] *(19)* Complain without fear of reprisals about the care and services you are receiving and to have the hospital respond to you and if you request it, a written response. If you are not satisfied with the hospital's response, you can complain to the New York State Health Department. The hospital must provide you with the Health Department telephone number.

[(18)] *(20)* Authorize those family members and other adults who will be given priority to visit consistent with your ability to receive visitors.

[(19)] *(21)* Make known your wishes in regard to anatomical gifts. [You] *Persons sixteen years of age or older* may document [your wishes in your] *their consent to donate their organs, eyes and/or tissues, upon their death, by enrolling in the NYS Donate Life Registry or by documenting their authorization for organ and/or tissue donation in writing in a number of ways (such as health care proxy, will, donor card, or other signed paper). The* health care proxy [or on a donor card,] *is* available from the hospital.

Subdivision (a) of section 751.9 is amended to read as follows:

(a) receive service(s) without regard to age, race, color, sexual orientation, religion, marital status, sex, *gender identity,* national origin or sponsor;

Subdivision (q) of section 751.9 is amended to read as follows:

(q) *when applicable,* make known your wishes in regard to anatomical gifts. [You] *Persons sixteen years of age or older* may document [your wishes in your] *their consent to donate their organs, eyes and/or tissues, upon their death, by enrolling in the NYS Donate Life Registry or by documenting their authorization for organ and/or tissue donation in writing in a number of ways (such as health care proxy, will, donor card, or other signed paper). The* health care proxy [or on a donor card] *is* available from the center.

Final rule as compared with last published rule: Nonsubstantive changes were made in sections 405.7(c) and 751.9(q).

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

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

Initial Review of Rule

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

Assessment of Public Comment

Comment: The Chairs of the New York State Assembly Committees on Health and on Administrative Regulations commented that a provision in the Patients' Bill of Rights that states that a patient has right to a "no smoking room" is obsolete. Smoking is now prohibited within hospitals, on hospital grounds, and within 15 feet of the entrance to or exit from the hospital or hospital grounds.

Response: The Department agrees that the provision is obsolete and has removed it. The paragraph has been repurposed to accommodate one of the new provisions that was proposed.

Comment: The New York City Department of Health and Mental Hygiene noted that the provision in the Patients' Bill of Rights relating to diagnostic and treatment centers, stating that a patient has a right to make their wishes known regarding anatomical gifts, is overbroad because patients at many such clinics have no reason to make an anatomical gift, based on the services provided at the clinic.

Response: The phrase "when applicable" has been added to the provision to add clarity.

State Liquor Authority

PROPOSED RULE MAKING HEARING(S) SCHEDULED

Delinquent (C.O.D.) List Procedures

I.D. No. LQR-02-19-00006-P

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

Proposed Action: Amendment of Part 68; repeal of sections 68.3, 68.8 and 68.10 of Title 9 NYCRR.

Statutory authority: Alcoholic Beverage Control Law, sections 101-aa, 101-aaa; State Administrative Procedure Act, section 201

Subject: Delinquent (C.O.D.) list procedures.

Purpose: To modernize outdated delinquent (C.O.D.) list procedures and provide for electronic notification for same.

Public hearing(s) will be held at: 10:00 a.m., April 17, 2019 at State Liquor Authority, 317 Lenox Ave., New York, NY.

Interpreter Service: Interpreter services will be made available to hearing impaired persons, at no charge, upon written request submitted within reasonable time prior to the scheduled public hearing. The written request must be addressed to the agency representative designated in the paragraph below.

Accessibility: All public hearings have been scheduled at places reasonably accessible to persons with a mobility impairment.

Text of proposed rule: § 68.2 [Grouping of licensees] *Alcoholic beverage delivery invoices required*

[(a) Except for chains, that may be assigned to a single group by the Authority, and off-premises liquor and/or wine store licensees, all retail licensees shall be divided into four credit groups based on the last two digits of the serial (license) number. These groupings are as follows:

Group 1--01-25
Group 3--51-75
Group 2--26-50
Group 4--76-00

(b) Chain grocery stores and other retail chain licensees shall be divided into four groups by the Liquor Authority as nearly equal as practicable. In addition, any retail licensee may be assigned to a group different from that which his serial number indicates where, in the judgment of the Authority, such assignment is warranted.]

(a) For purposes of calculating credit periods in compliance with Alcoholic Beverage Control Law Sections 101-aa and 101-aaa and this Part, each sale or delivery of alcoholic beverages to a retail licensee must be accompanied by a true and accurate invoice featuring: a unique invoice number; the delivery date; the seller's name and business address; the brand names and quantities of alcoholic beverages delivered on that date; the price of each individual item, the subtotal of all items delivered on that date, and the total amount due from the retailer arising from the entire invoice; the name, address, and license number of the retailer to whom the delivery is made; as well as a true, accurate, and complete statement of the terms and conditions upon which the delivery is made. In addition, each such invoice must feature the delivery address if different than the retailer's business address. A duplicate original of each delivery invoice must be maintained by each manufacturer and wholesaler for a minimum period of two years from the date of delivery of the alcoholic beverages.

(b) The delivery date reflected on each invoice as required by subpart (a) above shall be the date utilized for purposes of calculating credit periods in compliance with Alcoholic Beverage Control Law Sections 101-aa and 101-aaa and these rules. Any retailer that is delinquent in payment for any such invoice must be placed on the delinquent (C.O.D.) list by the manufacturer or wholesaler via the Online Delinquent Management System and in accordance with Alcoholic Beverage Control Law Sections 101-aa and 101-aaa and these rules.

(c) If goods are sold by a wholesaler to a retailer via the "bill and hold" method of operation whereby the wholesaler acts as a warehouse for a portion of the purchased product that is not physically delivered to the retailer's licensed premises or a licensed warehouse on behalf of the retailer all at once at the initial delivery, the wholesaler must issue to the retailer a warehouse receipt in accordance with Part 64 of these rules, and the date that the wholesaler accepts the order from the retailer shall be considered the date of delivery utilized for purposes of calculating credit periods and compliance with Alcoholic Beverage Control Law Sections 101-aa and 101-aaa and these rules.

§ 68.4 [Monthly statements to retailers] *Electronic mail notification option*

[On or before the Friday following the last day of a credit period of retail licensees, other than off-premises liquor and/or wine licensees, each manufacturer or wholesaler shall forward to such licensee, who is indebted to the manufacturer or wholesaler for purchases of alcoholic beverages during the preceding credit period, a statement in writing showing the amount owed on the last day of the credit period by such retailer to the manufacturer or wholesaler. Each such statement shall indicate thereon the prescribed final payment date. A record of the statement which was mailed to the retailer and was not paid on or before the final payment date shall be retained in the records of the manufacturer or wholesaler for a period of at least one year thereafter as evidence of compliance with this section.]

Each manufacturer or wholesaler that sells alcoholic beverages to retail licensees may allow any retail licensee to opt to receive notices and information via electronic mail including, but not limited to, delinquent (C.O.D.) list notifications. Any manufacturer or wholesaler who opts to allow retailers to receive electronic mail notifications shall for each retailer that opts to receive email notifications:

a) On or before the Final Payment Date, email the retailer a list of all invoices which are due on the Final Payment Date and remain unpaid (hereinafter the "First Notice") along with a statement setting forth the Notification Date and a statement that the retailer will be placed on the Delinquent List via the Authority's Online Delinquent Management System if payment of all outstanding invoice balances due for alcoholic beverage purchases and/or delivery charges arising therefrom has not been received by the Notification Date; and

b) In the event any amount due for alcoholic beverage purchases and/or delivery charges arising therefrom on each invoice included in the First Notice has not been paid in full, on the Notification Date report the retailer as delinquent via the Authority's Online Delinquent Management System and send a copy of the First Notice via electronic mail to the retail licensee; and

c) Maintain records of all email notifications sent to retailers for a period of two years.

§ 68.6 Purchases by retailers in default

Subsequent to [the receipt of a notice of default from any wholesaler] *having been reported as delinquent by a manufacturer or wholesaler via the Authority's Online Delinquent Management System,* no retail licensee shall purchase or accept any delivery of alcoholic beverages except for cash until such time as he *or she* has received a release in writing from the [Liquor] Authority or his *or her* name is removed from the delinquent list. No wholesaler or manufacturer shall make any sale or delivery, except for cash, to any retailer whose name is on the delinquent list unless the retailer evidences a release in writing from the [Liquor] Authority.

§ 68.7 Notification to Liquor Authority

(a) On [or before] the respective notification dates each *manufacturer or* wholesaler shall file with the [appropriate zone office of the] Authority [whichever of the following is appropriate:

(1) A copy of each notice of default forwarded to retail licensees, together with a list of delinquent retailers.

(2) In the event no retail licensees are in default, a statement in writing to that effect.]

via the Authority's Online Delinquent Management System at a website address and in a manner as directed by the Authority, the name and serial number of each delinquent retail licensee as well as the delivery date of the unpaid invoice and the amount owed thereon. Such electronic delinquent (C.O.D.) list posting shall serve as a substitute for the first class mailing requirements for Notices of Default as set forth in Alcoholic Beverage Control Law § 101-aa(3).

(b) Where a check drawn on the account of a retail licensee on the delinquent list is tendered to a manufacturer or wholesaler as "cash payment" and such check is not honored upon presentment to the bank for payment, said manufacturer or wholesaler shall submit a report in writing concerning the same [to the appropriate zone office of the Authority] *on a form and in a manner as directed by the Authority.*[, together with a copy of the notice of default sent to the retail licensee]. Such report shall be submitted within three business days after the manufacturer or wholesaler has received notice that the check was not honored when presented to the bank for payment and should be accompanied by a [Photostat] *copy* of both sides of the check.

(c) In any instance where a delinquent retailer makes a payment *in full of the entire amount due and payable on an invoice for alcoholic beverages and/or delivery charges arising therefrom*, [an appropriate notice of payment shall be forwarded to the retailer and to the Liquor Authority by] the *manufacturer or* wholesaler receiving such payment *shall log onto the Authority's Online Delinquent Management System and remove the retailer from the delinquent (C.O.D.) list*. [Such notices] *Said action* shall be [forwarded immediately] *taken by the manufacturer or wholesaler during the same business day that such payment is received* if the payment is made by cash, certified check, bank officer's check, draft or money order. Where payment is made by ordinary check, [the forwarding of the notice of payment] *the manufacturer or wholesaler* shall [be] defer[red] *removal of the retailer from the delinquent (C.O.D.) list* until such check has cleared the bank.

§ 68.9 Delinquent list[s]

[A separate delinquent list shall be published covering each of the four groups of retail licensees and the Liquor Authority shall mail a copy thereof to each manufacturer and wholesaler. Additional copies will be supplied to manufacturers or wholesalers requesting them at 50 cents per copy. The delinquent list for off-premises liquor and/or wine licensees shall be published together with the delinquent list for Group 1.]

The Authority shall publish the delinquent (C.O.D.) list online via the Online Delinquent Management System and shall make same available to licensed manufacturers, wholesalers and retailers. Any appearance of a retail licensee on the delinquent (C.O.D.) list shall constitute notice to all manufacturers and wholesalers of that retailer's delinquent status.

§ 68.11 Sale of business

Unless otherwise prescribed by the [Liquor] Authority where, in connection with a transfer or sale of a licensed business, the Authority issues a license to the purchaser, who assumes the debts of a seller who is on the delinquent list, the purchaser shall not purchase alcoholic beverages except for cash and his name shall be published on the delinquent list. [The purchaser shall be assigned to a group as set forth in section 68.2 above.]

§ 68.12 Releases from the delinquent list

The Authority may grant a release from the delinquent *(C.O.D.)* list to any retail licensee who has received a notice of default or is named on [any] *the* delinquent *(C.O.D.)* list [when notices of payment have been filed with the Authority by the manufacturers and wholesalers involved, or] on good cause shown to it and after investigation of the facts. [Such release shall permit the sale and delivery of alcoholic beverages on terms other than for cash prior to the publication of the next appropriate delinquent list.]

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

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

Public comment will be received until: Five days after the last scheduled public hearing.

Regulatory Impact Statement

Statutory authority:

These proposed regulations concerning the terms of sales of alcoholic beverages are issued pursuant to Alcoholic Beverage Control Law ("ABCL") §§ 101-aa and 101-aaa and are being issued by the State Liquor Authority ("Authority") and would appear as amended Parts 68.2, 68.4, 68.6, 68.7, 68.9, 68.11, and 68.12 and would also repeal Parts 68.3, 68.8 and 68.10 of Title 9, Subtitle B, of the New York Codes, Rules and Regulations (N.Y.C.R.R.).

These regulations are issued pursuant to the following:

ABCL § 101-aa, which authorizes the Authority to promulgate rules and regulations governing the terms of sales of alcoholic beverages bottled, packaged, sold, or possessed for sale within the state;

ABCL § 101-aaa, which authorizes the Authority to require manufacturers and wholesalers of beer, cider and wine products to file with the Authority a list of all retailers delinquent in payment for purchases of alcoholic beverages;

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

Legislative objectives:

Changing the public policy underpinnings of the ABCL to be more business friendly where possible was recommended by the New York State Law Revision Commission in their 2009 Report on the Alcoholic Beverage Control Law and its Administration, which included recommendations of "supporting economic growth, job development, and the state's alcoholic beverage production industries and its tourism and recreation industry…provided that such activities do not conflict with the primary regulatory objectives of promoting the health, welfare and safety of the people of the state, and promoting temperance in the consumption of alcoholic beverages." In that effort, and in order to codify by rule certain changes put into effect via an industry advisory several years ago (Advisory #2011-1 in compliance with bulletins #166, 338, and 339, as well as Divisional Order #719), the Authority hereby seeks to update its delinquent (C.O.D.) list rules to make them easier to understand and abide by for industry members and regulators alike. These regulatory proposals would thus help the Authority promote the health, welfare and safety of the people of New York by: making it clear that individual alcoholic beverage purchase invoices from manufacturers and wholesalers to retailers must be used to calculate credit periods for retailer payments and monitor compliance therewith in accordance with ABCL §§ 101-aa and 101-aaa; making it clear that manufacturers and wholesalers must use the Authority's Online Delinquent Management System for reporting delinquent retailers; making it clear that any manufacturer or wholesaler that sells alcoholic beverages to retail licensees may allow retail licensees to optionally receive delinquent payment notices and other information via electronic mail; and requiring wholesalers to maintain records by which the Authority can track compliance for a period of two years.

Needs and benefits:

These regulatory proposals will help modernize administration of the ABCL, and promote the health, welfare, and safety of the people of New York by: making it clear that individual alcoholic beverage purchase invoices from manufacturers and wholesalers to retailers must be used to calculate credit periods for retailer payments and monitor compliance therewith in accordance with the statutory requirements set forth in ABCL §§ 101-aa and 101-aaa; making it clear that manufacturers and wholesalers must use the Authority's Online Delinquent Management System for reporting delinquent retailers; making it clear that any manufacturer or wholesaler that sells alcoholic beverages to retail licensees may allow retail licensees to optionally receive delinquent payment notices and other information via electronic mail; and requiring wholesalers to maintain records by which the Authority can track compliance for a period of two years.

Costs:

There will be no increased costs to local municipal governments as a result of these proposals, as local municipalities play no role in regulating the delinquent (C.O.D.) lists. Additionally, there will be no increased costs to industry members or to the Authority as a result of these proposals since all parties are already utilizing the delinquent (C.O.D.) list processes set forth in these proposals by virtue of same having been implemented administratively by the Members of the Authority via establishment of the Online Delinquent Management System as well as via SLA Advisory #2011-1 which first codified email delinquency notification procedures. Due to the above, there will be no added costs to the Authority, to local governments or industry members as a result of the implementation of the proposed rule amendments.

Local government mandates:

None. Local governments play no role in maintaining the delinquent (C.O.D) list of alcoholic beverage retailers.

Paperwork:

The proposed rule amendments impose no new paperwork requirements on industry members or Authority staff since all parties are already utilizing the delinquent (C.O.D.) list processes set forth in these proposals by virtue of same having been implemented administratively by the Members of the Authority via establishment of the Online Delinquent Management

System as well as via SLA Advisory #2011-1 which first codified email delinquency notification procedures.

Duplication:

The Tobacco, Tax and Trade Bureau of the United States Department of the Treasury states that wholesale dealers may file their records of receipt and disposition in accordance with the wholesaler's regular accounting and recordkeeping systems. The Authority requires that these records be kept in accordance with the Authority's rules and regulations including what specific information must be included on manufacturer and wholesaler invoices to licensee retailers. There is, however, no federal equivalent of the delinquent (C.O.D.) list or the Online Delinquent Management System.

Alternatives/Federal standards:

The Authority is required by operation of ABCL §§ 101-aa and 101-aaa, for maintaining the delinquent (C.O.D.) list. The modernized Online Delinquent Management System and the email notification procedures first set forth in SLA Advisory #2011-1 are hereby proposed as modern e-commerce alternatives to the archaic publication and delivery of hardcopy delinquent lists to all manufacturers and wholesalers as required by operation of ABCL §§ 101-aa and 101-aaa.

Compliance schedule:

The period of time the industry will require to enable compliance is likely to be negligible as the industry has already been utilizing both the Online Delinquent Management System as well as the email delinquency notification procedures set forth in SLA Advisory 2011-1 virtually without incident for several years. As a result there are no actual policy changes being introduced via these rule proposals and the Authority expects to be compliant immediately upon adoption.

Regulatory Flexibility Analysis

The proposed amendments to Parts 68.2, 68.4, 68.6, 68.7, 68.9, 68.11, and 68.12 as well as the repeal of Parts 68.3, 68.8 and 68.10 of Title 9, Subtitle B, of the New York Codes, Rules and Regulations (N.Y.C.R.R.) would make it clear that individual alcoholic beverage purchase invoices from manufacturers and wholesalers to retailers must be used to calculate credit periods for retailer payments and monitor compliance therewith in accordance with ABCL §§ 101-aa and 101-aaa; make it clear that manufacturers and wholesalers must use the Authority's Online Delinquent Management System for reporting delinquent retailers; make it clear that any manufacturer or wholesaler that sells alcoholic beverages to retail licensees may allow retail licensees to optionally receive delinquent payment notices and other information via electronic mail; and require wholesalers to maintain records by which the Authority can track compliance for a period of two years. Since the entire industry has been operating in this manner since 2011 when the Authority adopted Advisory #2011-1, the amendments, by their very nature, would not impose an adverse economic impact on small businesses or local governments, and would not impose reporting, record keeping or other compliance requirements on small businesses or local governments. Because it is evident from the nature of the proposed amendments that they will have no adverse impact on small businesses or local governments, no further steps were needed to ascertain those facts and none were taken by the Authority. Accordingly, a full regulatory flexibility analysis for small businesses and local governments is not required for any of the proposed amendments and none has been prepared.

Rural Area Flexibility Analysis

The proposed amendments to Parts 68.2, 68.4, 68.6, 68.7, 68.9, 68.11, and 68.12 as well as the repeal of Parts 68.3, 68.8 and 68.10 of Title 9, Subtitle B, of the New York Codes, Rules and Regulations (N.Y.C.R.R.) would make it clear that individual alcoholic beverage purchase invoices from manufacturers and wholesalers to retailers must be used to calculate credit periods for retailer payments and monitor compliance therewith in accordance with ABCL §§ 101-aa and 101-aaa; make it clear that manufacturers and wholesalers must use the Authority's Online Delinquent Management System for reporting delinquent retailers; make it clear that any manufacturer or wholesaler that sells alcoholic beverages to retail licensees may allow retail licensees to optionally receive delinquent payment notices and other information via electronic mail; and require wholesalers to maintain records by which the Authority can track compliance for a period of two years. Since the entire industry has been operating in this manner since 2011 when the Authority adopted Advisory #2011-1, the amendments, by their very nature, would not impose an adverse impact on facilities in rural areas, and would not impose reporting, record keeping or other compliance requirements on facilities in rural areas. Because it is evident from the nature of the proposed amendments that they will have no adverse impact on rural areas, no further steps were needed to ascertain those facts and none were taken by the Authority. Accordingly, a full rural area flexibility analysis is not required for any of the proposed amendments and none has been prepared.

Job Impact Statement

The proposed amendments to Parts 68.2, 68.4, 68.6, 68.7, 68.9, 68.11, and 68.12 as well as the repeal of Parts 68.3, 68.8 and 68.10 of Title 9, Subtitle B, of the New York Codes, Rules and Regulations (N.Y.C.R.R.) would make it clear that individual alcoholic beverage purchase invoices from manufacturers and wholesalers to retailers must be used to calculate credit periods for retailer payments and monitor compliance therewith in accordance with ABCL §§ 101-aa and 101-aaa; make it clear that manufacturers and wholesalers must use the Authority's Online Delinquent Management System for reporting delinquent retailers; make it clear that any manufacturer or wholesaler that sells alcoholic beverages to retail licensees may allow retail licensees to optionally receive delinquent payment notices and other information via electronic mail; and require wholesalers to maintain records by which the Authority can track compliance for a period of two years. As a result, the proposed amendments will not have an adverse impact on jobs or employment opportunities. Because it is evident from the nature of the proposed amendments that they will have no impact on jobs or employment opportunities, no further steps were needed to ascertain those facts and none were taken by the Authority. Accordingly, a job impact statement is not required for any of the proposed amendments and none has been prepared.

Public Service Commission

NOTICE OF ADOPTION

Submetering of Electricity

I.D. No. PSC-28-18-00013-A

Filing Date: 2018-12-19

Effective Date: 2018-12-19

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

Action taken: On 12/13/18, the PSC adopted an order approving Woolworth 100 Owner LLC's (Woolworth 100) notice of intent to submeter electricity at 2 Park Place, New York, New York.

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

Subject: Submetering of electricity.

Purpose: To approve Woolworth 100's notice of intent to submeter electricity.

Substance of final rule: The Commission, on December 13, 2018, adopted an order approving Woolworth 100 Owner LLC's notice of intent to submeter electricity at 2 Park Place, New York, New York, located in the service territory of Consolidated Edison Company of New York, Inc., subject to the terms and conditions set forth in the order.

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

Text of rule may be obtained from: John Pitucci, Public Service Commission, 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-0328SA1)

NOTICE OF ADOPTION

Submetering of Electricity

I.D. No. PSC-34-18-00010-A

Filing Date: 2018-12-19

Effective Date: 2018-12-19

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

Action taken: On 12/13/18, the PSC adopted an order approving Tower 195 LLC's (Tower 195) notice of intent to submeter electricity at One South Clinton Avenue, Rochester, New York.

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

Subject: Submetering of electricity.

Purpose: To approve Tower 195's notice of intent to submeter electricity.

Substance of final rule: The Commission, on December 13, 2018, adopted an order approving Tower 195 LLC's notice of intent to submeter electricity at 1 South Clinton Avenue, Rochester, New York, located in the service territory of Rochester Gas and Electric Corporation, subject to the terms and conditions set forth in the order.

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

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

Assessment of Public Comment

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

(18-E-0258SA1)

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

2018 Electric Emergency Response Plans for Electric Utilities

I.D. No. PSC-02-19-00009-P

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

Proposed Action: The Commission is considering the 2018 Electric Emergency Response Plans filed by six combination electric utilities in December 2018.

Statutory authority: Public Service Law, sections 5(1)(b), 66(21)(a) and (b)

Subject: 2018 Electric Emergency Response Plans for electric utilities.

Purpose: To consider the adequacy of the 2018 Electric Emergency Response Plans.

Substance of proposed rule: The Public Service Commission (Commission) is considering the 2018 Electric Emergency Response Plans filed by Central Hudson Gas and Electric Corporation, Consolidated Edison Company of New York, Inc., New York State Electric and Gas Corporation, Niagara Mohawk Power Corporation d/b/a National Grid, Orange and Rockland Utilities, Inc. and Rochester Gas and Electric Corporation.

Section 66(21) of the Public Service Law (PSL) requires each electric utility subject to the provisions of PSL 25-a to file its emergency plan on or before December 15th of each year for Commission review and approval. PSL § 66(21)(a) and 16 NYCRR Part 105 specify the content and information that electric utilities must include in their respective emergency plans. The emergency plans must identify personnel responsible for managing company operations during an emergency and communicating with customers, government agencies, and the media. The emergency plans must also provide for additional communication to customers who use life support equipment (LSE customers) and customers that provide critical services. Emergency plans must also include procedures to deploy company and mutual assistance crews to work assignment areas, identify and obtain additional supplies and equipment during an emergency event, identify appropriate safety precautions to promptly respond to electrical hazards and downed wires, and to drill, or practice, the use of the emergency response plans.

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

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

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

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

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

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

(18-E-0717SP1)

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Transfer of Street Lighting Facilities to the Village of Newark

I.D. No. PSC-02-19-00010-P

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

Proposed Action: The Commission is considering a petition filed by New York State Electric & Gas Corporation for the transfer of its Street Lighting Facilities located in the Village of Newark with an original value over $100,000 to the Village of Newark.

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

Subject: Transfer of street lighting facilities to the Village of Newark.

Purpose: To consider whether the transfer of certain street lighting facilities to the Village of Newark is in the public interest.

Substance of proposed rule: The Public Service Commission (Commission) is considering a petition filed by New York State Electric & Gas Corporation (NYSEG or the Company) on December 6, 2018, requesting approval to transfer ownership of its system of street lighting poles, luminaires, lamps, mast arms, electrical connections, and wiring for street lighting installed through the Village of Newark (Village) limits to the Village.

Based on plant records, NYSEG represents that the original book cost of the facilities is approximately $326,425 and that the net book value, as of April 30, 2018, is $68,335. The Company proposes to transfer the street lighting facilities to the Village for $146,157. Upon the closing date of the sale, the Village will become solely responsible and liable for the operation, maintenance, and condition of the street lighting facilities.

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

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

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

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

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

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

(18-E-0737SP1)

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Notice of Intent to Submeter Electricity

I.D. No. PSC-02-19-00011-P

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

Proposed Action: The Commission is considering the notice of intent of Victor Nomad LLC to submeter electricity at 227 Fifth Avenue, New York, New York.

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

Subject: Notice of intent to submeter electricity.

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

Substance of proposed rule: The Commission is considering the notice of intent filed by Victor Nomad LLC on December 13, 2018, to submeter electricity at 277 Fifth Avenue, New York, New York, located in the service territory of Consolidated Edison Company of New York, Inc. (Con Edison).

By stating its intent to submeter electricity, Victor Nomad LLC requests authorization to take electric service from Con Edison and then distribute and meter that electricity to its residents. Submetering of electricity to residential residents is allowed so long as it complies with the protections and requirements of the Commission's regulations in 16 NYCRR Part 96.

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

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

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

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

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

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

(18-E-0763SP1)

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Unspent Settlement Funds to be Used for Future Gas Safety Programs

I.D. No. PSC-02-19-00012-P

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

Proposed Action: The Commission is considering a petition filed by National Fuel Gas Distribution Corporation to utilize remaining settlement funds from the Joint Proposal Regarding Negative Revenue Adjustments and Modifying Joint Proposal.

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

Subject: Unspent settlement funds to be used for future gas safety programs.

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

Substance of proposed rule: The Commission is considering a petition filed by National Fuel Gas Distribution Corporation (National Fuel or the Company), on December 10, 2018, to utilize approximately $400,000 in remaining settlement funds from the Joint Proposal Regarding Negative Revenue Adjustments and Modifying Joint Proposal (NRA Joint Proposal) to advance public safety and gas system integrity.

The NRA Joint Proposal was subsequently adopted by the Commission by a May 17, 2018 Order Resolving Disputes Regarding Gas Safety Performance Mechanism and Approving Uses of Funds.

National Fuel proposes to use the remaining settlement funds in two ways:

(1) to equip and train first responders in connection with natural gas emergencies, which includes the purchase of devices to detect the presence of gas accumulating in buildings and blowers to vent buildings; and, (2) install additional over-pressure protection monitoring and control equipment to exceed the already met regulatory requirements to further reduce the possibility of over-pressurization of the Company's low-pressure system. This includes installation of full-capacity relief valves, the elimination or protection from damage of underground sensing lines, and telemetric pressure sensors to quickly identify malfunctioning pressure regulating equipment and over pressure events. The Company asserts that the proposed use of the remaining settlement funds is consistent with the terms of the NRA Joint Proposal to reserve all remaining funds for future gas safety programs.

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

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

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

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

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

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

(13-G-0136SP8)

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Capacity Release Program

I.D. No. PSC-02-19-00013-P

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

Proposed Action: The Commission is considering a proposal filed by Niagara Mohawk Power Corporation d/b/a National Grid to modify its gas tariff schedule, P.S.C. No. 219, regarding its Capacity Release Program under Service Classification (SC) No. 11 — Load Aggregation.

Statutory authority: Public Service Law, sections 65 and 66

Subject: Capacity Release Program.

Purpose: To ensure safe and reliable service for customers at just and reasonable rates.

Substance of proposed rule: The Commission is considering a proposal filed by Niagara Mohawk Power Corporation d/b/a National Grid (National Grid or the Company) on December 6, 2018, to amend its gas tariff schedule, P.S.C. No. 219.

The Company proposes to modify its Capacity Release Program adopted by the Commission in its Order Adopting the Terms of Joint Proposal and Establishing Electric and Rate Plans, issued March 15, 2018, in Cases 17-E-0238 and 17-G-0239. National Grid proposes to further amend its Capacity Release Program under Service Classification (SC) No. 11 – Load Aggregation to: (1) modify the definition "Gas Supply Service" to "General Storage Service" to read DTI's [Dominion Energy Transmission, Inc.] rate schedule governing the storage of gas; (2) remove the reference to DTI under Limitation of Availability referencing how the Company will assign capacity; (3) add a description of the minimum delivery requirements for its Capacity Release Program which includes a proposal for a penalty charge due to non-compliance; (4) modify Allocation of Upstream Capacity to state that marketers must accept all capacity release or assignments; (5) modify the description of Release of Capacity to state that all releases will occur in each month of the year and will be subject to recall, and that DTI, Tennessee Gas Pipeline, Iroquois Gas Transmission System, Union and TransCanada capacity will be allocated to monthly balancing service customers equal to percentages of their Maximum Peak Day Quantity, provided the customer has a positive thermal response; (6) modify the description for Release of Storage Transportation to state that the amount of Firm Transportation No Notice Gas Storage Service transportation capacity to be released on behalf of a given customer will equal the percentage set forth on the Statement of Balancing Charges, updated each November 1, multiplied by their Maximum Peak Day Quantity provided the customer has a positive thermal response; (7) modify Storage Transfer for Customers to state that if the storage capacity release percentage set forth on the Statement of Balancing Charges increases from October to November, the rules will also apply to incremental storage capacity released; (8) state under Calculation of the Demand Transfer Recovery Rate that all demand changes will be included in the calculation; (9) state under Customers Returning to Sales Services that if the storage capacity release percentage set forth on the Statement of Balancing Charges decrease from October to November, these rules will also apply to the amount of storage capacity returned to the Company; (10) include references and a description of minimum delivery requirements along with penalty charges for non-compliance for other pipelines in the Company's portfolio, specifically, the Tennessee Gas Pipeline and

Iroquois Gas Transmission System; and (11) establish a new Statement of Demand Transfer Recovery Rate applicable to SC No. 11 – Load Aggregation. The proposed amendments have an effective date of May 1, 2019.

The full text of the proposal 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-G-0738SP1)

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Petition for Use of Electric Metering Equipment

I.D. No. PSC-02-19-00014-P

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

Proposed Action: The Commission is considering a petition filed by Itron Inc. for use of the Itron OpenWay Riva CENTRON C2SRD and CN2SRD Version 4.1 meters in electric metering applications.

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

Subject: Petition for use of electric metering equipment.

Purpose: To ensure that consumer bills are based on accurate measurements of electric usage.

Substance of proposed rule: The Public Service Commission is considering a petition filed by Itron Inc., on November 23, 2018, seeking approval for use of the Itron OpenWay Riva CENTRON models C2SRD and CN2SRD Version 4.1 electric meters.

New York State Electric & Gas Corporation states its intent to use these meters upon approval, in electric metering applications. New types of electric meters and accessories must be approved by the Commission in accordance with the Commission's regulations at 16 NYCRR Part 92.

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

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

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

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

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

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

(18-E-0724SP1)

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Limited Waiver of Remote Net Metering Rule

I.D. No. PSC-02-19-00015-P

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

Proposed Action: The Commission is considering a petition filed by National Grid seeking a limited waiver from the remote net metering requirement that the generator meter and the consumption meter are in the same load zone.

Statutory authority: Public Service Law, sections 5(1)(b), (2), 65(1), (2), (3), 66(2), (5) and 66-j

Subject: Limited waiver of remote net metering rule.

Purpose: To address issues related to certain developers/customers with two sites in different load zones.

Substance of proposed rule: The Public Service Commission is considering a petition filed by Niagara Mohawk Power Corporation d/b/a National Grid on August 28, 2018, seeking a limited waiver of the restriction that prohibits excess net metering credits at the host account to be applied to satellite accounts located in a different load zone within National Grid's service territory for ten projects enumerated in the petition.

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

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

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

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

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

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

(11-E-0321SP3)

Office of Temporary and Disability Assistance

NOTICE OF ADOPTION

Reengagement/Conciliation and Sanction Procedures for Employment Programs

I.D. No. TDA-12-18-00004-A

Filing No. 1183

Filing Date: 2018-12-20

Effective Date: 2019-01-15

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

Action taken: Amendment of sections 385.11 and 385.13 of Title 18 NYCRR.

Statutory authority: 51 United States Code title 7, sections 2011, 2013, 2029 (generally), 42 United States Code, section 607; Social Services Law, art. 5, title 9-B, sections 17(a)-(b), (j), 20(3)(d), 95, 131, 337, 341, 341-a, 342 and 342-a; L. 2015, ch. 562; L. 2012, ch. 41

Subject: Reengagement/conciliation and sanction procedures for employment programs.

Purpose: To implement statutory changes relative to PA reengagement/conciliation and sanction procedures for PA recipients living in a city with

one million or more people and refusing or failing to comply with employment requirements assigned by the social services district; to establish a consistent standard for imposing a PA and SNAP employment sanction; to reduce the minimum durational SNAP sanction period for first- and second-level SNAP employment sanctions for SNAP applicants and recipients; and to implement changes to SNAP voluntary quit consistent with State and federal laws, regulations, and policies.

Text of final rule: The Office of Temporary and Disability Assistance (OTDA) amends to 18 NYCRR §§ 385.11-385.13 relative to the reengagement/conciliation and sanction procedures for noncompliance with public assistance and/or Supplemental Nutrition Assistance Program (SNAP) work requirements. The full text of the rule is posted at http://otda.ny.gov/legal/regulatory-activities.asp

§ 385.11 Conciliation.

• Amend subdivision (a) of § 385.11 to clarify that conciliation procedures and notice requirements in this subdivision apply to individuals not living in a city with a population of one million or more people.

• Paragraph (1) of subdivision (a) of § 385.11 is amended to: remove "non-exempt"; clarify that the provision also applies to individuals who are subject to, but refuse to comply with work requirements; and update references to assessment requirements described in 18 NYCRR §§ 385.6–385.7.

• Subparagraphs (ii)-(iii) of paragraph (2) of subdivision (a) of § 385.11 are re-numbered as subparagraphs (iii) and (vi), respectively; new subparagraphs (ii), (iv), and (v) are added describing information required in the conciliation notice issued to public assistance (PA) recipients residing outside of a city with a population of one million or more people and refusing or failing to comply with employment requirements assigned by social services district (district), including information regarding specific instance(s) of willful refusal or failure to comply without good cause, providing examples of good cause and acceptable forms of evidence and information regarding necessary actions to be taken to avoid a pro rata reduction in benefits. Renumbered subparagraph (vi) is amended clarifying that the timeframe for requesting conciliation is 10 calendar days from date of conciliation notice for all Family Assistance (FA) households and 7 calendar days from the date of the conciliation notice for Safety Net Assistance (SN) households, and updating the reference from "seven" calendar days to "7" calendar days.

• Subparagraphs (ii)-(iv) of paragraph (3) of subdivision (a) of § 385.11 are re-numbered identifying information required in the notice informing household of an employment sanction, including information identifying specific instances of willful refusal and failure to comply without good cause with work requirements and indicating necessary actions to avoid a pro rata reduction in PA benefits, consistent with Social Services Law (SSL) § 341.

• Paragraph (4) of subdivision (a) of § 385.11 is amended making clarifying revisions.

• Paragraph (5) of subdivision (a) of § 385.11 is amended clarifying that conciliation periods for SN and FA applicants/recipients are measured in calendar days and adding the word "assistance" to "safety net".

• Subdivisions (b)–(c) of § 385.11 are relettered as subdivisions (c)–(d) and new subdivision (b) is added outlining reengagement/conciliation procedures and notice requirements applying to PA recipients living in a city with a population of one million or more people consistent with SSL § 341-a.

§ 385.12 Failure to comply with the requirements of this Part.

• Subparagraph (i) of paragraph (1) of subdivision (a) of § 385.12 is amended replacing "disabled" with "incapacitated due to a physical and/or mental health condition", replacing "be restored to self-sufficiency" with "improve his/her ability to work", adding "suitable medical care … and/or treatment" consistent with SSL § 131, and adding "willfully and without good cause" to clarify the requirements for determining that a potentially employable applicant is ineligible for PA because he/she refuses or fails to comply with reasonable medical care, rehabilitation or treatment that a medical professional determined is necessary to improve the individual's ability to work.

• Subparagraph (ii) of paragraph (1) of subdivision (a) of § 385.12 is amended replacing "disabled" with "incapacitated due to a physical and/or mental health condition", replacing "be restored to self-sufficiency" with "improve his/her ability to work", adding "suitable medical care … and/or treatment" consistent with SSL § 131, and adding "willfully and without good cause refuses or fails to comply with the requirements for the potentially employable recipient pursuant to section 385.2 of this Part" to clarify the requirements for determining that a potentially employable recipient is ineligible for PA because he/she refuses or fails to comply with reasonable medical care, rehabilitation or treatment that a medical professional determined is necessary to improve the individual's ability to work.

• Paragraph (2) of subdivision (a) of § 385.12 is amended to update cross-references to § 385.11.

• Subparagraphs (i) and (ii) of paragraph (2) of subdivision (a) of § 385.12 are amended to clarify that noncompliance with applicant work requirements other than applicant assessment, applicant job search and applicant voluntary job quit are subject to a "willfully and without good cause" standard and clarifying that an individual living in a city with a population of one million or more people must not have reengaged in work requirements as assigned by the district for minimum of 5 business days, but not more than 10 business days, before issuing the sanction notice.

• Subparagraph (iii) of paragraph (2) of subdivision (a) of § 385.12 is amended to describe the information required in notice issued informing household of employment sanction.

• Paragraph (3) of subdivision (a) of § 385.12 is to clarify that individual is not subject to sanction if he/she had good cause for refusing employment.

• Paragraph (1) of subdivision (b) of § 385.12 is amended clarifying that applicant failing to comply with SNAP work requirement, other than an applicant voluntary quit or reduction in work effort, will be denied SNAP benefits.

• Paragraphs (2), (4), and (7) of subdivision (b) of § 385.12 are amended replacing "without good cause," with "willfully and without good cause."

• Paragraph (5) of subdivision (b) of § 385.12 is amended replacing "disqualification" with "denial" for clarification.

• Paragraph (6) of subdivision (b) of § 385.12 is amended clarifying reference to "sanctionable".

• Paragraph (7) of subdivision (b) of § 385.12 is amended clarifying that the provision applies to individuals determined exempt from SNAP work requirements.

• The title of subdivision (c) of § 385.12 is amended to include "refusal or".

• Paragraph (1) of subdivision (c) of § 385.12 is amended replacing "without good cause," with "willfully and without good cause" and clarifying that childcare is needed for participation in district-assigned work activities.

• Paragraph (2) of subdivision (c) of § 385.12 is renumbered as paragraph (3) and new paragraph (2) is added clarifying that finding of "willful and without good cause" for an individual living in a city with a population of one million or more people cannot be based on refusal or failure to comply with a single appointment or work requirement.

• Renumbered paragraph (3) of subdivision (c) of § 385.12 is amended adding "an alleged exemption from work requirements, pursuant to section 385.2 of this Part."

• Subdivision (d) of § 385.12 is amended replacing references to "without good cause" with "willfully and without good cause" and updating references to assessment requirements in § § 385.6–385.7. The subdivision is revised to add the word "who" for clarification.

• Paragraphs (1)–(3) of subdivision (d) of § 385.12 are amended differentiating sanction procedures for individuals living in a city with a population of one million or more people from those applicable to individuals not residing in a city with a population with one million or more people, and clarifying "willing to comply" relative to the number of business days required by the district, not to exceed 10 business days.

• Paragraph (4) of subdivision (d) of § 385.12 renumbered as paragraph (5) and a new paragraph (4) is added establishing that an individual who lives in a city with a population of one million or more people is subject to PA sanction until individual reengages in work activities for minimum of five business days, but no more than 10 business days, or cooperates with efforts to document exemption from work requirements.

• Renumbered paragraph (5) of subdivision (d) of § 385.12 is amended differentiating requirement to issue reminder notice to Safety Net Assistance households without dependent children who reside outside of a city with a population of one million or more people.

• New paragraph (6) of subdivision (d) of § 385.12 is added establishing requirement to issue reminder notice to PA households living in a city with a population of one million or more people and including individual who has been sanctioned for 30 or more days.

• Paragraph (1) of subdivision (e) of § 385.12 is amended clarifying that SNAP applicant who voluntarily quits employment or reduces work effort without good cause is subject to SNAP sanction.

• Paragraph (2) of subdivision (e) of § 385.12 is amended including "willfully and without good cause" standard and reducing minimum durational SNAP sanction periods for first- and second-level SNAP employment sanctions for non-compliance with SNAP requirements.

• Paragraph (3) of subdivision (e) of § 385.12 is revised to include a technical update to a cross-reference.

§ 385.13 Voluntary termination of employment and voluntary reduction of earning capacity (voluntary quit).

• Section 385.13 is amended replacing "Food Stamps" with "Supplemental Nutrition Assistance Program (SNAP)."

• Paragraph (1) of subdivision (b) of § 385.13 is amended clarifying voluntary quit or reduction in work effort provisions consistent with federal requirements.

• Paragraphs (2) and (3)–(13) are renumbered as paragraphs (4) and (7)–(17), respectively, and new paragraphs (2)–(3) and (5)–(6) are added to subdivision (b) of § 385.13.

• New paragraph (2) is added to subdivision (b) of § 385.13 identifying elements used to determine when reduction in work effort may be subject to SNAP sanction consistent with federal regulations.

• New paragraph (3) is added to subdivision (b) of § 385.13 clarifying that minor variations in an individual's work hours or weekly minimum wage equivalent wages must be considered when assessing recipient's compliance with work rules.

• New paragraph (5) is added to subdivision (b) of § 385.13 identifying timeframe used when determining whether voluntary quit or reduction in work effort without good cause by an applicant household is subject to SNAP sanction.

• New paragraph (6) is added to subdivision (b) of § 385.13 clarifying that loss or reduction in income after a SNAP household has applied for SNAP benefits must be evaluated to determine whether voluntary quit or reduction in work effort has occurred.

• Renumbered paragraph (7) of subdivision (b) of § 385.13 is amended clarifying that disqualification period begins on date of application for SNAP benefits and listing durational SNAP periods applying when SNAP applicant has been determined to have voluntarily quit a job or reduced work effort and is subject to SNAP sanction.

• Renumbered paragraph (8) of subdivision (b) of § 385.13 is amended removing "without good cause" and adding "willful and without good cause" to a recipient voluntary quit or "reduction in work effort" determination.

• Renumbered paragraph (9) of subdivision (b) of § 385.13 is amended making a technical correction.

• Renumbered paragraph (10) of subdivision (b) of § 385.13 is amended clarifying that persons who, at the time they terminated employment were exempt from SNAP employment requirements, are not subject to voluntary quit provisions.

• Clause (f) of subparagraph (i) of renumbered paragraph (14) of subdivision (b) of § 385.13 is amended updating standards used to determine a bona fide job offer for SNAP purposes.

• Clause (h) of subparagraph (i) of renumbered paragraph (14) of subdivision (b) of § 385.13 is amended updating cross-reference from paragraph "11" to paragraph "15" of the subdivision.

• Subparagraph (vi) of renumbered paragraph (16) of subdivision (b) of § 385.13 is amended deleting "have reached age 6 but".

• Clauses (a)–(b) of subparagraph (i) of renumbered paragraph (17) of subdivision (b) of § 385.13 are relettered as clauses (b)–(c), respectively, and new clause (a) is added clarifying that individual can end SNAP sanction following minimum durational sanction period by complying with employment requirements assigned by the district.

• Relettered clause (c) of subparagraph (i) of renumbered paragraph (17) of subdivision (b) of § 385.13 is amended replacing "work registration requirements" is replaced with "SNAP work requirements."

• Subparagraph (ii) of renumbered paragraph (17) of subdivision (b) of § 385.13 is amended clarifying that ending voluntary quit or reduction in hours of paid work disqualification includes individuals that become exempt from participation in work activities for any reason consistent with exemptions in § 385.3 of this Part.

• Clause (iii) of subparagraph (c) of renumbered paragraph (17) of subdivision (b) of § 385.13 is added clarifying that the district must use the same application filed in the final month of the sanction period for certification purposes in future months, if all other eligibility criteria are met.

Final rule as compared with last published rule: Nonsubstantive changes were made in sections 385.11(a)(2)(vi), (5), 385.12(d) and (e)(3).

Text of rule and any required statements and analyses may be obtained from: Richard P. Rhodes, Jr., NYS 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

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

A revised Regulatory Impact Statement, Regulatory Flexibility Analysis, Rural Area Flexibility Analysis and Job Impact Statement are not required for the regulatory amendments because nonsubstantive changes were made to 18 NYCRR §§ 385.11(a)(2)(vi), 385.11(a)(5), and 385.12(d) and (e)(3) that do not materially alter the purpose, meaning or effect of the regulatory amendments.

Initial Review of Rule

As a rule that requires a RFA, RAFA or JIS, this rule will be initially reviewed in the calendar year 2022, which is no later than the 3rd year after the year in which this rule is being adopted.

Assessment of Public Comment

The Office of Temporary and Disability Assistance (OTDA) received comments relative to the proposed regulatory amendments to 18 NYCRR §§ 385.11–385.13. These comments have been reviewed and duly considered in this Assessment of Public Comments.

Comments suggest that OTDA remove language providing for "a minimum of five business days" for reengagement in work activities/requirements from the proposed regulatory amendments to §§ 385.11(b)(2)(vi), 385.11(b)(4)(i)–(ii), 385.12(a)(2)(ii), 385.12(a)(iii)(f) and 385.12(d)(4). Comments assert that: (1) this language impermissibly conflicts with Chapter 562 of the Laws of 2015 and Social Services Law (SSL) § 341-a(5) and contravenes the legislative intent of this chapter law, namely, to encourage and promote reengagement among participants; (2) the proposed regulatory amendments would establish different time periods within which to demonstrate compliance with work requirements between New York City (NYC) and the rest of the State, and that the reasons for this difference are not adequately explained in OTDA's Regulatory Impact Statement; (3) the proposed regulatory amendments are unclear as to the date a participant's public assistance benefits would be restored upon resolution of a sanction through compliance with his/her assigned reengagement work activities; and (4) successful implementation of the proposed five-business day requirement would require significant systems changes that could not be achieved for several months.

OTDA Responses:

(1) OTDA disagrees with this comment. Pursuant to Social Services Law (SSL) § § 17(a)-(b) and (j) (Powers and duties of the commissioner), 20(3)(d) (Powers and duties of the department), 131 (5) (Assistance, care and services to be given), 341-a (Re-engagement; conciliation; refusal to participate) and 342-a (Noncompliance with the requirements of this title), OTDA is authorized to determine a demonstrated compliance period, and is best situated within such authority to define the meanings of "agreeing to comply" and "willing to comply" insofar as those phrases are not specifically defined in statute. With respect to SSL § 342, OTDA has already promulgated regulations requiring a form of demonstrated compliance at § 385.12 (d)(3) where it defined "willing to comply" as meaning that "an individual, as required by the district, reports to and participates in an assigned work activity site or other location … on time and prepared to engage in the assigned activity." Current OTDA policy permits social services districts (districts) to elect a demonstrated compliance period of up to 10 business days. This comment, therefore, appears to be more concerned not with the requirement that an individual "demonstrate compliance" by reporting to and actively participating in an assigned work activity, but rather, that such participation is not considered meaningful unless it occurs for some minimal duration – i.e., at least five business days. Given that the statute no longer contains any durational sanction periods in NYC, it is essential that an individual affirmatively and meaningfully demonstrate compliance before he/she can be considered to have fulfilled his/her agreement to comply. Absent a minimal period of compliance, individuals could become involved in an ongoing cycle of merely agreeing to comply without there being any incentive to meaningfully participate. Finally, the requirement that such period be no less than 5, but no more than 10 business days is consistent with workplace expectations and aligns with an average worker's pay cycle. The five-business day period is reasonable and benefits would be restored retroactive to the first day the individual agreed to comply.

(2) OTDA disagrees with this comment. The statute has created significantly different sanction policies for NYC and the rest of the state. Therefore, the regulations for NYC, including the minimum time required for one to demonstrate compliance, differ. Traditionally, OTDA's policy has permitted districts to elect a demonstrated compliance period of up to 10 business days when durational sanction periods were statewide. The elimination of a durational sanction period for residents of NYC presents a need to establish a demonstrated compliance period of at least 5 business days, but no more than 10 business days, is appropriate for NYC while continuing to authorize districts outside NYC to make their own district-specific decisions with respect to demonstrated compliance.

(3) OTDA disagrees with this comment. OTDA Administrative Directive (ADM) 09-ADM-20 (Employment Sanctions and the Redetermination of Benefits) at page 3 clearly states that "Temporary Assistance [TA] benefits must be restored to the household upon the completion of the minimum sanction duration period and upon the individual demonstrating a willingness to comply with employment requirements consistent with the district's demonstrated compliance procedures …" (emphasis in original). 09-ADM-20 further provides that "Once the individual has demonstrated compliance consistent with the district's requirements, [TA] benefits are restored retroactive to the date the individual indicated a willingness to comply (but no earlier than the expiration of the minimum duration period) …" (id.). Since there is no longer a minimum sanction period in NYC, the benefits would be restored back to the date he/she indicated the willingness to comply. OTDA is also issuing further policy guidance through an additional ADM that will include information regarding the restoration of benefits once an individual has demonstrated compliance, retroactively to the date the individual indicated a willingness to comply.

(4) OTDA is presently engaged in ongoing discussions with commenters pertaining to the implementation of the regulatory amendments and will continue to work with all impacted parties to address systems-related issues and develop a reasonable timeframe for the regulatory amendments.

Comments suggest that OTDA forego amending the regulatory definition of "willing to comply" as currently set forth in § 385.12(d)(3).

OTDA Response:

OTDA disagrees with this comment. "Agreeing to comply" and "willing to comply" are not specifically defined in statute (see, e.g., SSL § 342). As previously stated above, OTDA is best qualified pursuant to its authority under SSL §§ 17(a)-(b) and (j), 20(3)(d) 131 (5), 341-a and 342-a to define "agreeing to comply" and "willing to comply."

One comment suggests that the proposed regulatory amendments to §§ 385.11(b)(2)(v) and 385.11(b)(3) be revised to include language requiring the district to consider whether the participant is exempt from work requirements before the reengagement/conciliation process begins and to include language clarifying that the burden for determining whether a participant is so exempt falls upon the district, based upon information in its possession, rather than upon information provided by a participant.

OTDA Response:

OTDA disagrees with this comment. The district must conduct a review of an individual's case prior to issuing a reengagement/conciliation notice. Prior to work activity assignment, the district would have determined the individual's exempt/non-exempt status. As written, the regulations provide that, prior to issuing a reengagement/conciliation notice (notice), the district has an obligation to review the case file to confirm that the district previously determined the individual non-exempt from a work assignment and that no evidence exists that the individual is now exempt. This is the only information available for the district to review prior to issuing the notice. If new or previously undisclosed limitations are raised, the individual is responsible for reporting this information to the district and providing relevant information. In the event the individual has information that has not been provided to the district, the reengagement/conciliation process affords the individual an opportunity to present this information.

One comment suggests that the proposed regulatory amendments to §§ 385.11(b)(2)(v), 385.11(b)(3)(iii), 385.11(b)(6), and 385.12(a)(2)(iii)(e) be revised to require the district to determine whether appropriate child care, transportation and accommodations for a disability reasonably known to the district "were in place" – instead of "were available" –at the time of a participant's refusal or failure to participate in work activities.

OTDA Response:

OTDA disagrees with this comment. The regulations, as drafted, require the district to determine, based on the information available in the individual's case record, that necessary supports, as reasonably known to the district to have been appropriate to the individual at the time an assignment to an activity was made, were made available to the individual. Prior to issuance of the notice, the district can only determine whether such necessary supports were, in fact, made available to the individual by reviewing the case record to verify that: authorization for, referral to and/or information regarding available child care and transportation services had been provided to the individual; that the necessary accommodations for a known disability were available to the individual upon assignment. If, in the interim, new supports are needed by the individual as had not been previously known to the district, or if there should develop a problem with the availability or appropriateness of a support previously made available by the district as was not previously known to the district, the responsibility lies with the individual to indicate to the district and to provide documentation to explain same. In the event the individual has information that has not been provided to the district, the reengagement/conciliation process affords the individual an opportunity to present this information.

One comment suggests that the proposed regulatory amendments to §§ 385.11(b)(2)(vi), 385.11(b)(3), 385.12(a)(2)(ii), 385.12(a)(2)(iii)(f), and 385.12(d)(4) be revised to clarify that any reengagement on the part of a participant be in a work activity that is "consistent with any medical condition which may limit the [individual's] ability to participate in work activities."

OTDA Response:

OTDA disagrees with this comment, as necessary safeguards are already in place. If new or previously undisclosed limitations are raised during the reengagement/conciliation process, it is the individual's responsibility to indicate same to the district and to provide documentation to support any medical condition which would limit or prevent his/her ability to participate. Pursuant to 18 NYCRR § 385.2(d)(13)(ii), districts shall assign an individual who is work limited to work activities only if the assignment is consistent with the treatment plan when such plan is prescribed by the individual's practitioner and/or the district's practitioner. In cases where no treatment plan exists, the assignment must be consistent with the individual's mental and physical limitations, and determined to be appropriate by the social services official who is satisfied that such individual is able to perform the work assigned and that such assignment will assist the individual's transition to self-sufficiency.

OTDA is issuing policy guidance through an ADM that will instruct districts to provide necessary supportive services or accommodation and to reengage the individual in work activities consistent with the individual's employment assessment and any documented work limitations.

One comment suggests that the proposed regulatory amendments to § 385.12(a)(1)(i)–(ii), relative to potentially employable public assistance applicants and recipients, be revised to strike the proposed language "improve his or her ability to work" in favor of maintaining the current regulatory language, "be restored to self-sufficiency."

OTDA Response:

OTDA disagrees with this comment. As § 385.12(a)(1) addresses potentially employable applicants and recipients – and specifically relates to an individual's ability to work – the intent of these regulatory amendments is to clarify the meanings of "disabled" and "be restored to self-sufficiency" and to expand the meaning of "rehabilitation." As drafted, the regulatory amendments state that a district may require an individual exempt from work requirements who is incapacitated due to a "physical and/or mental health condition" and has the potential to "improve his/her ability to work," to participate in "suitable medical care" "and/or treatment" (in addition to rehabilitation). OTDA contends that the regulatory amendments, as drafted, neither preclude a district from complying with those provisions under the federal Americans with Disabilities Act (ADA) designed to protect qualified individuals with disabilities from discrimination on the basis of disability, nor from adhering to appropriate disability determination procedures consistent with 18 NYCRR § 385.2; consequently, the regulatory amendments conflict with neither. Furthermore, the regulatory amendments are consistent with SSL § 131(7). SSL § 131(7)(a) includes, among the care, treatment and services mandated to be provided by social services officials to those unable to maintain themselves, "medical care, instruction and work training to restore health, aptitudes and capabilities or develop new aptitudes and skills for the purpose of preparing individuals for gainful employment." SSL § 131(7)(b) provides:

A public welfare official responsible for the assistance and care of a person who, in the judgment of such official, is employable or potentially employable, may require such person to receive suitable medical care and/or undergo suitable instruction and/or work training. Any such person who willfully refuses to accept such medical care, refuses or fails to report for or cooperate in a program of instruction and/or work training as required by the public welfare official, shall be ineligible to receive public assistance and care. However, the requirements of this provision relating to instruction and work training shall not apply in the case of a person who is not available for employment by reason of age, health or other disability (emphasis supplied).

One comment suggests that the proposed regulatory amendments to § 385.12(a)(1)(i)–(ii) also be revised to include language clarifying that any mandatory requirement relative to medical care, rehabilitation, and/or treatment of a participant "must be consistent with any medical condition which may limit the [individual's] ability to participate in work activities and must be consistent with disability protections under State and Federal law."

OTDA Response:

OTDA disagrees with this comment. Pursuant to § 385.2, districts may only require individuals to participate in work activities consistent with the individual's mental and physical limitations, thereby rendering a revision to the regulatory amendments unnecessary.

One comment suggests that New York State move to a voluntary Supplemental Nutrition Assistance Program (SNAP) Employment and Training (E&T) program "and focus its resources on highly motivated volunteers", or, alternatively, adopt a regulation authorizing districts to do so.

OTDA Response:

This comment is beyond the scope of the regulatory amendments. The proposed regulatory changes reduce existing SNAP E&T sanction periods to the minimum permitted by federal regulations. OTDA believes SNAP households are best served by participation in activities to secure employment. Additionally, the SNAP E&T program provides critical federal funds to support employment services for households not eligible for federal Temporary Assistance for Needy Families (TANF)-funded employment services.

One comment suggests making a technical revision to § 385.12(d) to read "An applicant for or recipient of public assistance who willfully and without good cause refuses or fails [without good cause] to comply with employment requirements assigned pursuant to this Part shall be ineligible to receive public assistance for the periods specified in this subdivision" (emphasis supplied).

OTDA Response:

OTDA agrees with this comment and has updated the regulatory text accordingly.

Several comments suggest that "willful" and/or "willfully" be added to the regulatory text relative to §§ 385.12(b)(1), (3) and (5), and 385.12(e)(1).

OTDA Response:

OTDA disagrees with these comments. OTDA asserts that inclusion of a "willful" standard for applicants in the referenced paragraphs would create a different standard than is currently applied for other types of eligibility-based acts of non-compliance.

Several comments suggest that "in a substantial manner" be added to the regulatory text relative to §§ 385.12(b)(1)-(4) and 385.12(e)(1)-(2)(i).

OTDA Response:

OTDA disagrees with these comments. OTDA asserts that there are no federal or State regulations requiring a "substantial" standard, and OTDA contends that, because the term "substantial" is undefined, vague and ambiguous, its inclusion in the regulatory amendments could potentially lead to inconsistency in their implementation.

One comment contends that the proposed regulatory amendments could give rise to a situation in which a sanctioned participant would be required to participate in a work activity for two full weeks in order to demonstrate a willingness to comply with work requirements, all the while incurring either a termination or reduction of public assistance. To address such situation, the comment suggests that OTDA revise the proposed regulatory amendments to provide authorization to districts, at their discretion, to establish a reengagement process.

OTDA Response:

OTDA disagrees with this comment. Individuals who participate in demonstrated compliance to end their sanction would receive from the district supportive services such as car fare and child care, as well as any other reasonable accommodations necessary to participate in their approved work activity. In a household with dependent children, once the sanctioned individual successfully completes the demonstrated compliance period, his/her portion of the TA benefits would be restored retroactive to the time the individual indicated a willingness to comply. Therefore, as long as the individual successfully complies with the district-approved work activity for the demonstrated compliance period, he/she would retroactively receive TA benefits for that timeframe. OTDA is issuing further policy guidance through an ADM which will include information regarding the restoration of benefits once an individual has demonstrated compliance, retroactively to the date the individual indicated a willingness to comply.

One comment suggests revising § 385.12(e)(4) to add language clarifying that when a SNAP durational sanction has ended, or a disqualified individual becomes exempt from SNAP E&T work requirements for reason other than participating in TANF work activities or unemployment insurance, the district should automatically add the formerly disqualified individual to the household, rather than require the household to affirmatively request the addition.

OTDA Response:

OTDA asserts that the regulatory amendments as drafted are consistent with federal and State regulations and that the suggested revision to the regulatory amendments is unnecessary.

One comment suggests that the proposed regulatory amendments be revised to extend § 385.12(c)(2) – which prevents a finding of "willful and without good cause" based upon a refusal or failure to comply with a single appointment or work requirement in NYC – to the rest of the State.

OTDA Response:

OTDA disagrees with this comment. There is no federal or State statutory or regulatory authority requiring that OTDA create a policy for districts outside of NYC that a failure of an individual to comply with a single appointment or work requirement does not equate to "willful and without good cause" noncompliance with public assistance work requirements. Districts outside of NYC remain bound by conciliation requirements and must consider all good cause reasons for noncompliance.

Although not subjects of public comments, OTDA also made nonsubstantive clarifying updates to §§ 385.11(a)(2)(vi), 385.11(a)(5), and 385.12(d) and a nonsubstantive technical update to a cross-reference in § 385.12(e)(3).