RULE MAKING ACTIVITIES

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

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

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

Office of Children and Family Services

EMERGENCY RULE MAKING

Requirements Regarding the Cooperation of School Districts with Investigations of Suspected Child Abuse or Maltreatment

I.D. No. CFS-23-16-00004-E
Filing No. 811
Filing Date: 2016-08-19
Effective Date: 2016-08-21

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

Action taken: Amendment of section 432.3 of Title 18 NYCRR.

Statutory authority: Social Services Law, sections 20(3)(d), 34(3)(f), 421(3), 423(6) and 425(1)

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

Specific reasons underlying the finding of necessity: These regulations are necessary to protect the health, safety and welfare of children involved in a report of suspected child abuse or maltreatment. An oral order issued by the United States District Court for the Southern District of New York on August 19, 2015 pertaining to Phillips et al. v. County of Orange, et al. ("Phillips") granted a motion by the plaintiffs for summary judgment and held that, in this case, the county engaged in an unconstitutional seizure of a child when the child was questioned in a public school without parental consent as part of a child protective services investigation. Although the oral determination was not part of a published decision, holds no precedential value, and went well beyond established case law, the determination created great confusion and anxiety for school districts and child protective services agencies alike.

In response to the order, some school districts have begun denying access to the child protective service (CPS) or requiring additional CPS actions prior to allowing CPS access to children in a school setting without parental consent. These obstructions are disparate in form and manner among school districts and have added dangerous and unnecessary delay and confusion to the investigatory process. These delays are creating danger to the health, safety and welfare of children.

The position of OCFS and SED was and remains that children who are alleged to have been abused or maltreated can be interviewed by CPS at school without parental permission or a court order in appropriate circumstances. The first duty of CPS in conducting a child protective services investigation is to see to the safety of the child. (Section 424(6)(a) of the Social Services Law and 18 NYCRR 432.2(b)(3)). Especially in a situation where a parent is alleged to have abused or maltreated a child and there is concern over the immediate health or safety of the child, the need to protect the health and safety of the child requires CPS to interview the child outside the presence of the parent who has allegedly abused or maltreated the child.

Regulations are necessary to clarify the requirements and standards around CPS access to children in schools. Emergency regulations are necessary to provide immediate protections for vulnerable children when CPS encounters circumstances during an investigation into suspected child abuse or maltreatment that warrant interviewing the child apart from family members or the home where child abuse or maltreatment allegedly occurred and without parental consent.

Subject: Requirements regarding the cooperation of school districts with investigations of suspected child abuse or maltreatment.

Purpose: To clarify requirements for the cooperation of school districts with investigations of suspected child abuse or maltreatment.

Text of emergency rule: Existing subdivision (i) of Section 432.3 of Title 18 of the NYCRR is amended to read as follows:

(i)*(1)* Commencing or causing the appropriate society for the prevention of cruelty to children to commence within 24 hours an appropriate investigation or family assessment response on all reports of suspected child abuse and maltreatment in accordance with the provisions of sections 432.2(b)(3) and section 432.13 of this Part.

(2) Request and receive, as provided for in subdivision 1 of Section 425 of the Social Services Law, when applicable, from departments, boards, bureaus, or other agencies of the state, or any of its political subdivisions including school districts (as that term is defined in subdivision 2 of Section 1980 of the Education Law), and charter schools operated pursuant to Article 56 of the Education Law, or any duly authorized agency, or any other agency providing services under the local child protective services plan, such assistance and data as will enable the local child protective service to fulfill its responsibilities properly, including providing such assistance and data to members of a multi-disciplinary team established pursuant to subdivision 6 of Section 423 of the Social Services Law when such members accompany a representative of the child protective service. Such assistance and data includes, but is not limited to:

(i) access to records relevant to the investigation of suspected abuse or maltreatment; and

(ii) access to any child named as a victim in a report of suspected abuse or maltreatment or any sibling or other child residing in the same home as the named victim. Such access includes conducting an interview of such child without a court order or the consent of the parent, guardian or other person legally responsible for the child when the child protective service encounters circumstances that warrant interviewing the child apart from family or other household members or the home or household where child abuse or maltreatment allegedly occurred. The representative of the child protective service and other members of a multi-disciplinary team accompanying a representative of the child protective service may

be asked to provide identification and to identify the child or children to be interviewed, but may not be asked for or required to provide any other information or documentation as a condition of having access to a child or children. Nothing contained herein shall preclude a school, school district or other program or facility operated by a department, board, bureau, or other agency of the state or any of its political subdivisions, or by a duly authorized agency or other agency providing services under the local child protective services plan from authorizing a staff member of the school or other such program or facility to observe the interview of the child, either from the same or another room, at the discretion of the school, school district or other such program or facility. Nothing contained herein shall preclude a school, school district or other such program or facility from requiring that representatives of the child protective service or other members of a multi-disciplinary team accompanying a representative of the child protective service comply with the reasonable visitor policies or procedures of the school, school district or other such program or facility, unless such policies or procedures are contrary to the requirements of this paragraph.

This notice is intended to serve only as a notice of emergency adoption. This agency intends to adopt the provisions of this emergency rule as a permanent rule, having previously submitted to the Department of State a notice of proposed rule making, I.D. No. CFS-23-16-00004-EP, Issue of June 8, 2016. The emergency rule will expire October 17, 2016.

Text of rule and any required statements and analyses may be obtained from: Public Information Office, New York State Office of Children and Family Services, 52 Washington Street, Rensselaer, NY 12144, (518) 473-7793, email: info@ocfs.ny.gov

Regulatory Impact Statement

1. Statutory authority:

Section 20(3)(d) of the Social Services Law (SSL) authorizes the Office of Children and Family Services (OCFS) to establish rules and regulations to carry out its powers and duties pursuant to the provisions of the SSL.

Section 34(3)(f) of the SSL requires the Commissioner of OCFS to establish regulations for the administration of public assistance and care within the State.

Section 421(3) of the SSL requires the Commissioner of OCFS to promulgate regulations setting forth requirements for the provision of child protective services by social services districts including establishing uniform requirements for the investigation of reports of child abuse and maltreatment.

Section 423(6) of the SSL authorizes the establishment of multi-disciplinary teams by social services districts for the purpose of investigating reports of suspected child abuse and maltreatment. Such teams must include representatives of child protective services, law enforcement, and others.

Section 425(1) of the SSL provides that the Commissioner of OCFS may request and shall receive from departments, boards, bureaus and agencies of the State or any of its political subdivisions, or any duly authorized agency, or any other agency providing services under the local child protective services plan, such assistance and data as will enable the local child protective service to fulfill its responsibilities properly.

2. Legislative objectives:

The proposed changes to the regulations are necessary to further the legislative objective that children be protected from abuse and maltreatment.

3. Needs and benefits:

The regulatory language clarifies the expectations of child protective services and schools around cooperation and assistance with ongoing investigations of suspected child abuse and maltreatment. The proposed changes to the regulations are in response to the recognized need to strengthen and clarify these expectations to better provide for the safety of children in New York State. Accordingly, the benefit of this regulation is to create consistent safeguards for children during the investigation of allegations of abuse and maltreatment.

The regulations will clarify that the requirement to provide assistance and data to child protective services includes school districts and charter schools. The regulations will discuss what constitutes assistance and clarify that it includes access to an allegedly abused or maltreated child by child protective services and members of a multi-disciplinary team accompanying child protective services. The regulations will limit the information that child protective services and members of a multi-disciplinary team accompanying child protective services may be required to provide as a condition of having access to a child, but will permit schools, school districts and other programs and facilities operated by a department, board, bureau or other agency of the State or any of its political subdivisions, or any duly authorized agency, or any other agency providing services under the local child protective services plan to require compliance with reasonable visitor policies and procedures. Schools, school districts and other such programs and facilities would also be permitted to have staff observe interviews of children occurring in the school, school district or other such program or facility.

The regulations will also clarify that the provision of data includes those records relevant to the child protective investigation. it will not require the provision of any and all records in the possession of the school, school district or other such program or facility, but only those relevant to such investigation. As under current practice, the determination of what records are relevant will have to be determined on a case by case basis through discussion between child protective services and the holder of the records.

4. Costs:

The proposed regulatory changes are not expected to have an adverse fiscal impact on social services districts, child protective services or school districts.

5. Local government mandates:

The proposed regulations will not impose any additional mandates on social services districts or school districts.

6. Paperwork:

The proposed regulations do not require any additional paperwork.

7. Duplication:

The proposed regulations effectuate the requirements of Section 425(1) of the SSL. They do not duplicate any other State or Federal requirements.

8. Alternatives:

The proposed regulations are necessary to provide immediate protections for vulnerable children when child protective services encounters circumstances during an investigation into suspected child abuse or maltreatment that warrant interviewing the child apart from family members or the home where child abuse or maltreatment allegedly occurred. Therefore, there are no alternatives to the proposed regulations.

9. Federal standards:

The regulatory amendments do not conflict with any federal standards.

10. Compliance schedule:

The regulations will be effective on May 23, 2016.

Regulatory Flexibility Analysis

1. Types and estimated number of small businesses and local governments:

There are 58 social services districts and 695 school districts in New York State.

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

No anticipated impact.

3. Costs:

No anticipated additional costs.

4. Economic and technological feasibility:

The proposed regulatory changes would not require any additional technology and should not have any adverse economic consequences for regulated parties.

5. Minimizing adverse impact:

The proposed changes to the regulations clarify requirements and standards for child protective services (and in relevant cases, accompanying members of a multi-disciplinary team) access to children in school settings. The regulation is necessary to provide immediate protections for vulnerable children when child protective services encounters circumstances during an investigation into suspected child abuse or maltreatment that warrant interviewing the child apart from family members or the home where child abuse or maltreatment allegedly occurred, and without the consent of the parent.

6. Small business and local government participation:

The Office of Children and Family Services (OCFS) received requests from the New York Public Welfare Association (NYPWA), multiple social services districts, the New York State Association of School Attorneys (NYSASA) and the New York State School Boards Association (NYSSBA) for clarification or guidance on this issue. This regulation is supported by policies issued by OCFS and the State Education Department. In addition, forums for training and other presentations are anticipated using resources available to OCFS, NYPWA, NYSASA and NYSSBA to reach school districts and social services districts.

Rural Area Flexibility Analysis

1. Types and estimated number of rural areas:

There are 44 rural social services districts and 299 school districts in rural areas.

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

No anticipated impact.

3. Costs:

No anticipated costs.

4. Minimizing adverse impact:

The proposed changes to the regulations clarify expectations and standards around access to children in school settings by child protective services and, in relevant cases, accompanying members of a multi-

disciplinary team. The regulation is necessary to provide immediate protections for vulnerable children when child protective services encounters circumstances during an investigation into suspected child abuse or maltreatment that warrant interviewing the child apart from family members or the home where child abuse or maltreatment allegedly occurred, and without the consent of the parent.

5. Rural area participation:

The Office of Children and Family Services (OCFS) received requests from the New York Public Welfare Association (NYPWA), multiple social services districts, the New York State Association of School Attorneys (NYSASA) and the New York State School Boards Association (NYSSBA) for clarification or guidance on this issue. This regulation is supported by policies issued by OCFS and the State Education Department. In addition, forums for training and other presentations are anticipated using resources available to OCFS, NYPWA, NYSASA and NYSSBA to reach school districts and social services districts.

Job Impact Statement

The proposed regulations are not expected to have a negative impact on jobs or employment opportunities in either public or private sector service providers. A full job impact statement has not been prepared for the proposed regulations as it is not anticipated that the proposed regulations will have any adverse impact on jobs or employment opportunities.

Department of Civil Service

NOTICE OF ADOPTION

Jurisdictional Classification

I.D. No. CVS-51-15-00002-A
Filing No. 805
Filing Date: 2016-08-18
Effective Date: 2016-09-07

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 December 23, 2015 issue of the Register, I.D. No. CVS-51-15-00002-P.

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

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

Assessment of Public Comment

The agency received no public comment.

NOTICE OF ADOPTION

Jurisdictional Classification

I.D. No. CVS-51-15-00003-A
Filing No. 803
Filing Date: 2016-08-18
Effective Date: 2016-09-07

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 December 23, 2015 issue of the Register, I.D. No. CVS-51-15-00003-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: jennifer.paul@cs.ny.gov

Assessment of Public Comment

The agency received no public comment.

NOTICE OF ADOPTION

Jurisdictional Classification

I.D. No. CVS-02-16-00003-A
Filing No. 807
Filing Date: 2016-08-18
Effective Date: 2016-09-07

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 January 13, 2016 issue of the Register, I.D. No. CVS-02-16-00003-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: jennifer.paul@cs.ny.gov

Assessment of Public Comment

The agency received no public comment.

NOTICE OF ADOPTION

Jurisdictional Classification

I.D. No. CVS-02-16-00004-A
Filing No. 806
Filing Date: 2016-08-18
Effective Date: 2016-09-07

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 positions from and classify positions in the non-competitive class.

Text or summary was published in the January 13, 2016 issue of the Register, I.D. No. CVS-02-16-00004-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: jennifer.paul@cs.ny.gov

Assessment of Public Comment

The agency received no public comment.

NOTICE OF ADOPTION

Jurisdictional Classification

I.D. No. CVS-02-16-00005-A
Filing No. 804
Filing Date: 2016-08-18
Effective Date: 2016-09-07

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 January 13, 2016 issue of the Register, I.D. No. CVS-02-16-00005-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: jennifer.paul@cs.ny.gov

Assessment of Public Comment

The agency received no public comment.

NOTICE OF ADOPTION

Jurisdictional Classification

I.D. No. CVS-02-16-00006-A

Filing No. 802

Filing Date: 2016-08-18

Effective Date: 2016-09-07

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 positions from the non-competitive class.

Text or summary was published in the January 13, 2016 issue of the Register, I.D. No. CVS-02-16-00006-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: jennifer.paul@cs.ny.gov

Assessment of Public Comment

The agency received no public comment.

Department of Environmental Conservation

PROPOSED RULE MAKING HEARING(S) SCHEDULED

Lake Champlain Drainage Basin

I.D. No. ENV-36-16-00002-P

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

Proposed Action: Amendment of Part 830 of Title 6 NYCRR.

Statutory authority: Environmental Conservation Law, sections 3-0301(2)(m), 15-0313(1), (2), (3), 17-0301(2) and (9)

Subject: Lake Champlain drainage basin.

Purpose: To reclassify certain surface waters in Lake Champlain Drainage Basin, in Clinton, Essex, Franklin, Warren, Washington counties.

Public hearing(s) will be held at: 11:00 a.m., November 2, 2016 at Plattsburgh Town Hall, Town Office Meeting Rm., 151 Banker Rd., Plattsburgh, NY.

Two public information Meetings will be held on October 13, 2016, to provide background information on the proposed rule making. Comments regarding the proposed regulations will not be taken during these information sessions. These meetings will be held at 2:00-4:00 p.m. and 6:00-8:00 p.m. at the Town of Plattsburgh, Town Office Meeting Room, 151 Banker Rd., Plattsburgh, 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.

Substance of proposed rule (Full text is posted at the following State website:dec.ny.gov/regulations/39559.htm): Reclassification of Certain Waters Within the Lake Champlain Drainage Basin Within Clinton, Essex, Franklin, Warren, and Washington Counties, New York

The waters within the Lake Champlain drainage basin are listed in Table I of 6 NYCRR Part 830 for purposes of classification. For ease of reference, each listing in the table has been assigned an "item number," which can refer to a single waterbody, or multiple waterbodies, or a portion of a waterbody. DEC proposes to amend the classifications of 174 item numbers, adopt 39 new item numbers, and repeal 1 item number in Table I, to include:

1) reclassifying 123 item numbers from a classification of "D" to "C";
2) reclassifying 8 item numbers from a classification of "D" to "C(T)";
3) reclassifying 8 item numbers from a classification of "D" to "C(TS)";
4) reclassifying 9 item numbers from a classification of "C" to "C(T)";
5) reclassifying 3 item numbers from a classification of "C" to "C(TS)";
6) reclassifying 3 item numbers from a classification of "C(T)" to "C(TS)";
7) reclassifying 6 item numbers from a classification of "A" to "A(T)";
8) reclassifying 9 item numbers from a classification of "AA" to "AA(T)";
9) reclassifying 1 item number from a classification of "AA" to "AA(TS)";
10) reclassifying 2 item numbers from a classification of "AA Special" to "AA Special(TS)";
11) classifying 1 item number as "C" where classification is currently blank;
12) removing the D classification for 1 item number due to its location with the forest preserve;
13) adding 3 new item numbers having a classification of "C";
14) adding 1 new item number having a classification of "C(T)";
15) adding 35 new item numbers for waters being extracted from existing item numbers;
16) deleting 1 item number because the water is being incorporated into another item number.

No downgrading of classifications is proposed. Use Attainability Analyses have been completed for 28 waters to remain as Class D. A new section is proposed, titled "Designated waters." A portion of the Definitions section would be modified and used to create a proposed new section called "Special conditions." Several definitions are proposed to be clarified and rearranged. Seventeen quadrangle maps and one map showing the location of the Lake Champlain drainage basin are proposed to be replaced with new maps.

Text of proposed rule and any required statements and analyses may be obtained from: Robert Simson, New York State Department of Environmental Conservation, 625 Broadway, 4th Floor, Albany, NY 12233-3500, (518) 402-8233, email: Part.830Reclass@dec.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

1. Statutory Authority

Environmental Conservation Law ("ECL") §§ 3-0301, 15-0313, and 17-0301 provide DEC with the authority to adopt regulations to classify the surface waters in New York, and authorize DEC to modify existing classifications.

2. Legislative Objectives

The reclassification of fresh surface waters proposed for the Lake Champlain drainage basin will contribute to the fulfillment of the legislative objective of the ECL to guarantee that the "widest range of beneficial uses of the environment is attained without risk to health or safety," (ECL 1-0101[3][b]) and that the waters of the state are classified "in accordance with considerations of best usage in the interest of the public" (ECL 17-0301[2]).

Under the federal Clean Water Act ("CWA"), the reclassification will contribute to achieving the federal mandate "to restore and maintain the chemical, physical, and biological integrity of the Nation's waters," (33 USC § 1251[a]) and the national goal, wherever attainable, of "water quality which provides for the protection and propagation of fish, shellfish, and wildlife" (33 USC § 1251[a][2]), commonly known as the "fishable" goal. In addition, CWA § 303(c) requires the states to review their water quality classifications and standards at least once every three years and to modify them as appropriate.

3. Needs and Benefits

CWA § 303(c) requires the states, every three years, to "hold public hearings for the purpose of reviewing applicable water quality standards and, as appropriate, modifying and adopting standards" (33 USC § 1313[c]). CWA § 101(a)(2) states that "it is the national interim goal that wherever attainable, an interim goal of water quality which provides for the protection and propagation of fish, shellfish, and wildlife and provides for recreation in and on the water be achieved by July 1, 1983" (33 USC § 1251[a][2]). CWA § 303(c)(2)(A) requires water quality standards to "protect the public health or welfare, enhance the quality of water

and serve the purposes of this chapter" (33 USC § 1313[c][2][A]). The U.S. Environmental Protection Agency's ("EPA's") regulations in the Code of Federal Regulations ("CFR"), Title 40, Part 131, interpret and implement these provisions through a requirement that water quality standards protect CWA § 101(a)(2) uses unless those uses have been shown to be unattainable, effectively creating a rebuttable presumption of attainability (see 48 Fed Reg 51405 [1983], codified at 40 CFR 131 et seq.). In addition, ECL § 17-0301(2) requires the DEC to "group the waters of the state into classes."

The proposed amendments to surface water classifications are the result of petitions submitted to DEC pursuant to 6 NYCRR Part 609. A copy of any of the petitions may be obtained by emailing your request to DEC at Part.830Reclass@dec.ny.gov. The "D" classification protects fish life (i.e. fish survival) but not fish propagation. Protection for fish propagation is necessary to achieve the fishable goal of the CWA, as expressed in § 101(a)(2). Petitions to amend the classification of waters from Class "D" to Class "C," protecting fishing and fish propagation, resulted from analyses performed as specified in "Water Quality Standards Attainability Strategy," NYSDEC, dated June 6, 1985. A copy of this document may be obtained by emailing your request to DEC at Part.830Reclass@dec.ny.gov.

Factors that may limit a water's ability to achieve a best usage of fishing (fish propagation) were evaluated through a Use Attainability Analysis ("UAA"). Pursuant to 40 CFR Part 131.3 (g), a UAA is a structured scientific assessment of the factors affecting the attainment of the use which may include physical, chemical, biological, and economic factors as described in § 131.10(g).

The purpose of a UAA is to determine the highest attainable use for a waterbody and provide the supporting documentation when a state refines its designated uses. A UAA must be conducted when designating uses that do not include the uses specified in CWA § 101(a)(2), such as in those cases where a waterbody is proposed to remain class "D." For existing "D" waters, a decision not to upgrade must be supported by a UAA to comply with federal regulations pursuant to the CWA. Where a state believes that a use specified in § 101(a)(2) is not attainable and wishes to remove or subcategorize this use, the state is required to demonstrate that the use is not attainable based on one or more of the factors included in 40 CFR Part 131.10 (g) through the completion and submission of a UAA to the EPA. In addition, the state must show that the change in use will not result in removing an existing use. If the analysis leads to a recommendation of a classification below "C," the state must provide appropriate justification as described above.

In Table I of 6 NYCRR Part 830, the waters within the Lake Champlain drainage basin are listed for purposes of classification. For ease of reference, each listing in the table is assigned an "item number," which can refer to a single waterbody, or multiple waterbodies, or a portion of a waterbody. Twenty eight item numbers currently classified "D" cannot sustain a classification of "C"; UAAs were completed for these item numbers. A copy of any of the UAAs may be obtained by emailing your request to DEC at Part.830Reclass@dec.ny.gov.

Proposed changes designating waters for trout (T) or trout spawning (TS) were based on field surveys where trout were captured or the habitat was evaluated and determined to be suitable to support the proposed use. Those proposals were documented by petitions and supporting information prepared by staff from DEC's Division of Fish and Wildlife.

DEC proposes to amend the classifications of 174 item numbers (as summarized in Table A below), adopt 39 new item numbers, and repeal 1 item number in Table I of Part 830. The benefit of the proposed action is that it would provide a current basis for protection of the basin's waters, ensuring they are classified consistently with their best usage, and that the applicable water quality standards for each water's classification will protect its best usage. In the long term, it will lead to improved water quality because of the generally increased protection provided. The proposed action would continue the state's compliance with federal requirements to maintain an appropriate review process for waterbody classifications and water quality standards. This process also continues to maintain the eligibility of municipalities throughout the state to receive assistance for the construction of publicly owned wastewater treatment works. There are loans available from the New York State Environmental Facilities Corporation, and grants are periodically available from DEC.

4. Costs

Reclassification of a waterbody results in the application of different ambient water quality standards, which must be considered when writing wastewater discharge permits. For example, if a waterbody is reclassified from "D" to "C," additional and more stringent standards would apply to protect the water quality for fish propagation. As an example, for cyanide in Class D waters, the aquatic life standard is 22 micrograms per liter (µg/L) to protect fish survival, but Class C waters have a more restrictive aquatic life standard of 5.2 µg/L to protect fish propagation. Thus, a classification change could lead to additional capital construction and/or operation and maintenance costs for individual permitees if their current permit limits and level of wastewater treatment would not meet the newly applied standards.

Adoption of the proposed classifications would not immediately change the limits in existing permits. Permits are reviewed according to their priority under the "Environmental Benefit Permit Strategy" and are drafted consistent with standards in place and information available at that time. This discussion of costs reflects an assessment made with current knowledge of water quality data and treatment plant effluent constituents.

All wastewater treatment plants are required by the CWA to meet minimum standards—both in treatment methodologies and effluent quality—based on the type of facility. For example, municipal treatment plants must provide a minimum amount of secondary treatment, and industrial and commercial facilities have equivalent minimum requirements based on the type of industry and the processes used. Reclassification could cause a facility's permit limits to change, but if it is currently operating in a manner that would meet the more stringent permit limits, there would be no cost impact from the new limits.

All facilities having a State Pollutant Discharge Elimination System ("SPDES") permit and currently discharging to waters proposed for reclassification have had their present permit effluent limits reassessed to determine whether more stringent water quality standards or guidance values would result in more stringent effluent limits. The review of the SPDES permit involves a calculation of projected effluent limits for each discharger where more stringent water quality standards or guidance values would result from the proposed classification when compared to the current classification. All SPDES permits which potentially could be affected were reviewed to determine if their specified discharge limits would change and if there would be any associated costs. The review of permit limits and operational data from facilities discharging to waters proposed for reclassification indicated there would be no cost impact to SPDES-permitted facilities.

The following statements are the result of evaluations of financial impact of this proposal on potentially affected entities:

(a) Costs to State Government

No costs are projected for state government because no state owned facility discharge would be affected by this proposal.

(b) Costs to Local Governments

No costs are projected for local governments because no local government owned facility discharge would be affected by this proposal.

(c) Costs to Private Regulated Parties

No costs are projected for private regulated parties because no privately owned facility discharge would be affected by this proposal.

(d) Costs to the Regulating Agency

New costs to DEC associated with this rulemaking are limited to the costs of advertising and conducting the public hearing.

5. Local Government Mandates

This proposal would not impose any program, service, duty, or responsibility upon any local government entity.

6. Paperwork

There would be no new reporting requirements, including forms or other paperwork, associated with the proposed reclassifications.

7. Duplication

There is no duplication. DEC is proposing these amendments to Part 830 in order to comply with the requirements of the CWA.

8. Alternatives

An alternative to pursuing the proposed rulemaking is to take no action. "No action" would fail to provide the desired water quality protection that would result from the upgraded classifications. The "no action" alternative would fail to ensure that New York State regulations are consistent with federal requirements. The "no action" alternative was rejected because it would not result in the needed upgrades as described above.

9. Federal Standards

The proposed rule complies with federal standards for the classification of waters.

10. Compliance Schedule

Existing wastewater treatment facilities can currently meet the water quality requirements of the proposed classifications. No further action is required by these facilities to achieve compliance.

TABLE A

		Proposed Reclassifications							
Existing Classification	No. of Item Numbers	C	C(T)	C(TS)	A(T)	AA(T)	AA(TS)	AA Special (TS)	None ***
AA-Special	2							2	
AA	10					9	1		
A	6				6				
C(T)	3			3					

C	12		9	3					
D*	140	123	8	8					1
None**	1	1							
TOTAL	174	124	8	8	0	0	0	0	1

* Twenty-eight (28) item numbers currently classified "D" were determined to be inappropriate for reclassification. Supporting UAA forms are on file.

** None; "Class" column entry in Table I of Part 830 is blank

*** None; water is in forest preserve

Regulatory Flexibility Analysis

1. Effect of Rule

The proposed rule would apply to any small businesses or local governments that have permitted discharges of treated sanitary wastewater into surface waters within the Lake Champlain drainage basin. The small businesses and local governments that have discharges to waters proposed to be reclassified currently have wastewater treatment systems which would meet the water quality requirements of the proposed classifications so there would be no associated costs.

2. Compliance Requirements

This rulemaking will not impose any reporting, record keeping, or other compliance requirements on small businesses or local governments or their permitted facilities.

3. Professional Services

Professional services of consulting engineers will not be needed for the design and construction management of new pollution abatement facilities because existing wastewater treatment facilities can currently meet the water quality requirements of the proposed classifications.

4. Compliance Costs

The RIS discusses the costs of complying with the proposed rule. As discussed in Section 1 and in the RIS, there would be no costs to small businesses or local governments' permitted facilities associated with this rulemaking because existing wastewater treatment facilities can currently meet the water quality requirements of the proposed classifications.

5. Economic and Technological Feasibility

The consideration of pollution abatement technologies does not apply since existing wastewater treatment facilities can currently meet the water quality requirements of the proposed classifications.

6. Minimizing Adverse Impact

This rulemaking does not impose any costs on regulated parties.

7. Small Business and Local Government Participation

The Department will hold a public hearing on this rulemaking to receive comments from stakeholders on the proposed regulations. In addition, the Department will hold a public information meeting, in advance of the public hearing, to present an overview of the proposed rulemaking.

Rural Area Flexibility Analysis

1. Types and Estimated Numbers of Rural Areas

The rule would apply to all towns and villages in rural areas of Clinton, Essex, Franklin, Warren, and Washington Counties, New York that have municipal wastewater treatment plants ("WWTPs") or businesses that discharge treated sanitary wastewater to waterbodies proposed for upgrade in classification.

2. Reporting, Recordkeeping and Other Compliance Requirements, and Professional Services

Within the rural areas of the Lake Champlain drainage basin, the wastewater treatment facilities that discharge to waters proposed to be reclassified can currently meet the water quality requirements of the proposed classifications. Therefore, there are no reporting, recordkeeping or other compliance requirements, or professional services needed for such facilities.

3. Costs

There are no new costs to dischargers located in rural areas associated with this rulemaking because existing wastewater treatment facilities can currently meet the water quality requirements of the proposed classifications.

4. Minimizing Adverse Impact

There is no adverse impact from this rule; therefore, there is no adverse impact that needs to be minimized.

5. Rural Area Participation

DEC will comply with the State Administrative Procedure Act § 202-bb (7) by providing the public in rural areas with the opportunity to participate in the rulemaking process. The Department will inform the public about the proposed rule through the DEC website, letters to dischargers and municipalities, and notices in the Environmental Notice Bulletin and the State Register. DEC will hold both a public information meeting and a public hearing within the Lake Champlain drainage basin. The public will have the opportunity to comment on the proposed rule by attending the public hearing or by submitting written comments to the Department.

Job Impact Statement

A Job Impact Statement is not required for this rulemaking because the proposed rule will not have a substantial adverse impact on jobs and employment opportunities. The only businesses that could potentially be adversely impacted by changes to water quality standards are those that hold SPDES permits for the affected waterbodies. However, this rule does not impose any increased requirements for permitted dischargers. The proposed regulatory changes are needed to upgrade the classification of waters to meet the "fishable" goal of the federal Clean Water Act. These reclassifications will not result in any increased requirements for permitted dischargers and thus will not lead to any impact on jobs or employment opportunities. This rulemaking will not result in the loss of any jobs in New York State. Therefore, the Department has determined that a Job Impact Statement is not required.

Department of Financial Services

EMERGENCY/PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

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

I.D. No. DFS-36-16-00001-EP

Filing No. 808

Filing Date: 2016-08-18

Effective Date: 2016-08-18

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

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

Statutory authority: Financial Services Law, sections 202 and 302; Insurance Law, sections 301, 3201, 3217, 3221 and 4237

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

Specific reasons underlying the finding of necessity: Chapter 32 of the Laws of 2016 added a new Article 41 to the General Business Law ("GBL") to authorize and regulate professional combative sports and professional wrestling in New York State. The legislation takes effect September 1, 2016. As part of this legislation, new GBL section 1015.11 requires every licensed promoter of authorized combative sports and professional wrestling to provide accident insurance for the protection of licensed professionals and wrestlers appearing in authorized combative sports matches or professional wrestling exhibitions on and after September 1, 2016. The minimum dollar amounts for the medical, surgical and hospital care benefits and the accidental death benefit included in the accident insurance are set forth in the legislation. The State Athletic Commission is also authorized to promulgate any rule or regulation necessary for the implementation of the legislation. The State Athletic Commission is repealing current 19 NYCRR 208 and promulgating a new Part 208 to 19 NYCRR. The new regulation includes a new section 208.15, which establishes the coverage requirements for the benefits included in the accident insurance provided pursuant to GBL section 1015.11. Pursuant to the State Athletic Commission regulation, the policy of accident insurance may be either primary or secondary to any other applicable insurance coverage held by the licensed professional or wrestler participant, and the policy shall so state which it is. Policies of accident insurance are subject to the approval of the Superintendent of Financial Services pursuant to Insurance Law section 3201. These policies are subject to the requirements of 11 NYCRR 52 (Insurance Regulation 62). In order for the accident insurance policy to be secondary to other coverage, an amendment to Insurance Regulation 62 is necessary.

A licensed promoter of authorized combative sports and professional wrestling must provide accident insurance that satisfies the requirements of GBL section 1015.11 and the regulations thereunder providing for the protection of licensed professionals and wrestlers appearing in authorized combative sports matches or professional wrestling exhibitions on and after September 1, 2016. In order to do that, insurers need sufficient time to develop policy forms and premium rates for the accident insurance and to submit the forms and rates to the Department of Financial Services for

review and approval. To ensure the availability of the requisite accident insurance by September 1, 2016, it is necessary to promulgate this amendment on an emergency basis for the furtherance of the public health and general welfare.

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

Purpose: To allow blanket accident insurance policy issued in accordance with General Business Law, section 1015.11 to be excess to any plan.

Text of emergency/proposed rule: Subdivision (m) of section 52.23 is hereby amended to read as follows:

(m) No plan may contain a provision that its benefits are excess or always secondary to any plan except in [accord] *accordance* with *this subdivision or* subdivision (d) of this section. A contract as described in paragraph [(e)] (7) *of subdivision (e)* of this section *or a blanket accident insurance policy issued in accordance with General Business Law section 1015.11* may contain a provision that its benefits are excess or always secondary to any plan.

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 November 15, 2016.

Text of rule and any required statements and analyses may be obtained from: Tobias Len, NYS Department of Financial Services, One Commerce Plaza, Albany, NY 12257, (518) 486-7815, email: tobias.len@dfs.ny.gov

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

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

Regulatory Impact Statement

1. Statutory authority: Financial Services Law ("FSL") sections 202 and 302 and Insurance Law ("IL") sections 301, 3201, 3217, 3221 and 4237.

Pursuant to FSL section 202, the Superintendent of Financial Services ("Superintendent") has the rights, powers, and duties in connection with financial services and protection in this state, expressed or reasonably implied by the FSL or any other applicable law of this State.

FSL section 302 and IL section 301, in pertinent part, authorize the Superintendent to prescribe regulations, not inconsistent with the IL and FSL, interpreting the provisions of the IL and to effectuate any power granted to the Superintendent in the Insurance Law.

Pursuant to IL section 3201, policy forms, including blanket accident insurance policy forms, are subject to the Superintendent's approval.

IL section 3217 authorizes the Superintendent to issue regulations to establish minimum standards, including standards for full and fair disclosure, for the form, content and sale of accident and health insurance policies and subscriber contracts of corporations organized under Article 32 and Article 43 of the Insurance Law, and Article 44 of the Public Health Law.

IL section 3221 of the Insurance Law prohibits a policy of group or blanket accident and health insurance, except as provided in Insurance Law section 3221(d), to be delivered or issued for delivery in New York unless it contains in substance the provisions set forth therein or provisions that are in the opinion of the Superintendent more favorable to the holders of such certificates or not less favorable to the holders of such certificates and more favorable to policyholders.

IL section 4237 defines a blanket accident insurance policy, a blanket health insurance policy, and a blanket accident and health insurance policy.

2. Legislative objectives: Chapter 32 of the Laws of 2016 added a new Article 41 to the General Business Law ("GBL") to authorize and regulate professional combative sports and professional wrestling in New York State. In providing a framework for the licensure and regulation of authorized combative sports and professional wrestling, the Legislature repealed the existing statutory structure related to "boxing, sparring and wrestling" and replaced it with a more comprehensive scheme for the regulation of those endeavors as well as, among others, professional and amateur mixed martial arts, kickboxing, and other combative sports.

The legislation also sought to protect combatants in all combative endeavors by requiring every licensed promoter of authorized combative sports and professional wrestling to provide accident insurance for the protection of licensed professionals and wrestlers appearing in authorized combative sports matches or professional wrestling exhibitions on and after September 1, 2016; establishing insurance minimums; and authorizing the State Athletic Commission ("SAC") to establish regulations to implement the legislation (codified as GBL section 1015.11). Accordingly, SAC is repealing current 19 NYCRR 208 and promulgating a new Part 208, which, among other things, provides that the accident insurance policy may be either primary or secondary to any other applicable insurance coverage held by the licensed professional or wrestler participant.

Currently, 11 NYCRR 52 (Insurance Regulation 62) would prohibit an insurer from issuing such a blanket policy on an excess basis. This amendment would allow an insurer to issue a blanket accident insurance policy that is issued in accordance with GBL section 1015.11 to contain a provision that its benefits are excess or always secondary to any plan.

3. Needs and benefits: Permitting a limited exception to Regulation 62 in allowing the GBL section 1015.11 blanket accident insurance policies to be written on an excess basis should make the coverage more affordable and more readily available. In order for a blanket accident insurance policy that is issued in accordance with GBL section 1015.11 to be secondary to other coverage, it is necessary to amend Insurance Regulation 62. Without this amendment, the SAC's proposal permitting the accident insurance policy to be either primary or secondary to any other applicable insurance coverage held by a licensed professional or wrestler participant could not be fully realized. While this means that other accident and health policies insuring the participant could be primary, this amendment should not significantly impact the rates for those policies because they already have to provide the coverage and there are only a limited number of participants involved. Moreover, coordination of coverage with other policies may vary depending upon the jurisdiction in which the other policies were issued.

4. Costs: This amendment imposes no compliance costs upon state or local governments. The Department of Financial Services ("Department") will not incur any additional costs due to this amendment because insurers that choose to offer the accident insurance coverage under the rule will not be required to file its forms any differently than they are presently required to do. The Department also does not expect any substantial increase in the number of forms filed with the Department due to this amendment.

Insurers that issue the accident insurance policies under this rule would incur no additional costs beyond their usual costs of doing business. In fact, insurers that write the coverage should earn additional income from the new business.

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

6. Paperwork: This amendment does not impose any additional paperwork for insurers, the Department, or any local or state governments.

7. Duplication: There are no federal or other New York State requirements that duplicate, or conflict with this regulation.

8. Alternatives: Without this amendment, the SAC's proposal permitting the accident insurance policy to be either primary or secondary to any other applicable insurance coverage held by a licensed professional or wrestler participant could not be fully realized, which might make the coverage less available. Therefore, there are no viable alternatives to this amendment.

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

10. Compliance schedule: The emergency adoption of the amended rule will become effective upon filing with the Department of State.

Regulatory Flexibility Analysis

1. Small businesses: The Department of Financial Services ("Department") finds that this amendment will not impose any adverse economic impact on small businesses and will not impose any reporting, recordkeeping or other compliance requirements on small businesses. The basis for this finding is that this amendment is directed at insurers that are authorized to write accident insurance coverage in New York State, none of which fall within the definition of "small business" as defined in State Administrative Procedure Act section 102(8), because there are no such insurers that are both independently owned and have less than one hundred employees.

2. Local governments: This amendment, which simply allows a blanket accident insurance policy that is issued in accordance with General Business Law section 1015.11 to contain a provision that its benefits are excess or always secondary to any plan, does not impose any impacts, including any adverse impacts, or any reporting, recordkeeping, or other compliance requirements on any local governments.

Rural Area Flexibility Analysis

The Department of Financial Services finds that this amendment, which simply allows a blanket accident insurance policy that is issued in accordance with General Business Law section 1015.11 to contain a provision that its benefits are excess or always secondary to any plan, does not impose any additional burden on persons located in rural areas, and will not have an adverse impact on rural areas. This amendment applies uniformly to regulated parties that do business in both rural and non-rural areas of New York State. Additionally, this amendment will not require regulated entities to engage in any additional reporting, recordkeeping or other compliance requirements. Neither will it require additional professional services. As such, this amendment will not impose any additional costs on rural areas.

Job Impact Statement

The amendment to Insurance Regulation 62 should have no negative impact on jobs or employment opportunities, including self-employment opportunities, in New York State.

New General Business Law ("GBL") section 1015.11 requires every licensed promoter of authorized combative sports and professional wrestling to provide accident insurance for the protection of licensed professionals and wrestlers appearing in authorized combative sports matches or professional wrestling exhibitions on and after September 1, 2016, and authorizes the State Athletic Commission to promulgate regulations necessary to implement this legislation.

In accordance with GBL section 1015.11, the State Athletic Commission is repealing current 19 NYCRR 208 and promulgating a new Part 208, which, among other things, provides that the accident insurance policy may be either primary or secondary to any other applicable insurance coverage held by the licensed professional or wrestler participant.

Pursuant to Insurance Law section 3201, accident insurance policies are subject to the approval of the Superintendent of Financial Services. These policies are subject to the requirements of 11 NYCRR 52 (Insurance Regulation 62). In order for the accident insurance policy to be secondary to other coverage, an amendment to Insurance Regulation 62 is necessary.

This amendment allows a blanket accident insurance policy that is issued in accordance with GBL section 1015.11 to contain a provision that its benefits are excess or always secondary to any plan.

This amendment should not result in any impact on jobs or employment opportunities, including self-employment opportunities, in New York State because it neither creates new employment or job opportunities nor reduces them.

Department of Labor

NOTICE OF ADOPTION

Methods of Payment of Wages

I.D. No. LAB-21-15-00009-A

Filing No. 814

Filing Date: 2016-08-24

Effective Date: 2017-03-07

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

Action taken: Addition of Part 192 to Title 12 NYCRR.

Statutory authority: Labor Law, sections 21 and 199

Subject: Methods of Payment of Wages.

Purpose: This regulation provides clarification and specification as to the permissible methods of payment, including payroll debit cards.

Text of final rule: *Part 192 Methods of Payment of Wages*

Subpart-1 General Provisions

§ 192-1.1 Permissible Methods of Payment

Employees may be paid wages by employers using the following permissible methods:

(a) Cash;

(b) Check;

(c) Direct Deposit; or

(d) Payroll Debit Card.

§ 192-1.2 Definitions

For the purposes of this part:

(a) Payroll Debit Card shall mean a card that provides access to an account with a financial institution established directly or indirectly by the employer, and to which transfers of the employee's wages are made on an isolated or recurring basis.

(b) Consent shall mean an express, advance, written authorization given voluntarily by the employee and only given following receipt by the employee of written notice of all terms and conditions of the method of payment. Consent may be withdrawn at any time, provided however, that the employer shall be given a reasonable period of time, but no longer than two full pay periods, to finalize such change.

(c) No Cost shall mean that an employee can access his or her wages, in full, without encumbrances, costs, charges, or fees.

(d) Local Access shall mean that the employee is provided with access to his or her wages, at a facility or machine which is located within a reasonable travel distance to the employee's work location or home, and without unreasonable restraint by the employer or its agent.

(e) Employee shall be as it is defined in Section 190 of the Labor Law and shall not include any person employed in a bona fide executive, administrative, or professional capacity whose earnings are in excess of the dollar threshold contained in Section 192(2) of the Labor Law, or an employee working on a farm not connected with a factory.

(f) Direct Deposit shall mean the transfer of wages into an account, of the employee's choosing, of a financial institution.

(g) Reasonable Intervals shall mean not less frequently than annually.

(h) Negotiable instrument shall be as it is defined in Section 3-104 of the New York State Uniform Commercial Code.

§ 192-1.3 Written Notice and Consent

(a) Notice of methods of payment. An employer who uses methods of payments other than cash or check shall provide employees with a written notice that identifies the following:

(1) a plain language description of all of the employee's options for receiving wages;

(2) a statement that the employer may not require the employee to accept wages by payroll debit card or by direct deposit;

(3) a statement that the employee may not be charged any fees for services that are necessary for the employee to access his or her wages in full; and

(4) if offering employees the option of receiving payment via payroll debit card, a list of locations where employees can access and withdraw wages at no charge to the employees within reasonable proximity to their place of residence or place of work.

(b) Consent. An employer who offers one or more methods of payment of wages that require consent shall obtain such consent in writing and shall ensure that:

(1) It obtains the employee's informed consent without intimidation, coercion, or fear of adverse action by the employer for refusal to accept payment of wage by direct deposit or payroll debit card; and

(2) Does not make payment of wage by direct deposit or payroll debit card a condition of hire or of continued employment.

(c) Electronic. The written notice and written consent may be provided and obtained electronically so long as an employee is provided with the ability to view and print both the notice and the consent while the employee is at work and without cost to the employee, and the employee is notified of his or her right to print such materials by the employer through such electronic process.

(d) Language. The written notice and written consent shall be provided in English and in the primary language of the employee when a template notice and consent in such language is available from the commissioner.

§ 192-1.4 Prohibited practices

An employer and its agent shall not engage in unfair, deceptive or abusive practices in relation to the method or methods of payment of wages. No employer or his agent, or the officer or agent of any corporation, shall discharge, penalize or in any other manner discriminate against any employee because such employee has not consented to receive his or her wages through direct deposit or payroll debit card.

Subpart-2 Methods of Payment

§ 192-2.1 Payment of Wages by Check

When paying wages by check, an employer shall ensure that:

(a) The check is a negotiable instrument; and

(b) The employer does not impose any fees in connection with the use of checks for the payment of wages, including a fee for replacement of a lost or stolen check.

§ 192-2.2 Payment of Wages by Direct Deposit

When paying wages by direct deposit, an employer shall ensure that:

(a) It has consent from the employee;

(b) A copy of the employee's consent must be maintained by the employer during the period of the employee's employment and for six years following the last payment of wages by direct deposit. A copy of the employee's written consent must be provided to the employee; and

(c) Such direct deposit is made to a financial institution selected by the employee.

§ 192-2.3 Payment of Wages by Payroll Debit Card

(a) When paying wages by payroll debit card, an employer shall ensure that:

(1) It has consent from the employee;

(2) It provides the information referenced in Section 192-1.3(a) and receives consent at least seven business days prior to taking action to issue the payment of wages by payroll debit card, during such seven business days the employee's consent shall not take effect.

(b) An employer shall not deliver payment of wages by payroll debit card unless each of the following is provided:

(1) Local Access to one or more automated teller machines that offers withdrawals at no cost to the employee;

(2) At least one method to withdraw up to the total amount of wages for each pay period or balance remaining on the payroll debit card without the employee incurring a fee;

(c) An employer or agent shall not charge, directly or indirectly, an employee a fee for any of the items listed in this subsection. Inclusion in this subsection does not impose any separate or independent obligation to provide services, nor does it relieve an employer or agent from compliance with this Part or any Federal or State law or regulations:

(1) Application, initiation, loading, participation or other action necessary to receive wages or to hold the payroll debit card;

(2) Point of sale transactions;

(3) Overdraft, shortage, or low balance status;

(4) Account inactivity;

(5) Maintenance;

(6) Telephone or online customer service;

(7) Accessing balance or other account information online, by Interactive Voice Response through any other automated system offered in conjunction with the payroll debit card, or at any ATM in network made available to the employee;

(8) Providing the employee with written statements, transaction histories or the issuer's policies;

(9) Replacing the payroll debit card at reasonable intervals;

(10) Closing an account or issuing payment of the remaining balance by check or other means; or

(11) Declined transactions at an Automated Teller Machine that does not provide free balance inquiries.

(12) Any fee not explicitly identified by type and by dollar amount in the contract between the employer and the issuer or in the terms and conditions of the payroll debit card provided to the employee.

(d) An employer or its agent shall not deliver payment of wages by payroll debit card account that is linked to any form of credit, including a loan against future pay or a cash advance on future pay. Nothing in this subsection shall prohibit an issuer from covering an occasional inadvertent overdraft transaction if there is no charge to the employee.

(e) An employer shall not pass on any of its own costs associated with a payroll debit card account to an employee, nor may an employer receive any kickback or other financial remuneration from the issuer, card sponsor, or any third party for delivering wages by payroll debit card.

(f) An employer or its agent shall not deliver payment of wages by payroll debit card unless the agreement between the employer and issuer requires that the funds on a payroll debit card shall not expire. Notwithstanding this requirement, the agreement may provide that the account may be closed for inactivity provided that the issuer gives reasonable notice to the employee and that the remaining funds are refunded within seven days.

(g) At least thirty days before any change in the terms and conditions of a payroll debit card takes effect, an employer must provide written notice in plain language, in the employee's primary language or in a language the employee understands, and in at least 12-point font of any change to the terms or conditions of the payroll debit card account including any changes in the itemized list of fees. If the issuer charges the employee any new or increased fee before thirty days after the date the employer has provided the employee with written notice of the change in accordance with the provisions of this subsection, the employer must reimburse the employee for the amount of that fee.

(h) Where an employee is covered by a valid collective bargaining agreement that expressly provides the method or methods by which wages may be paid to employees, an employer must also have the approval of the union before paying by payroll card.

Final rule as compared with last published rule: Nonsubstantive changes were made in section 192-2.3(a).

Revised rule making(s) were previously published in the State Register on October 28, 2015 and June 15, 2016.

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

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

The revisions do not necessitate revisions 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 2020, which is no later than the 3rd year after the year in which this rule is being adopted.

Assessment of Public Comment

The Department received numerous comments following publication of the revised rule in the June 15, 2016 edition of the NY Register. The following represents a summary and an analysis of such comments, and the reasons why any significant alternatives were not incorporated into the rule. Generally, comments were received arguing against the adoption of the present rule, and comments were received commending the Department for this proposal and urging its adoption. Comments which were previously analyzed, for which no changes were made in the revised rule in the previously published Assessment of Comments, are not included here and reference is made to the previously published assessment for such analysis and response.

Comment 1:

The Department of Labor should take steps to inform workers of their rights under Federal Regulation E of the Electronic Fund Transfer Act.

Response 1:

The Department will consider adding guidance and statements which reference the protections of Regulation E in future guidance and material, including the notice templates contemplated by this rule.

Comment 2:

In addition to the languages previously identified, the Department should make templates available in French, Arabic, Bengali, Tagalog, and Urdu in order to ensure workers are informed of their rights.

Response 2:

The Department agrees and intends to make the templates available in such additional languages.

Comment 3:

Prior consents and authorizations for the payment of wages via direct deposit and/or payroll debit card should remain valid.

Response 3:

The Department, in analyzing the significant comments received advocating for the continued effectiveness for consents prior to the effective date of this rule, agrees and consents given without the requisite notices will remain valid so long as such notices are provided to employees before the effective date of this rule and employees are expressly notified of their right to withdraw consent to direct deposit or payroll debit card through such notices. Such interpretation is consistent with the goal of ensuring that employees are notified of their rights while seeking to minimize adverse impact on and paperwork requirement for employers. This Comment and Response supersedes Response Number 10 in the June 15, 2016 Assessment of Comment.

Comment 4:

Local access to an ATM should not be required in favor of requiring access to a network of ATMs with a substantial presence in the State.

Response 4:

The Department disagrees. An ATM network with a substantial presence in the State will not guarantee local access to ATMs since such a requirement does not address the diverse population areas throughout the State. For example, a substantial network that has a significant presence Downstate would provide little to no access to ATMs for employees in the North Country. Conversely and more appropriately toward the goal of ensuring employee local ATM access to wages, the requirements of the present rule merely require that one or more ATMs be located within a reasonable distance to the employees work or home. Such requirement may be sufficiently met by a network of ATMs, but compliance will be determined not with the statewide sufficiency of the network, but rather by the local access provided relative to the employee's place of work or home.

Comment 5:

The notice and consent requirements of the rule are vague, and they fail to provide employers with sufficient information as to what notice is required to be provided.

Response 5:

The notice and consent requirements provide employers with a sufficient basis of what is required, and the Department will prepare templates that contain all of the information necessary for compliance with the requirements of the rule. Employers are free to utilize such templates, model their notices after such templates, or develop their own templates using the requirements outlined in the rule.

Comment 6:

There is a technical issue in 192-2.3(a)(2) which provides that the "following information" must be provided before consent must take effect, but the information referenced was moved to Section 192-1.3(a).

Response 6:

The Department agrees. A non-substantial change was made to reflect this technical issue.

Comment 7:

Employers should not have to provide employees with an individualized list of ATM locations, as a phone number or website which contains such a list should be sufficient.

Response 7:

A link to a website which provides a list or mechanism by which an employee can access a list of ATM locations which provide local access is sufficient to satisfy the notice requirements in Section 192-1.3(a)(4).

Comment 8:

The rule should be revised to exclude the exemption in applicability for employees working on a farm not connected with a factory.

Response 8:

The statutory authority, from which the present rule is derived, at least

in significant part, comes from provisions within Article 6 of the Labor Law which exclude, in their coverage, employee working on a farm not connected with a factory. As such, the provisions of the present rule properly exclude such employees given the limited authority that the Department has relative to such workers in this context.

Comment 9:

The Department should not finalize this rule until the Consumer Fraud Protection Bureau acts with regard to amendments to Regulation E.

Response 9:

The Department disagrees. Any amendments to Regulation E, which applies generally to financial institutions and governs their interactions with consumers, will be reviewed by the Department as to the effect that they have on the present rule, if any, and appropriate regulatory or administrative action will be taken at that time.

Department of Motor Vehicles

NOTICE OF ADOPTION

Certified Examiners

I.D. No. MTV-27-16-00001-A

Filing No. 810

Filing Date: 2016-08-23

Effective Date: 2016-09-07

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

Action taken: Amendment of section 6.13 of Title 15 NYCRR.

Statutory authority: Vehicle and Traffic Law, sections 215(a), 509-g and 509-m(2)

Subject: Certified examiners.

Purpose: To clarify and strengthen guidelines regarding certified examiners.

Text or summary was published in the July 6, 2016 issue of the Register, I.D. No. MTV-27-16-00001-P.

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

Text of rule and any required statements and analyses may be obtained from: Heidi Bazicki, DMV, 6 Empire State Plaza, Rm. 522A, Albany, NY 12228, (518) 474-0871, email: heidi.bazicki@dmv.ny.gov

Assessment of Public Comment

Comment: Assemblyman Kenneth P. Zebrowski, Chairman of the Administrative Regulations Review Commission, submitted a comment about the proposed amendments to 15 NYCRR 6. The Assemblyman does not object to adoption of the consensus rule as proposed, but recommends an amendment for a future rulemaking.

Assemblyman Zebrowski writes that although the proposed rule adds new compliance requirements for motor carriers, corresponding changes are not made to section 6.22. He explains that unless section 6.22 is amended, the proposed amendments to section 6.13 would appear to be the only carrier compliance requirements involving false statements or misrepresentations that could not be enforced through civil penalties.

Response: The Department appreciates the Assemblyman's comments and will carefully consider whether a conforming amendment to section 6.22 is appropriate for a future rulemaking.

NOTICE OF ADOPTION

Driving Schools

I.D. No. MTV-27-16-00008-A

Filing No. 809

Filing Date: 2016-08-23

Effective Date: 2016-09-07

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

Action taken: Amendment of Part 76 of Title 15 NYCRR.

Statutory authority: Vehicle and Traffic Law, sections 215 and 394

Subject: Driving schools.

Purpose: Makes technical and clarifying amendments to improve consumer protection and increases Department efficiency.

Text or summary was published in the July 6, 2016 issue of the Register, I.D. No. MTV-27-16-00008-P.

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

Text of rule and any required statements and analyses may be obtained from: Heidi Bazicki, DMV, 6 Empire State Plaza, Rm. 522 A, Albany, NY 12228, (518) 474-0871, email: heidi.bazicki@dmv.ny.gov

Assessment of Public Comment

The agency received no public comment.

Public Service Commission

PROPOSED RULE MAKING HEARING(S) SCHEDULED

Disposition of Tax Refunds Received by New York American Water Company, Inc.

I.D. No. PSC-36-16-00005-P

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

Proposed Action: The Commission is considering the petition of New York American Water Company, Inc. that proposes the disposition of a tax refund.

Statutory authority: Public Service Law, section 113(2)

Subject: Disposition of tax refunds received by New York American Water Company, Inc.

Purpose: To determine the disposition of tax refunds and other related matters.

Public hearing(s) will be held at: 10:30 a.m., Oct. 25, 2016 and continuing daily as needed*, at Department of Public Service, Three Empire State Plaza, 3rd Fl. Hearing Rm., Albany, NY.

*On occasion there are requests to reschedule or postpone evidentiary hearing dates. If such a request is granted, notification of any subsequent scheduling changes will be available at the DPS website (www.dps.ny.gov) under Case 16-W-0384.

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.

Substance of proposed rule: The Public Service Commission is considering a petition by New York American Water Company, Inc. (NYAW) to implement its proposed disposition of a tax refund received from the Town of Oyster Bay, the Syosset Sanitation District and the Glenwood Garbage District. NYAW received a tax refund in the amount of $984,058.71. NYAW proposes that certain costs related to these tax challenges be deducted and that its shareholders retain a percentage of the net amount as reward for its efforts in obtaining the refund. The remainder of the refund is proposed to be returned to ratepayers in a manner to be determined. The Commission may adopt, reject or modify, in whole or in part, the relief proposed and may resolve related matters.

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

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

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

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

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

(16-W-0384SP1)

PROPOSED RULE MAKING
NO HEARING(S) SCHEDULED

Petition Regarding the Commission's July 14, 2016 Order Denying Petition

I.D. No. PSC-36-16-00003-P

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

Proposed Action: The Commission is considering a Petition filed by Fastrac Markets, LLC on August 10, 2016, requesting rehearing of the Commission's July 14, 2016 Order Denying Petition.

Statutory authority: Public Service Law, sections 2(13), 5(1)(b), 22, 65, 66 and 68(1)

Subject: Petition regarding the Commission's July 14, 2016 Order Denying Petition.

Purpose: To consider the terms and conditions of utility service received by Fastrac Markets, LLC.

Substance of proposed rule: The New York State Public Service Commission (Commission) is considering an "Application for Rehearing and Renewal" (Petition), filed on August 10, 2016, by Fastrac Markets, LLC (Fastrac). Fastrac's Petition seeks rehearing of the Commission's Order Denying Petition, issued on July 14, 2016, with respect to the following issues: (1) whether, Rochester Gas and Electric Corporation (RG&E) has an obligation to provide electric service to Fastrac, and whether Fastrac has a right to receive electric service from RG&E (2) whether the relief sought in Fastrac's original petition fell outside the scope of the relief permitted under a declaratory ruling; (3) whether Fastrac's Ridge Road property is located within the property boundaries of the Eastman Business Park (Park); and, (4) whether the Commission granted RED-Rochester, LLC (RED) the exclusive authority to provide utility delivery services in the Park. With respect to points (3) and (4), Fastrac claims to present new facts in support of a renewal of its original request for a declaratory ruling. Therefore, comments are also sought on whether reconsideration should be granted based on the location of Fastrac's Ridge Road property in relation to the boundaries of the Park, and whether the Commission granted RED exclusive authority to provide utility delivery services in the Park. Upon conducting its evaluation of the Petition, the Commission may reaffirm its initial decision or adhere to it with additional rationale in denying the Petition, modify or reverse the decision in granting the Petition in whole or in part, or take other action as it deems necessary with respect to the Petition. However, the Commission will limit its review to the issues raised by the Petition.

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: 45 days after publication of this notice.

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

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

(16-E-0057SP2)

PROPOSED RULE MAKING
NO HEARING(S) SCHEDULED

Recovery of Costs for Installation of Electric Service

I.D. No. PSC-36-16-00004-P

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

Proposed Action: The Commission is considering a petition of 43 Mall, Ltd. requesting recovery of costs, related to the installation of electric service at a new housing development, from Niagara Mohawk Power Corporation d/b/a National Grid.

Statutory authority: Public Service Law, sections 65 and 66

Subject: Recovery of costs for installation of electric service.

Purpose: To consider the recovery of costs for installation of electric service.

Substance of proposed rule: The Public Service Commission is considering a petition of 43 Mall, Ltd. (43 Mall), filed on August 12, 2016, requesting recovery of costs, related to the installation of electric service at a new housing development, from Niagara Mohawk Power Corporation d/b/a National Grid. 43 Mall claims that National Grid failed to comply with the terms of its tariff regarding the provision of electric service to new developments and requests that National Grid be ordered to compensate 43 Mall for costs incurred in preparing the cite for service, 43 Mall alleges that National Grid violated its tariff through unreasonable delays in scheduling work, locating a transformer too close to a road and refusing to move it, and not fully compensating 43 Mall for the work the petitioner performed. The Commission may adopt, reject or modify, in whole or in part, the petition 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: 45 days after publication of this notice.

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

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

(16-E-0457SP1)

Office of Temporary and Disability Assistance

PROPOSED RULE MAKING
NO HEARING(S) SCHEDULED

Supplemental Nutrition Assistance Program (SNAP)

I.D. No. TDA-36-16-00006-P

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

Proposed Action: Amendment of section 387.1 of Title 18 NYCRR.

Statutory authority: 7 United States Code, ch. 51 and sections 2011, 2013 and 2024; 7 Code of Federal Regulations, sections 271.2 and 273.16; Social Services Law, section 95; L. 2012, ch. 41

Subject: Supplemental Nutrition Assistance Program (SNAP).

Purpose: Update State regulations to reflect federal requirements regarding the trafficking of SNAP benefits.

Text of proposed rule: Subdivisions (n) - (kk) of § 387.1 of Title 18 NYCRR are relettered as subdivisions (o) - (ll), and a new subdivision (n) is added to read as follows:

(n) Eligible food means:

(1) Any food or food product intended for human consumption except alcoholic beverages, tobacco, and hot foods and hot food products prepared for immediate consumption;

(2) Seeds and plants to grow foods for the personal consumption of eligible households;

(3) Meals prepared and delivered by an authorized meal delivery service to households eligible to use SNAP benefits to purchase delivered meals; or meals served by an authorized communal dining facility for the elderly, for SSI households or both, to households eligible to use SNAP benefits for communal dining;

(4) Meals prepared and served by a drug addict or alcoholic treatment and rehabilitation center to narcotic addicts or alcoholics and their children who live with them;

(5) Meals prepared and served by a group living arrangement facility to residents who are blind or disabled;

(6) Meals prepared by and served by a shelter for battered women and children to its eligible residents; or

(7) In the case of homeless SNAP households, meals prepared for and served by an authorized public or private nonprofit establishment (e.g. soup kitchen, temporary shelter), approved by an appropriate State or local agency, that feeds homeless persons.

Amend re-lettered subdivision (aa) of § 387.1 of Title 18 NYCRR to read as follows:

(aa) Intentional program violation occurs when an applicant or recipient intentionally makes a false or misleading statement, misrepresents, conceals, withholds facts or commits any act that constitutes a violation of the Food [Stamp Act] *and Nutrition Act of 2008*, the [food stamp program] *SNAP* regulations or any State statute relating to the use, presentation, transfer, acquisition, receipt or [possession of food stamp coupons] *trafficking of SNAP benefits*.

Add a new subdivison (mm) to § 387.1 of Title 18 NYCRR to read as follows:

(mm) Trafficking of SNAP benefits is:

(1) The buying, selling, stealing, or otherwise effecting an exchange of SNAP benefits issued and accessed via Electronic Benefit Transfer (EBT) cards, card numbers and personal identification numbers (PINs), or by manual voucher and signature, for cash or consideration other than eligible food, either directly, indirectly, in complicity or collusion with others, or acting alone;

(2) The exchange of firearms, ammunition, explosives, or controlled substances for SNAP benefits;

(3) Purchasing a product with SNAP benefits that has a container requiring a return deposit with the intent of obtaining cash by discarding the product and returning the container for the deposit amount, intentionally discarding the product, and intentionally returning the container for the deposit amount;

(4) Purchasing a product with SNAP benefits with the intent of obtaining cash or consideration other than eligible food by reselling the product, and subsequently intentionally reselling the product purchased with SNAP benefits in exchange for cash or consideration other than eligible food;

(5) Intentionally purchasing products originally purchased with SNAP benefits in exchange for cash or consideration other than eligible food; or

(6) Attempting to buy, sell, steal, or otherwise affect an exchange of SNAP benefits issued and accessed via Electronic Benefit Transfer (EBT) cards, card numbers and personal identification numbers (PINs), or by manual voucher and signatures, for cash or consideration other than eligible food, either directly, indirectly, in complicity or collusion with others, or acting alone.

Subdivisions (ll) - (nn) of § 387.1 of Title 18 NYCRR are relettered as subdivisions (nn) - (pp).

[(ll)] *(nn)* Verification is the process of obtaining information which establishes the accuracy of information provided by the applicant/recipient.

[(mm)] *(oo)* Veteran means a person who served in the active military, naval, or air service of the United States, and who was discharged or released therefrom under conditions other than dishonorable.

[(nn)] *(pp)* United States Department of Agriculture (USDA) is the Federal agency responsible for the administration of the [food stamp program] *SNAP*.

Text of proposed rule and any required statements and analyses may be obtained from: Matthew L. Tulio, New York State Office of Temporary and Disability Assistance, 40 North Pearl Street, 16C, Albany, New York 12243-0001, (518) 486-9568, email: matthew.tulio@otda.ny.gov

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

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

Regulatory Impact Statement

1. Statutory authority:

The federal Supplemental Nutrition Assistance Program (SNAP) is authorized by Chapter 51 of Title 7 of the United States Code (U.S.C.). Pursuant to 7 U.S.C. § 2011, the federal SNAP promotes the general welfare and safeguards the health and well-being of the nation's population by raising levels of nutrition among low-income households.

Pursuant to 7 U.S.C. § 2013, the federal Secretary of Agriculture is authorized to administer the federal SNAP under which, at the request of the State agency, eligible households within the State will be provided an opportunity to obtain SNAP benefits.

Pursuant to 7 U.S.C. § 2024 and Social Services Law (SSL) § 147, penalties are set forth for the unauthorized use, transfer, acquisition, alteration or possession of SNAP benefits and for the payment or redemption of benefits that have been illegally received, transferred or used.

The provisions of 7 Code of Federal Regulations (C.F.R.) § 271.2 set forth what kinds of foods, seeds, and plants may constitute "eligible food" pursuant to SNAP. 7 C.F.R. § 271.2 also describes "trafficking" as the buying or selling of SNAP benefits, SNAP benefit cards or other benefit instruments for cash or consideration other than eligible food; or the exchange of SNAP benefits for ammunition, firearms, explosives or controlled substances, as defined in 21 U.S.C. § 802.

Pursuant to 7 C.F.R. § 273.16, intentional program violations shall include the trafficking of SNAP benefits or authorization cards used as part of an automated benefit delivery system.

SSL § 95 authorizes the Office of Temporary and Disability Assistance (OTDA) to administer the SNAP, formerly named the Food Stamp Program, in New York State and to perform such functions as may be appropriate, permitted or required by or pursuant to federal law.

Chapter 41 of the Laws of 2012 changed the name of the Food Stamp Program to the SNAP.

2. Legislative objectives:

It was the intent of the Legislature in enacting SSL § 95 that OTDA establish rules, regulations and policies so that adequate provision is made for those persons unable to provide for themselves, while at the same time complying with federal statutes and regulations governing the SNAP.

3. Needs and benefits:

The proposed regulatory amendments, adding the definitions of "eligible food" and "trafficking of SNAP benefits," are necessary to bring the State regulations into compliance with current State policies and practices, which are required by federal statutes and regulations.

Chapter 41 of the Laws of 2012 changed the name of the Food Stamp Program to the SNAP. This proposal would update references in the amended regulations from the Food Stamp Program to the SNAP. The regulatory amendments would also update a reference from the federal Food Stamp Act to the federal Food and Nutrition Act of 2008.

4. Costs:

The proposed regulatory amendments would have no fiscal impact. The social services districts (SSDs) are already required to comply with federal statutes and regulations governing SNAP.

5. Local government mandates:

The proposed regulatory amendments would not impose any additional programs, services, duties or responsibilities upon the SSDs.

6. Paperwork:

There would be no additional forms required to support the proposed regulatory amendments.

7. Duplication:

The proposed amendments would not conflict with any existing State statutes or federal statutes or regulations. The proposal would bring State regulations into compliance with federal requirements set forth in 7 U.S.C. § 2024 and 7 C.F.R. §§ 271.2 and 273.16.

8. Alternatives:

An alternative to the proposed amendments would be to retain the existing regulations. However, these regulatory amendments are necessary to bring the State regulations into compliance with federal requirements and current State practices.

9. Federal standards:

The proposed amendments are consistent with the federal standards for the SNAP.

10. Compliance schedule:

OTDA and the SSDs would be in compliance with the regulatory provisions on their effective date.

Regulatory Flexibility Analysis

1. Effect of Rule:

The proposed amendments would have no effect on small businesses. The proposed amendments would have a beneficial impact on the 58 social services districts (SSDs) in the State because the amendments would update the State regulations to reflect the current practices and policies of the SSDs.

2. Compliance Requirements:

There would be no additional reporting requirements or new paperwork required to support the proposed regulatory amendments. The proposed regulations would not impose any programs upon the SSDs.

3. Professional Services:

The proposed amendments would not require SSDs to hire additional professional services.

4. Compliance Costs:

The SSDs would not incur initial capital costs or annual costs to comply with the proposed regulations. The proposed regulatory amendments are necessary to bring the State regulations into compliance with current State policies and practices, which are required by federal statutes and regulations.

5. Economic and Technological Feasibility:

SSDs currently have the economic and technological abilities to comply with these proposed regulations.

6. Minimizing Adverse Impact:

The proposed regulations would not have an adverse impact upon the SSDs. The proposed regulatory amendments would not impose any additional programs, services, duties, or responsibilities upon the SSDs.

7. Small Business and Local Government Participation:

The concept of adding trafficking provisions to the State regulations has been discussed at the Office of Temporary and Disability Assistance's (OTDA's) New York Welfare Fraud Investigators Association Annual Conference and at regional training meetings. Representatives from the SSDs were at each of these meetings and expressed support for the proposal. In addition, SSDs have reached out to OTDA since the meetings to support OTDA's goal of addressing Supplemental Nutrition Assistance Program benefits trafficking through the intentional program violation process.

Rural Area Flexibility Analysis

1. Types and estimated numbers of rural areas:

The proposed amendments would have no effect on small businesses in rural areas. The proposed amendments would have a beneficial impact on the social services districts (SSDs) in rural areas because the proposed amendments would update the State regulations to reflect the current practices and policies of the SSDs.

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

The proposed amendments would not impose any additional reporting or recordkeeping on the rural SSDs. Rural SSDs would not need to hire additional professional services to comply with the proposed regulations.

3. Costs:

The rural SSDs would not incur initial capital costs or annual costs to comply with the proposed regulations. The proposed regulatory amendments are necessary to bring the State regulations into compliance with current State policies and practices, which are required by federal statutes and regulations.

4. Minimizing adverse impact:

The proposed regulations would not have an adverse impact upon the rural SSDs. The proposed regulatory amendments would not impose any additional programs, services, duties, or responsibilities upon the rural SSDs.

5. Rural area participation:

The concept of adding trafficking provisions to the State regulations has been discussed at the Office of Temporary and Disability Assistance's (OTDA's) New York Welfare Fraud Investigators Association Annual Conference and at regional training meetings. Representatives from the rural SSDs were at these meetings and expressed support for the proposal. In addition, rural SSDs have reached out to OTDA since the meetings to support OTDA's goal of addressing Supplemental Nutrition Assistance Program benefits trafficking through the intentional program violation process.

Job Impact Statement

A Job Impact Statement is not required for the proposed amendments. It is apparent from the nature and the purpose of the proposed amendments that they would not have substantial adverse impacts on jobs and employment opportunities in either the public sector or private sectors in New York State. The proposed amendments would not impact the private sector. The proposed amendments would not affect the jobs of the workers in the social services districts or the State because the proposed amendments would update the State regulations to reflect current policies and practices. Thus, the proposed amendments would not have any adverse impact upon jobs and employment opportunities in New York State.