

# 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.

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## Office of Children and Family Services

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

#### Casework Contact for Foster Children Placed Out of State

I.D. No. CFS-20-15-00004-P

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

**Proposed Action:** Amendment of sections 428.3, 430.12 and 441.21 of Title 18 NYCRR.

**Statutory authority:** Social Services Law, sections 20(3)(d) and 34(3)(f)

**Subject:** Casework contact for foster children placed out of state.

**Purpose:** To conform NYS standards for casework contacts of foster children under age 18 who are placed out of state to federal standards.

**Text of proposed rule:** Subparagraph (iv) of paragraph (2) of subdivision (b) of section 428.3 is repealed, subparagraph (v) is amended and renumbered as subparagraph (iv) and subparagraph (vi) is renumbered as subparagraph (v) as follows:

(iv) [ if the child has been placed in foster care outside of the state, a report prepared every six months by a caseworker employed by either the authorized agency with case management and/or case planning responsibility for the child, the state in which the placement home or facility is located, or a private agency under contract with either the authorized agency or other state, documenting the caseworker's visit(s) with the child at his or her placement home or facility within the six-month period; and

(v)] the child's transition plan prepared in accordance with the standards set forth in section 430.12(j) of this Title[.]; *and*

[(vi)] (v) the foster child's consumer report provided in accordance with section 430.12(k) of this Title.

Subparagraph (x) of paragraph (2) of subdivision (c) of section 430.11 is repealed and subparagraphs (viii) and (ix) are amended to read as follows:

(viii) if the child has been placed in a foster care placement a substantial distance from the home of the parents of the child or in a state different from the state in which the parent's home is located, the uniform case record must contain documentation why such placement is in the best interests of the child; *and*

(ix) show in the uniform case record that efforts were made to keep the child in his or her current school, or where distance was a factor or the education setting was inappropriate, that efforts were made to seek immediate enrollment in a new school and to arrange for timely transfer of school records[; and

(x) if the child has been placed in foster care outside of the state in which the home of the parents of the child is located, the uniform case record must contain a report prepared every six months by a caseworker employed the authorized agency with case management and/or case planning responsibility over the child, the state in which the home is located, or a private agency under contract with either the authorized agency or other state documenting the caseworker's visit to the child's placement within the six-month period].

Paragraph (3) of subdivision (c) of section 430.12 is amended to read as follows:

(3) Casework contacts. (i) Standard. Casework contacts with the child, the child's caretakers, the child's parents or relatives, if any, must adhere to the standards mandated in section 441.21 [431.16] of this Title. [Notwithstanding any other provisions of this paragraph, the standards concerning casework contacts with the child are deemed to be met by the district for any child] *When a foster child [who has been] is placed in a facility operated or supervised by the Office of Mental Health, Office [of Mental Retardation and] for People with Developmental Disabilities, Office of Alcoholism and Substance Abuse Services or the Department of Health, casework contacts required by this paragraph may be made by appropriate staff from the above referenced state agencies or by appropriate staff who perform like or similar functions under contract with such state agencies where such contacts otherwise satisfy the frequency, location and content requirements set forth in section 441.21 of this Title.*

(ii) Documentation. The progress notes shall show the extent to which these contacts are occurring pursuant to section 441.21 of this Title [department regulations], the location of the contacts and the content of the contacts. [Information concerning services which are provided to children in facilities operated or supervised by the Office of Mental Health or the Office of Mental Retardation and Developmental Disabilities and which is forwarded by such facilities to the social services district responsible for maintaining the uniform case record shall be included in the uniform case record and shall be deemed to fulfill the documentation requirements of this subparagraph.] *If such contact is made by appropriate state or contract staff, in accordance with subparagraph (i) of this paragraph, information concerning the date, location, content of the contact and services provided to the foster child must be forwarded by such state or contract staff in the month the contact occurs to the social services district or the voluntary authorized agency case manager or case planner responsible for maintaining the foster child's uniform case record. This information must then be included in the foster child's uniform case record in accordance with Part 428 of this Title.*

Paragraph (2) of subdivision (c) of section 441.21 is amended and a new paragraph (3) is added to read as follows:

(2) During the first 30 days of placement, casework contacts are to be held with the child as often as is necessary to implement the services tasks in the family and children's services plan but must occur at least twice. At least one of the two contacts must be held at the child's placement location. The focus of the initial contacts with the child must include, but need not be limited to, determining the child's reaction to the separation and his/her adjustment to the out-of-home placement and arranging for services necessary to meet his/her needs. After the first 30 days of placement, casework

contacts are to be held with the child at a minimum of once a month. At least two of the monthly contacts every 90 days must be at the child's placement location. If the youth is age 18 or older and is attending an educational or vocational program 50 miles or more outside the local social services district, the casework contacts may be made by telephone, [or] mail or electronically; provided, however, where the youth age 18 or older is placed in a foster care home or facility located outside of the State of New York, the face-to-face contact requirements set forth in subparagraph (ii) of paragraph (3) of this subdivision apply.

(3)(i) Where a foster child under the age of 18 is placed in a home or facility located outside of the State of New York, the monthly casework contact requirements set forth in paragraph (2) of this subdivision apply to such child. Such contacts must be made either by the authorized agency with case management and/or case planning responsibility for the child, a public agency in the state in which the foster home or facility is located or a private agency under contract with either the authorized agency or the other public agency.

(ii) Where a foster child is 18 years of age or older is placed in a home or facility located outside of the State of New York, a face-to-face contact with such foster child must be made at least every six months. Such casework contact must be made either by the authorized agency with case management and/or case planning responsibility for the child, a public agency in the state in which the foster home or facility is located or a private agency under contract with either the authorized agency or the public agency.

(iii) Casework contacts required by this paragraph must be recorded in the child's uniform case record in accordance the requirements of Part 428 of this Title.

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

**Data, views or arguments may be submitted to:** Public Information Office, NYS Office of Children and Family Services, 52 Washington Street, Rensselaer, NY 12144, email: info@ocfs.ny.gov

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

#### 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 398(6)(a) of the SSL requires the local commissioners of social services to determine what assistance and care, supervision or treatment foster children require.

##### 2. Legislative objectives:

The proposed regulations are necessary in order for New York State to comply with federal statutory mandates relating to caseworker visits (contacts) with foster children, in particular foster children placed outside of New York State. The federal mandates are set forth in Title IV-B, subpart 1 of the Social Security Act (SSA), specifically in section 422(b)(17) and 424(f) of the SSA.

Enhanced casework contact standards support the overall legislative goal that children be served by the child welfare system in settings where they are safe and receiving appropriate care and supervision, and that such children reside in permanent homes as soon as reasonably can be accomplished. Frequent casework contacts with foster children are important to assess and maintain the children's safety and well-being.

##### 3. Needs and benefits:

The proposed regulations would impose new requirements on social services districts and voluntary authorized agencies in relation to making casework contacts for foster children under the age of 18 who are placed outside of the State of New York. Currently, casework contacts with foster children placed out-of-state must be made every 6 months. The proposed regulations would require that casework contacts must be made on a monthly basis for foster children under the age of 18 who are placed out of state. The proposed regulations would not apply to foster children who are 18 years of age or older who are placed outside of New York. The current six month casework contact standard will continue to apply for this category of foster children.

The proposed regulations will adopt the current regulatory requirement for monthly casework contacts in place for foster children placed in a home or facility in the State of New York. Expanding the monthly casework contact requirements to include foster children placed out-of-state who are under the age of 18 will provide a consistent, statewide standard that reflects the generally accepted good child welfare practice regarding the frequency of such contacts.

The proposed regulations maintain the current standard for in-state placements regarding foster children over the age of 18 who attend an educational or vocational program 50 miles or more outside the local social services district. In such cases, casework contacts must be monthly, but may be made by telephone or mail. The proposed regulations would permit such contacts may be made electronically.

The federal Administration for Children and Families of the Department of Health and Human Services (DHHS) indicates that a correlation exists between the number of casework contacts and positive outcomes for foster children, including: achieving reunification or other permanent placements; preserving the foster child's connections and relationship with family members; and involving children and parents or relatives in case planning. In addition, the Child Welfare League of America recommends monthly visits as a protective measure.

##### 4. Costs:

The proposed regulation will assist New York State to avoid exposure to federal fiscal sanctions for non-compliance with federal caseworker visit (contact) requirements that impact the State's federal Title IV-B, subpart 1 funding. Although Title IV-B, subpart 1 funding does not support foster care costs, this is where DHHS has decided to assess the penalty.

Using the FFY 2014 Title IV-B, Subpart 1 grant award, the penalties would be:

Percentage	Funding Reduction
1 Percent	\$118,515
3 Percent	\$355,544
5 Percent	\$592,573

Since 2011, the average Title IV-B, Subpart 1 award has been \$12.9 million. Each year the annual grant has decreased.

##### 5. Local government mandates:

The social services districts or voluntary authorized agencies that are not already conducting or arranging for monthly casework contacts with foster children under age 18 and placed out-of-state will have to increase these contacts or arrange for these contact requirements to be met by comparable staff in the state where the foster child is placed. As of April 30, 2015, there were 358 foster children placed out-of-state; 318 of them were under the age of 18, and 40 of them age 18 and over.

##### 6. Paperwork:

All casework contacts must be documented in the child's Uniform Case Record in accordance with 18 NYCRR Part 428. The proposed regulations would allow comparable staff in the state where the foster child is placed to make the contact, record the information about such contact and send it to the responsible social services district or voluntary authorized agency where the child's case manager, case planner or foster child's caseworker is employed. Such documentation must be recorded electronically in the Progress Notes dialog in CONNECTIONS.

##### 7. Duplication:

The proposed regulations do not duplicate other State requirements.

##### 8. Alternatives:

The proposed regulations are necessary to improve the health, safety and well-being of foster children, to meet the requirements of federal statute and to avoid penalties imposed by the federal statute, as described below. Therefore, there are no alternatives to the proposed regulations.

##### 9. Federal standards:

As a condition to receive federal Title IV-B, subpart 1 funding, New York State must have a State Plan that satisfies the requirements of section 422 of the SSA. One of the conditions is that New York State describes the standards for the content and frequency of caseworker visits (contacts) with foster children which, at a minimum, must be monthly. Section 424 of the SSA addresses the standards for payment of federal Title IV-B, subpart 1 funds to the States. Section 424(f) of the SSA requires that States must take steps to ensure that the total number of caseworker visits (contacts) is not less than ninety percent of the total number of such visits during the fiscal year, with at least fifty present occurring in the residence of the foster child. Effective with federal fiscal year 2015 and thereafter, the threshold standard for monthly caseworker visits is ninety-five percent of the total number of such visits that would occur during the fiscal year if each such child were so visited once every month while in care.

DHHS issued a Program Instruction ACYF-CB-PI-12-01 on January 6, 2012 clarifying federal policy that the Title IV-B caseworker visit standards noted above applies to foster children placed out of state. In addition, DHHS states that, at this time, States were not required to report caseworker visit on foster children 18 years of age or older.

##### 10. Compliance schedule:

Compliance with the proposed regulations must begin immediately upon final adoption.

**Regulatory Flexibility Analysis**

**1. Effect of Rule:**

The proposed regulations will affect the 58 social services districts and the St. Regis Mohawk Tribe, which is authorized by sections 39 and 371(10)(b) of the Social Services Law (SSL) to provide child welfare services pursuant to its State/Tribal Agreement with the Office of Children and Family Services (OCFS). Voluntary authorized agencies also will be affected by the proposed regulations. There are approximately 111 such agencies.

**2. Compliance Requirements:**

The proposed regulations would impose new requirements on social services districts and voluntary authorized agencies in relation to making casework contacts with foster children who are placed out-of-state. These compliance requirements stem from sections 422(b)(17) and 424(f) of the Social Security Act (SSA) relating to caseworker visits (contacts) with foster children. The federal law requires that in order to continue to receive Title IV-B, subpart 1 funding, New York State must provide to the federal Department of Health and Human Services (DHHS) each year data on the percentage of foster children who were visited on a monthly basis and the percentage of visits that occurred in the residence of the child. New York State, in consultation with DHHS, had to establish an outline of the steps to be taken so that beginning by October 1, 2011 at least ninety percent of children in foster care are visited on a monthly basis and that the majority of the visits occur in the residence of the child. Effective federal fiscal year 2012, at least fifty percent of the monthly caseworker visits (contacts) must occur in the residence of the foster child. Effective federal fiscal year 2015 and thereafter, the total number of caseworker visits (contacts) made on a monthly basis to children in foster care during the fiscal year must not be less than at least ninety-five percent of the total number of such visits that would occur during the fiscal year if each such child were so visited one every month while in care.

If DHHS determines that the above referenced percentages are not achieved, the following penalties will be assessed:

- Percentage not met by less than 10%, Title IV B, subpart 1 funds are reduced by 1%;
- Percentage not met by between 10 and 20 %, Title IV-B, subpart 1 funds are reduced by 3%;
- Percentage not met by 20% or more, Title IV-B subpart 1 funds are reduced by 5%.

OCFS regulations currently meet the above referenced federal monthly casework contact requirement except for foster children under the age of 18 who are placed out-of-state. Current regulations require contact with a foster child placed in a home or facility outside of the State of New York every 6 months.

Following the enactment of the federal Act, New York State directly inquired of DHHS regarding the applicability of the standards noted above to foster children placed outside of the State of New York, including foster children over the age of 18. This was done because of an apparent conflict between the monthly casework contact requirements of Title IV-B (sections 422(b)(17) and 424(f) of the SSA) and a Title IV-E casework contact requirement that specifically references out-of-state placements (section 475(5)(A)(ii) of the SSA) that imposes a six month casework contact requirement. Thereafter, DHHS confirmed that the above referenced monthly casework contact provisions of Title IV-B applied to out-of-state placements of foster children under the age of 18. However in regard to foster children placed out of state who are over the age of 18, DHHS advised OCFS that the monthly Title IV-B casework contact requirements would apply to those foster children only if New York's age of majority was greater than 18 years of age and the state still had placement and care responsibility for the child.

In addition, DHHS issued a Policy Instruction, ACYF-CB-PI-12-01 on January 6, 2012 which confirmed that the federal monthly caseworker visit (contact) standards applied to foster children placed out of state. Also, DHHS informed the States that, at this time, DHHS was not requiring States to report caseworker visits of foster children who are 18 years of age or older.

Based on these responses and because a child, as defined in section 371(1) of the Social Services Law, is a person under the age of 18, the proposed regulations would expand to monthly the frequency of casework contacts for foster children under the age of 18 who are placed out-of-state. For those foster children age 18 and over who are placed out-of-state, the frequency of casework contacts remains at least every six months. As of April 30, 2015, there were 358 foster children placed out-of-state; 318 of them were under the age of 18, and 40 of them age 18 and over.

**3. Professional Services:**

It is expected that most social services districts and voluntary authorized agencies will not have to hire additional staff to implement the proposed regulations as the requirement will be met by comparable staff in the state where the child is placed. Caseworkers will have to enter the

casework contacts required by the proposed regulations into the Progress Notes dialog in the CONNECTIONS system. They have been comprehensively trained to use the system.

**4. Compliance Costs:**

New York State must implement the proposed regulations to avoid penalties for non-compliance with the federal monthly caseworker visit requirements that would impact the State's federal Title IV-B, Subpart 1 funding. Although Title IV-B, subpart 1 funding does not support foster care costs, this is where the federal Department of Health and Human Services has decided to assess the penalty.

Using the FFY 2014 Title IV-B, Subpart 1 grant award, the penalties would be:

Percentage	Funding Reduction
1 Percent	\$118,515
2 Percent	\$355,544
5 Percent	\$592,573

Since 2011, the average Title IV-B, Subpart 1 grant award has been \$12.9 million. Each year the annual grant has decreased.

**5. Economic and Technological Feasibility:**

Those social services districts that are not already conducting or arranging for monthly casework contacts with foster children under the age of 18 who are placed out-of-state will have to increase these contacts or arrange for these contact requirements to be met by comparable staff in the state where the foster child is placed. The proposed regulations also clarify that for foster children 18 years or older who are placed out of state the current six month casework contact standard remains in effect. Social services districts and voluntary authorized agencies will not need additional computers to perform these regulatory functions beyond those they already have.

**6. Minimizing Adverse Impact:**

The revisions to the casework contact requirements included in the proposed regulations are necessary to better promote the health, safety and well-being of foster children. To minimize potential adverse impact on the social services districts and voluntary authorized agencies, the proposed regulations allow comparable staff in the state where the foster child is placed to make the contact and record the information about such contact and send it to the responsible social services district or voluntary authorized agency where the child's case manager, case planner or foster child's caseworker is employed.

**7. Small Business and Local Government Participation:**

OCFS has distributed information about the federal requirements concerning casework contacts with foster children to social services districts and voluntary authorized agencies. In addition, conference calls have also been held to seek their input. OCFS has also publicized reports on this subject so social services districts and voluntary authorized agencies can assess their compliance levels.

**Rural Area Flexibility Analysis**

**1. Types and Estimated Numbers of Rural Areas:**

The proposed regulations will affect the 44 social services districts that are in rural areas. The St. Regis Mohawk Tribe is authorized by sections 39 and 371(10)(b) of the Social Services Law (SSL) as a social services district to provide child welfare services pursuant to its State/Tribal Agreement with the Office of Children and Family Services (OCFS). Those voluntary authorized agencies in rural areas contracting with social services districts to provide foster care and adoption services also will be affected by the proposed regulations. Currently, there are approximately 35 agencies.

**2. Reporting, Recordkeeping and Compliance Requirements; and Professional Services:**

The proposed regulations would bring New York State into compliance with federal standards relating to caseworker visits (contacts) with foster children placed out of state and reflect existing federal policy on caseworker visits of foster children. The federal compliance requirements are set forth in sections 422(b)(17) and 424(f) of the Social Security Act (SSA). Federal law requires that in order to continue to receive Title IV-B, subpart 1 funding, New York State must provide to the federal Department of Health and Human Services (DHHS) each year data on the percentage of foster children who were visited on a monthly basis and the percentage of visits that occurred in the residence of the child. New York State, in consultation with DHHS, had to establish an outline of the steps to be taken so that by October 1, 2011, at least ninety percent of children in foster care are visited on a monthly basis and that the majority of the visits occur in the residence of the child. Effective with federal fiscal year 2012, at least fifty percent of the monthly caseworker visits (contacts)

must occur in the residence of the foster child. Effective federal fiscal year 2015 and thereafter, the total number of caseworker visits (contacts) made on a monthly basis to children in foster care during the fiscal year must not be less than ninety-five percent of the total number of such visits that would occur during the fiscal year if each such child were so visited once every month while in care.

If DHHS determines that the above referenced percentages are not achieved, the following penalties will be assessed:

- Percentage not met by less than 10%, Title IV B, subpart 1 funds are reduced by 1%;
- Percentage not met by between 10 and 20 %, Title IV-B, subpart 1 funds are reduced by 3%;
- Percentage not met by 20% or more, Title IV-B, subpart 1 funds are reduced by 5%.

OCFS regulations currently meet the above referenced federal monthly casework contact requirement except for foster children under the age of 18 who are placed out-of-state. Current regulations require contact with a foster child placed in a home or facility outside of the State of New York every 6 months.

Following the enactment of the federal Act, New York State directly inquired of DHHS regarding the applicability of the standards noted above to foster children placed outside of the State of New York, including foster children over the age of 18. This was done because of an apparent conflict between the monthly casework contact requirements of Title IV-B (sections 422(b)(17) and 424(f) of the SSA) and a Title IV-E casework contact requirement that specifically references out-of-state placements (section 475(5)(A)(ii) of the SSA) that imposes a six month casework contact requirement. Thereafter, DHHS confirmed that the above referenced monthly casework contact provisions of Title IV-B applied to out-of-state placements of foster children under the age of 18. However in regard to foster children placed out of state who are 18 years of age or older, DHHS advised OCFS that the monthly Title IV-B casework contact requirements would apply to those foster children only if New York's age of majority was greater than 18 years of age and the state still had placement and care responsibility for the child.

In addition, DHHS issued Policy Instruction, ACYF-CB-PI-12-01 on January 6, 2012 which confirmed that the federal monthly caseworker visit (contact) standards applied to foster children placed out of state. Also, DHHS informed the States that, at this time, DHHS was not requiring States to report caseworker visits of foster children who are 18 years of age or older.

Based on these responses and because a child, as defined in section 371(1) of the Social Services Law, is a person under the age of 18, the proposed regulations would expand the casework contact requirements for those foster children placed out-of-state under the age of 18 to monthly. For those foster children placed out-of-state, age 18 and over, the requirement remains at every six months. As of April 30, 2015, there were 358 foster children placed out-of-state; 318 were under the age of 18, and 40 of them age 18 and over.

It is expected that most social services districts and voluntary authorized agencies will not have to hire additional staff to implement the proposed regulations as the requirement will be met by comparable staff in the state where the child is placed. Caseworkers will have to enter the casework contacts required by the proposed regulations into the Progress Notes dialog in the CONNECTIONS system. They have been comprehensively trained to use the system.

3. Professional Services:

It is anticipated that most social services districts and voluntary authorized agencies will not have to hire additional staff to implement the proposed amendments to regulations.

4. Costs:

New York State must implement the proposed regulations to avoid penalties for non-compliance with the federal monthly caseworker visit standards that impact the State's federal Title IV-B, subpart 1 funding. Although Title IV-B, subpart 1 funding does not support foster care costs, this is where the federal Department of Health and Human Services has decided to assess the penalty.

Using the FFY 2014 Title IV-B, Subpart 1 grant award, the penalties would be:

Percentage	Funding Reduction
1 Percent	\$118,515
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Since 2011, the average Title IV-B, Subpart grant award has been \$12.9 million. Each year the annual grant has decreased.

5. Minimizing Adverse Impact:

The revisions to the casework contact requirements included in the proposed regulations are necessary to better promote the health, safety and well-being of foster children. To minimize potential adverse impact on the social services districts and voluntary authorized agencies, the proposed regulations allow comparable staff in the state where the foster child is placed to make the contact and record the information about such contact and send it to the responsible social services district or voluntary authorized agency where the child's case manager, case planner or foster child's caseworker is employed.

6. Rural Area Participation:

OCFS has distributed information about the federal requirements concerning casework contacts with foster children to social services districts and voluntary authorized agencies. In addition, conference calls have also been held to seek their input. OCFS has also publicized reports on this subject so social services districts and voluntary authorized agencies can assess their compliance levels.

Job Impact Statement

The proposed regulations will not have a negative impact on jobs or employment opportunities in either public or private child welfare agencies. A full job statement has not been prepared for the proposed regulations as it is assumed that the proposed regulations will not result in the loss of any jobs.

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## Department of Financial Services

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### EMERGENCY RULE MAKING

#### Unfair Claims Settlement Practices and Claim Cost Control Measures

**I.D. No.** DFS-20-15-00002-E

**Filing No.** 351

**Filing Date:** 2015-05-04

**Effective Date:** 2015-05-04

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

**Action taken:** Amendment of Part 216 (Regulation 64) of Title 11 NYCRR.

**Statutory authority:** Financial Services Law, sections 202 and 302; and Insurance Law, sections 301 and 2601

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

**Specific reasons underlying the finding of necessity:** Insurance Law § 2601 prohibits an insurer doing business in New York State from engaging in unfair claims settlement practices and sets forth a list of acts that, if committed without just cause and performed with such frequency as to indicate a general business practice, will constitute unfair claims settlement practices. Insurance Regulation 64 sets forth the standards insurers are expected to observe to settle claims properly.

On October 26, 2012, in anticipation of extensive power outages, loss of life and property, and ongoing harm to public health and safety expected to result from then-Hurricane Sandy, Governor Andrew M. Cuomo issued Executive Order 47, declaring a State of Disaster Emergency for all 62 counties within New York State. As anticipated, Storm Sandy struck New York State on October 29, 2012, causing extensive power outages, loss of life and property, and ongoing harm to public health and safety. In addition, a nor'easter struck New York just a week later, adding to the damage and dislocation. Many people still had not had basic services such as electric power restored before the second storm hit.

Insurers insuring property in areas that were hit the hardest by the storms, including Long Island and New York City, have a number of claims left to settle. As a result, some homeowners and small business owners have not been able to start to repair or replace their damaged property, or in some cases, complete their repairs. Moreover, there are insureds who have had their claims denied by their insurers and whose only remaining option is to file a civil suit against their insurers. Lawsuits such as these can often take years to resolve, and homeowners and small businesses can not afford to wait for the resolution of their claims in the courts.

Fair and prompt settlement of claims is critical for homeowners, a number of whom have been displaced from their homes or are living in

unsafe conditions, and for small businesses, a number of which have yet to return to full operation and to recover their losses caused by the storm.

Given the nature and extent of the damage, an alternative avenue to mediate the claims would help protect the public and ensure its safety and welfare.

For the reasons stated above, the promulgation of this regulation on an emergency basis is necessary for the public health, public safety, and general welfare.

**Subject:** Unfair Claims Settlement Practices and Claim Cost Control Measures.

**Purpose:** To create a mediation program to facilitate the negotiation of certain insurance claims arising between 10/26/12 - 11/15/12.

**Text of emergency rule:** 216.13 Mediation.

(a) This section shall apply to any claim for loss or damage, other than claims made under flood policies issued under the national flood insurance program, occurring from October 26, 2012 through November 15, 2012, in the counties of Bronx, Kings, Nassau, New York, Orange, Queens, Richmond, Rockland, Suffolk or Westchester, including their adjacent waters, with respect to:

(1) loss of or damage to real property; or

(2) loss of or damage to personal property, other than damage to a motor vehicle.

(b)(1) Except as provided in paragraph (2) of this subdivision, an insurer shall send the notice required by paragraph (3) of this subdivision to a claimant, or the claimant's authorized representative:

(i) at the time the insurer denies a claim in whole or in part;

(ii) within 10 business days of the date that the insurer receives notification from a claimant that the claimant disputes a settlement offer made by the insurer, provided that the difference between the positions of the insurer and claimant is \$1,000 or more; or

(iii) within two business days when the insurer has not offered to settle within 45 days after it has received a properly executed proof of loss and all items, statements and forms that the insurer had requested from the claimant.

(2) If, prior to the effective date of this section: the insurer denied a claim in whole or in part; or a claimant disputed a settlement offer, or more than 45 days elapsed after the insurer received a properly executed proof of loss and all items, statements and forms that the insurer had requested from the claimant, and in either case the claim still remains unresolved as of the effective date of this section, then the insurer shall provide the notice required by paragraph (3) of this subdivision within ten business days from the effective date of this section.

(3) The notice specified in paragraphs (1) and (2) of this subdivision shall inform the claimant of the claimant's right to request mediation and shall provide instructions on how the claimant may request mediation, including the name, address, phone number, and fax number of an organization designated by the superintendent to provide a mediator to mediate claims pursuant to this section. The notice shall also provide the insurer's address and phone number for requesting additional information.

(c) If the claimant submits a request for mediation to the insurer, the insurer shall forward the request to the designated organization within three business days of receiving the request.

(d) The insurer shall pay the designated organization's fee for the mediation to the designated organization within five days of the insurer receiving a bill from the designated organization.

(e)(1) The mediation shall be conducted in accordance with procedures established by the designated organization and approved by the superintendent.

(2) A mediation may be conducted by face-to-face meeting of the parties, videoconference, or telephone conference, as determined by the designated organization in consultation with the parties.

(3) A mediation may address any disputed issues for a claim to which this section applies, except that a mediation shall not address and the insurer shall not be required to attend a mediation for:

(i) a dispute in property valuation that has been submitted to an appraisal process or a claim that is the subject of a civil action filed by the insured against the insurer, unless the insurer and the insured agree otherwise;

(ii) any claim that the insurer has reason to believe is a fraudulent transaction or for which the insurer has knowledge that a fraudulent insurance transaction has taken place; or

(iii) any type of dispute that the designated organization has excepted from its mediation process in accordance with the organization's procedures approved by the superintendent.

(f)(1) The insurer must participate in good faith in all mediations scheduled by the designated organization, which shall at a minimum include compliance with paragraphs (2), (3), and (4) of this subdivision.

(2) The insurer shall send a representative to the mediation who is knowledgeable with respect to the particular claim; and who has author-

ity to make a binding claims decision on behalf of the insurer and to issue payment on behalf of the insurer. The insurer's representative must bring a copy of the policy and the entire claims file, including all relevant documentation and correspondence with the claimant.

(3) An insurer's representatives shall not continuously disrupt the process, become unduly argumentative or adversarial or otherwise inhibit the negotiations.

(4) An insurer that does not alter its original decision on the claim is not, on that basis alone, failing to act in good faith if it provides a reasonable explanation for its action.

(g) An insured's right to request mediation pursuant to this section shall not affect any other right the insured may have to redress the dispute, including remedies specified in the insurance policy, such as an insured's right to request an appraisal, the right to litigate the dispute in the courts if no agreement is reached, or any right provided by law.

(h)(1) No organization shall be designated by the superintendent unless it agrees that:

(i) the superintendent shall oversee the operational procedures of the designated organization with respect to administration of the mediation program, and shall have access to all systems, databases, and records related to the mediation program; and

(ii) the organization shall make reports to the superintendent in whatever form and as often as the superintendent prescribes.

(2) No organization shall be designated unless its procedures, approved by the superintendent, require that:

(i) the parties agree in writing prior to the mediation that statements made during the mediation are confidential and will not be admitted into evidence in any civil litigation concerning the claim, except with respect to any proceeding or investigation of insurance fraud;

(ii) a settlement agreement reached in a mediation shall be transcribed into a written agreement, on a form approved by the superintendent, that is signed by a representative of the insurer with the authority to do so and by the claimant; and

(iii) a settlement agreement prepared during a mediation shall include a provision affording the claimant a right to rescind the agreement within three business days from the date of the settlement, provided that the insured has not cashed or deposited any check or draft disbursed to the claimant for the disputed matters as a result of the agreement reached in the mediation.

(3) No organization shall be designated unless its procedures, approved by the superintendent, provide that:

(i) the mediator may terminate a mediation session if the mediator determines that either the insurer's representative or the claimant is not participating in the mediation in good faith, or if even after good faith efforts, a settlement can not be reached;

(ii) the designated organization may schedule additional mediation sessions if it believes the sessions may result in a settlement;

(iii) the designated organization may require the insurer to send a different representative to a rescheduled mediation session if the representative has not participated in good faith, the fee for which shall be paid by the insurer; and

(iv) the designated organization may reschedule a mediation session if the mediator determines that the claimant is not participating in good faith, but only if the claimant pays the organization's fee for the mediation.

**This notice is intended** to serve only as a notice of emergency adoption. This agency intends to adopt this emergency rule as a permanent rule and will publish a notice of proposed rule making in the *State Register* at some future date. The emergency rule will expire August 1, 2015.

**Text of rule and any required statements and analyses may be obtained from:** Brenda Gibbs, NYS Department of Financial Services, One Commerce Plaza, Albany, NY 12257, (518) 408-3451, email: [brenda.gibbs@dfs.ny.gov](mailto:brenda.gibbs@dfs.ny.gov)

#### Regulatory Impact Statement

1. Statutory authority: Sections 202 and 302 of the Financial Services Law and Sections 301 and 2601 of the Insurance Law. Financial Services Law § 202 grants the Superintendent of Financial Services ("Superintendent") the rights, powers, and duties in connection with financial services and protection in this state, expressed or reasonably implied by the Financial Services Law or any other applicable law of this state. Insurance Law § 301 and Financial Services Law § 302 authorize the Superintendent to prescribe regulations interpreting the provisions of the Insurance Law and to effectuate any power granted to the Superintendent in the Insurance Law. Insurance Law § 2601 prohibits an insurer doing business in New York State from engaging in unfair claims settlement practices, sets forth certain acts that, if committed without just cause and performed with such frequency as to indicate a general business practice, constitute unfair claims settlement practices, and imposes penalties if an insurer engages in these acts. Such practices include "not attempting in good faith to effectu-

ate prompt, fair and equitable settlements of claims submitted in which liability has become reasonably clear” and “compelling policyholders to institute suits to recover amounts due under its policies by offering substantially less than the amounts ultimately recovered in suits brought by them.”

2. Legislative objectives: As noted in the Department’s statement in support for the bill that added the predecessor section to § 2601, Section 40-d, to the Insurance Law in 1970 (Chapter 296 of the Laws of 1970), an insurance company’s obligation to deal fairly with claimants and policyholders in the settlement of claims – indeed, its simple obligation to pay claims at all – was solely a matter of private contract law. That left the Department unable to aid consumers and relegated them solely to the courts. There was a wide variety in insurers’ claims practices. Insurance Law § 2601 reflects the Legislature’s concerns with insurance claims practices of insurers. In enacting that section, the Legislature authorized the Superintendent to monitor and regulate insurance claims practices.

3. Needs and benefits: On October 26, 2012, in anticipation of extensive power outages, loss of life and property, and ongoing harm to public health and safety expected to result from then-Hurricane Sandy, Governor Andrew M. Cuomo issued Executive Order 47, declaring a State of Disaster Emergency for all 62 counties within New York State. As anticipated, Storm Sandy struck New York State on October 29, 2012, causing extensive power outages, loss of life and property, and ongoing harm to public health and safety. In addition, a nor’easter struck New York just a week later, adding to the damage and dislocation. Many people still had not had basic services such as electric power restored before the second storm hit.

Insurers insuring property in areas that were hit the hardest by the storms, including Long Island and New York City, have a number of claims left to settle. As a result, a number of homeowners and small business owners have not been able to start to repair or replace their damaged property, or in some cases, complete their repairs. Many small businesses have suffered losses of income that threaten their survival. Fair and prompt settlement of claims is critical for homeowners, many of whom who have been displaced from their homes or who are living in unsafe conditions, and for small businesses, to enable them to return to full operation and to recover their losses caused by the storm. Furthermore, many small businesses provide essential services to and a significant source of employment in the communities in which they are located.

Moreover, there are many insureds who have had their claims denied by their insurers and whose only remaining option is to file a civil suit against their insurers. Lawsuits such as these can often take years to resolve, and homeowners and small businesses can not afford to wait for the resolution of their claims in the courts.

Therefore, this rule creates a mediation program to facilitate the negotiation of certain insurance claims arising in the counties of New York, Bronx, Kings, Richmond, Queens, Nassau, Suffolk, Westchester, Rockland, and Orange, the areas that suffered the greatest storm damage, between October 26, 2012 and November 15, 2012. An insured may request mediation for a claim for loss or damage to personal or real property (1) that the insurer has denied, (2) for which the insured disputes the insurer’s settlement offer if the difference between what the insured seeks and the insurer offers is more than \$1,000, or (3) that has not been settled within 45 days after the insurer received all the information the insurer needs to decide the claim. The amendment does not provide for mediation of claims for damage to motor vehicles.

Participation in the mediation program by insureds is voluntary. Participation by insurers in the mediation program is mandatory, except that an insurer is not required to participate in a mediation for any claim involving a dispute in property valuation that has been submitted to an appraisal process or that has become the subject of civil litigation, unless the insurer and insured agree otherwise. An insurer also is not required to mediate any claim for which the insurer has reason to believe or knowledge that a fraudulent insurance transaction has taken place.

4. Costs: This rule does not impose compliance costs on state or local governments. The rule may increase costs for insurers, because they will need to pay the costs of mediation and provide representatives to send to the mediations. However, by providing an alternative to litigation, the insurers should also realize savings from mediations that result in settlements because the cost to mediate a claim is significantly less than the cost to defend against civil litigation brought by insureds. The actual cost effect of the rule is difficult to quantify because it is dependent upon unknown variables such as how many claims will be subject to litigation, how many insureds will select the mediation option, and how many claims that are mediated will be successfully resolved without the insured resorting to litigation. Nothing in this rule requires insurers to reach a settlement in the course of a mediation.

5. Local government mandates: This rule does not impose any requirement upon a city, town, village, school district, or fire district.

6. Paperwork: This rule does not impose any additional paperwork.

7. Duplication: This rule will not duplicate any existing state or federal rule.

8. Alternatives: The Department considered making this rule applicable to the entire state. However, since the major concerns appeared to be localized, the applicability of the amendment is limited to those counties most impacted by the storm. In addition, the Department could have made the rule apply to all claims, even those that had been settled before the effective date of the rule. However, after meeting with industry trade groups and hearing their concerns, the Department modified the rule to make clear that, for claims that had already been made as of the rule’s effective date, only those that were denied or unresolved as of the rule’s effective date are covered by the rule. The Department also changed the rule so that it applies only to disputes where the parties’s positions are \$1,000 or more apart.

9. Federal standards: There are no minimum standards of the federal government for the same or similar subject areas. The rule is consistent with federal standards or requirements. The regulation does not apply to claims made under policies issued under the national flood insurance program.

10. Compliance schedule: Insurers will be required to comply with this rule upon the Superintendent’s filing the rule with the Secretary of State.

#### **Regulatory Flexibility Analysis**

1. Small businesses: The Department of Financial Services (“Department”) finds that this rule 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 rule is directed at insurers authorized to do business in New York State, none of which fall within the definition of a “small business” as found in State Administrative Procedure Act § 102(8). The Department has monitored annual statements and reports on examination of authorized insurers subject to this rule, and believes that none of the insurers falls within the definition of “small business” because no insurer is both independently owned and has fewer than 100 employees.

2. Local governments: The rule does not impose any impact, including any adverse impact, or reporting, recordkeeping, or other compliance requirements on any local governments. The basis for this finding is that this rule is directed at authorized insurers, which are not local governments.

#### **Rural Area Flexibility Analysis**

1. Types and estimated numbers of rural areas: “Rural areas,” as used in State Administrative Procedure Act (“SAPA”) § 102(10), means counties within the state having less than 200,000 population, and the municipalities, individuals, institutions, communities, programs and such other entities or resources as are found therein. In counties of 200,000 or greater population, “rural areas” means towns with population densities of 150 persons or less per square mile, and the villages, individuals, institutions, communities, programs and such other entities or resources as are found therein. While insurers affected by this rule may be headquartered in rural areas, the rule itself only applies within the counties of New York, Bronx, Kings, Richmond, Queens, Nassau, Suffolk, Westchester, Rockland, and Orange. None of these counties is a rural area, and the Department of Financial Services (“Department”) does not believe that there are any towns within any of those counties that would be considered to be rural areas within the SAPA definition.

2. Reporting, recordkeeping and other compliance requirements; and professional services: The rule would not impose any additional reporting or recordkeeping requirements. However, the rule would impose other compliance requirements on insurers that may be headquartered in rural areas by requiring insurers to participate in mediation sessions when an insured with a claim subject to the rule requests mediation of his or her claim.

It is unlikely that professional services would be needed in rural areas to comply with this rule.

3. Costs: The rule may result in additional costs to insurers headquartered in rural areas, because they will need to pay the costs of mediation and provide representatives to send to the mediations. However, by providing an alternative to litigation, the insurers may also realize savings from mediations that result in settlements because the cost to mediate a claim is significantly less than the cost to defend against civil litigation brought by insureds. The actual cost effect of the rule is difficult to quantify because it is dependent upon unknown variables such as how many claims will be subject to litigation, how many insureds will select the mediation option, and how many claims that are mediated will be successfully resolved without the insured resorting to litigation. Nothing in this rule requires insurers to reach a settlement in the course of a mediation.

4. Minimizing adverse impact: The Department considered the approaches suggested in SAPA § 202-bb(2) for minimizing adverse economic impacts. Because the public health, safety, or general welfare has been endangered, establishment of differing compliance or reporting requirements or timetables based upon whether or not the damage oc-

curred in a rural area is not appropriate. However, the rule applies only in the counties of New York, Bronx, Kings, Richmond, Queens, Nassau, Suffolk, Westchester, Rockland, and Orange, the areas that suffered the greatest storm damage, and thus the impact of the rule on rural areas is minimized, since none of those counties are rural areas.

5. Rural area participation: Public and private interests in rural areas have had a continual opportunity to participate in the rule making process since the first publication of the emergency measure in the State Register on March 13, 2013, which was published again in the State Register on February 4, 2015. The emergency measure also has been posted on the Department’s website continually since March 13, 2013.

**Job Impact Statement**

The Department of Financial Services does not believe that this rule will have any adverse impact on jobs or employment opportunities, including self-employment opportunities. This rule provides insureds with open or denied claims for loss or damage to personal and real property, except damage to automobiles, arising in New York, Bronx, Kings, Richmond, Queens, Nassau, Suffolk, Westchester, Rockland, and Orange counties between October 26, 2012 and November 15, 2012, with an option to participate in a mediation program to facilitate the negotiation of their claims with their insurers.

**NOTICE OF ADOPTION**

**Mandatory Underwriting Inspection Requirement for Private Passenger Automobiles**

**I.D. No.** DFS-07-15-00004-A

**Filing No.** 350

**Filing Date:** 2015-05-01

**Effective Date:** 2015-05-20

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

**Action taken:** Amendment of Part 67 (Regulation 79) of Title 11 NYCRR.

**Statutory authority:** Financial Services Law, sections 202 and 302; Insurance Law, sections 301, 3411, 5303 and art. 53

**Subject:** Mandatory Underwriting Inspection Requirement for Private Passenger Automobiles.

**Purpose:** Revise requirements regarding the inspection of private passenger automobiles for physical damage coverage.

**Text or summary was published in** the February 18, 2015 issue of the Register, I.D. No. DFS-07-15-00004-P.

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

**Text of rule and any required statements and analyses may be obtained from:** Camielle Barclay, NYS Department of Financial Services, One State Street, New York, NY 10005, (212) 480-5299, email: camielle.barclay@dfs.ny.gov

**Assessment of Public Comment**

The agency received no public comment.

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

**Financial Statement Filings and Accounting Practices And Procedures**

**I.D. No.** DFS-20-15-00005-P

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

**Proposed Action:** This is a consensus rule making to amend Part 83 (Regulation 172) of Title 11 NYCRR.

**Statutory authority:** Financial Services Law, sections 202 and 302; Insurance Law, sections 107(a)(2), 301, 307, 308, 1109, 1301, 1302, 1308, 1404, 1405, 1407, 1411, 1414, 1501, 1505, 3233, 4117, 4233, 4239, 4301, 4310, 4321-a, 4322-a, 4327 and 6404; Public Health Law, sections 4403, 4403-a, 4403-(c)(12) and 4408-a; and L. 2002, ch. 599; L. 2008, ch. 311

**Subject:** Financial statement filings and accounting practices and procedures.

**Purpose:** To update citations in Part 83 to the Accounting Practices and Procedures Manual as of March 2014 (instead of 2013).

**Text of proposed rule:** Subdivision (c) of section 83.2 is amended to read as follows:

(c) To assist in the completion of the financial statements, the NAIC also adopts and publishes from time to time certain policy, procedures and instruction manuals. The latest of these manuals, the Accounting Practices and Procedures Manual as of March [2014] 2015 \* (accounting manual) includes a body of accounting guidelines referred to as statements of statutory accounting principles (SSAPs). The accounting manual shall be used in the preparation of quarterly statements and the annual statement for [2014] 2015, which will be filed in [2015] 2016.

\*ACCOUNTING PRACTICES AND PROCEDURES MANUAL AS OF MARCH [2014] 2015. © Copyright 1999 – [2014] 2015 by National Association of Insurance Commissioners, in Kansas City, Missouri.

**Text of proposed rule and any required statements and analyses may be obtained from:** Sally Geisel, New York State Department of Financial Services, 1 State Street, New York, NY 10004, (212) 480-5287, email: sally.geisel@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.

**Consensus Rule Making Determination**

No person is likely to object to amendment of the rule that adopts the most recent edition of the Accounting Practices and Procedures Manual As of March 2015 (“2015 Accounting Manual”), published by the National Association of Insurance Commissioners (“NAIC”), and replaces the rule’s current reference to the Accounting Practices and Procedures Manual As of March 2014.

All states require insurers to comply with the 2015 Accounting Manual, which establishes uniform practices and procedures for U.S.-licensed insurers. Adoption of the rule is necessary for the Department to maintain its accreditation status with the NAIC. The NAIC-accreditation standards require that state insurance regulators have adequate statutory and administrative authority to regulate insurers’ corporate and financial affairs, and that they have the necessary resources to carry out that authority.

The Department determines this rule to be a consensus rule, as defined in State Administrative Procedure Act § 102(11) (SAPA), and is proposed pursuant to SAPA § 202(1)(b)(i). Accordingly, this rulemaking is exempt from the requirement to file a Regulatory Impact Statement, Regulatory Flexibility Analysis for Small Businesses and Local Governments or a Rural Area Flexibility Analysis.

**Job Impact Statement**

The Department does not believe that this rulemaking will have any impact on jobs and employment opportunities, including self-employment opportunities. The amendment adopts the most recent edition published by the National Association of Insurance Commissioners (“NAIC”) of the Accounting Practices and Procedures Manual As of March 2015 (“2015 Accounting Manual”), replacing the rule’s current reference to the Accounting Practices and Procedures Manual As of March 2014.

All states require insurers to comply with the 2015 Accounting Manual, which establishes uniform practices and procedures for U.S.-licensed insurers. Adoption of the rule is necessary for the Department to maintain its accreditation status with the NAIC. The NAIC accreditation standards require that state insurance regulators have adequate statutory and administrative authority to regulate insurers’ corporate and financial affairs, and that they have the necessary resources to carry out that authority.

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**New York State Gaming  
Commission**

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**EMERGENCY  
RULE MAKING**

**Implementation of Rules Pertaining to Gaming Facility Request for Application and Gaming Facility License Application**

**I.D. No.** SGC-28-14-00006-E

**Filing No.** 349

**Filing Date:** 2015-04-30

**Effective Date:** 2015-04-30

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

**Action taken:** Addition of Part 5300 to Title 9 NYCRR.

**Statutory authority:** Racing, Pari-Mutuel Wagering and Breeding Law, sections 104(19), 1305(20) and 1307(2)

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

**Specific reasons underlying the finding of necessity:** The Gaming Commission (“Commission”) has determined that immediate adoption of these rules is necessary for the preservation of the general welfare. On March 31, 2014, the Gaming Facility Location Board, which the Commission established pursuant to section 109-a of the Racing, Pari-Mutuel Wagering and Breeding Law, issued a Request for Applications (“RFA”) for applicants seeking a license to develop and operate a gaming facility in New York State pursuant to the Upstate New York Gaming Economic Development Act of 2013, as amended by Chapter 175 of the Laws of 2013 (the “Act”). The Act authorizes four upstate destination gaming resorts to enhance economic development in upstate New York, completed applications were due to the Gaming Facility Location Board by June 30, 2014. The immediate re-adoption of these rules is necessary to prescribe the form of the RFA and the information required to be submitted in response to the RFA. Standard rule making procedures would prevent the Commission from commencing the fulfillment of its statutory duties.

**Subject:** Implementation of rules pertaining to gaming facility request for application and gaming facility license application.

**Purpose:** To facilitate a fair and transparent process for applying for a license to operate a gaming facility.

**Substance of emergency rule:** This addition of Part 5300 of Subtitle T of Title 9 NYCRR will add new Sections 5300.1 through 5300.5 to allow the New York State Gaming Commission (“Commission”) to prescribe the form of the application for a gaming facility license.

The new Part of the Gaming Commission regulations describes the form of application for applicants seeking a gaming facility license and the information the applicant must provide. Section 5300.1 sets forth the form of the application including disclosure of identifying information, finance and capital structure of the proposed gaming facility, economic and market analysis, proposed land and design of facility space, assessment of local support and plans to address regional tourism, problem gambling, workforce development and resource management. Section 5300.2 describes the scope of background information the applicant and related parties must provide in three disclosure forms, the Gaming Facility License Application Form, the Multi-Jurisdictional Personal History Disclosure Form and the Multi-Jurisdictional Personal History Disclosure Supplemental Form. Section 5300.3 describes the process by which all applicants for a gaming facility license shall submit fingerprints as part of a background investigation. Section 5300.4 describes the applicant’s duty to update its application as necessary, following submission of the application. Section 5300.5 describes the application fee and procedure for refunding a portion of such fee in certain circumstances.

**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. SGC-28-14-00006-EP, Issue of July 16, 2014. The emergency rule will expire June 28, 2015.

**Text of rule and any required statements and analyses may be obtained from:** Kristen Buckley, New York State Gaming Commission, 1 Broadway Center, PO Box 7500, Schenectady, New York 12301-7500, (518) 388-3407, email: gamingrules@gaming.ny.gov

#### **Regulatory Impact Statement**

1. **STATUTORY AUTHORITY:** Racing, Pari-Mutuel Wagering and Breeding Law (“Racing Law”) section 104(19) grants authority to the Gaming Commission (“Commission”) to promulgate rules and regulations that it deems necessary to carry out its responsibilities. Racing Law section 1305(2) grants rule making authority to the Commission to implement, administer and enforce the provisions of Racing Law Article 13.

Racing Law section 1306(1) and section 1312(1) prescribe that the Gaming Facility Location Board (“Board”), which is established by the Commission, shall issue a request for applications (“RFA”) for applicants seeking a license to develop and operate gaming facilities in New York State. On March 31, 2014, the Gaming Facility Location Board issued the RFA.

Racing Law section 1307(2) prescribes that the Commission regulate, among other things, the method and form of the application; the methods, procedures and form for delivery of information concerning an applicant’s family, habits, character, associates, criminal record, business activities, and financial affairs; and the procedures for the fingerprinting of an applicant.

2. **LEGISLATIVE OBJECTIVES:** This emergency rule making carries out the legislative objectives of the above-referenced statutes by implementing the requirements of Racing Law section 1307(2).

3. **NEEDS AND BENEFITS:** This emergency rule making is necessary to enable the Board to carry out its statutory duty of issuing the RFA for applicants seeking a license to develop and operate a gaming facility in New York State.

#### 4. COSTS:

(a) Costs to the regulated parties for the implementation of and continuing compliance with the rule: Those parties who choose to seek a gaming facility license will bear some costs. There is an application fee of \$1 million that is prescribed by Racing Law section 1316(8) to defray the costs of processing the application and investigating the applicant. The extent of other costs incurred by applicants will depend upon the efforts that they put into completing and submitting the application.

(b) Costs to the regulating agency, the State, and local governments for the implementation of and continued administration of the rule: The rules will impose some costs on the Commission in reviewing gaming facility applications and in issuing licenses, but it is anticipated that the \$1 million application fee paid by each applicant will offset such costs. The rules will not impose any additional costs on local governments.

(c) The information, including the source or sources of such information, and methodology upon which the cost analysis is based: The cost estimates are based on the Commission’s experience regulating racing and gaming activities within the State.

5. **PAPERWORK:** The rules set forth the content of the application for a gaming facility license. The requirements apply only to those parties that choose to seek a gaming facility license.

6. **LOCAL GOVERNMENT MANDATES:** The rules do not impose any mandatory program, service, duty, or responsibility upon local government because the licensing of gaming facilities is strictly a matter of State law.

7. **DUPLICATION:** The rules do not duplicate, overlap or conflict with any existing State or federal requirements.

8. **ALTERNATIVES:** The Commission is required to create these rules under Racing Law section 1307(2). Therefore, no alternatives were considered.

9. **FEDERAL STANDARDS:** There are no federal standards applicable to the licensing of gaming facilities in New York because such licensing is solely in accordance with New York State law.

10. **COMPLIANCE SCHEDULE:** The Commission anticipates that affected parties will be able to achieve compliance with the rules upon the adoption of the rules, which will occur upon filing.

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

This emergency rule making will not have any adverse impact on small businesses, local governments, jobs or rural areas. The rules prescribe the method and form of the application for a gaming facility license; the methods, procedures and form for delivery of information concerning an applicant’s family, habits, character, associates, criminal record, business activities, and financial affairs; and the procedures for fingerprinting an applicant. It is not expected that any small business or local government will apply for a gaming facility license.

The rules impose no adverse economic impact or reporting, recordkeeping, or other compliance requirements on small businesses in rural or urban areas or on employment opportunities. It is anticipated that the opening of up to four gaming facilities in upstate New York will create new job opportunities. The rules apply uniformly throughout the State to any applicant seeking a license to develop and operate a gaming facility in the State.

The proposal will not adversely impact small businesses, local governments, jobs, or rural areas. It does not require a full Regulatory Flexibility Analysis, Rural Area Flexibility Analysis, or Job Impact Statement.

#### **Assessment of Public Comment**

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

### **NOTICE OF WITHDRAWAL**

#### **Implementation of Rules Pertaining to Gaming Facility Request for Application and Gaming Facility License Application**

**I.D. No.** SGC-17-15-00001-W

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

**Action taken:** Notice of proposed rule making, I.D. No. SGC-17-15-00001-EP, has been withdrawn from consideration. The notice of proposed rule making was published in the *State Register* on April 29, 2015.

**Subject:** Implementation of Rules Pertaining to Gaming Facility Request for Application and Gaming Facility License Application.

**Reason(s) for withdrawal of the proposed rule:** Sought to file an Emergency Re-adoption of SGC-28-14-00006-EP, rather than initiate a new Proposed Rulemaking. Used wrong form.

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

**Amendments to Coupled Entries in Thoroughbred Wagering**

**I.D. No.** SGC-20-15-00003-P

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

**Proposed Action:** Amendment of section 4025.10 of Title 9 NYCRR.

**Statutory authority:** Racing, Pari-Mutual Wagering and Breeding Law, sections 103(2), 104(1), (19) and 122

**Subject:** Amendments to coupled entries in thoroughbred wagering.

**Purpose:** To improve wagering opportunities in thoroughbred horse racing.

**Text of proposed rule:** Section 4025.10 of 9 NYCRR would be amended to read as follows:

§ 4025.10. Limitation on entries.

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(b) All horses in common ownership as defined in *subdivision (e)* of section [4026.2(e)] 4026.2 of this [Title] *article* (i.e., having any common managing owner) or *subdivision (c)* of section [4026.3(c)] 4026.3 of this *article* (i.e., in which there is a 25 percent commonality among nonmanaging owners) must be coupled and run as an entry.

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(d) A maximum of two horses trained by the same trainer may race uncoupled in any race provided the entries do not have common ownership as set forth in subdivision (b) of this section.

(e) The commission steward may require any horses entered in a race to be coupled for betting purposes prior to the commencement of wagering on-track and off-track, if such steward finds it necessary in the public interest.

\*\*\*

(g) Notwithstanding the provisions of subdivisions (b) and (d) of this section, no entry shall be coupled by reason of common ownership or training in any stakes race in which the gross purse is [\$1,000,000] \$50,000 or more, provided however that the provisions of subdivision (e) of this section shall continue to be applicable in any such races. In any race subject to the provisions of this subdivision, the racing secretary shall have the authority to establish a mutual field and coupled entries in any race with more than 14 starters. *When this subdivision permits two or more horses to race without being coupled and run as one entry, the race-track operator shall take such actions as are necessary to inform the public adequately with regard to the common ownership and/or trainer that would otherwise require such horses to be coupled as a single betting interest pursuant to this section.*

**Text of proposed rule and any required statements and analyses may be obtained from:** Kristen Buckley, Acting Secretary, New York State Gaming Commission, One Broadway Center, PO Box 7500, Schenectady, New York 12305-7500, (518) 388-3407, email: gamingrules@gaming.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 New York State Gaming Commission ("Commission") is authorized to promulgate these rules pursuant to Racing Pari-Mutuel Wagering and Breeding Law sections 103(2), 104(1), 104(19) and 122. Under Section 103(2), the Commission is responsible to supervise, regulate, and administer all horse racing and pari-mutuel wagering activities in the State. Subdivision (1) of Section 104 confers upon the Commission general jurisdiction over all such gaming activities within the State and over the corporations, associations and persons engaged in such activities. Subdivision (19) of Section 104 authorizes the Commission to promulgate any rules and regulations that it deems necessary to carry out its responsibilities. Section 122 continues previous rules and regulations of the legacy New York State Racing and Wagering Board, subject to the authority of the Commission to modify or abrogate such rules and regulations.

2. Legislative Objectives: To improve wagering opportunities in thoroughbred pari-mutuel racing.

3. Needs and Benefits: This rulemaking will amend the thoroughbred limitation on entries rule, 9 NYCRR 4025.10, to allow horses with common ownership or trainers to be not coupled as a single betting interest in any stakes race with a purse of \$50,000 or more.

The current rule for coupling entries for betting purposes, when there is a common ownership of more than one horse in a race, or a common trainer of more than two horses in a race, excludes races in which the gross purse is \$1,000,000 or more at Section 4025.10(g).

The proposal would amend this exception to exclude stakes races in which the gross purse is \$50,000 or more. The proposal is consistent with recent amendments of a similar nature in other major racing jurisdictions, such as Kentucky and Texas. The racing stewards can closely monitor each race and have the authority to place any horse in a finishing position that is appropriate, if collusion is observed, and the rule proposal requires further that bettors be informed by the racetrack of any common ownership or trainer among horses in the same race. In addition, the Commission steward has the authority to order that horses be coupled if necessary in the public interest pursuant to 9 NYCRR 4025.10(e).

When horses are not coupled as a single entry, it increases the wagering opportunities, betting interest, and handle for the race. As a result, the proposal would result in increased revenues for thoroughbred racetracks in New York and generate more revenue for state and local government.

**4. Costs:**

(a) Costs to regulated parties for the implementation of and continuing compliance with the rule: This amendment would not add any new mandated costs to the existing rules.

(b) Costs to the agency, the state and local governments for the implementation and continuation of the rule: None. There will be no costs to local governments because they do not regulate pari-mutuel racing activities.

(c) The information, including the source(s) of such information and the methodology upon which the cost analysis is based: The Commission has determined that no costs will be imposed because the rule does not create any mandatory new duty or obligation.

5. Local Government Mandates: None. The Commission is the only governmental entity authorized to regulate pari-mutuel horse racing activities.

6. Paperwork: The Commission will lessen the paperwork faced by thoroughbred racetrack operators by eliminating the requirement of coupling entries in more stakes races.

7. Duplication: None. The proposed amendments do not duplicate any existing State or Federal requirements.

8. Alternatives: The Commission considered eliminating the requirement of coupling entries in all races. The Commission concluded that it would be prudent to take an intermediate first step before considering a complete elimination of this rule.

9. Federal Standards: None. There are no federal standards related to the proposed amendments.

10. Compliance Schedule: The proposed rule does not create any additional requirements with which regulated persons must comply.

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

A regulatory flexibility analysis for small business and local governments, a rural area flexibility analysis, and a job impact statement are not required for this rulemaking proposal because it will not adversely affect small businesses, local governments, rural areas, or jobs.

This proposal only authorizes the thoroughbred racetrack operators in New York not to couple the entries of horses with common ownership or trainers as a single betting interest in pari-mutuel stakes races with a gross purse of \$50,000 or more. The current rule authorizes such de-coupling of entries only if the gross purse is \$1,000,000 or more. The proposal will increase the wagering opportunities for those who are interested in wagering on the race. No regulated party will need a period to cure a pending matter because there is no penalty enhancement.

Such regulation will serve the best interests of thoroughbred racing by increasing the wagering opportunities that racetrack operators may offer to the wagering public. This rule will not impose an adverse economic impact or reporting, record keeping, or other compliance requirements on small businesses in rural or urban areas or on employment opportunities. No local government activities are involved.

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**Office of Mental Health**

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**NOTICE OF ADOPTION**

**Patients Committee to the Custody of the Commissioner Pursuant to CPL Article 730**

**I.D. No.** OMH-10-15-00002-A

**Filing No.** 352

**Filing Date:** 2015-05-04

**Effective Date:** 2015-05-20

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

**Action taken:** Amendment of Part 540 of Title 14 NYCRR.  
**Statutory authority:** Mental Hygiene Law, sections 7.09 and 31.04; Criminal Procedure Law, art. 730.10  
**Subject:** Patients Committee to the Custody of the Commissioner Pursuant to CPL article 730.  
**Purpose:** Conform regulatory provisions to statute with respect to the performance of competency reports.  
**Text or summary was published** in the March 11, 2015 issue of the Register, I.D. No. OMH-10-15-00002-P.  
**Final rule as compared with last published rule:** No changes.  
**Text of rule and any required statements and analyses may be obtained from:** Sue Watson, NYS Office of Mental Health, 44 Holland Avenue, Albany, NY 12229, (518) 474-1331, email: Sue.Watson@omh.ny.gov  
**Assessment of Public Comment**  
 The agency received no public comment.

## Department of Motor Vehicles

### NOTICE OF ADOPTION

#### Commercial Learner's Permits and Commercial Driver's Licenses

**I.D. No.** MTV-11-15-00017-A

**Filing No.** 353

**Filing Date:** 2015-05-05

**Effective Date:** 2015-06-04 with the exception of section 3.6(a) which is effective 2015-07-08

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

**Action taken:** Amendment of sections 3.1, 3.2, 3.3, 3.4, 3.5, 3.6 and 3.7 of Title 15 NYCRR.

**Statutory authority:** Vehicle and Traffic Law, sections 215(a), 410-c, 501(2)(c) and 508(4)

**Subject:** Commercial learner's permits and commercial driver's licenses.

**Purpose:** Conforms state licensing requirements to federal requirements.

**Text of final rule:** Pursuant to the authority contained in Sections 215(a), 410-c, 501(2)(c) and 508(4) of the Vehicle and Traffic Law, the Commissioner of Motor Vehicles hereby amends the Regulations of the Commissioner of Motor Vehicles as follows:

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Section 3.1 is amended to read as follows:

Chapters 173 and 696 of the Laws of 1990 amended various provisions of the Vehicle and Traffic Law relating to driver licensing effective February 19, 1991. Those chapters provide that the holder of any previously issued license or permit to drive in existence on February 19, 1991 shall continue to have all of the rights granted by such license or permit at the time of its issuance until the expiration of that license or permit except that no such license or permit will be valid for the operation of a commercial motor vehicle on and after April 1, 1992. Those chapters also established a new classification system for driver licenses and provided for endorsements and restrictions which may be added to such licenses. This part is intended to implement the provisions of those chapters. *The provisions of this part that are applicable to an applicant for or the holder of a commercial driver's license shall also be applicable to an applicant for or the holder of a commercial learner's permit, except for those provisions which by their nature can have no application.*

\*\*\*\*\*

Subdivision (a), subparagraphs (ii) and (iii) of paragraph (1) of subdivision (b) and subdivision (c) of section 3.2 are amended to read as follows:

(a) License classifications. Paragraph (a) of subdivision two of section 501 of the Vehicle and Traffic Law establishes eight classes of driver licenses and sets forth the vehicles which may be operated with each such class subject to any required endorsements and any restrictions which may be made to any such license. The license classes are: A, B, C, D, E, DJ, M and MJ. Class A, class B and class C licenses which contain an H, P, S or X endorsement are commercial driver licenses or CDLs. Any other class license, including a class C license which does not contain an H, P, S or X endorsement is not a CDL. No license may contain more than one class

except that any license may contain a motorcycle M class in addition to its other class. A license which has both a motorcycle and a DJ class will be designated as a DMJ license. *No person shall apply for a commercial learner's permit unless such person holds a class D license. A commercial learner's permit may not be issued with an endorsement authorized by federal regulation, other than a P, S or N endorsement.*

(ii) Farm endorsement. There are three types of farm endorsements F, G and Z. The F endorsement is required on a non-CDL for operation of farm vehicles and farm vehicle combinations over 26,000 lbs. The G endorsement is required on a non-CDL for operation of single farm vehicles over 26,000 lbs. The Z endorsement is required on a non-CDL for transporting hazardous materials in a farm vehicle. All of the farm endorsements are limited to operation of the farm vehicle or combinations within 150 miles of the farm. Beyond that distance, an appropriate class CDL is required. Farm endorsements shall be issued for appropriate class licenses upon passage of an appropriate non-CDL knowledge test[,] and skills test in a representative vehicle, [and certification by the licensee that he operates a farm vehicle] except that a Z endorsement shall be issued only after the applicant also passes the hazardous materials knowledge test which is required for issuance of an H endorsement to a CDL.

(iii) Personal use vehicle endorsement. An R endorsement is the personal use vehicle endorsement. It is required on a non-CDL for operation of recreational vehicles and rental vehicles over 26,000 pounds GVWR or over forty feet in length for transportation of personal household goods. It shall be issued upon passage of a skills test in a recreational vehicle over 26,000 pounds GVWR or over forty feet in length when the licensee has not passed a CDL [knowledge] skills test.

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Paragraph (3) of subdivision (c) of section 3.2 is amended and a new paragraph 5 is added to read as follows:

Code	Restriction	Code	Restriction
A	ACCEL LEFT OF BRAKE	N	[PASS REST TO CLASS C VEH] NO CLASS A OR B PASSENGER VEHICLE
A2	PROBLEM DRIVER		
A3	MED CERT EXEMPT	N1	NO VEHICLE WITH DESIGNED ADULT SEATING CAPACITY OF 15 OR MORE PASSENGERS
A4	INTERLOCK DEVICE	N2	NO VEHICLE WITH DESIGNED ADULT SEATING CAPACITY OF 8 OR MORE PASSENGERS
B	CORRECTIVE LENSES	O	[TRK/TRLR COMBI ONLY] NO TRACTOR TRAILER CMV
C	MECHANICAL AID	O1	[TRUCK/TRL COMBI] No TRACTOR TRAILER CMV/TRUCK NOT OVER 26,000 GVWR
D	PROSTHETIC DEVICE	P	[POWER BRAKES]NO PASSENGERS IN CMV BUS
		P1	POWER BRAKES
E	[Automatic Transmission]NO MANUAL TRANSMISSION EQUIPPED CMV	Q	POWER STEERING
E1	AUTOMATIC TRANSMISSION		
F	[HEARING AID OR FULL VIEW MIRROR]OUTSIDE MIRRORS	R	BUILT UP SEAT/PED/SHOE
F1	HEARING AID/FULL VIEW MIRROR		
G	DAYLIGHT DRIVING ONLY	[S	HAZMAT/SCHOOL VEHICLE]

H	LIMITED TO EMPLOYMENT	T	CMV TRACTOR ONLY
I	LIMITED USE AUTO	U	HAND OPERATED BRAKE
I1	LIMITED USE MCY MAX 40 MPH	V	MEDICAL VARIANCE
I2	LIMITED USE MCY MAX 30 MPH	VI	FOOT OPER PARKING BRAKE
I3	LIMITED USE MCY MAX 20 MPH	X	[FULL HAND CONTROL]NO CARGO IN CMV TANK VEHICLE
		XI	FULL HAND CONTROL
I4	THREE WHEEL MCY	Y	SHOULDER HARNESS USE
J	OTHER	Z	[WHEEL SPINNER]NO FULL AIR BRAKE EQUIPPED CMV
		ZI	WHEEL SPINNER
K	CDL INTRASTATE ONLY (DOES NOT PERMIT OPERATION OUTSIDE OF NYS IN INTERSTATE COMMERCE)	3	TELESCOPIC LENS
L	NO AIR BRAKES EQUIPPED CMV	5	NO LIMITED ACCESS ROADS
[L1	NO AIR BRAKES CLASS A VEH ]		
[L2	NO AIR BRAKES CLASS B VEH ]		
M	[PASS REST TO CLASS B VEH ] NO CLASS A PASSENGER VEHICLE		

(5) Commercial learner's permit restrictions. Every commercial learner's permit with a P (passenger) or S (school bus) endorsement must also carry a P restriction. Every commercial learner's permit with a T (tank) endorsement must also carry an X restriction. Every class B commercial learner's permit with a P or S endorsement must also carry an M restriction.

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Paragraphs (1), (2) and (3) of subdivision (a), and subdivisions (c) and (d) of section 3.3 are amended to read as follows:

(1) An appropriate learner's permit shall be issued upon passage of a vision test, submission of all documentation required with respect to age, identity and fitness, payment of [the application fee] *all fees required by section 503 of the Vehicle and Traffic Law, the taking of a photo image,* and passage of a knowledge test appropriate for the license for which application is being made. [No learner's permit which is valid for the operation of any vehicle which may not be driven with a class E or M license shall be issued.] An applicant shall be entitled to make an appointment to take a skills test upon submission of evidence of completion of the required preclicensing driver training and highway safety course as provided in Part 7 of this Title. [No skills test shall be given in any vehicle which may not be operated with a class E or M license.]

(2) Upon passage of a skills test, the applicant shall be issued an appropriate interim license *at a motor vehicle office or by mail, depending on the class of license.* Such license shall not be valid beyond the expiration on it. [Upon such passage the licensee shall be sent an application for a standard license document. Upon receipt of such form, the licensee must appear at a motor vehicle office and pay the required license fee and have his or her photo image taken. Thereafter, the appropriate standard license document shall be mailed to the licensee.]

(3) If during the course of an application for an original driver license, an applicant does not pass the skills test within *the period of validity* [a year from the issuance] of the learner's permit, such permit shall expire. If within [such year] *the period of validity*, the applicant fails two skills tests, the application and learner's permit shall expire. A new application procedure may then be commenced, except that a knowledge test shall be waived if that application is for the same type license and is made within two years from the date of passage of the prior knowledge test.

(c) Amendments to the license. A valid driver license may be amended by making application on a form provided for such purpose to a motor vehicle office, paying all fees and submitting all documentation required and passing the appropriate knowledge and/or skills test or tests if such tests are required. [If passage of a skills test is required, the procedure with respect to original licenses set forth above shall apply except that upon scheduling a skills test required for a class A, B or C license or for a recreational or farm vehicle endorsement, the fee required by Vehicle and Traffic Law section 503(2) must be paid at that time and if an interim license is issued after passage of the skills test for an amendment of a driver's license which was not a commercial driver license to a CDL, the interim license shall not be valid for more than 10 days.]

(d) Issuance of a license after revocation. If an applicant for a license has had his or her driver license revoked, an application for a new license must be made to the central office of the Department, *unless otherwise provided by law.* Any fee or penalty required by statute must be paid before such application may be approved. Upon approval of such a license application the usual procedure for obtaining an original license shall apply [except that if] *unless* such applicant qualifies for waiver of knowledge and skills tests as provided in Part 8 of this Title [procedure for renewal of a license shall be followed].

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Section 3.4 is amended to read as follows:

Knowledge tests appropriate for the class of license or license endorsement shall be in written form and shall be available in both English and Spanish. However, a knowledge test may be given in other than written form if the agent of the commissioner in charge of administering knowledge tests in that office is satisfied that the applicant is incapable of undertaking and completing a written test. The alternative testing procedure shall be oral and, unless a time, conditions and procedures for the giving of such tests in another language acceptable to the agent may be established, the test shall be in English, except that alternative CDL knowledge tests shall only be given in English and Spanish; *provided, however, that the knowledge test for the hazardous materials endorsement shall only be given in written form and in English.*

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Paragraphs (1), (3), (4), (6) and (8) are amended and paragraphs (5) and (7) of section 3.5 are repealed.

(1) If a skills test is taken and passed in a tractor-trailer combination (GCWR more than 26,000 lbs., GVWR of trailer more than 10,000 lbs.) and the CDL general knowledge and combination vehicle tests are passed, a class A license will be issued. Unless the vehicle was equipped with air brakes and the CDL air brake knowledge test has been passed, an air brake (L) restriction will be placed on the license. A class [C] *non-commercial class* license with a farm (F) endorsement will be issued if a CDL general knowledge test has not been passed [and an affidavit of farm operation is submitted].

(3) If a skills test is taken and passed in a truck-trailer combination (truck over 26,000 lbs. GVWR trailer over 10,000 lbs. GVWR) and the CDL general knowledge and combination vehicle tests have been passed, a class A license with truck trailer combination only (O) restriction will be issued. Unless the vehicle was equipped with air brakes and the CDL air brake knowledge test has been passed, an air brake (L) restriction will be placed on the license. *If a skills test is taken in a vehicle equipped with air over hydraulic brakes, a Z restriction must be placed on the CDL. Air over hydraulic brakes includes any braking system operating partially on the air brake and partially on the hydraulic brake principle.* A class C license with a farm (F) endorsement with a truck trailer combination only (O) restriction will be issued if a CDL general knowledge test has not been passed [and an affidavit of farm operation is submitted]. A class C license with a personal use vehicle (R) endorsement will be issued if a CDL general knowledge test has not been passed [and no affidavit of farm operation is submitted].

(4) If a skills test is taken and passed in a truck-trailer combination (truck [18,001] up to 26,000 lbs. GVWR trailer over 10,000 lbs. GVWR) and the CDL general knowledge and combination vehicle test have been passed, a class A license with a truck-trailer combination only (truck cannot exceed 26,000 lbs. GVWR) (01) restriction will be issued. Unless the vehicle was equipped with air brakes and the CDL air brake knowledge test has been passed, an air brake (L) restriction will be placed on the license. *If a skills test is taken in a vehicle equipped with air over hydraulic brakes, a Z restriction must be placed on the CDL. Air over hydraulic brakes includes any braking system operating partially on the air brake and partially on the hydraulic brake principle.* A class C license with a farm (F) endorsement with a truck-trailer combination only (truck cannot

exceed 26,000 lbs. GVWR) (01) restriction will be issued if a CDL general knowledge test has not been passed [and an affidavit of farm operation is submitted]. A class C license with a personal use vehicle (R) endorsement will be issued if a CDL general knowledge test has not been passed [and an affidavit of farm operation is not submitted].

(6) If a skills test is taken and passed in a truck with a GVWR over 26,000 lbs. and the CDL general knowledge test has been passed, a class B license will be issued. Unless the vehicle was equipped with air brakes and the CDL air brake knowledge test has been passed, an air brake (L) restriction will be placed on the license. *If a skills test is taken in a vehicle equipped with air over hydraulic brakes, a Z restriction must be placed on the CDL. Air over hydraulic brakes includes any braking system operating partially on the air brake and partially on the hydraulic brake principle.* A class C license with a farm (G) endorsement will be issued if a CDL general knowledge test has not been passed [and an affidavit of farm operation is not submitted]. A class C license with a personal use vehicle (R) endorsement will be issued if a CDL general knowledge test has not been passed [and an affidavit of farm operation is not submitted].

(8) If a skills test is taken and passed in a bus over 26,000 lbs. GVWR and the CDL general knowledge and passenger endorsement tests have been passed, a class B license with a passenger (P) endorsement will be issued. Unless the vehicle was equipped with air brakes and the CDL air brake knowledge test has been passed an air brake (L) restriction will be placed on the license. *If a skills test is taken in a vehicle equipped with air over hydraulic brakes, a Z restriction must be placed on the CDL. Air over hydraulic brakes includes any braking system operating partially on the air brake and partially on the hydraulic brake principle.*

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Paragraph (a) of section 3.6 is amended and paragraph (e) of such section is repealed:

(a) An application for a commercial driver’s license will not be accepted if the applicant is not a resident of this State. *In addition, an application shall not be accepted unless the applicant presents acceptable proofs of United States citizenship or lawful permanent residency, as prescribed by the commissioner.* For the purposes of this Part, the term “resident” shall mean domiciliary as defined in subdivision 5 of Section 250 of the Vehicle and Traffic Law.

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Subparagraph (iii) of paragraph (5) of section 3.7 is amended to read as follows:

(iii) that he or she is the holder of a valid “New York driver’s license, and has successfully completed the 15-hour “Motorcycle Rider Course: Riding and Street Skills” developed by the Motorcycle Safety Foundation (MSF), or a compatible course approved by the Department.

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**Final rule as compared with last published rule:** Nonsubstantive changes were made in section 3.3(a)(1).

**Text of rule and any required statements and analyses may be obtained from:** Heidi Bazicki, Department of Motor Vehicles, 6 Empire State Plaza, Rm. 526, Albany, NY 12228, (518) 474-0871, email: heidi.bazicki@dmv.ny.gov

**Revised Job Impact Statement**

A revised Job Impact Statement is not requirement because the revision to the final rule is non substantive in nature and has no impact on job creation or development in the State.

**Assessment of Public Comment**

The agency received no public comment.

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## Public Service Commission

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### NOTICE OF WITHDRAWAL

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

The following rule makings have been withdrawn from consideration:

I.D. No.	Publication Date of Proposal
PSC-50-10-00005-P	December 15, 2010
PSC-26-14-00012-P	July 2, 2014
PSC-26-14-00016-P	July 2, 2014

PSC-26-14-00018-P  
 PSC-26-14-00019-P  
 PSC-03-15-00005-P

July 2, 2014  
 July 2, 2014  
 January 21, 2015

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

#### Implementation of the Proposed Microgrid Business Model As a Reliability and Demand Management Resource

I.D. No. PSC-20-15-00006-P

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

**Proposed Action:** The Commission is considering a petition filed by Pareto Energy Ltd. to implement a Microgrid Business Model as a least-cost resource to meet reliability contingencies and demand management objectives.

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

**Subject:** Implementation of the proposed Microgrid Business Model as a reliability and demand management resource.

**Purpose:** Consider implementation of the proposed Microgrid Business Model as a reliability and demand management resource.

**Substance of proposed rule:** The Public Service Commission is considering a Petition filed on April 10, 2015 by Pareto Energy Ltd. (Pareto) regarding the implementation of a Microgrid Business Model as a least-cost resource to meet reliability contingencies and demand management objectives. The Microgrid Business Model Pareto proposes aims to maximize the contributions of customer-owned distributed energy resources (DER) to the utility-owned transmission and distribution grid. Pareto also proposes to substitute for current interconnection procedures a non-synchronous interconnection technology that may reduce costs and improve the functionality of DER-to-grid connections. The Commission may grant or deny, in whole or in part, the Petition, 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:** Elaine Agresta, Public Service Commission, 3 Empire State Plaza, Albany, New York 12223-1350, (518) 486-2660, email: Elaine.Agresta@dps.ny.gov

**Data, views or arguments may be submitted to:** Kathleen H. Burgess, 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.

(15-E-0250SP1)

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

#### Considering Proposals for Changes to the Electronic Data Interchange Standards

I.D. No. PSC-20-15-00007-P

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

**Proposed Action:** The Commission is considering adopting, rejecting or modifying, in whole or in part, proposals for changes to the Electronic Data Interchange Standards filed on April 7, 2015 in the “Report on EDI Standards Development”.

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

**Subject:** Considering proposals for changes to the Electronic Data Interchange standards.

**Purpose:** To consider proposals for changes to the Electronic Data Interchange standards.

**Substance of proposed rule:** The Public Service Commission is considering whether to approve or reject, in whole or in part, the proposal filed on

April 7, 2015 by the New York Electronic Data Exchange Working Group regarding modifications to the EDI Standards. On February 6, 2015, the Commission issued an Order in Cases 12-M-0476, 98-M-1343, 06-M-0647 and 98-M-0667 Granting and Denying Petitions for Rehearing in Part. The Commission is now considering additional modifications to the EDI Standards. The Commission may adopt, reject, or modify, in whole or in part, the Staff proposal, 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:* Elaine Agresta, Public Service Commission, 3 Empire State Plaza, Albany, New York 12223-1350, (518) 486-2660, email: [elaine.agresta@dps.ny.gov](mailto:elaine.agresta@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](mailto: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.

(12-M-0476SP10)

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

**Petition for Rehearing and/or Clarification of the Commission's Order, Issued in Case 13-W-0246**

**I.D. No.** PSC-20-15-00008-P

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

*Proposed Action:* The Commission is considering whether to grant or reject, in whole or in part, the petition of the Town of Ramapo seeking rehearing and/or clarification of the Commission's Order issued in Case 13-W-0246 on November 14, 2014.

*Statutory authority:* Public Service Law, sections 4, 5, 22, 89-a, 89-b, 89-c, 113 and 114

*Subject:* Petition for rehearing and/or clarification of the Commission's Order, issued in Case 13-W-0246.

*Purpose:* To consider the petition for rehearing and/or clarification filed by the Town of Ramapo.

*Substance of proposed rule:* The Public Service Commission is considering the petition of the Town of Ramapo (Ramapo) for rehearing and/or clarification of the Commission's Order Denying Surcharge and Making Determinations Regarding the Treatment of Certain Long-term Water Supply Development Costs, issued November 14, 2014. Ramapo alleges the Commission committed errors of law or fact (16 NYCRR 3.7) in: 1) allowing pre-construction costs to be accrued as Allowance for Funds Used During Construction (AFUDC); 2) implicitly approving allegedly imprudent actions and expenses incurred by United Water New York, Inc. (UWNY); 3) finding Department of Public Service Staff's audit of non-legal expenses sufficient; and 4) applying two separate standards of review to legal and non-legal expenses. Ramapo further seeks clarification regarding: allowed accrual of AFUDC development costs by the Uniform System of Accounts, the prudence of certain actions and expenses incurred by UWNY and the sufficiency of review by Staff of vendor invoices. The Commission may accept, reject or modify Ramapo's proposal in whole or part, or take other action in response to other parties' filings in response to the Ramapo 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:* Elaine Agresta, Public Service Commission, 3 Empire State Plaza, Albany, New York 12223-1350, (518) 486-2660, email: [elaine.agresta@dps.ny.gov](mailto:elaine.agresta@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](mailto: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.

(13-W-0246SP4)

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

**Actions on a Financing and Ownership Transfer and Restructuring Transactions for an Electric Transmission Facility**

**I.D. No.** PSC-20-15-00009-P

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

*Proposed Action:* The Commission is considering a petition filed on April 23, 2015 by Cross-Sound Cable Company, LLC, its affiliates, and other requesting actions on electric transmission facility financings and ownership transfer and restructuring transactions.

*Statutory authority:* Public Service Law, sections 5(2), 65(1), (2), (3), 66(1) (2), (3), (5), (8), 69 and 70

*Subject:* Actions on a financing and ownership transfer and restructuring transactions for an electric transmission facility.

*Purpose:* To consider actions on a financing and ownership transfer and restructuring transactions for an electric transmission facility.

*Substance of proposed rule:* The Public Service Commission is considering a petition filed on April 23, 2015 by Cross-Sound Cable Company, LLC (CSC) and its affiliates, and AIA Energy North America, LLC and its affiliates, requesting approval of a financing consisting of bonds, credit facilities and working capital in an amount of up to \$137.5 million encumbering CSC's 24 mile merchant transmission line connecting Long Island and Connecticut. In addition, actions are requested on electric transmission and ownership transfer and restructuring transactions. 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:* Elaine Agresta, Public Service Commission, 3 Empire State Plaza, Albany, New York 12223-1350, (518) 486-2660, email: [elaine.agresta@dps.ny.gov](mailto:elaine.agresta@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](mailto: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.

(15-E-0243SP1)

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## Department of State

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### NOTICE OF ADOPTION

**Rules Relating to Real Estate Brokers and Salespersons**

**I.D. No.** DOS-11-15-00001-A

**Filing No.** 355

**Filing Date:** 2015-05-05

**Effective Date:** 2015-05-20

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

*Action taken:* Amendment of sections 175.12, 175.20, 175.24(a), 177.2, 179.1, 179.2(b) and 179.3(a) of Title 19 NYCRR.

*Statutory authority:* Real Property Law, section 442-K

*Subject:* Rules relating to real estate brokers and salespersons.

*Purpose:* To update obsolete and outdated regulations.

*Text of final rule:* Section 175.12 of Title 19 NYCRR is amended to read as follows:

175.12 Delivering [duplicate original] copy of instrument  
A real estate broker shall immediately deliver a [duplicate original]

copy of any instrument to any party or parties executing the same, where such instrument has been prepared by such broker or under his supervision and where such instrument relates to the employment of the broker or to any matters pertaining to the consummation of a lease, or the purchase, sale or exchange of real property or any other type of real estate transaction in which he may participate as a broker.

Subdivision (b) of section 175.20 of Title 19 NYCRR is amended to read as follows:

(b) Every branch office shall be under the direct supervision of the broker to whom the license is issued, or a representative broker of a corporation or partnership holding such license. [A salesperson licensed as such for a period of not less than two years and who has successfully completed a course of study in real estate approved by the Secretary of State, may be permitted to operate such a branch office only under the direct supervision of the broker provided the names of such salesperson and supervising broker shall have been filed and recorded in the division of licenses of the Department of State.]

Subdivision (c) of section 175.20 of Title 19 NYCRR is repealed.

Subdivision (a) of section 175.24 of Title 19 NYCRR is amended to read as follows:

(a) [Residential property as used in this section shall not include condominiums or cooperatives but shall be limited to one, two or three family dwellings.] *Residential real property as used in this section shall mean real property used or occupied, or intended to be used or occupied, wholly or partly, as a home or residence of one or more persons improved by: (i) a one to four family dwelling or (ii) condominium or cooperative apartments but shall not refer to unimproved real property upon which such dwellings are to be constructed.*

Section 177.2 of Title 19 NYCRR is amended to read as follows:

**177.2 Approved Entities**

Continuing education real estate courses and offerings may be given by any college or university accredited by the Commissioner of Education of the State of New York or by a regional accrediting agency approved by said Commissioner of Education; public or private vocational schools; real estate boards; and real estate related professional societies and organizations. *Courses, including sales or technology, that increase the competency of the licensee as it relates to the real estate transaction shall be acceptable as meeting continuing education requirements subject to the restrictions set forth in paragraph (d) of this section.* No real estate course of study seeking approval may be affiliated with or controlled by a real estate broker, salesperson, firm or company or real estate franchise, or controlled by a subsidiary of any real estate broker or real estate franchise. The following types of instruction shall not be acceptable as meeting continuing education requirements:

(a) general training or education to prepare a student for passing a real estate broker's or salespersons' examination which is not part of an approved course under Part 176 of this Title;

(b) offerings in mechanical office and business skills, such as typing, basis computer skills training, instructional navigation of the world wide web, instructional use of generic computer software, speed reading, memory improvement, report writing, personal motivation, salesmanship and sales psychology; [and]

(c) sales promotion meetings[.]; and

(d) subjects that are not real estate related.

Section 179.1 of Title 19 NYCRR is amended to read as follows:

**179.1 Qualifying experience**

An applicant for licensure as a real estate broker must possess [one] two years of full-time experience as a licensed real estate salesperson under the supervision of a licensed real estate broker or the equivalent full-time experience in general real estate business for a period of at least [two] three years.

Subdivision (b) of section 179.2 of Title 19 NYCRR is amended to read as follows:

(b) [1750] 3500 points shall equate to [a] two years of full-time experience.

Subdivision (a) of section 179.3 of Title 19 NYCRR is amended to read as follows:

(a) Experience points shall be credited an applicant in accordance with the following schedule:

**REAL ESTATE BROKER POINT SYSTEM FOR LICENSED SALESPERSON ACTIVITY ONLY**

Category	Point Value
<b>RESIDENTIAL SALES:</b>	
1. Single Family, condo, co-op unit, multi-family (2 to 8-unit), farm (with residence, under 100 acres)	250
2. Exclusive listings	10

3. Open listings	1
4. Binders effected	25
5. Co-op unit transaction approved by seller and buyer that fails to win Board of Directors approval	100

**RESIDENTIAL RENTALS:**

6. Rentals or subleases effected	25
7. Exclusive Listings	5
8. Open Listings	1
9. Property Management	
- Lease renewal	2
- Rent collections per tenant/per year	1

**COMMERCIAL SALES:**

10. Taxpayer/Storefront	400
11. Office Building	400
12. Apartment Building (9 units or more)	400
13. Shopping Center	400
14. Factory/Industrial warehouse	400
15. Hotel/Motel	400
16. Transient garage/parking lot	400
17. Multi-unit commercial condominium	400
18. Urban commercial development site	400
19. Alternative sale type transaction	400
20. Single-tenant commercial condo	250
21. Listings	10

**COMMERCIAL LEASING:**

22. New Lease-aggregate rental \$1 to \$200,000	150
23. New Lease-aggregate rental \$200,000 to \$1 million	250
24. New Lease-aggregate rental over \$1 million	400
25. Renewal-aggregate renewal \$1 to \$200,000	75
26. Renewal-aggregate rental \$200,000 to \$1 million	125
27. Renewal-aggregate rental over \$1 million	200
28. Listings	10

**COMMERCIAL FINANCING:**

**(includes residential properties of more than four units):**

29. \$1 to \$500,000	200
30. \$500,000 to \$5,000,000	300
31. Over \$5,000,000	400

**MISCELLANEOUS:**

32. Sale vacant lots, land (under 100 acres)	50
33. Sale vacant land (more than 100 acres)	150
34. Other must be fully explained. —	

**TOTAL POINTS NEEDED:** [1750] 3500

**Final rule as compared with last published rule:** Nonsubstantive changes were made in sections 177.2(a)-(d) and 179.2(b).

**Text of rule and any required statements and analyses may be obtained from:** David A. Mossberg, NYS Dept. of State, 123 William Street, 20th FL., New York, NY 10038, (212) 417-2063, email: david.mossberg@dos.ny.gov

**Revised Job Impact Statement**

The non-substantive changes that have been made since publication of the Notice of Proposed Rule Making does not necessitate changes to the previously published JIS.

The only changes are as follows:

In section 177.2, in each of the four subdivisions (a-d), the first letter of the first word was changed from uppercase to lowercase, for the purpose of conforming to the style and form of NYCRR.

In section 179.2(b), a typographical error was corrected to more accurately indicate certain obsolete language that was previously contained in the rule's prior version. More specifically, the proposed published text mistakenly indicated that "1700" points had previously equated to one

year of full-time experience. The amended old text now accurately indicates that “1750” points had previously equated to one year of full-time experience. (The new text of 179.2(b) has not changed; it reads as previously published: “3500 points shall equate to two years of full-time experience.”)

In consideration of the foregoing, changes made to last published rule do not necessitate revision to the previously published JIS. Further, it remains apparent from the nature and purpose of the rule that it will not have a substantial adverse impact on jobs or employment opportunities.

#### **Initial Review of Rule**

As a rule that requires a RFA, RAFA or JIS, this rule will be initially reviewed in the calendar year 2018, which is no later than the 3rd year after the year in which this rule is being adopted.

#### **Assessment of Public Comment**

The agency received no public comment.

## Office of Temporary and Disability Assistance

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

#### **Information Appropriate for Victims of Sexual Assault**

**I.D. No.** TDA-20-15-00001-P

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

**Proposed Action:** Addition of section 351.2(m) to Title 18 NYCRR.

**Statutory authority:** Social Services Law, sections 20(3)(d), 34(3)(f) and 131(20); L. 2009, ch. 427

**Subject:** Information appropriate for victims of sexual assault.

**Purpose:** To require social services districts to make all applicants for and recipients of public assistance aware of their option to receive information appropriate for victims of sexual assault consistent with Chapter 427 of the Laws of 2009.

**Text of proposed rule:** Subdivision (m) is added to section 351.2 of Title 18 NYCRR to read as follows:

*(m) Social services districts must make all applicants for and recipients of public assistance aware of their option to receive information appropriate for victims of sexual assault. Such information must be made available to all individuals who demonstrate a need for or who are interested in receiving services appropriate for victims of sexual assault, and must include referral and contact information for all local programs that provide services to victims of sexual assault including, but not limited to:*

*(1) sexual assault examiner programs, including a list of any local hospitals offering sexual assault forensic examiner services certified by the department of health;*

*(2) rape crisis centers; and*

*(3) other advocacy, counseling, and hotline services appropriate for victims of sexual assault.*

**Text of proposed rule and any required statements and analyses may be obtained from:** Jeanine S. Behuniak, New York State Office of Temporary and Disability Assistance, 40 North Pearl Street, 16C, Albany, New York 12243-0001, (518) 474-9779, email: Jeanine.Behuniak@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:**

Social Services Law (SSL) § 20(3)(d) authorizes the Office of Temporary and Disability Assistance (OTDA) to promulgate regulations to carry out its powers and duties.

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

SSL § 131 (20) requires OTDA to promulgate regulations to implement procedures for making all applicants for and recipients of public assistance aware of their option to receive information appropriate for victims of sexual assault. Pursuant to this section, such information must be made available to all individuals who demonstrate a need for or who are interested in receiving services appropriate for victims of sexual assault.

Chapter 427 of the Laws of 2009 added subdivision (20) to SSL § 131,

which requires local social services districts (local districts) to make all applicants for and recipients of public assistance aware of their option to receive information appropriate for victims of sexual assault.

##### **2. Legislative objectives:**

It was the intent of the Legislature in enacting Chapter 427 of the Laws of 2009 to ensure that individuals who have experienced sexual abuse or assault will receive information about locally available services for sexual assault victims in order to help protect such victims from further harm.

##### **3. Needs and benefits:**

The proposed regulatory amendments are consistent with Chapter 427 of the Laws of 2009 and would update the State regulations to require local districts to make all applicants for and recipients of public assistance aware of their option to receive information appropriate for victims of sexual assault. Consistent with the statutory requirement, such information must be made available to all individuals who demonstrate a need for or who are interested in receiving services appropriate for victims of sexual assault, and must include referral and contact information for all local programs that provide services to victims of sexual assault. The intent of this information is to increase outreach to victims of sexual assault and to promote access to essential services necessary for victims of sexual assault to overcome the physical, mental and emotional trauma associated from such abuse.

##### **4. Costs:**

The proposed regulatory amendments would have no fiscal impact. These amendments are needed to bring the State regulations into compliance with State law. All portions of the regulatory proposal are necessary to comply with Chapter 427 of the Laws of 2009.

##### **5. Local government mandates:**

Pursuant to Chapter 427 of the Laws of 2009 and the proposed regulatory amendments, local districts need to establish a process, or modify an existing process, to ensure that all applicants for and recipients of public assistance are made aware of their option to receive information regarding services for victims of sexual assault. Local districts need to provide individuals who demonstrate a need for or who request information with referral and contact information for all local programs that provide services to victims of sexual assault. For the most part, the requirements set forth in Chapter 427 of the Laws of 2009 have had only a minimal impact on the local districts. The districts already had processes in place to meet with applicants and recipients, and they were already required to inform applicants and recipients of various resources and services available to them.

##### **6. Paperwork:**

To comply with Chapter 427 of the Laws of 2009 and the proposed regulatory amendments, the local districts need to provide certain applicants and recipients referral and contact information for all local programs that provide services to victims of sexual assault including, but not limited to: sexual assault examiner programs, including a list of any local hospitals offering sexual assault forensic examiner services certified by the Department of Health; rape crisis centers; and other advocacy, counseling and hotline services appropriate for victims of sexual assault. In the past, some local districts have had information packets and booklets available for victims of sexual assault.

##### **7. Duplication:**

These proposed amendments do not conflict with any existing State or federal statutes or regulations.

##### **8. Alternatives:**

The alternative is to leave 18 NYCRR § 351.2 intact. However, this is not an option because there would be no regulatory support for Chapter 427 of the Laws of 2009 and its amendment to SSL § 131 (20).

##### **9. Federal standards:**

The proposed amendments do not conflict with federal standards for public assistance.

##### **10. Compliance schedule:**

The local districts will be in compliance with the proposed regulations on their effective date. Chapter 427 of the Laws of 2009 is already in effect. OTDA has issued an Administrative Directive (ADM), transmittal 10-ADM-03, to the local districts explaining the requirements of Chapter 427 of the Laws of 2009 and providing guidance for implementation. The ADM informs local districts that they must make all applicants for and recipients of public assistance aware of their option to receive information appropriate for victims of sexual assault and then provide such information accordingly. The ADM provides resources that local districts can use to identify their local Department of Health certified hospitals offering sexual assault forensic examiner services as well as their local rape crisis centers. OTDA contact information is also included in the ADM in case local districts have questions.

#### **Regulatory Flexibility Analysis**

##### **1. Effect of rule:**

The proposed amendments will have a nominal effect on local governments, but they will not impact small businesses.

2. Compliance requirements:

Pursuant to Chapter 427 of the Laws of 2009 and the proposed regulatory amendments, local districts need to establish a process, or modify an existing process, to ensure that all applicants for and recipients of public assistance are made aware of their option to receive information regarding services for victims of sexual assault. Local districts need to provide individuals who demonstrate a need for or who request information with referral and contact information for all local programs that provide services to victims of sexual assault. For the most part, the requirements set forth in Chapter 427 of the Laws of 2009 have had only a minimal impact on the local districts. The districts already had processes in place to meet with applicants and recipients, and they were already required to inform applicants and recipients of various resources and services available to them.

3. Professional services:

The proposed amendments will not require small businesses or local governments to hire additional professional services.

4. Compliance Costs:

The proposed regulatory amendments would have no fiscal impact. These amendments are needed to bring the State regulations into compliance with State law. All portions of the regulatory proposal are necessary to comply with Chapter 427 of the Laws of 2009.

5. Economic and technological feasibility:

All small businesses and local governments have the economic and technological ability to comply with the proposed regulation.

6. Minimizing adverse impact:

The regulatory amendments would not have an adverse economic impact on local governments and small businesses. Pursuant to Chapter 427 of the Laws of 2009, local districts already are required to provide information regarding locally available services for victims of sexual assault.

7. Small business and local government participation:

Local districts did not participate in the development of this proposal because all portions of the amendment are necessary to comply with Chapter 427 of the Laws of 2009. However, OTDA did develop an Administrative Directive (ADM), transmittal 10-ADM-03, to explain the requirements of Chapter 427 of the Laws of 2009 and to address implementation. All of the local districts had an opportunity to review and comment on the draft version of the ADM. The local districts did not raise any objections or concerns regarding the implementation of the statutory requirements. The one comment received in response to the draft ADM was from a rural social services district, and the comment was favorable.

**Rural Area Flexibility Analysis**

1. Types and estimated numbers of rural areas:

The proposed amendments will have a nominal impact on the forty-four rural social services districts (rural districts) in the State.

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

Pursuant to Chapter 427 of the Laws of 2009 and the proposed regulatory amendments, rural districts need to establish a process, or modify an existing process, to ensure that all applicants for and recipients of public assistance are made aware of their option to receive information regarding services for victims of sexual assault. Rural districts need to provide individuals who demonstrate a need for or who request information with referral and contact information for all local programs that provide services to victims of sexual assault. For the most part, the requirements set forth in Chapter 427 of the Laws of 2009 have had only a minimal impact on the local districts. The districts already had processes in place to meet with applicants and recipients, and they were already required to inform applicants and recipients of various resources and services available to them.

3. Costs:

The proposed regulatory amendments would have no fiscal impact. These amendments are needed to bring the State regulations into compliance with State law. All portions of the regulatory proposal are necessary to comply with Chapter 427 of the Laws of 2009.

4. Minimizing adverse impact:

The regulatory amendments would not have an adverse economic impact on rural districts. Pursuant to Chapter 427 of the Laws of 2009, local districts already are required to provide information regarding locally available services for victims of sexual assault.

5. Rural area participation:

Rural districts did not participate in the development of this proposal because all portions of the amendment are necessary to comply with Chapter 427 of the Laws of 2009. However, OTDA did develop a draft Administrative Directive (ADM), transmittal 10-ADM-03, to explain the requirements of Chapter 427 of the Laws of 2009 and to address implementation. All of the local districts, including the rural districts, had an opportunity to review and comment on the draft version of the ADM. The local districts did not raise any objections or concerns regarding the implementation of the statutory requirements. The one comment received

in response to the draft ADM was from a rural district, and the comment was favorable.

**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 will not have a substantial adverse impact on jobs and employment opportunities. The proposed amendments will not affect in any significant way the jobs of the workers in the local districts. The proposed amendments will provide victims of sexual assault with appropriate information on resources available to them. The changes will not have any adverse impact on jobs and employment opportunities in the State.