

RULE MAKING ACTIVITIES

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

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

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

Department of Audit and Control

NOTICE OF EXPIRATION

The following notice has expired and cannot be reconsidered unless the Department of Audit and Control publishes a new notice of proposed rule making in the *NYS Register*.

Official Station and Limitations of Traveling Expenses

I.D. No.	Proposed	Expiration Date
AAC-46-10-00005-P	November 17, 2010	November 17, 2011

Department of Civil Service

NOTICE OF ADOPTION

Jurisdictional Classification

I.D. No. CVS-47-10-00003-A
Filing No. 1255
Filing Date: 2011-11-17
Effective Date: 2011-12-07

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

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

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

Subject: Jurisdictional Classification.

Purpose: To classify a position in the exempt class.

Text or summary was published in the November 24, 2010 issue of the Register, I.D. No. CVS-47-10-00003-P.

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

Text of rule and any required statements and analyses may be obtained from: Shirley LaPlante, NYS Department of Civil Service, AESSOB, Albany, NY 12239, (518) 473-6598, email: shirley.laplante@cs.state.ny.us

Assessment of Public Comment

The agency received no public comment.

NOTICE OF ADOPTION

Jurisdictional Classification

I.D. No. CVS-47-10-00004-A

Filing No. 1257

Filing Date: 2011-11-17

Effective Date: 2011-12-07

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

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

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

Subject: Jurisdictional Classification.

Purpose: To add a subheading and classify a position in the exempt class.

Text or summary was published in the November 24, 2010 issue of the Register, I.D. No. CVS-47-10-00004-P.

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

Text of rule and any required statements and analyses may be obtained from: Shirley LaPlante, NYS Department of Civil Service, AESSOB, Albany, NY 12239, (518) 473-6598, email: shirley.laplante@cs.state.ny.us

Assessment of Public Comment

The agency received no public comment.

NOTICE OF ADOPTION

Jurisdictional Classification

I.D. No. CVS-47-10-00006-A

Filing No. 1256

Filing Date: 2011-11-17

Effective Date: 2011-12-07

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

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

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

Subject: Jurisdictional Classification.

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

Text or summary was published in the November 24, 2010 issue of the Register, I.D. No. CVS-47-10-00006-P.

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

Text of rule and any required statements and analyses may be obtained from: Shirley LaPlante, NYS Department of Civil Service, AESSOB, Albany, NY 12239, (518) 473-6598, email: shirley.laplante@cs.state.ny.us

Assessment of Public Comment

The agency received no public comment.

NOTICE OF ADOPTION

Jurisdictional Classification

I.D. No. CVS-47-10-00007-A

Filing No. 1254

Filing Date: 2011-11-17

Effective Date: 2011-12-07

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

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

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

Subject: Jurisdictional Classification.

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

Text or summary was published in the November 24, 2010 issue of the Register, I.D. No. CVS-47-10-00007-P.

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

Text of rule and any required statements and analyses may be obtained from: Shirley LaPlante, NYS Department of Civil Service, AESSOB, Albany, NY 12239, (518) 473-6598, email: shirley.laplante@cs.state.ny.us

Assessment of Public Comment

The agency received no public comment.

NOTICE OF ADOPTION

Jurisdictional Classification

I.D. No. CVS-47-10-00008-A

Filing No. 1253

Filing Date: 2011-11-17

Effective Date: 2011-12-07

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

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

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

Subject: Jurisdictional Classification.

Purpose: Substitute subheading in exempt and non-competitive classes; delete and classify positions in exempt and non-competitive classes.

Text or summary was published in the November 24, 2010 issue of the Register, I.D. No. CVS-47-10-00008-P.

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

Text of rule and any required statements and analyses may be obtained from: Shirley LaPlante, NYS Department of Civil Service, AESSOB, Albany, NY 12239, (518) 473-6598, email: shirley.laplante@cs.state.ny.us

Assessment of Public Comment

The agency received no public comment.

Division of Criminal Justice Services

EMERGENCY RULE MAKING

Probation State Aid Block Grant Funding

I.D. No. CJS-37-11-00018-E

Filing No. 1268

Filing Date: 2011-11-22

Effective Date: 2011-11-22

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

Action taken: Repeal of Part 345 and addition of new Part 345 to Title 9 NYCRR.

Statutory authority: Executive Law, sections 243(1) and 246; L. 2011, chs. 53 and 57

Finding of necessity for emergency rule: Preservation of public safety.

Specific reasons underlying the finding of necessity: In order to promote public safety, probation State aid block grant monies must be readily available to local governments for probation department operations to ensure continuity of probation services to the criminal justice and juvenile justice system and timely implementation of Chapters 53 and 57 of the Laws of 2011 with respect to probation State aid grants. Funding of probation services is viewed as a critical component to promote the effective application of the probation system. As the existing state aid rule has been rendered obsolete, new emergency regulations will avoid potential disruption of probation services caused by delayed funding. This emergency regulation will help maintain and improve service delivery to the criminal and juvenile justice systems with respect to the probation population in general, as well as for specialized high-risk populations for which targeted grant monies have been statutorily earmarked for distribution.

Subject: Probation State Aid Block Grant Funding.

Purpose: To conform probation state aid rule with new statutory provisions with respect to block grant funding.

Text of emergency rule: Part 345 of 9 NYCRR is REPEALED and a new Part 345 is added to read as follows:

(Statutory authority Chapters 53 and 57 of the Laws of 2011, Executive Law Sections 243 and 246)

Part 345 - Probation State Aid Block Grant

Section 345.1 Objective.

To provide for the distribution of State aid to county probation services and to the probation services of New York City and to provide State financial assistance to local governments for regular and/or specialized probation programming to promote offender accountability, rehabilitation, and enhance public safety.

Section 345.2 Definitions.

When used in this Part:

(a) "Division" shall mean the Division of Criminal Justice Services.

(b) "Commissioner" shall mean the Commissioner of the Division of Criminal Justice Services.

(c) "Office" shall mean the Office of Probation and Correctional Alternatives located within the Division of Criminal Justice Services.

(d) "Director" shall mean the Director of the Office of Probation and Correctional Alternatives within the Division.

(e) "Department" shall mean a county probation department or the City of New York probation department.

Section 345.3 State Aid Plan Application Submission and Eligibility for State Aid.

Every county outside of the City of New York and the City of New York shall annually file a probation state aid plan application with the Office pursuant to the format, timeframe and schedule prescribed by the Commissioner in consultation with the Director.

(a) Applications shall include a detailed plan with cost estimates covering probation services for the fiscal year or portion thereof for which aid is requested. Included in such estimates shall be clerical costs, maintenance and operation costs, salaries of probation personnel and other pertinent information including an overview of probation program services relating to staff training, investigation, supervision, and intake.

(b) An approved plan and compliance with standards relating to the administration of probation services, promulgated by the Commissioner in consultation with the Director, shall be a prerequisite to eligibility for State Aid.

(c) A county outside of the City of New York and the City of New York may apply for additional state aid as part of a block grant award for enhanced program services with respect to specific populations, including aid for the Intensive Supervision Program (ISP), Enhanced Specialized Services for Sex Offenders (ESSO), Juvenile Risk Intervention Coordination Services (J-RISC) or any other specific population determined by the Commissioner.

(d) The Commissioner shall allocate block grant monies based upon a review of all approved plans and their respective budgets and pursuant to a plan prepared by the Commissioner and approved by the Director of the Division of the Budget. All state aid shall be granted by the Commissioner after consultation with the State Probation Commission and the Director.

(e) State aid monies received by the Division during 2011 shall be, to the greatest extent possible, distributed in a manner consistent with the prior year distribution amounts and thereafter as authorized by law.

Section 345.4 Plan approval, funding, and reporting.

(a) State aid grants shall not be used for expenditures for capital additions or improvements, or for debt service costs for capital improvements.

(b) Each plan shall:

(1) ensure adherence to all applicable laws and rules and regulations governing probation services;

(2) ensure that the Integrated Probation Registrant System will be maintained by the Department in a timely and accurate manner and that

the proportion of active but closable adult supervision cases will be maintained at less than five percent of the total active Department caseload and whenever in excess, immediate steps will be undertaken to reduce percentage to less than five percent;

(3) ensure that the Department will timely collect DNA from individuals under their supervision who have not yet submitted DNA as agreed upon pursuant to a plea, as required by law, or as otherwise ordered by the court and routinely review the "DNA Owed" report on the Division's Probation Services Suite for such purposes;

(4) ensure that the Department will facilitate timely Sex Offender Registration Act (SORA) compliance (registration, submission of photographs, completion of annual address verification form, change of address forms, and 48-hour forms) by the Department and by any registered sex offender subject to supervision by the Department and conduct quarterly address checks of registerable sex offenders under probation supervision as requested by the Division to verify compliance;

(5) ensure that probation officers have access to the Division's eJusticeNY;

(6) ensure that the Department uses a Division approved fully validated Risk/Need Assessment instrument for juvenile and adult offender populations;

(7) if application is made for ISP service funding, make the following assurances:

(i) defendants will be screened at the earliest/appropriate stage in the dispositional process for program participation using Division eligibility criteria, and any additional criteria developed by the Department;

(ii) the Department will maintain and update, when applicable, local eligibility criteria that will further limit the unnecessary incarceration of certain high risk offenders. These criteria shall be in accordance with Division rules and regulations and such criteria and any update shall be forwarded to the Division;

(iii) the Department will use an approved Division assessment process or instrument to identify and target those with greatest risk and needs for program participation;

(iv) the Department will reduce the number of defendants who may be unnecessarily incarcerated by diverting them into the program by facilitating a probation sentence with the condition of program participation for suitable high risk defendants who would otherwise have been incarcerated and probationers who violate the original order and conditions of probation who will be continued under probation supervision with the condition of program participation, as an alternative to incarceration;

(v) the Department will complete a full assessment of all probationer program participants' criminogenic risks and needs, using a Division approved instrument and establish a supervision plan in a timely manner;

(vi) the Department will refer all such probationers to appropriate service providers based on the case planning assessment in the supervision plan; and

(vii) the Department will ensure that all such probationer's participate and engage in all service programs, and monitor their progress.

(8) if application is made for ESSO funding, make the following assurances:

(i) the Department will ensure that all SORA Level 2 or 3 registered sex offenders under probation supervision are subject, where applicable, to the mandatory sex offender condition(s) set forth in Penal Law § 65.10(4-a), and court-ordered or interstate authorized specialized sex offender conditions which may include, but are not limited to, the internet restriction condition under Penal Law § 65.10 (5-a);

(ii) the Department will ensure that all such sex offenders are assigned to the caseload of an experienced probation officer/probation unit who either solely or primarily supervises sex offenders, or has a significant concentration of sex offenders on the caseload, and who has received specialized training on sex offender management;

(iii) the Department will perform enhanced field work (i.e. surveillance, collateral contacts, employment visits, as well as use of electronic monitoring, global positioning systems, computer scanning, internet usage monitoring, and other enforcement initiatives) in supervising such sex offenders;

(iv) the Department will conduct at least one visit to a SORA Level 2 or 3 sex offender's home each quarter during which, at a minimum, a plain view search for prohibited items and/or substances is completed;

(v) the Department will ensure that all such sex offenders are assessed by a probation officer or treatment provider using a sex-offender specific assessment instrument approved by the Division;

(vi) the Department will ensure that all such sex offenders are referred to, participate in, or successfully complete Association for the Treatment of Sexual Abusers (ATSA)-compliant clinical evaluation and/or treatment where available;

(vii) the Department will maintain and implement a policy which

provides for collaboration with other law enforcement and service agencies on: warrant execution sweeps, home visits, surveillance, searches, treatment planning, housing, and other activities related to general sex offender management;

(viii) the Department will maintain and implement a policy which provides for officers to independently or in concert with law enforcement execute warrants on Sex Offenders, including apprehending absconders who are found, pursue extradition where appropriate, and secure warrants and retake interstate sex offenders where required and/or necessitated; and

(ix) the Department will utilize polygraph examinations for the management of certain sex offenders consistent with the goals of community safety where available.

(9) If application is made for J-RISC funding, make the following assurances:

(i) the Department will use an approved Division risk and needs assessment process or instrument, refer alleged and/or adjudicated Persons In Need of Supervision (PINS) and Juvenile Delinquent (JD) youth who are determined to be high risk and appropriate for program services and conduct reassessments as necessary; and

(ii) the Department will assign juvenile probation officers trained in family intervention and cognitive behavioral techniques, youth supervision and delinquency prevention to perform program services and/or work collaboratively with evidence-based intervention provider(s) to achieve reductions in dynamic risk for J-RISC youth and to achieve successful program completion.

(10) Ensure adherence to other program goals, objectives, and performance target requirements set forth by the Division for additional state aid with respect to special/specific populations other than the populations specified in paragraphs seven, eight and nine of this subdivision.

(c) The Commissioner may require modification of the plan in order to obtain approval. Any modification of a plan requires Commissioner approval.

(d) Vouchers and program reports shall be in a format established by the Division and shall be submitted on a schedule established by the Division.

(e) Division or other governmental findings by audit or program analysis and review which show that the Department has not adhered to the approved plan of operation and/or standards governing probation practice, may be the basis for withholding the payment of State aid or recouping monies. A county or the City of New York may request reconsideration of the decision to withhold payment or recoup monies to the Office and shall submit information as to their respective position and specific details in support of its position and such other information as may be requested by the Director. After consultation with the Director, the Commissioner will render a final determination which may include the steps that are necessary to obtain funding.

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. CJS-37-11-00018-EP, Issue of September 14, 2011. The emergency rule will expire January 20, 2012

Text of rule and any required statements and analyses may be obtained from: Linda J. Valenti, Assistant Counsel, Division of Criminal Justice Services, Four Tower Place, Albany, NY 12203-3764, (518) 457-8413, email: linda.valenti@dcjs.state.ny.us

Regulatory Impact Statement

1. Statutory authority:

Chapters 53 and 57 of the Laws of 2011 continued the provisions of block grant funding for probation services, originally enacted pursuant to Chapters 50 and 56 of the Laws of 2010. These 2010 Chapter laws had renamed the former Division of Probation and Correctional Alternatives (DPCA) to the Office of Probation and Correctional Alternatives (OPCA), merged OPCA within the Division of Criminal Justice Services (DCJS), specifically transferred all rules and regulations of DPCA to DCJS, and established that such rules and regulations shall continue in full force and effect until duly modified or abrogated by the Commissioner of DCJS. Additionally, other conforming statutory changes were made including the amendment of Executive Law Section 243(1) to establish in pertinent part that the Commissioner of DCJS has authority to "adopt general rules which shall regulate methods and procedure in the administration of probation services..." so as to secure the most effective application of the probation system and the most effective enforcement of the probation laws throughout the state." Such rules are binding with the force and effect of law. Further, Executive Law Section 246 was amended to revamp probation state aid funding from approvable expenditures to block grant distribution and authorize within such grant monies funding for other specific enhanced program services related to specific probation populations. State Fiscal Year 2010-2011 and 2011-2012 appropriations were enacted consistent with statutory changes in this area.

2. Legislative objectives:

These regulatory amendments are consistent with legislative intent to maintain State financial assistance to local governments for regular and/or specialized probation programming, continuing a streamlined mechanism for local government to apply for and receive probation state aid block grant monies, and to afford greater flexibility to probation departments with respect to managing probation operations. The amendments will help guarantee the stability of probation service delivery consistent with state law, rules and regulations, and additional specific state programmatic requirements, promote offender accountability and rehabilitation, and enhance public safety.

3. Needs and benefits:

The need for a new proposed regulation in this area replacing the existing probation state aid rule with a new probation state aid block grant rule is necessitated by statutory changes in the enacted 2010 and 2011 Executive Budget (L. 2010, Chapters 50 and 56 and L. 2011, Chapters 53 and 57) and the recent expiration of a 2010 emergency block grant rule which had replaced the former outdated probation state aid rule. Additionally, certain regulatory changes are sought to particular specialized sex offender funding performance measures in recognition of addressing some local issues which have arisen in complying with terms and conditions of such funding. Immediate regulatory changes must be implemented to ensure the timely distribution of probation funding to local governments to guarantee that there is no disruption of service delivery. This regulation will continue to provide local probation departments mandate relief with respect to the manner which they may apply for state monies for probation management operations. The proposed regulation has been designed to streamline application procedures, reduce program standards to core components in order to achieve fiscal efficiencies, and provide greater flexibility as to local probation department service delivery consistent with law, and good professional practice. Program standards are not new, but instead codify past contractual agreements based upon best practices and ensure the integrity of probation service delivery to the criminal justice and juvenile justice system. For general State aid block grant monies, program standards have retained DNA, Sex Offender Registration Act (SORA), eJusticeNY, and Integrated Probation Registrant System requirements from past years to promote public safety and ensure sound probation management. Probation state aid is no longer based upon detailed regulatory criteria specifying eligible reimbursement expenditures; thus, departments will have greater latitude to utilize monies for probation operations. The singular regulatory restriction mirrors State law. For Intensive Supervision Program (ISP) State aid block grant monies, program standards are consistent with respect to key program operational expectations governing screening, initial and full assessment, advocacy, case planning, referral, and monitoring consistent with existing ISP operational guidelines, policies, and agency regulations and the application is now incorporated within the annual state aid application process. For Enhanced Specialized Services for Sex Offenders (ESSO) State aid block grant monies, the program standards have been reduced to essential program components critical for enhanced supervision of high-risk sex offenders with additional minor modifications in the area of polygraph examinations and referral to treatment services that will greatly assist some departments in adhering to particular terms and conditions. Consistent with 2010 statutory changes, departments are no longer restricted in the amount of monies which can be spent for certain program activities, including those related to specialized caseload, field work, polygraph testing, and retaking or extradition of a SORA Level II or III sex offender under probation supervision. Additionally, in accordance with a change implemented in 2010, specialized ESSO monies earmarked for polygraph testing and retaking and extradition of offenders remain included in total distribution. This will optimize flexibility in utilization of such ESSO monies for program performance in this area. For Juvenile Risk Intervention Services Coordination (J-RISC) grant monies, program standards have continued 2010 funding changes which retained prior year contractual core service delivery expectations based upon evidence-based practices. J-RISC monies may be spent as departments determine appropriate to effectuate program services.

Consistent with 2010 regulatory changes, for ISP, ESSO, and J-RISC State aid block grant monies, the application continues to be incorporated within the annual state aid application process and will not require detailed budgetary information for such specialized monies. As during 2010, no longer will there be a need to seek State approval with respect to changes in local ISP, ESSO, or J-RISC budgets. Further, to receive monies there is a simplified voucher process with less documentation necessitated and due to the block grant distribution, instead of separate quarterly program vouchers previously required, a probation department will submit one voucher on a quarterly basis covering all funded division programmatic services.

4. Costs:

This regulation will not result in increased costs. Greater flexibility in

utilization of probation state aid should improve fiscal efficiencies and program operations, and reduce State and local costs associated with contractual processing.

a. This regulation will not impose a cost on probation departments. Prior to 2010, departments had to apply to OPCA for re-imbusement after expenses were incurred. This regulation continues 2010 rule changes which will allow for a single application for funding prior to incurring expenses and will likely result in savings to a probation department by reducing staff effort in securing re-imbusement.

b. Although DCJS must approve each plan, this approval can be accomplished using existing staff and resources. Therefore no additional costs will be incurred. As noted above, it is anticipated that the costs to each local government may be reduced through the streamlined funding plan.

c. This cost analysis is based on the prior experience of OPCA employees in consultation with DCJS.

5. Local government mandates:

The regulatory changes do not impose any new mandates upon probation departments with respect to probation state aid funding. While prior to 2010 probation departments seeking State funding were required to apply to OPCA, since 2010 applications are made directly to DCJS.

6. Paperwork:

No additional paperwork is necessary for implementation of these regulatory changes.

7. Duplication:

These amendments do not duplicate any State or Federal law or regulation.

8. Alternatives:

This regulation is similar to last year's funding rule with respect to probation block grant monies.

Chapter 53 and 57 of the laws of 2011 continued provisions of Chapter 56 of the laws of 2010 and provisions of Executive Law Section 246 which established that state aid block grant funding with respect to regular and certain specialized program services shall be pursuant to DCJS rules and regulations. Eliminated as no longer necessary was funding of such program services pursuant to contractual agreements. DCJS developed a regulation which created a singular streamlined application procedure as to regular State aid and the three new statutorily earmarked block grant specialized services. Further, DCJS chose to simplify and clarify program performance standards with respect to core components and provide greater flexibility as to local probation department service delivery consistent with law and good professional practice. Before finalization of the 2010 emergency regulation, DCJS distributed a draft regulation to the State Probation Commission, which consists of two probation directors and a former probation officer among others appointed by the Governor and which includes the Chief Administrator of the Courts. At the Probation Commission's August 2010 meeting, DCJS received unanimous favorable endorsement from the Commission as to the approach and identification of the core components of the probation standards reflected in the regulation, as well as the manner of distribution of monies which is consistent with Chapter 56 of the Laws of 2010 amendments to Executive Law Section 246 and appropriation language found in Chapter 50 of the Laws of 2010. Regulatory implementation and funding allocation methodology were further discussed with the Council of Probation Administrators, the professional organization of probation directors and deputy directors throughout New York State, which did not raise objection.

9. Federal standards:

There are no federal standards governing probation state aid.

10. Compliance schedule:

This regulation is similar to the 2010 state aid application procedures with respect to state aid probation block grant monies. Dissemination of the new regulation to local probation departments will enable such departments to comply with the regulation and timely secure State funds without delay.

Regulatory Flexibility Analysis

1. Effect of Rule:

This new rule Part sets forth parameters governing probation state aid block grant distribution.

The regulatory changes will better assist probation departments in funding and managing their own probation operations. They will afford relief to probation departments by streamlining state aid plan application procedures with respect to provision of State financial assistance to local governments for probation programming to achieve fiscal efficiencies and provide greater flexibility in usage of state aid monies consistent with Chapters 50 and 56 of the Laws of 2010 and Chapters 53 and 56 of the Laws of 2011 and state aid block grant provisions. Changes will expedite receipt of grant monies as once approved there is no need to enter into formal contractual processing.

The amendments do not affect small business.

2. Compliance Requirements:

In order to comply with this rule, a local probation department will be required to apply to the Division of Criminal Justice Services (DCJS) prior to receiving State financial assistance. This regulation is similar to prior year state aid application procedures with respect to state aid probation monies and the reporting, recordkeeping and compliance requirements are similar to those of prior years. This regulation has no affect on small businesses.

3. Professional Services:

No professional services are required to comply with this regulation.

4. Compliance Cost:

The regulatory changes will not result in probation departments incurring any compliance costs. The regulatory amendments mirror 2010 application procedures with respect to probation state aid block grant monies, and continue last year's provision of mandate relief to local probation departments with respect to the manner which they can distribute state monies for probation management operations consistent with other statutory provisions.

5. Economic and Technological Feasibility:

There are no economic or technological issues or problems arising from the proposed rule. A probation department will be able to apply for State financial assistance pursuant to this rule using existing staff and technology.

6. Minimizing Adverse Impacts:

DCJS foresees that these regulatory amendments will have no adverse impact on any local government. As noted in more detail below, the Office of Probation and Correctional Alternatives (OPCA) within DCJS collaborated with jurisdictions across the state, including rural, suburban, and urban counties, and probation professional associations in soliciting feedback as to regulatory changes in order to provide probation mandate relief. As a result of the 2010 enactment of probation state aid block grant funding and continuation of block grant funding in 2011, the proposed regulation is designed to streamline application procedures, reduce program standards to core components, and provide greater flexibility as to local probation department service delivery consistent with law, and good professional practice.

As the probation state aid block grant rule does not have any impact upon small business, the regulatory changes have no negative impact upon small business operations.

7. Small Business and Local Government Participation:

Pursuant to Executive Order No. 17, the OPCA prepared initial Rule Review Findings in October 2009 of all of its rules and regulations and disseminated the findings to all probation departments, the Council of Probation Administrators (COPA) (the statewide professional association of probation directors), the New York State Probation Officers Association (NYSPOA), the New York State Association of Counties (NYSAC), the State Probation Commission, and the Division of the Budget (DOB). Additionally, OPCA convened an October 26, 2009 meeting in Albany which was attended by over a dozen probation departments (urban, suburban, and rural counties), COPA and NYSPOA Presidents, NYSAC, and DOB representatives. OPCA staff went over all rules and regulations and reviewed them individually, discussed proposed regulatory changes, and solicited feedback from the audience.

There was considerable interest by probation professionals across the state from rural, urban, and suburban jurisdictions, for legislation which would change the distribution of probation state aid from reimbursed expenditures to probation State aid block grants to achieve greater fiscal efficiencies and provide greater flexibility in probation management operations. This block grant concept was incorporated in the 2010 Public Protection appropriation portion of the Executive Budget and other statutory language which was subsequently signed into law and continued in enactment of 2011 budgetary provisions. During 2010, DCJS disseminated the 2010 emergency rule in this area to all local probation departments. This 2011 emergency rule incorporates a few modifications with respect to funding performance requirements which will assist certain departments in achieving regulatory compliance.

As this rule does not impact upon small businesses, there was no business involvement with respect to the regulatory changes.

Rural Area Flexibility Analysis

1. Types and estimated number of rural areas:

Forty-four local probation departments, which are located in rural areas, will be affected by the proposed rule.

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

The regulation imposes no new reporting, recordkeeping, other compliance requirements. This regulation is similar to 2010 state aid application procedures with respect to state aid probation block grant monies and the reporting, recordkeeping and compliance requirements are similar to those of prior years. No professional services will be necessary to comply with the regulation.

3. Costs:

The new regulatory Part will not result in increased costs.

4. Minimizing adverse impact:

DCJS foresees that these regulatory amendments will have no adverse impact on any jurisdiction, including rural areas. As noted in more detail below, the former Division of Probation and Correctional Alternatives (DPCA), now the Office of Probation and Correctional Alternatives (OPCA) within DCJS, collaborated with jurisdictions across the state, including rural areas, and probation professional associations with rural membership in soliciting feedback as to agency regulations in order to provide sound probation mandate relief. The 2010 and 2011 statutory and appropriation language with respect to probation state aid block grant is consistent with recent suggestions raised by many probation departments and communicated by the Council of Probation Administrators, the statewide professional association of probation administrators. The regulatory amendments have been designed to streamline application procedures, reduce program standards to core components, and provide greater flexibility as to local probation department service delivery consistent with law, public safety, and good professional practice.

5. Rural area participation:

Pursuant to Executive Order No. 17, the OPCA prepared initial Rule Review Findings in October 2009 of all of its rules and regulations and disseminated the findings to all probation departments, the Council of Probation Administrators (COPA) (the statewide professional association of probation directors), the New York State Probation Officers Association (NYSPOA), the New York State Association of Counties (NYSAC), the State Probation Commission, and the Division of the Budget (DOB). Additionally OPCA convened an October 26, 2009 meeting in Albany which was attended by over a dozen probation departments (rural, urban, and suburban counties), COPA and NYSPOA Presidents, NYSAC, and DOB representatives. DPCA staff went over all rules and regulations and reviewed them individually, discussed proposed regulatory changes, and solicited feedback from the audience. There was considerable interest by some probation professionals across the state from rural, urban, and suburban jurisdictions, which gained legislative and Executive support, for legislation which would change the distribution of probation state aid from reimbursed expenditures to probation State aid block grant to achieve greater fiscal efficiencies and provide greater flexibility in probation management operations. This block grant concept was incorporated in the 2010 Public Protection appropriation portion of the Executive Budget which was subsequently signed into law and continued in enactment of 2011 budgetary provisions. The proposed regulation, which is similar in content with past expired emergency regulations, and consistent with recent statutory provisions, will achieve greater fiscal efficiencies and provide greater flexibility in probation management operations.

Job Impact Statement

The emergency regulation will have no adverse effect on private or public jobs or employment opportunities. The revisions are technical and procedural in nature and consistent with recently implemented State law probation State aid block grant language.

Assessment of Public Comment

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

NOTICE OF ADOPTION

Probation Management

I.D. No. CJS-39-11-00015-A

Filing No. 1265

Filing Date: 2011-11-22

Effective Date: 2011-12-07

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

Action taken: Amendment of section 347.4 of Title 9 NYCRR.

Statutory authority: Executive Law, section 243(1)

Subject: Probation Management.

Purpose: To provide probation departments certain mandate relief with respect to probation management operations.

Text or summary was published in the September 28, 2011 issue of the Register, I.D. No. CJS-39-11-00015-P.

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

Text of rule and any required statements and analyses may be obtained from: Linda J. Valenti, Assistant Counsel, Division of Criminal Justice Services, Four Tower Place, Albany, New York 12203-3764, (518) 457-8413, email: linda.valenti@dcjs.state.ny.us

Assessment of Public Comment

The agency received no public comment.

Education Department

NOTICE OF ADOPTION

Waiver of Corporate Professional Practice Restrictions for Certain Mental Health Professions

I.D. No. EDU-37-11-00016-A

Filing No. 1260

Filing Date: 2011-11-22

Effective Date: 2011-12-07

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

Action taken: Amendment of section 59.14 of Title 8 NYCRR.

Statutory authority: Education Law, sections 207(not subdivided), 6503-a(1)(a) and (c), 6504(not subdivided), 6507(2)(a), and L. 2011, ch. 187

Subject: Waiver of corporate professional practice restrictions for certain Mental Health professions.

Purpose: To conform Commissioner's Regulations to Education Law section 6503-a, as amended by Ch. 187, L. 2011.

Text or summary was published in the September 14, 2011 issue of the Register, I.D. No. EDU-37-11-00016-P.

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

Text of rule and any required statements and analyses may be obtained from: Mary Gammon, State Education Department, State Education Building, Room 148, 89 Washington Ave., Albany, NY 12234, (518) 474-8857, email: legal@mail.nysed.gov

Assessment of Public Comment

The agency received no public comment.

Department of Financial Services

EMERGENCY RULE MAKING

License, Financial Responsibility, Education and Test Requirements for Mortgage Loan Originators

I.D. No. DFS-49-11-00002-E

Filing No. 1263

Filing Date: 2011-11-22

Effective Date: 2011-11-22

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

Action taken: Repeal of Part 420 and Supervisory Procedures MB 107, MB 108; and addition of new Part 420 and Supervisory Procedure 107 to Title 3 NYCRR.

Statutory authority: Banking Law, arts. 12-D and 12-E

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

Specific reasons underlying the finding of necessity: Article 12-E of the Banking Law provides for the regulation of mortgage loan originators (MLOs). Article 12-E was recently amended in order to conform the regulation of MLOs in New York to new federal legislation (Title V of the Housing and Economic Recovery Act of 2008, known as the "SAFE Act").

The SAFE Act authorized the federal Department of Housing and Urban Development ("HUD") to assume the regulation of MLOs in any state that did not enact acceptable implementing legislation by August 1, 2009. In response, the Legislature enacted revised Article 12-E.

The emergency rulemaking revises the existing MLO regulations, which implement the prior version of Article 12-E, to conform to the changes in the statute.

Under the new legislation, MLOs, including those already engaged in the business of originating mortgage loans, must complete new education, testing and bonding requirements prior to licensure. Meeting these requirements will likely entail significant time and effort on the part of individuals subject to the revised law and regulations.

Emergency adoption of the revised regulations is necessary in order to afford such individuals sufficient advance notice of the new substantive rules and licensing procedures for MLOs that they will have an adequate opportunity to comply with the new licensing requirements and in order to protect against federal preemption of the regulation of MLOs in New York.

Subject: License, financial responsibility, education and test requirements for mortgage loan originators.

Purpose: To require that individuals engaging in mortgage loan origination activities must be licensed by the Superintendent of Financial Services (formerly the Superintendent of Banks).

Substance of emergency rule: Summary of New Part 420

Section 420.1 summarizes the scope and application of Part 420. It notes that all individuals unless exempt must be licensed under Article 12-E to engage in mortgage loan originator ("MLO") activities. It also sets forth the basic authority of the Superintendent to revoke or suspend a license.

Section 420.2 sets out the exemptions available to individuals from the general license requirements. Specifically, the proposed regulation includes a number of exemptions, including exemptions for individuals who work for banking institutions as mortgage loan originators and individuals who arrange mortgage loans for family members. Also, individuals who work for mortgage loan servicers and negotiate loan modifications are only subject to the license requirement if required by HUD. The Superintendent is authorized to approve other exemptions for good cause.

Section 420.3 contains a number of definitions of terms that are used in Part 420. These include definitions for "mortgage loan originator," "originating entity," "residential mortgage loan" and "loan processor or underwriter".

Section 420.4 describes the applications procedures for applying for a license as an MLO. It also provides important transitional rules for individuals already engaging in mortgage loan origination activities pursuant to the authority of the prior version of Article 12-E or, in the case of individuals engaged in the origination of manufactured homes, not previously subject to regulation by the Department of Financial Services (formerly the Banking Department).

Section 420.5 describes the circumstances in which originating entities may employ or contract with MLOs to engage in mortgage loan origination activities during the application process.

Section 420.6 sets forth the steps the Superintendent of Financial Services (formerly the Superintendent of Banks) must take upon determining to approve or disapprove an application for an MLO license.

Section 420.7 describes the circumstances when an MLO license is inactive and how an MLO may maintain his or her license during such periods.

Section 420.8 sets forth the circumstances when an MLO license may be suspended or terminated. Specifically, the proposed regulation provides that an MLO license shall terminate if the annual license renewal fee has not been paid or the requisite number of continuing education credits have not been taken. The Superintendent also may issue an order suspending an MLO license if the licensee does not file required reports or maintain a bond. The license of an MLO that has been suspended pursuant to this authority shall automatically terminate by operation of law after 90 days unless the licensee has cured all deficiencies within this time period.

Section 420.9 sets forth the process for the annual renewal of an MLO license.

Section 420.10 sets forth the process by which an MLO may surrender his or her license.

Section 420.11 sets forth the pre-licensing educational requirements applicable to applicants seeking an MLO license. Twenty hours of educational courses are required, including courses related to federal law and state law issues.

Section 420.12 sets out the requirement that pre-licensing education and continuing education courses and education course providers must be approved by the Nationwide Mortgage Licensing System and Registry (the "NMLS"). This represents a change from the prior law pursuant to which the Superintendent issued such approvals.

Section 420.13 sets forth the pre-licensing testing requirements for applicants for an MLO license. It also sets out the test location requirements and the minimum passing grades to obtain a license.

Section 420.14 sets out the continuing education requirements applicable to MLOs seeking to renew their licenses.

Section 420.15 sets out the new requirements that MLOs have a surety bonds in place as a condition to being licensed under Article 12-E. It also sets out the minimum amounts of such bonds.

Section 420.16 requires the Superintendent to make reports to the NMLS annually regarding violations by, and enforcement actions against, MLOs. It also provides a mechanism for MLOs to challenge the content of such reports.

Section 420.17 sets forth the process for calculating and collecting fees applicable to MLO licensing.

Sections 420.18 and 420.19 set forth the various duties of MLOs and originating entities. Section 420.20 also describes conduct prohibited for MLOs and loan originators.

Finally, Section 420.21 describes the administrative action and penalties that the Superintendent may take against an MLO for violations of law or regulation.

Summary of Revised Supervisory Procedure MB 107

Section 107.1 contains definitions of defined terms used in the Supervisory Procedure. Importantly, it defines the National Mortgage Licensing System (NMLS), the web-based system with which the Superintendent has entered into a written contract to process applications for initial licensing and applications for annual license renewal for MLOs.

Section 107.2 contains general information about applications for initial licensing and annual license renewal as an MLO. It states that a sample of the application form (which must be completed online) may be found on the Department's website and includes the address where certain information required in connection with the application for licensing must be mailed.

Section 107.3 describes the parts of an application for initial licensing. The application includes (1) the application form, (2) fingerprint cards, (3) the fees, (4) applicant's credit report, (5) an affidavit subscribed under penalty of perjury in the form prescribed by the Superintendent, and (6) any other information that may be required by the Superintendent. It also describes the procedure when the Superintendent determines that the information provided by the application is not complete.

Section 107.4 describes the required submissions for annual license renewal of an MLO.

Section 107.5 covers inactive status.

Section 107.6 provides information on places where applicants may obtain additional instructions and assistance on the Department's website, by email, by mail, and by telephone.

Supervisory Procedure MB 108 is hereby repealed.

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 February 19, 2012.

Text of rule and any required statements and analyses may be obtained from: Sam L. Abram, Assistant Counsel, New York State Department of Financial Services, One State Street, New York, NY 10004, (212) 709-1658, email: sam.abram@dfs.ny.gov

Regulatory Impact Statement

1. Statutory Authority.

Revised Article 12-E of the Banking Law became effective on July 11, 2009 when Governor Paterson signed into law Chapter 123 of the Laws of 2009. The revised version of Article 12-E is modeled on the provisions of Title V of the federal Housing and Economic Recovery Act of 2008, also known as the S.A.F.E. Mortgage Licensing Act (the "SAFE Act") pertaining to the regulation of mortgage loan originators. Hence, the licensing and regulation of mortgage loan regulators in New York now closely tracks the federal standard.

Current Part 420 of the Superintendent's Regulations, implementing the prior version of Article 12-E, was adopted on an emergency basis in December of 2008. Since the new version of Article 12-E is already effective, it is necessary to revise Part 420 and adopt the revised version on an emergency basis. An earlier draft of this regulation was published on the Department of Financial Services' (formerly the Banking Department) website on August 27, 2009. To date, the Department has received two sets of comments, and these have been incorporated into the current version of the revised regulation as appropriate.

New Section 599-a of the Banking Law sets forth the legislative purpose of new Article 12-E. It notes that the new Article is intended to enhance consumer protection, reduce fraud and ensure the public welfare. It also notes that the new regulatory scheme is to be consistent with the SAFE Act.

Section 599-b sets forth the definitions used in the new Article. Defined terms include: mortgage loan originator ("MLO"); mortgage loan processor -- an individual who may not need to be licensed; residential mortgage loans -- loans for which an MLO must be licensed; residential real property; and the Nationwide Mortgage Licensing System and Registry (the "NMLS").

Section 599-c sets forth the requirements for being licensed as an MLO, the effective date for licensing and exemptions from the licensing requirements. Exemptions include ones for individuals who work for

insured financial institutions, licensed attorneys who negotiate the terms of a loan for a client as an ancillary to the attorney's representation of the client, and, unless required to be licensed by the U.S. Department of Housing and Urban Development ("HUD"), certain individuals employed by a mortgage loan servicer.

Section 599-d sets out the process for obtaining an MLO license. It also sets out the Department's authority for imposing fees, the authority of the NMLS to collect such fees, the ability of the Superintendent of Financial Services (formerly the Superintendent of Banks) to modify the requirements of Article 12-E in order to ensure compliance with the SAFE Act, the requirement that filings be made electronically and required background information from all applicants.

Section 599-e sets forth the findings that the Superintendent must make before a license is issued. These include a finding that the applicant not have any felony convictions within seven years or any fraud convictions at any time, that the applicant demonstrate acceptable character and fitness, educational and testing criteria and a bonding requirement. An MLO also must be affiliated with an originating entity -- a licensed mortgage banker or registered mortgage broker (or other licensed entity in the case of individuals originating manufactured homes) -- or working for mortgage loan servicers.

Section 599-f sets out the pre-licensing education requirements, and Section 599-g sets forth the pre-licensing testing requirements. Section 599-h imposes a reporting requirement on entities employing MLOs. Such entities must make annual filings through the NMLS.

Section 599-i sets forth the annual license renewal requirements for MLOs. In addition to continuing to satisfy the initial requirements for licensing, MLOs must satisfy annual continuing educational requirements and must have paid all fees. Failure to meet these requirements shall result in the automatic termination of an MLO's license. The statute also provides for a licensee going into inactive status, provided the individual continues to pay all applicable fees and to take required education courses.

Section 599-j sets forth the continuing education requirements for MLOs, and Section 599-k sets forth the requirements for a surety bond. Section 599-l requires the Superintendent to report through the NMLS at least annually on all violations of Article 12-E and all enforcement actions. MLOs may challenge the information contained in such reports. Section 599-m sets forth the records and reports that originating entities must maintain or make on MLOs employed by, or working for, such entities. This section also requires the Superintendent to maintain on the internet a list of all MLOs licensed by the Department and requires reporting to the Department by MLOs.

Section 599-n sets forth the enforcement authority of the Superintendent. In addition to "for good cause" suspension authority, the Superintendent may revoke a license for stated reasons (after a hearing), and the Superintendent may suspend a license if a required surety bond is allowed to lapse or thirty days after a required report is not filed. This section also sets out the requirements for surrendering a license and the implications of any surrender, revocation, termination or suspension of a license.

Section 599-o sets forth the authority of the Superintendent to adopt rules and regulations implementing Article 12-E, including the authority to adopt expedited review and licensing procedures for individuals previously authorized under the prior version of Article 12-E to act as MLOs. It also authorizes the Superintendent to investigate licensees and the entities with which they are associated.

Section 599-p requires that the unique identifier of every originator be clearly shown on certain documents. Section 599-q provides certain confidentiality protections for information provided to the Superintendent by an MLO, notwithstanding the sharing of such information with other regulatory bodies.

2. Legislative Objectives.

As noted, new Article 12-E was intended to conform New York Law to federal law and to enhance the regulation of MLOs operating in this state. These objectives have taken on increased urgency with the problems evidenced in the mortgage banking industry over the last two years.

The regulations implement this statute. New Part 420 differs from the prior version in a number of respects. The following is a summary of the major changes from the previous regulation:

(a) The definition of a mortgage loan originator is broadened to include any individual who takes a mortgage application or offers or negotiates the terms of the mortgage with a consumer.

(b) Individuals who originate loans on manufactured homes will be subject to the regulation for the first time.

(c) If licensing of individuals who work for mortgage loan servicers and who engage in loan modification activities is required by the U.S. Department of Housing and Urban Development, such individuals may be subject to the licensing requirements of the new law and to the new regulation.

(d) Individuals who have applied for "authorization" under the prior version of Article 12-E and Part 420 have a simplified process for becoming

ing licensed and may continue to originate loans until they are licensed under the revised regulation or their applications are denied.

(e) Individuals with a felony conviction within the last seven years or a felony conviction for fraud at any time are now prohibited from being licensed as MLOs in New York State.

(f) Individuals must satisfy new pre-license education and testing requirements. There also are new bonding requirements and continuing education requirements.

(g) A license automatically terminates if the licensee does not pay his or her annual license renewal fee or take the requisite amount of continuing education credits. The authority of the Superintendent to suspend an individual for good cause also has been clarified.

When Part 420 was originally adopted on an emergency basis, the Superintendent also adopted Supervisory Procedures MB 107 and MB 108. Supervisory Procedure MB107 deals with applications to become an MLO. It has been updated in line with the revisions to Article 12-E and Part 420.

Supervisory Procedure MB 108, relating to the approval of education providers and courses, was originally adopted because the prior version of Article 12-E required the Superintendent to approve both courses and providers. This activity has been transferred to the NMLS under new Article 12-E. Accordingly, Supervisory Procedure MB 108 is being rescinded.

3. Needs and Benefits.

The SAFE Act is intended to impose a nationwide standard for MLO regulation; new Article 12-E constitutes New York's effort to adopt a regulatory regime consistent with this uniform standard. This regulation is needed to implement revised Article 12-E and is necessary to address problems that have surfaced over the last several years in the mortgage industry.

As has now been recognized at the federal level in the SAFE Act, increased oversight of mortgage loan originators is necessary to curb disreputable and deceptive business practices by MLOs. Individuals engaging in abusive practices have avoided detection by moving from company to company and in some instances, from state to state. The licensing of MLOs will greatly assist the Department in its efforts to oversee the mortgage industry and protect consumers. The regulation will enable the Department to identify, track and hold accountable those individuals who engage in abusive practices, and ensure continuing education for all MLOs that are licensed by the Department.

These regulatory requirements will improve accountability among mortgage industry professionals, protect and promote the integrity of the mortgage industry, and improve the quality of service, thereby helping to restore consumer confidence.

If New York did not adopt the new federal standards for MLO regulation or failed to implement its requirements, the SAFE Act requires that HUD assume the licensing of MLOs in New York State. This would result in ceding an important responsibility and element of state sovereignty to the federal government.

4. Costs.

MLOs are already experiencing increased costs as a result of the fees and continuing education requirements associated with the prior version of Article 12-E. These costs will continue under the new law and regulations.

The amount of the fingerprint fee is set by the State Division of Criminal Justice Services and the processing fees of the National Mortgage Licensing System and Registry are set by that body.

The ability by the Department to regulate MLOs is expected to substantially decrease losses to consumers and the mortgage industry, as well as to assist in decreasing the number of foreclosures in the State and the associated direct and indirect costs of such foreclosures. It is expected also to reduce consumer complaints regarding MLO conduct.

The regulations will not result in any fiscal implications to the State. The Banking Department is funded by the regulated financial services industry. Fees charged to the industry will be adjusted periodically to cover Department expenses incurred in carrying out this regulatory responsibility.

5. Local Government Mandates.

None.

6. Paperwork.

An application process has been established for MLOs electronically through the NMLS. Over time, the application process is expected to become virtually paperless; accordingly, while a limited number of documents, including fingerprints where necessary, currently have to be submitted to the Department in paper form, these requirements should diminish with the passage of time.

The specific procedures that are to be followed in order to apply for licensing as a mortgage loan originator are detailed in revised Supervisory Procedure MB 107.

7. Duplication.

The revised regulation does not duplicate, overlap or conflict with any other regulations.

8. Alternatives.

The purpose of the regulation is to carry out the statutory mandate to license and regulate MLOs in a manner consistent with the SAFE Act. As noted above, the alternative would be to cede this responsibility to the federal government. By enacting revised Article 12-E, the Legislature has indicated its desire to retain this responsibility at the state level.

9. Federal Standards.

Currently, mortgage loan originators are required under the SAFE Act to be licensed under requirements nearly identical to those set forth in new Article 12-E.

10. Compliance Schedule.

New Article 12-E became effective on July 11, 2009.

A transitional period is provided for mortgage loan originators who, as of July 11, 2009, were authorized to act as MLOs or had filed applications to be so authorized. Such MLOs may continue to engage in MLO activities, provided they submit any additional, updated information required by the Superintendent. The transitional period runs until January 1, 2011, in the case of authorized persons, and until July 31, 2010, in the case of applicants (unless their applications are denied or withdrawn as of an earlier date). Applicants are required to complete their applications considerably in advance of these dates under the regulations in order to allow the Department to complete their processing.

Regulatory Flexibility Analysis

1. Effect of the Rule:

The revised regulation will not have any impact on local governments. However, many of the originating entities who employ or are affiliated with mortgage loan originators are mortgage bankers or mortgage brokers who are considered small businesses. In excess of 2,700 of these businesses are licensed or registered by the Department of Financial Services (formerly the Banking Department).

2. Compliance Requirements:

The revised regulation reflects the changes made in revised Article 12-E of the Banking Law. The small businesses that MLOs are employed by or affiliated with will be required to ensure that all MLOs employed by them have been duly licensed, report four times a year on the MLOs newly employed by them or dismissed for actual or alleged violations, determine that each MLO employed by or affiliated with them has the character, fitness and education qualifications to warrant the belief he or she will engage in mortgage loan originating honestly, fairly and efficiently; and, finally, retain acceptable documentation as evidence of satisfactory completion of required education courses for each MLO for a period of six years. In addition to these requirements, originating entities will be required to assign MLOs to registered locations and to ensure that an MLO's unique identifier is recorded on each mortgage application he or she originates.

3. Professional Services:

None.

4. Compliance Costs:

As under the existing Part 420, some mortgage entities may choose to pay for costs associated with initial licensing and annual license renewal for their MLOs and with continuing education requirements, but are not required to do so. Costs associated with electronic filing of quarterly employment reports and retaining for six years evidence of completion by MLOs of required continuing education are expected to be minimal.

5. Economic and Technological Feasibility:

The rule-making should impose no adverse economic or technological burden on small businesses that MLOs are employed by or affiliated with.

6. Minimizing Adverse Impacts:

The industry, and specifically small businesses who are licensed and registered mortgage businesses, supported passage of the previous Banking Law Article 12-E and had substantial opportunity to comment on the specific requirements of this statute and its supporting regulations. In addition, these businesses were involved in a policy dialogue with the Department during rule development. In order to minimize any potential adverse economic impact of the rulemaking, outreach was conducted with associations representing the industries that would be affected thereby (mortgage bankers, and mortgage brokers).

The revised regulation implements changes in Article 12-E of the Banking Law. An earlier draft of the revised regulation was published on the Department's website on August 27, 2009. Changes incorporating the comments have been made in the regulation where appropriate.

7. Small Business and Local Government Participation:

See response to Item 6 above.

Rural Area Flexibility Analysis

Types and Estimated Numbers. The New York State Department of Financial Services (formerly the Banking Department) licenses over 1,800 mortgage bankers and brokers, of which over 1,200 are located in the

state. It has received almost 15,000 applications from MLOs under the present regulations and anticipates receiving approximately 2,700 applications from individuals who were previously exempted but will be required to be licensed under the revised regulations. Many of these entities and MLOs will be operating in rural areas of New York State and would be impacted by the regulation. If individuals who originate mobile home loans are required to be licensed, a relatively small number of additional applications is anticipated.

Compliance Requirements. Mortgage loan originators in rural areas must be licensed by the Superintendent of Financial Services (formerly the Superintendent of Banks) to engage in the business of mortgage loan origination. The application process established by the regulations requires an MLO to apply for a license electronically and to submit additional background information to the Mortgage Banking unit of the Department. This additional information consists of fingerprints, a recent credit report, supplementary background information and an attestation as to the truthfulness of the applicant's statements. Mortgage brokers and bankers are required to ensure that all MLOs employed by them have been duly licensed, report four times a year on the MLOs newly employed by them or dismissed for cause, determine that each MLO employed by or affiliated with them has the character, fitness and education qualifications to warrant the belief he or she will engage in mortgage loan originating honestly, fairly and efficiently; and, finally, retain acceptable documentation as evidence of satisfactory completion of required education courses for each MLO for a period of six years. The Department believes that this rule will not impose a burdensome set of requirements on entities operating in rural areas.

Costs. Some mortgage businesses in rural areas may choose to pay the increased costs associated with the continuing education requirements and the fees associated with licensing and annual renewal of their MLOs, but are not required to do so. The regulation sets forth a background investigation fee of \$125.00, an initial license processing fee of \$50.00 and an annual license renewal fee of \$50.00. There will also be a fee for the processing of fingerprints and fees to cover the cost of third party processing of the application. The latter two fees will be posted on the Department's website. Costs associated with electronic filing of quarterly employment reports and retaining for six years evidence of completion by MLOs of required continuing education courses are expected to be minimal. The cost of continuing education is estimated to be approximately \$500 every two years. The Department's increased effectiveness in fighting mortgage fraud and predatory lending will lower costs related to litigation and will decrease losses to consumers and the mortgage industry by hundreds of millions of dollars.

Minimizing Adverse Impacts. The industry supported passage of the prior Article 12-E and had substantial opportunity to comment on the specific requirements of this statute and its supporting regulation. In addition, the industry was involved in a dialogue with the Department during rule development.

The revised regulations implement revised Article 12-E of the Banking Law, which in turn closely tracks the provisions of Title V of the federal Housing and Economic Recovery Act of 2008, also known as the S.A.F.E. Mortgage Licensing Act (the "SAFE Act"). Hence, the licensing and regulation of mortgage loan originators in New York now closely tracks the federal standard. If New York did not adopt this standard, the SAFE Act requires that the federal Department of Housing and Urban Development assume the licensing of MLOs in New York State.

Rural Area Participation. Representatives of various entities, including mortgage bankers and brokers conducting business in rural areas and entities that conduct mortgage originating in rural areas, participated in outreach meetings that were conducted during the process of drafting the prior Article 12-E and the implementing regulations. As noted above, the revised statute and regulations closely track the provisions of the federal SAFE Act.

Job Impact Statement

Revised Article 12-E of the Banking Law, effective on July 11, 2009, replaces the prior version of Article 12-E with respect to the licensing and regulation of mortgage loan servicers. This proposed regulation sets forth the application, exemption and approval procedures for licensing registration as a Mortgage Loan Originator (MLO), as well as financial responsibility requirements for individuals engaging in MLO activities. The proposed regulation also provides transition rules for individuals who engaged in MLO activities under the prior version of the article to become licensed under the new statute.

The requirement to comply with the proposed regulations is not expected to have a significant adverse effect on jobs or employment activities within the mortgage loan servicing industry. This is because individuals were already subject to regulation under the prior version of Article 12-E of the Banking Law. New Article 12-E and Part 420 are intended to conform the regulation of MLOs to the requirements of federal law. Absent action by New York to conform this regulation to federal require-

ments, federal law authorized the Department of Housing and Urban Affairs to take control of the regulation of MLOs in New York State.

As with their predecessors, the new statute and proposed regulations require the use of the internet-based National Mortgage Licensing System and Registry (NMLS), developed by the Conference of State Bank Supervisors and the American Association of Residential Mortgage Regulators. This system uses a common on-line application for MLO registration in New York and other participating states. It is believed that any remaining adverse impact would be due primarily to the nature and purpose of the statutory licensing requirement rather than the provisions of the proposed regulations.

Supervisory Procedure 108 relates to the approval by the Superintendent of Financial Services (formerly the Superintendent of Banks) of educational courses and course providers for MLOs. Under revised Article 12-E, this function has been transferred to the NMLS. Moreover, educational requirements have been increased under the new law and proposed regulation by the Superintendent.

EMERGENCY RULE MAKING

Registration and Financial Responsibility Requirements for Mortgage Loan Servicers

I.D. No. DFS-49-11-00003-E

Filing No. 1264

Filing Date: 2011-11-22

Effective Date: 2011-11-22

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

Action taken: Addition of Part 418 and Supervisory Procedures MB 109 and 110 to Title 3 NYCRR.

Statutory authority: Banking Law, art. 12-D

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

Specific reasons underlying the finding of necessity: Chapter 472 of the Laws of 2008, which requires mortgage loan servicers to be registered with the Superintendent (formerly the Superintendent of Banks), went into effect on July 1, 2009. These regulations implement the registration requirement. It is therefore necessary that servicers be informed of the details of the registration process sufficiently far in advance to permit applications for registrations to be prepared, submitted and reviewed by the effective date.

Subject: Registration and financial responsibility requirements for mortgage loan servicers.

Purpose: To require that persons or entities which service mortgage loans on residential real property on or after July 1, 2009 be registered with the Superintendent of Financial Services (formerly the Superintendent of Banks).

Substance of emergency rule: Section 418.1 summarizes the scope and application of Part 418. It notes that Sections 418.2 to 418.11 implement the requirement in Article 12-D of the Banking Law that certain mortgage loan servicers ("servicers") be registered with the Superintendent of Financial Services (formerly the Superintendent of Banks), while Sections 418.12 and 418.13 set forth financial responsibility requirements that are applicable to both registered and exempt servicers. [Section 418.14 sets forth the transitional rules.]

Section 418.2 implements the provisions in Section 590(2)(b-1) of the Banking Law requiring registration of servicers and exempting mortgage bankers, mortgage brokers, and most banking and insurance companies, as well as their employees. The Superintendent is authorized to approve other exemptions.

Section 418.3 contains a number of definitions of terms that are used in Part 418, including "Mortgage Loan", "Mortgage Loan Servicer", "Third Party Servicer" and "Exempted Person".

Section 418.4 describes the requirements for applying for registration as a servicer.

Section 418.5 describes the requirements for a servicer applying to open a branch office.

Section 418.6 covers the fees for application for registration as a servicer, including processing fees for applications and fingerprint processing fees.

Section 418.7 sets forth the findings that the Superintendent must make to register a servicer and the procedures to be followed upon approval of an application for registration. It also sets forth the grounds upon which the Superintendent may refuse to register an applicant and the procedure for giving notice of a denial.

Section 418.8 defines what constitutes a “change of control” of a servicer, sets forth the requirements for prior approval of a change of control, the application procedure for such approval and the standards for approval. The section also requires servicers to notify the Superintendent of changes in their directors or executive officers.

Section 418.9 sets forth the grounds for revocation of a servicer registration and authorizes the Superintendent, for good cause or where there is substantial risk of public harm, to suspend a registration for 30 days without a hearing. The section also provides for suspension of a servicer registration without notice or hearing upon non-payment of the required assessment. The Superintendent can also suspend a registration when a servicer fails to file a required report, when its surety bond is cancelled, or when it is the subject of a bankruptcy filing. If the registrant cures the deficiencies, its registration can be reinstated. The section further provides that in all other cases, suspension or revocation of a registration requires notice and a hearing.

The section also covers the right of a registrant to surrender its registration, as well as the effect of revocation, termination, suspension or surrender of a registration on the obligations of the registrant. It provides that registrations will remain in effect until surrendered, revoked, terminated or suspended.

Section 418.10 describes the power of the Superintendent to impose fines and penalties on registered servicers.

Section 418.11 sets forth the requirement that applicants demonstrate five years of servicing experience as well as suitable character and fitness.

Section 418.12 covers the financial responsibility and other requirements that apply to applicants for servicer registration, registered servicers and exempted persons (other than insured depository institutions to which Section 418.13 applies). The financial responsibility requirements include a required net worth (as defined in the section) of at least \$250,000 plus 1/4 % of total loans serviced or, for a Third Party Servicer, 1/4 of 1% of New York loans serviced; (2) a corporate surety bond of at least \$250,000 and (3) a Fidelity and E&O bond in an amount that is based on the volume of New York mortgage loans serviced, with a minimum of \$300,000.

The Superintendent is empowered to waive, reduce or modify the financial responsibility requirements for certain servicers who service an aggregate amount of loans not exceeding \$4,000,000.

Section 418.13 exempts from the otherwise applicable net worth and surety bond requirements, but not the Fidelity and E&O bond requirements, entities that are subject to the capital requirements applicable to insured depository institutions and that are considered at least adequately capitalized.

Section 418.14 provides a transitional period for registration of mortgage loan servicers. A servicer doing business in this state on June 30, 2009 which files an application for MLS registration by July 31, 2009 will be deemed in compliance with the registration requirement until notified that its application has been denied. A person who is required to register as a servicer solely because of the changes in the provisions of the rule regarding use of third party servicers which became effective on August 23, 2011 and who files an application for registration within 30 days thereafter will not be required to register until six months from the effective date of the amendment or until the application is denied, whichever is earlier.

Section 109.1 defines a number of terms that are used in the Supervisory Procedure.

Section 109.2 contains a general description of the process for registering as a mortgage loan servicer (“servicer”) and contains information about where the necessary forms and instructions may be found.

Section 109.3 lists the documents to be included in an application for servicer registration, including the required fees. It also sets forth the execution and attestation requirements for applications. The section makes clear that the Superintendent of Financial Services (formerly the Superintendent of Banks) can require additional information or an in person conference, and that the applicant can submit additional pertinent information.

Section 109.4 describes the information and documents required to be submitted as part of an application for registration as a servicer. This includes various items of information about the applicant and its regulatory history, if any, information demonstrating compliance with the applicable financial responsibility and experience requirements, information about the organizational structure of the applicant, and other documents, such as fingerprint cards and background reports.

Section 110.1 defines a number of terms that are used in the Supervisory Procedure.

Section 110.2 contains a general description of the process for applying for approval of a change of control of a mortgage loan servicer (“servicer”) and contains information about where the necessary forms and instructions may be found.

Section 110.3 lists the documents to be included in an application for approval of a change of control of a servicer, including the required fees.

It sets forth the time within which the Superintendent of Financial Services (formerly the Superintendent of Banks) must approve or disapprove an application. It also sets forth the execution and attestation requirements for applications. The section makes clear that the Superintendent can require additional information or an in person conference, and that the applicant can submit additional pertinent information. Last, the section lists the types of changes in a servicer’s operations resulting from a change of control which should be notified to the Department of Financial Services (formerly the Banking Department).

Section 110.4 describes the information and documents required to be submitted as part of an application for approval of a change of control of servicer. This includes various items of information about the applicant and its regulatory history, if any, information demonstrating continuing compliance with the applicable financial responsibility and experience requirements, information about the organizational structure of the applicant, a description of the acquisition and other documents regarding the applicant, such as fingerprint cards and background reports.

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 February 19, 2012.

Text of rule and any required statements and analyses may be obtained from: Sam L. Abram, Assistant Counsel, New York State Department of Financial Services, One State Street, New York, NY 10004, (212) 709-1658, email: sam.abram@dfs.ny.gov

Regulatory Impact Statement

1. Statutory Authority.

Article 12-D of the Banking Law, as amended by the Legislature in the Subprime Lending Reform Law (Ch. 472, Laws of 2008, hereinafter, the “Subprime Law”), creates a framework for the regulation of mortgage loan servicers. Mortgage loan servicers (MLS) are individuals or entities which engage in the business of servicing mortgage loans for residential real property located in New York. That legislation also authorizes the adoption of regulations implementing its provisions. (See, e.g., Banking Law Sections 590(2) (b-1) and 595-b.)

Subsection (1) of Section 590 of the Banking Law was amended by the Subprime Law to add the definitions of “mortgage loan servicer” and “servicing mortgage loans”. (Section 590(1)(h) and Section 590(1)(i).)

A new paragraph (b-1) was added to Subdivision (2) of Section 590 of the Banking Law. This new paragraph prohibits a person or entity from engaging in the business of servicing mortgage loans without first being registered with the Superintendent of Financial Services (formerly the Superintendent of Banks). The registration requirements do not apply to an “exempt organization,” licensed mortgage banker or registered mortgage broker.

This new paragraph also authorizes the Superintendent to refuse to register an MLS on the same grounds as he or she may refuse to register a mortgage broker under Banking Law Section 592-a(2).

Subsection (3) of Section 590 was amended by the Subprime Law to clarify the power of the banking board to promulgate rules and regulations and to extend the rulemaking authority regarding regulations for the protection of consumers and regulations to define improper or fraudulent business practices to cover mortgage loan servicers, as well as mortgage bankers, mortgage brokers and exempt organizations.

New Paragraph (d) was added to Subsection (5) of Section 590 by the Subprime Law and requires mortgage loan servicers to engage in the servicing business in conformity with the Banking Law, such rules and regulations as may be promulgated by the Banking Board or prescribed by the Superintendent, and all applicable federal laws, rules and regulations.

New Subsection (1) of Section 595-b was added by the Subprime Law and requires the Superintendent to promulgate regulations and policies governing the grounds to impose a fine or penalty with respect to the activities of a mortgage loan servicer. Also, the Subprime Law amends the penalty provision of Subdivision (1) of Section 598 to apply to mortgage loan servicers as well as to other entities.

New Subdivision (2) of Section 595-b was added by the Subprime Law and authorizes the Superintendent to prescribe regulations relating to disclosure to borrowers of interest rate resets, requirements for providing payoff statements, and governing the timing of crediting of payments made by the borrower.

Section 596 was amended by the Subprime Law to extend the Superintendent’s examination authority over licensees and registrants to cover mortgage loan servicers. The provisions of Banking Law Section 36(10) making examination reports confidential are also extended to cover mortgage loan servicers.

Similarly, the books and records requirements in Section 597 covering licensees, registrants and exempt organizations were amended by the Subprime Law to cover servicers and a provision was added authorizing the Superintendent to require that servicers file annual reports or other regular or special reports.

The power of the Superintendent to require regulated entities to appear and explain apparent violations of law and regulations was extended by the Subprime Law to cover mortgage loan servicers (Subdivision (1) of Section 39), as was the power to order the discontinuance of unauthorized or unsafe practices (Subdivision (2) of Section 39) and to order that accounts be kept in a prescribed manner (Subdivision (5) of Section 39).

Finally, mortgage loan servicers were added to the list of entities subject to the Superintendent's power to impose monetary penalties for violations of a law, regulation or order. (Paragraph (a) of Subdivision (1) of Section 44).

The fee amounts for MLS registration applications and for MLS branch applications are established in accordance with Banking Law Section 18-a.

2. Legislative Objectives.

The Subprime Bill is intended to address various problems related to residential mortgage loans in this State. The Subprime Law reflects the view of the Legislature that consumers would be better protected by the supervision of mortgage loan servicing. Even though mortgage loan servicers perform a central function in the mortgage industry, there has heretofore been no general regulation of servicers by the state or the Federal government.

The Subprime Law requires that entities be registered with the Superintendent in order to engage in the business of servicing mortgage loans in this state. The new law further requires mortgage loan servicers to engage in the business of servicing mortgage loans in conformity with the rules and regulations promulgated by the Banking Board and the Superintendent.

The mortgage servicing statute has two main components: (i) the first component addresses the registration requirement for persons engaged in the business of servicing mortgage loans; and (ii) the second authorizes the Banking Board and the superintendent to promulgate appropriate rules and regulations for the regulation of servicers in this state.

The regulations implement the first component of the mortgage servicing statute - the registration of mortgage servicers. In doing so, the rule utilizes the authority provided to the Superintendent to set standards for the registration of such entities. For example, the rule requires that a potential loan servicer would have to provide, under Sections 418.11 to 418.13 of the proposed regulations, evidence of their character and fitness to engage in the servicing business and demonstrate to the Superintendent their financial responsibility. The rule also utilizes the authority provided by the Legislature to revoke, suspend or otherwise terminate a registration or to fine or penalize a registered mortgage loan servicer.

Consistent with this requirement, the rule authorizes the Superintendent to refuse to register an applicant if he/she shall find that the applicant lacks the requisite character and fitness, or any person who is a director, officer, partner, agent, employee, substantial stockholder of the applicant has been convicted of certain felonies. These are the same standards as are applicable to mortgage bankers and mortgage brokers in New York. (See Section 418.7.)

Further, in carrying out the Legislature's mandate to regulate the mortgage servicing business, Section 418.8 sets out certain application requirements for prior approval of a change in control of a registered mortgage loan servicer and notification requirements for changes in the entity's executive officers and directors. Collectively, these various provisions implement the intent of the Legislature to register and supervise mortgage loan servicers.

3. Needs and benefits.

Governor Paterson reported in early 2008 that there were more than 52,000 foreclosure actions filed in 2007, or approximately 1,000 per week. That number increased in 2008, averaging approximately 1,100 per week in the first quarter. This is a crisis and the problems that have affected so many have been found to affect not only the origination of residential mortgage loans, but also their servicing and foreclosure. The Subprime Law adopted a multifaceted approach to the problem. It affected a variety of areas in the residential mortgage loan industry, including: i. loan originations; ii. loan foreclosures; and iii. the conduct of business by residential mortgage loans servicers.

Currently, the Department of Financial Services (formerly the Banking Department) regulates the brokering and making of mortgage loans, but not the servicing of these mortgage loans. Servicing is vital part of the residential mortgage loan industry; it involves the collection of mortgage payments from borrowers and remittance of the same to owners of mortgage loans; to governmental agencies for taxes; and to insurance companies for insurance premiums. Mortgage servicers also may act as agents for owners of mortgages in negotiations relating to modifications. As "middlemen," moreover, servicers also play an important role when a property is foreclosed upon. For example, the servicer may typically act on behalf of the owner of the loan in the foreclosure proceeding.

Further, unlike in the case of a mortgage broker or a mortgage lender, borrowers cannot "shop around" for loan servicers, and generally have no input in deciding what company services their loans. The absence of

the ability to select a servicer obviously raises concerns over the character and viability of these entities given the central part of they play in the mortgage industry. There also is evidence that some servicers may have provided poor customer service. Specific examples of these activities include: pyramiding late fees; misapplying escrow payments; imposing illegal prepayment penalties; not providing timely and clear information to borrowers; and erroneously force-placing insurance when borrowers already have insurance. While establishing minimum standards for the business conduct of servicers will be the subject of another regulation currently being developed by the Department, Section 418.2 makes it clear that persons exempted by from the registration requirement must notify the Department that they are servicing loans and must otherwise comply with the regulations.

As noted above, these regulations relate to the first component of the mortgage servicing statute - the registration of mortgage loan servicers. It is intended to ensure that only those persons and entities with adequate financial support and sound character and general fitness will be permitted to register as mortgage loan servicers.

Further, consumers in this state will also benefit under these regulations because in the event there is an allegation that a mortgage servicer is involved in wrongdoing and the Superintendent finds that there is good cause, or that there is a substantial risk of public harm, he or she can suspend such mortgage servicer for 30 days without a hearing. And in other cases, he or she can suspend or revoke such mortgage servicer's registration after notice and a hearing. Also, the requirement that servicers meet minimum financial standards and have performance and other bonds will act to ensure that consumers are protected.

As noted above, the MLS regulations are being divided into two parts in order to facilitate meeting the statutory requirement that all MLSs be registered by July 1, 2009. The Department will separately propose regulations dealing with business conduct and consumer protection requirements for MLSs.

All Exempt Organizations, mortgage bankers and mortgage brokers that perform mortgage loan servicing with respect to New York mortgages must notify the Superintendent that they do so, and will be required to comply with the conduct of business and consumer protection rules applicable to MLSs.

4. Costs.

The mortgage business will experience some increased costs as a result of the fees associated with MLS registration. The amount of the application fee for MLS registration and for an MLS branch application is \$3,000.

The amount of the fingerprint fee is set by the State Division of Criminal Justice Services and the processing fees of the National Mortgage Licensing System are set by that body. MLSs will also incur administrative costs associated with preparing applications for registration.

The ability by the Department to regulate mortgage loan servicers is expected to reduce costs associated with responding to consumers' complaints, decrease unnecessary expenses borne by mortgagors, and, through the timely response to consumers' inquiries, should assist in decreasing the number of foreclosures in this state.

The regulations will not result in any fiscal implications to the State. The Banking Department is funded by the regulated financial services industry. Fees charged to the industry will be adjusted periodically to cover Department expenses incurred in carrying out this regulatory responsibility.

5. Local Government Mandates.

None.

6. Paperwork.

An application process is being established for potential mortgage loan servicers to apply for registration electronically through the National Mortgage Licensing System and Registry (NMLSR) - a national system, which currently facilitates the application process for mortgage brokers, bankers and loan originators.

Therefore, the application process would be virtually paperless; however, a limited number of documents, including fingerprints where necessary, would have to be submitted to the Department in paper form.

The specific procedures that are to be followed in order to apply for registration as a mortgage loan servicer are detailed in Supervisory Procedure MB 109.

7. Duplication.

The regulation does not duplicate, overlap or conflict with any other regulations.

An exemption was created under Section 418.13, from the otherwise applicable net worth and surety bond requirements, for entities that are subject to the capital requirements applicable to insured depository institutions and are considered adequately capitalized.

8. Alternatives.

The purpose of the regulation is to carry out the statutory mandate to register mortgage loan servicers while at the same time avoiding overly complex and restrictive rules that would have imposed unnecessary

burdens on the industry. The Department is not aware of any alternative that is available to the instant regulations. The Department also has been cognizant of the possible burdens of this regulation, and it has accordingly concluded that an exemption from the registration requirement for persons or entities that are involved in a de minimis amount of servicing would address the intent of the statute without imposing undue burdens those persons or entities.

The procedure for suspending servicers that violate certain financial responsibility or customer protection requirements, which provides a 90-day period for corrective action, during which there can be an investigation and hearing on the existence of other violations, provides flexibility to the process of enforcing compliance with the statutory requirements.

9. Federal Standards.

Currently, mortgage loan servicers are not required to be registered by any federal agencies. However, although not a registration process, in order for any mortgage loan servicer to service loans on behalf of certain federal instrumentalities such servicers have to demonstrate that they have specific amounts of net worth and have in place Fidelity and E&O bonds.

These regulations exceed those minimum standards, in that, a mortgage loan servicer will now have to demonstrate character and general fitness in order to be registered as a mortgage loan servicer. In light of the important role of a servicer - collecting consumers' money and acting as agents for mortgagees in foreclosure transactions - the Department believes that it is imperative that servicers be required to meet this heightened standard.

10. Compliance Schedule.

The emergency regulations will become effective on November 22, 2011. Similar emergency regulations have been in effect since July 1, 2009.

The Department expects to approve or deny applications within 90 days of the Department's receipt (through NMLSR) of a completed application.

A transitional period is provided for mortgage loan servicers which were doing business in this state on June 30, 2009 and which filed an application for registration by July 31, 2009. Such servicers will be deemed in compliance with the registration requirement until notified by the Superintendent that their application has been denied.

Additionally, the version of Part 418 adopted on an emergency basis effective August 5, 2011 requires holders of mortgage servicing rights to register as mortgage loans servicers even where they have sub-contracted servicing responsibilities to a third-party servicer. Such servicers have been given additional time to file an application for registration.

Regulatory Flexibility Analysis

1. Effect of the Rule:

The emergency rule will not have any impact on local governments. It is estimated that there are approximately 120 mortgage loan servicers in the state which are not mortgage bankers, mortgage brokers or exempt organizations, and which are therefore required to register under the Subprime Lending Reform Law (Ch. 472, Laws of 2008) (the "Subprime Law"). Of these, it is estimated that a very few of the remaining entities will be deemed to be small businesses.

2. Compliance Requirements:

The provisions of the Subprime Law relating to mortgage loan servicers has two main components: it requires the registration by the Department of Financial Services (formerly the Banking Department) of servicers who are not mortgage bankers, mortgage brokers or exempt organizations (the "MLS Registration Regulations"), and it authorizes the Department to promulgate rules and regulations that are necessary and appropriate for the protection of consumers, to define improper or fraudulent business practices, or otherwise appropriate for the effective administration of the provisions of the Subprime Law relating to mortgage loan servicers (the "MLS Business Conduct Regulations").

The provisions of the Subprime Law requiring registration of mortgage loan servicers which are not mortgage bankers, mortgage brokers or exempt organizations became effective on July 1, 2009. The emergency MLS Registration Regulations here adopted implement that statutory requirement by providing a procedure whereby MLSs can apply to be registered and standards and procedures for the Department to approve or deny such applications. The emergency regulations also set forth financial responsibility standards applicable to applicants for MLS registration, registered MLSs and servicers which are exempted from the registration requirement.

Additionally, the regulations set forth standards and procedures for Department action on applications for approval of change of control of an MLS. Finally, the emergency regulations set forth standards and procedures for, suspension, revocation, expiration, termination and surrender of MLS registrations, as well as for the imposition of fines and penalties on MLSs.

3. Professional Services:

None.

4. Compliance Costs:

Applicants for mortgage loan servicer registration will incur administra-

tive costs associated with preparing applications for registration. Applicants, registered MLSs and mortgage loan servicers exempted from the registration requirement may incur costs in complying with the financial responsibility regulations. Registration fees of \$3000, plus fees for fingerprint processing and participation in the National Mortgage Licensing System and Registry (NMLS) will be required of non-exempt servicers.

5. Economic and Technological Feasibility:

The emergency rule-making should impose no adverse economic or technological burden on mortgage loan servicers who are small businesses. The NMLS is now available. This technology will benefit registrants by saving time and paperwork in submitting applications, and will assist the Department by enabling immediate tracking, monitoring and searching of registration information; thereby protecting consumers.

6. Minimizing Adverse Impacts:

The regulations minimize the costs and burdens of the registration process by utilizing the internet-based NMLS, developed by the Conference of State Bank Supervisors and the American Association of Residential Mortgage Regulators. This system uses an on-line application form for servicer registration. A common form will be accepted by New York and the other participating states.

As noted above, most servicers are not small businesses. As regards servicers that are small businesses and not otherwise exempted, the regulations give the Superintendent of Financial Services (formerly the Superintendent of Banks) the authority to reduce, waive or modify the financial responsibility requirements for entities that do a de minimis amount of servicing.

7. Small Business and Local Government Participation:

Industry representatives have participated in outreach programs regarding regulation of servicers. The Department also maintains continuous contact with large segments of the servicing industry through its regulation of mortgage bankers and brokers. The Department likewise maintains close contact with a variety of consumer groups through its community outreach programs and foreclosure mitigation programs. In response to comments received regarding earlier versions of this regulation, the Department has modified the financial responsibility requirements. The revised requirements should generally be less burdensome for mortgage loan servicers, particularly smaller servicers and those located in rural areas.

Rural Area Flexibility Analysis

Types and Estimated Numbers. The New York State Department of Financial Services (formerly the Banking Department) anticipates that approximately 120 mortgage loan servicers may apply to become registered in 2009. It is expected that a very few of these entities will be operating in rural areas of New York State and would be impacted by the emergency regulation.

Compliance Requirements. Mortgage loan servicers in rural areas which are not mortgage bankers, mortgage brokers or exempt organizations must be registered with the Superintendent to engage in the business of mortgage loan servicing. An application process will be established requiring a MLS to apply for registration electronically and to submit additional background information and fingerprints to the Mortgage Banking unit of the Department.

MLSs are required to meet certain financial responsibility requirements based on their level of business. The regulations authorize the Superintendent of Financial Services (formerly the Superintendent of Banks) to reduce or waive the otherwise applicable financial responsibility requirements in the case of MLSs which service not more than \$4,000,000 in aggregate mortgage loans in New York and which do not collect tax or insurance payments. The Superintendent is also authorized to reduce or waive the financial responsibility requirements in other cases for good cause. The Department believes that this will ameliorate any burden which those requirements might otherwise impose on entities operating in rural areas.

Costs. The mortgage business will experience some increased costs as a result of the fees associated with MLS registration. The application fee for MLS registration will be \$3,000. The amount of the fingerprint fee is set by the State Division of Criminal Justice Services and the processing fees of the National Mortgage Licensing System and Registry ("NMLSR") are set by that body. Applicants for mortgage loan servicer registration will also incur administrative costs associated with preparing applications for registration.

Applicants, registered MLSs and mortgage loan servicers exempted from the registration requirement may incur costs in complying with the financial responsibility regulations.

Minimizing Adverse Impacts. The regulations minimize the costs and burdens of the registration process by utilizing the internet-based NMLSR, developed by the Conference of State Bank Supervisors and the American Association of Residential Mortgage Regulators. This system uses an on-line application form for servicer registration. A common form will be accepted by New York and the other participating states.

Of the servicers which operate in rural areas, it is believed that most are mortgage bankers, mortgage brokers or exempt organizations. In addition, servicers that operate in rural areas and are not otherwise exempted, the regulations give the Superintendent the authority to reduce, waive or modify the financial responsibility requirements for entities that do a de minimis amount of servicing.

Rural Area Participation. Industry representatives have participated in outreach programs regarding regulation of servicers. The Department also maintains continuous contact with large segments of the servicing industry through its regulation of mortgage bankers and brokers. The Department likewise maintains close contact with a variety of consumer groups through its community outreach programs and foreclosure mitigation programs. In response to comments received regarding earlier versions of this regulation, the Department has modified the financial responsibility requirements. The revised requirements should generally be less burdensome for mortgage loan servicers, particularly smaller servicers and those located in rural areas.

Job Impact Statement

Article 12-D of the Banking Law, as amended by the Subprime Lending Reform Law (Ch. 472, Laws of 2008), requires persons and entities which engage in the business of servicing mortgage loans after July 1, 2009 to be registered with the Superintendent of Financial Services (formerly the Superintendent of Banks). This emergency regulation sets forth the application, exemption and approval procedures for registration as a Mortgage Loan servicer (MLS), as well as financial responsibility requirements for applicants, registrants and exempted persons. The regulation also establishes requirements with respect to changes of officers, directors and/or control of MLSs and provisions with respect to suspension, revocation, termination, expiration and surrender of MLS registrations.

The requirement to comply with the emergency regulations is not expected to have a significant adverse effect on jobs or employment activities within the mortgage loan servicing industry. Many of the larger entities engaged in the mortgage loan servicing business are already subject to oversight by the Department of Financial Services (formerly the Banking Department) and exempt from the new registration requirement. Additionally, the regulations give the Superintendent the authority to reduce, waive or modify the financial responsibility requirements for entities that do a de minimis amount of servicing.

The registration process itself should not have an adverse effect on employment. The regulations require the use of the internet-based National Mortgage Licensing System and Registry, developed by the Conference of State Bank Supervisors and the American Association of Residential Mortgage Regulators. This system uses a common on-line application for servicer registration in New York and other participating states. It is believed that any remaining adverse impact would be due primarily to the nature and purpose of the statutory registration requirement rather than the provisions of the emergency regulations.

Department of Health

NOTICE OF ADOPTION

Chemical Analyses of Blood, Urine, Breath or Saliva for Alcoholic Content

I.D. No. HLT-39-11-00012-A

Filing No. 1261

Filing Date: 2011-11-22

Effective Date: 2011-12-07

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

Action taken: Amendment of Part 59 of Title 10 NYCRR.

Statutory authority: Vehicle and Traffic Law, sections 1194(4)(c) and 1198(6); and Environmental Conservation Law, section 11-1205(6)

Subject: Chemical Analyses of Blood, Urine, Breath or Saliva for Alcoholic Content.

Purpose: Update technical standards for blood and breath alcohol testing conducted by law enforcement.

Text or summary was published in the September 28, 2011 issue of the Register, I.D. No. HLT-39-11-00012-P.

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

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

Assessment of Public Comment

The agency received no public comment.

NOTICE OF ADOPTION

NYS Newborn Screening Panel

I.D. No. HLT-39-11-00018-A

Filing No. 1262

Filing Date: 2011-11-22

Effective Date: 2011-12-07

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

Action taken: Amendment of section 69-1.2 of Title 10 NYCRR.

Statutory authority: Public Health Law, section 2500-a

Subject: NYS Newborn Screening Panel.

Purpose: Adds Severe Combined Immunodeficiency (SCID) and eliminates testing for hyperammonemia/ornithinemia/citrullinemia (HHH).

Text or summary was published in the September 28, 2011 issue of the Register, I.D. No. HLT-39-11-00018-P.

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

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

Assessment of Public Comment

The public comment period for this regulation ended on November 14, 2011. The Department received one comment from Grifols, Inc. and it was in support for the amendment to Section 69-1.2 of Title 10 NYCRR regarding the addition of Severe Combined Immune Deficiency Disease (SCID) to the NYS Newborn Screening Panel.

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Amendment to Limitations of Operating Certificates

I.D. No. HLT-49-11-00007-P

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

Proposed Action: Amendment of section 401.2 of Title 10 NYCRR.

Statutory authority: Public Health Law, section 2803(2)(a)

Subject: Amendment to Limitations of Operating Certificates.

Purpose: To allow Public Health Law article 28 facilities to operate at sites not designated on their operating certificate during an emergency.

Text of proposed rule: Section 401.2 is amended to read as follows:

401.2 Limitations of operating certificates. Operating certificates are issued to established operators subject to the following limitations and conditions:

(a) The medical facility shall control admission and discharge of patients or residents to assure that occupancy shall not exceed the bed capacity specified in the operating certificate, except that a hospital may temporarily exceed such capacity in an emergency.

(b) An operating certificate shall be used only by the established operator for the designated site of operation, *except that the commissioner may permit the established operator to operate at an alternate or additional site approved by the commissioner on a temporary basis in an emergency.* [provided that an] An operating certificate issued for a facility approved to provide:

(1) chronic renal dialysis services shall also encompass the provision of such services to patients at home;

(2) comprehensive outpatient rehabilitation facility (CORF) services shall also encompass the provision of the following services offsite: physical therapy, occupational therapy, speech pathology and in addition, home visits to evaluate the home environment in relation to the patient's established treatment goals; and

(3) outpatient physical therapy, occupational therapy and/or speech-language pathology services shall also encompass the provision of home

visits to evaluate the home environment in relation to the patient's established treatment goals.

(c) An operating certificate shall be posted conspicuously at the designated site of operation.

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

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

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

This action was not under consideration at the time this agency's regulatory agenda was submitted.

Regulatory Impact Statement

Statutory Authority:

The authority for the promulgation of these regulations is contained in section 2803(2)(a)(v) of the Public Health Law, which authorizes the Public Health and Health Planning Council to adopt and amend rules and regulations, subject to the approval of the Commissioner, that define standards and procedures relating to hospital operating certificates.

Legislative Objective:

The regulatory objective of this authority is to permit the Commissioner of the Department of Health to ensure access to health care in communities where a crisis has prevented or limited an existing local health care facility operator from operating at the site designated on its operating certificate.

Needs and Benefits:

This amendment would give the Commissioner the ability to safeguard the health and welfare of residents of areas affected by emergency situations by permitting operators of health care facilities to resume operations at temporary sites. Under the existing regulation, the Commissioner has no authority to permit an operator to operate its health care facility at any site other than that designated on the operating certificate. In the event all or part of a facility cannot be used due to circumstances related to an emergency such as a natural disaster or a fire, this amendment would permit the Commissioner to act quickly to ensure that the patients or residents of the operator are temporarily served at an alternate or additional site appropriate under the circumstances. The operator of the affected facility would be able to continue to meet the needs of its patients or residents at a safe and appropriate alternate or additional site pending the repair, replacement or relocation of the designated site of operation.

COSTS:

Costs for the Implementation of, and Continuing Compliance with this Regulation to Regulated Entity:

None. The ability to receive revenue through continued operations during the temporary relocation would be a benefit to the regulated entity.

Cost to the Department of Health:

There will be no costs to the Department.

Local Government Mandates:

This amendment will not impose any program service, duty or responsibility upon any county, city, town, village school district, fire district or other special district.

Paperwork:

This amendment will increase the paperwork for providers only to the extent required by the temporary relocation of their operations.

Duplication:

This regulation does not duplicate, overlap or conflict with any other state or federal law or regulations.

Alternatives:

No alternatives were considered, as § 401.2 (b) presents the only barrier to allowing a health care facility operator to operate at a site not designated on its operating certificate.

Federal Standards:

This amendment does not exceed any minimum standards of the federal government for the same or similar subject areas.

Compliance Schedule:

The proposed amendment will become effective upon publication of a Notice of Adoption in the New York *State Register*.

Regulatory Flexibility Analysis

Effect on Small Businesses and Local Governments:

No impact on small businesses or local governments is expected.

Compliance Requirements:

This amendment does not impose new reporting, record keeping or other compliance requirements on small businesses or local governments.

Professional Services:

No new professional services are required as a result of this proposed action.

Compliance Costs:

This amendment does not impose new reporting, recordkeeping or other compliance requirements on small businesses or local governments.

Economic and Technological Feasibility:

This amendment does not impose any new financial or technical burdens upon regulated entities.

Minimizing Adverse Impact:

There is no adverse impact.

Opportunity for Small Business Participation:

Any operator of a hospital as defined under Article 28 of the Public Health Law, regardless of size, may need to operate its facility at another or additional location in an emergency. This amendment would allow it to do so.

No Amelioration or Cure Period Necessary:

This amendment does not involve the establishment or modification of a violation or of penalties associated with a violation. It merely gives operators of hospitals as defined under Article 28 of the Public Health Law the ability to temporarily operate at sites not designated on their operating certificates in times of emergency. Therefore, as no new penalty could be imposed as a result of this amendment, no cure period was included.

Rural Area Flexibility Analysis

Types and Estimated Number of Rural Areas:

This rule will apply to all operators of hospitals as defined under Article 28 of the Public Health Law. These businesses are located in rural, as well as suburban and metropolitan areas of the State.

Reporting, Recordkeeping and Other Compliance Requirements and Professional Services:

No new reporting, recordkeeping or other compliance requirements and professional services are needed in a rural area to comply with the proposed rule.

Compliance Costs:

There are no direct costs associated with compliance.

Minimizing Adverse Impact:

There is no adverse impact.

Opportunity for Rural Area Participation:

Any operator of a hospital as defined under Article 28 of the Public Health Law, including those in rural areas, may need to operate its facility at another location in an emergency. This amendment would allow it to do so.

Job Impact Statement

Nature of Impact:

It is not anticipated that there will be any impact of this rule on jobs or employment opportunities.

Categories and Numbers Affected:

This rule will apply to all operators of hospitals as defined under Article 28 of the Public Health Law.

Regions of Adverse Impact:

This rule will apply to operators of hospitals as defined under Article 28 of the Public Health Law in all regions within the State, but it will have no adverse impact on those operators or their employees.

Minimizing Adverse Impact:

The rule would not impose any additional requirements upon regulated entities, and therefore there would be no adverse impact on jobs or employment opportunities.

Self-Employment Opportunities:

The rule is expected to have no impact on self-employment opportunities.

Power Authority of the State of New York

NOTICE OF ADOPTION

Rates for Sale of Power and Energy

I.D. No. PAS-33-11-00001-A

Filing Date: 2011-11-22

Effective Date: 2011-11-22

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

Action taken: Increase hydroelectric preference power rates.

Statutory authority: Public Authorities Law, section 1005(5)

Subject: Rates for sale of power and energy.

Purpose: To maintain the system's fiscal integrity.

Substance of final rule: The Power Authority of the State of New York (the "Authority") has approved the final rates to be charged to its preference power customers. The rate increase would allow the Authority to recover the increased costs associated with serving the customers subject to the preference power rate. The Authority will provide for an effective rate of \$11.30/MWh for a typical customer in the 2011 rate year (December 1, 2011 to April 30, 2012), \$11.91/MWh in the 2012 rate year (May 1, 2012 to April 30, 2013), \$12.57/MWh in the 2013 rate year (May 1, 2013 to April 30, 2014) and \$13.28/MWh in the 2014 rate year (May 1, 2014 to April 30, 2015). In order to mitigate customer bill impacts, the increased costs will be phased in over 41 months from the December 2011 billing period through the April 2015 billing period.

The Authority received comments from the New York Association of Public Power, The Municipal Electric Utilities Association, neighboring states customers, and the Niagara Power Coalition, among others. Based on those comments and subsequent staff analysis, the Authority made reductions to the originally proposed demand charge, and implemented certain adjustments that affect the contract-based rate stabilization reserve (RSR) balance for year-end 2010. The final rates will become effective commencing with the December 2011 billing period and the Authority will modify the service tariffs applicable to customers receiving power at the preference rate to include the approved rates.

Final rule as compared with last published rule: Substantial revisions were made in paragraphs (2) and (3).

Text of rule and any required statements and analyses may be obtained from: Karen Delince, Corporate Secretary, Power Authority of the State of New York, 123 Main Street, 11-P, White Plains, New York 10601, (914) 390-8085, email: secretarys.office@nypa.gov

Revised Regulatory Impact Statement

A revised regulatory impact statement is not submitted with this notice because the rule is within the definition contained in section 102(2)(a)(ii) of the State Administrative Procedure Act.

Revised Regulatory Flexibility Analysis

A revised regulatory flexibility analysis is not submitted with this notice because the rule is within the definition contained in section 102(2)(a)(ii) of the State Administrative Procedure Act.

Revised Rural Area Flexibility Analysis

A revised rural area flexibility analysis is not submitted with this notice because the rule is within the definition contained in section 102(2)(a)(ii) of the State Administrative Procedure Act.

Revised Job Impact Statement

A revised job impact statement is not submitted with this notice because the rule is within the definition contained in section 102(2)(a)(ii) of the State Administrative Procedure Act.

Assessment of Public Comment

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

Public Service Commission

NOTICE OF ADOPTION

Resolving the Disposition of Tax Refunds and Credits Obtained by the Company for the Period of 1996-2010

I.D. No. PSC-26-09-00010-A

Filing Date: 2011-11-18

Effective Date: 2011-11-18

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

Action taken: On 11/17/11 the PSC adopted an order approving the Joint Proposal between Staff & Brooklyn Union Gas Co. d/b/a National Grid NY, resolving the disposition of certain property and special franchise tax refunds & credits related to the period of 1996-2010.

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

Subject: Resolving the disposition of tax refunds and credits obtained by the Company for the period of 1996-2010.

Purpose: To resolve the disposition of tax refunds and credits obtained by the Company for the period of 1996-2010.

Substance of final rule: The Commission, on November 17, 2011 adopted an order approving the Joint Proposal between Staff and Brooklyn Union Gas Company d/b/a National Grid NY (National Grid NY or the Company), resolving the disposition of certain property and special franchise tax refunds and credits obtained by the Company related to the period from 1996-2010, subject to the terms and conditions set forth in the order.

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

Text of rule may be obtained from: Leann Ayer, Public Service Commission, Three Empire State Plaza, Albany, NY 12223, (518) 486-2655, email: leann_ayer@dps.state.ny.us An IRS employer ID no. or social security no. is required from firms or persons to be billed 25 cents per page. Please use tracking number found on last line of notice in requests.

Assessment of Public Comment

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

(08-M-1445SA1)

NOTICE OF ADOPTION

Resolving the Disposition of Tax Refunds and Credits Obtained by the Company for the Period of 1996-2010

I.D. No. PSC-49-09-00019-A

Filing Date: 2011-11-18

Effective Date: 2011-11-18

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

Action taken: On 11/17/11, the PSC adopted an order approving the Joint Proposal between Staff & Brooklyn Union Gas Company d/b/a National Grid NY, resolving the disposition of certain tax refunds and credits obtained by the Company related to the period from 1996-2010.

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

Subject: Resolving the disposition of tax refunds and credits obtained by the Company for the period of 1996-2010.

Purpose: To resolve the disposition of tax refunds and credits obtained by the Company for the period of 1996-2010.

Substance of final rule: The Commission, on November 17, 2011 adopted an order approving the Joint Proposal between Staff and Brooklyn Union Gas Company d/b/a National Grid NY (National Grid NY or the Company), resolving the disposition of certain tax refunds and credits obtained by the Company related to the period from 1996-2010, subject to the terms and conditions set forth in the order.

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

Text of rule may be obtained from: Leann Ayer, Public Service Commission, Three Empire State Plaza, Albany, NY 12223, (518) 486-2655, email: leann_ayer@dps.state.ny.us An IRS employer ID no. or social security no. is required from firms or persons to be billed 25 cents per page. Please use tracking number found on last line of notice in requests.

Assessment of Public Comment

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

(09-M-0818SA1)

NOTICE OF ADOPTION

Institute Proper Billing Practices and to Refund, with Interest, Sales Taxes Recovered During 2005 Through 2007

I.D. No. PSC-26-10-00003-A

Filing Date: 2011-11-21

Effective Date: 2011-11-21

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

Action taken: On 11/17/11, the PSC adopted an order directing Independent Water Works, Inc. (IWW) to institute proper billing practices and to refund, with interest, sales taxes recovered during the calendar years 2005 through 2007.

Statutory authority: Public Service Law, sections 4(1), 5(1)(f), 89-c(1), (10), 89-i and 89-j

Subject: Institute proper billing practices and to refund, with interest, sales taxes recovered during 2005 through 2007.

Purpose: To direct IWW to institute proper billing practices and to refund, with interest, sales taxes recovered during 2005 through 2007.

Substance of final rule: The Commission, on November 17, 2011 adopted an order directing Independent Water Works, Inc. to institute proper billing practices, use accurate square footage measurements in the formula used for billing service charges based upon square footage, bill Highlands Shopping Center for unoccupied space and common areas and refund, with interest, sales taxes recovered during the calendar years 2005 through 2007, subject to the terms and conditions set forth in the order.

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

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

Assessment of Public Comment

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

(10-W-0262SA1)

NOTICE OF ADOPTION

Amendments to PSC 1—Water, for an Increase in Annual Revenues of \$29,670 or 351%, to Become Effective 12/1/11

I.D. No. PSC-03-11-00013-A

Filing Date: 2011-11-17

Effective Date: 2011-11-17

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

Action taken: On 11/17/11, the PSC adopted an order approving Garrow Water Works Company, Inc.'s amendments to PSC 1—Water, to produce additional annual revenues of \$29,670 or 351%, to become effective December 1, 2011.

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

Subject: Amendments to PSC 1—Water, for an increase in annual revenues of \$29,670 or 351%, to become effective 12/1/11.

Purpose: To approve amendments to PSC 1—Water, for an increase in annual revenues of \$29,670 or 351%, to become effective 12/1/11.

Substance of final rule: The Commission, on November 17, 2011 adopted an order approving Garrow Water Works Company, Inc.'s amendments to PSC 1—Water, to produce additional annual revenues of \$29,670 or 351%, to become effective December 1, 2011, subject to the terms and conditions set forth in the order.

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

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

Assessment of Public Comment

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

(10-W-0003SA1)

NOTICE OF ADOPTION

Complaint Concerning the Rates of Aqua New York, Inc. for its Dykeer Water System

I.D. No. PSC-03-11-00014-A

Filing Date: 2011-11-21

Effective Date: 2011-11-21

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

Action taken: On 11/17/11, the PSC adopted an order resolving a complaint of the Willows Home Owners Association, Inc.

Statutory authority: Public Service Law, sections 4(1), 5(1)(f), 89-c(1), (10) and 89-i

Subject: Complaint concerning the rates of Aqua New York, Inc. for its Dykeer Water System.

Purpose: To resolve a complaint concerning the rates of Aqua New York, Inc. for its Dykeer Water System.

Substance of final rule: The Commission, on November 17, 2011 adopted an order resolving a complaint by the Willows Home Owners Association Inc. concerning the rates of Aqua New York Inc. for its Dykeer Water System, subject to the terms and conditions set forth in the order.

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

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

Assessment of Public Comment

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

(10-W-0652SA1)

NOTICE OF ADOPTION

Capital Expenditure Commitments

I.D. No. PSC-09-11-00009-A

Filing Date: 2011-11-18

Effective Date: 2011-11-18

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

Action taken: On 11/17/11, the PSC adopted an order directing New York State Electric & Gas Corporation and Rochester Gas and Electric Corporation to calculate credits and deferrals for the benefit of shareholders on certain 2010 electric capital expenditures.

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

Subject: Capital expenditure commitments.

Purpose: To directing capital expenditure commitments for NYSEG and RG&E.

Substance of final rule: The Commission, on November 13, 2011 adopted an order directing New York State Electric & Gas Corporation (NYSEG) and Rochester Gas and Electric Corporation (RG&E) to calculate the credits and deferrals for the benefit of NYSEG's shareholders on certain 2010 electric capital expenditures and NYSEG and RG&E are directed to record a deferred credit in Account 254, Other Regulatory Liabilities, of \$6.8 million and \$10.0 million, respectively, and are also authorized to make any related federal income tax journal entries that may be required, subject to the terms and conditions set forth in the order.

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

Text of rule may be obtained from: Leann Ayer, Public Service Commission, Three Empire State Plaza, Albany, NY 12223, (518) 486-2655, email: leann_ayer@dps.state.ny.us An IRS employer ID no. or social security no. is required from firms or persons to be billed 25 cents per page. Please use tracking number found on last line of notice in requests.

Assessment of Public Comment

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

(07-M-0906SA7)

NOTICE OF ADOPTION

Revising Service Classification No. 14-RA—Standby Service, with Modifications

I.D. No. PSC-25-11-00009-A

Filing Date: 2011-11-17

Effective Date: 2011-11-17

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

Action taken: On 11/17/11, the PSC adopted an order approving, with modifications, Consolidated Edison Company of New York, Inc.'s (Con Edison) tariff filing to revise Service Classification No. 14-RA—Standby Service.

Statutory authority: Public Service Law, section 66(12)

Subject: Revising Service Classification No. 14-RA—Standby Service, with modifications.

Purpose: To approve the revision Service Classification No. 14-RA—Standby Service, with modifications.

Substance of final rule: The Commission, on November 17, 2011 adopted an order approving, with modifications, Consolidated Edison Company of New York, Inc.'s tariff filing to revise Service Classification No. 14-RA—Standby Service, subject to the terms and conditions set forth in the order.

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

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

Assessment of Public Comment

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

(11-E-0299SA1)

NOTICE OF ADOPTION

To Allow the Mercury Instruments IP Cellular Modem to be Used as a Gas Meter Transmitting Device for Use in NYS

I.D. No. PSC-28-11-00010-A

Filing Date: 2011-11-17

Effective Date: 2011-11-17

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

Action taken: On 11/17/11, the PSC adopted an order approving the petition of Corning Natural Gas Corporation to allow the Mercury Instruments IP Cellular Modem to be used as a gas meter transmitting device for use in New York State.

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

Subject: To allow the Mercury Instruments IP Cellular Modem to be used as a gas meter transmitting device for use in NYS.

Purpose: To approve the Mercury Instruments IP Cellular Modem to be used as a gas meter transmitting device for use in NYS.

Substance of final rule: The Commission, on November 17, 2011 adopted an order approving the petition of Corning Natural Gas Corporation to allow the Mercury Instruments IP Cellular Modem to be used as a gas meter transmitting device for use in New York State.

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

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

Assessment of Public Comment

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

(11-G-0340SA1)

NOTICE OF ADOPTION

Natural Gas Vehicles and Distributed Generation Pilot Programs

I.D. No. PSC-29-11-00015-A

Filing Date: 2011-11-18

Effective Date: 2011-11-18

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

Action taken: On 11/17/11, the PSC adopted an order approving National

Fuel Gas Distribution Corporation's amendment to PSC No. 8—Gas, effective 12/1/11 to implement a partnership for a natural gas vehicles pilot program.

Statutory authority: Public Service Law, section 66(12)

Subject: Natural Gas Vehicles and Distributed Generation Pilot Programs.

Purpose: To approve amendments for Natural Gas Vehicles and Distributed Generation Pilot Programs.

Substance of final rule: The Commission, on November 17, 2011 adopted an order approving National Fuel Gas Distribution Corporation's amendment to PSC No. 8 – Gas, effective 12/1/11 to implement a partnership for a natural gas vehicles pilot program and to extend the existing Distributive Generation Pilot Program, subject to the terms and conditions set forth in the order.

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

Text of rule may be obtained from: Leann Ayer, Public Service Commission, Three Empire State Plaza, Albany, NY 12223, (518) 486-2655, email: leann_ayer@dps.state.ny.us An IRS employer ID no. or social security no. is required from firms or persons to be billed 25 cents per page. Please use tracking number found on last line of notice in requests.

Assessment of Public Comment

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

(11-G-0348SA1)

NOTICE OF ADOPTION

Elimination of the Requirement to Conduct a Refrigerator Measurement and Verification Study

I.D. No. PSC-31-11-00014-A

Filing Date: 2011-11-22

Effective Date: 2011-11-22

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

Action taken: On 11/17/11, the PSC adopted an order relieving NYSERDA of the requirement to conduct & submit a separate measurement & verification study of the refrigerator replacement portion of its Electric Multifamily & Low-Income Multifamily Performance Programs.

Statutory authority: Public Service Law, sections 4(1), 5(2) and 66(1)

Subject: Elimination of the requirement to conduct a refrigerator measurement and verification study.

Purpose: To approve the elimination of the requirement to conduct a refrigerator measurement and verification study.

Substance of final rule: The Commission, on November 17, 2011 adopted an order relieving New York State Energy Research and Development Authority (NYSERDA) of the requirement to conduct and submit a separate measurement and verification study of the refrigerator replacement portion of its Electric Multifamily Performance and Low-Income Multifamily Performance Programs, subject to the terms and conditions set forth in the order.

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

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

Assessment of Public Comment

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

(07-M-0548SA42)

NOTICE OF ADOPTION

Amendments to PSC No. 1 — Electricity, Eff. 12/1/11 to Increase Annual Electric Revenues of \$300,000 or 10.9%

I.D. No. PSC-32-11-00010-A

Filing Date: 2011-11-21

Effective Date: 2011-11-21

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

Action taken: On 11/17/11, the PSC adopted an order authorizing, with modifications Green Island Power Authority's amendments to PSC No. 1 — Electricity, eff. 12/1/11, to increase annual electric revenues of \$300,000 or 10.9% excluding hydroelectric revenues.

Statutory authority: Public Service Law, section 66(12)

Subject: Amendments to PSC No. 1 — Electricity, eff. 12/1/11 to increase annual electric revenues of \$300,000 or 10.9%.

Purpose: To approve amendments to PSC No. 1 — Electricity, eff. 12/1/11 to increase annual electric revenues of \$300,000 or 10.9%.

Substance of final rule: The Commission, on November 17, 2011 adopted an order authorizing, with modifications Green Island Power Authority's amendments to PSC No. 1 — Electricity, effective December 1, 2011, to increase annual electric revenues of \$300,000 or 10.9%, excluding hydroelectric revenues, subject to the terms and conditions set forth in the order.

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

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

Assessment of Public Comment

An assessment of public comment is not submitted with this notice because the rule is within the definition contained in section 102(2)(a)(ii) of the State Administrative Procedure Act. (11-E-0387SA1)

NOTICE OF ADOPTION

Amendments to PSC No. 15—Electricity, Effective 12/1/11 to Modify the Energy Cost Adjustment Mechanism

I.D. No. PSC-32-11-00011-A

Filing Date: 2011-11-17

Effective Date: 2011-11-17

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

Action taken: On 11/17/11, the PSC adopted an order approving Central Hudson Gas & Electric Corporation's amendments to PSC No. 15—Electricity, effective December 1, 2011 to modify the Energy Cost Adjustment Mechanism.

Statutory authority: Public Service Law, section 66(12)

Subject: Amendments to PSC No. 15—Electricity, effective 12/1/11 to modify the Energy Cost Adjustment Mechanism.

Purpose: To approve amendments to PSC No. 15—Electricity, effective 12/1/11 to modify the Energy Cost Adjustment Mechanism.

Substance of final rule: The Commission, on November 17, 2011 adopted an order approving Central Hudson Gas & Electric Corporation's amendments to PSC No. 15—Electricity, effective December 1, 2011 to modify the Energy Cost Adjustment Mechanism to reflect the expiration of the Purchased Power Agreement (PPA), and the commencement of the Revenue Sharing Agreement (RSA), provided the Company files further revisions to reflect the application of carrying charges, subject to the terms and conditions set forth in the order.

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

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

Assessment of Public Comment

An assessment of public comment is not submitted with this notice because the rule is within the definition contained in section 102(2)(a)(ii) of the State Administrative Procedure Act. (11-E-0390SA1)

NOTICE OF ADOPTION

Denying the Petitions for Rehearing and/or Clarification of the Commission's 6/17/11 Electric Rate Order

I.D. No. PSC-32-11-00014-A

Filing Date: 2011-11-21

Effective Date: 2011-11-21

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

Action taken: On 11/17/11, the PSC adopted an order denying the petitions for rehearing and/or clarification of Orange and Rockland Utilities, Inc. and the Utility Intervention Unit of the New York Department of State for the Commission's 6/17/11 Electric Rate Order.

Statutory authority: Public Service Law, sections 4(1), 22, 65(1) and 66(1)

Subject: Denying the petitions for rehearing and/or clarification of the Commission's 6/17/11 Electric Rate Order.

Purpose: To denying the petitions for rehearing and/or clarification of the Commission's 6/17/11 Electric Rate Order.

Substance of final rule: The Commission, on November 17, 2011 adopted an order denying the petitions for rehearing and/or clarification of Orange and Rockland Utilities, Inc. and the Utility Intervention Unit of the New York Department of State for the Commissions June 17, 2011 Electric Rate Order, subject to the terms and conditions set forth in the order.

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

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

Assessment of Public Comment

An assessment of public comment is not submitted with this notice because the rule is within the definition contained in section 102(2)(a)(ii) of the State Administrative Procedure Act. (10-E-0362SA1)

NOTICE OF ADOPTION

Adopt in Part and Deny in Part the Petition for Rehearing and Authorize Incremental Storm Expenses

I.D. No. PSC-33-11-00007-A

Filing Date: 2011-11-22

Effective Date: 2011-11-22

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

Action taken: On 11/17/11, the PSC adopted an order granting in part & denying in part Central Hudson Gas & Electric Corporation's petition for rehearing & modifying its Order of 4/14/11 to allow the Company to defer additional incremental electric storm expenses.

Statutory authority: Public Service Law, sections 22 and 66

Subject: Adopt in part and deny in part the petition for rehearing and authorize incremental storm expenses.

Purpose: To adopt in part and deny in part the petition for rehearing and authorize incremental storm expenses.

Substance of final rule: The Commission, on November 17, 2011 adopted an order granting in part and denying in part Central Hudson Gas & Electric Corporation's (the Company or Central Hudson) petition for rehearing and modifying its Order of April 14, 2011 to allow the Company to defer an additional \$270,974 in incremental electric storm expense, and also allowing Central Hudson to recover the costs it incurred and continues to incur related to achieving federal tax benefits for ratepayers, subject to the terms and conditions set forth in the order.

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

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

Assessment of Public Comment

An assessment of public comment is not submitted with this notice because the rule is within the definition contained in section 102(2)(a)(ii) of the State Administrative Procedure Act.
(10-M-0473SA2)

NOTICE OF ADOPTION**Amendments to PSC No. 1—Gas, Effective December 1, 2011**

I.D. No. PSC-33-11-00011-A

Filing Date: 2011-11-18

Effective Date: 2011-11-18

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

Action taken: On 11/17/11, the PSC adopted an order approving, with modifications, Brooklyn Union Gas Company d/b/a National Grid NY (KEDNY)'s amendments to PSC No. 1 — Gas, effective December 1, 2011.

Statutory authority: Public Service Law, sections 65 and 66

Subject: Amendments to PSC No. 1—Gas, effective December 1, 2011.

Purpose: To approve amendments to PSC No. 1—Gas, effective December 1, 2011.

Substance of final rule: The Commission, on November 17, 2011 adopted an order approving, with modifications, Brooklyn Union Gas Company d/b/a National Grid NY (KEDNY)'s amendments to PSC No. 1 – Gas, effective December 1, 2011, to amend and clarify the requirements and procedures for customers taking service under Service Classification Numbers 5A, 6C, 6G, 6M and 18, subject to the terms and conditions set forth in the order.

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

Text of rule may be obtained from: Leann Ayer, Public Service Commission, Three Empire State Plaza, Albany, NY 12223, (518) 486-2655, email: leann_ayer@dps.state.ny.us An IRS employer ID no. or social security no. is required from firms or persons to be billed 25 cents per page. Please use tracking number found on last line of notice in requests.

Assessment of Public Comment

An assessment of public comment is not submitted with this notice because the rule is within the definition contained in section 102(2)(a)(ii) of the State Administrative Procedure Act.
(11-G-0411SA1)

NOTICE OF ADOPTION**Amendments to PSC No. 1—Gas, Effective December 1, 2011**

I.D. No. PSC-33-11-00013-A

Filing Date: 2011-11-18

Effective Date: 2011-11-18

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

Action taken: On 11/17/11, the PSC adopted an order approving, with modifications, KeySpan Gas East Corporation d/b/a National Grid NY (KEDLI)'s amendments to PSC No. 1 — Gas, effective December 1, 2011.

Statutory authority: Public Service Law, sections 65 and 66

Subject: Amendments to PSC No. 1—Gas, effective December 1, 2011.

Purpose: To approve amendments to PSC No. 1—Gas, effective December 1, 2011.

Substance of final rule: The Commission, on November 17, 2011 adopted an order approving, with modifications, KeySpan Gas East Corporation d/b/a National Grid NY (KEDLI)'s amendments to PSC No. 1 – Gas, effective December 1, 2011, to amend and clarify the requirements and procedures for customers taking service under Service Classification Numbers 4, 7, 12, and 13, subject to the terms and conditions set forth in the order.

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

Text of rule may be obtained from: Leann Ayer, Public Service Commission, Three Empire State Plaza, Albany, NY 12223, (518) 486-2655, email: leann_ayer@dps.state.ny.us An IRS employer ID no. or social security no. is required from firms or persons to be billed 25 cents per page. Please use tracking number found on last line of notice in requests.

Assessment of Public Comment

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

(11-G-0412SA1)

NOTICE OF ADOPTION**Lightened Ratemaking Regulation as a Competitive Provider of Gas Transportation**

I.D. No. PSC-34-11-00012-A

Filing Date: 2011-11-22

Effective Date: 2011-11-22

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

Action taken: On 11/17/11, the PSC adopted an order approving the petition of Gateway Delmar LLC for lightened ratemaking regulation as a competitive provider of gas transportation service to Owens-Corning Fiberglass Corporation.

Statutory authority: Public Service Law, sections 2(13), (22), 5(1)(b), 64, 65, 66, 68, 69, 69-a, 70, 71, 72, 72-a, 75, 105, 106, 107, 108, 109, 110, 111, 112, 113, 114, 114-a, 115, 117, 118, 119-b and 119-c

Subject: Lightened ratemaking regulation as a competitive provider of gas transportation.

Purpose: To approve lightened ratemaking regulation as a competitive provider of gas transportation.

Substance of final rule: The Commission, on November 17, 2011 adopted an order approving the petition of Gateway Delmar LLC for lightened ratemaking regulation as a competitive provider of gas transportation service to Owens-Corning Fiberglass Corporation, subject to the terms and conditions set forth in the order.

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

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

Assessment of Public Comment

An assessment of public comment is not submitted with this notice because the rule is within the definition contained in section 102(2)(a)(ii) of the State Administrative Procedure Act.
(11-G-0361SA1)

NOTICE OF ADOPTION**Gas Tariff Amendments in Compliance with the Commission's Order of June 20, 2011**

I.D. No. PSC-35-11-00010-A

Filing Date: 2011-11-17

Effective Date: 2011-11-17

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

Action taken: On 11/17/11, the PSC adopted an order approving Consolidated Edison Company of New York, Inc.'s amendments to PSC No. 9—Gas eff. 11/20/11 to alter and clarify tariff provisions applicable to interruptible customers regarding categories of service.

Statutory authority: Public Service Law, section 66(12)

Subject: Gas tariff amendments in compliance with the Commission's order of June 20, 2011.

Purpose: To approve gas tariff amendments in compliance with the Commission's order of June 20, 2011.

Substance of final rule: The Commission, on November 17, 2011 adopted an order approving Consolidated Edison Company of New York, Inc.'s amendments to PSC No. 9—Gas effective November 20, 2011, to alter and clarify tariff provisions applicable to interruptible customers regarding categories of service within each priority, and to clarify the eligibility provision for Priority D in compliance with the Commission Order issued June 20, 2011.

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

Text of rule may be obtained from: Leann Ayer, Public Service Commission, Three Empire State Plaza, Albany, New York 12223, (518) 486-2655, email: leann_ayer@dps.state.ny.us An IRS employer ID no. or social security no. is required from firms or persons to be billed 25 cents

per page. Please use tracking number found on last line of notice in requests.

Assessment of Public Comment

An assessment of public comment is not submitted with this notice because the rule is within the definition contained in section 102(2)(a)(ii) of the State Administrative Procedure Act.
(11-G-0054SA2)

NOTICE OF ADOPTION

Net Energy Metering for Farm Waste Electric Generating Systems and NYS Standardized Interconnection Requirements

I.D. No. PSC-37-11-00006-A

Filing Date: 2011-11-21

Effective Date: 2011-11-21

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

Action taken: On 11/17/11, the PSC approved, with modifications Orange and Rockland Utilities, Inc. tariff filing to effectuate changes to PSL Sections 66-j and 66-l for Net Energy Metering and NYS Standardized Interconnection Requirements.

Statutory authority: Public Service Law, section 66(12)

Subject: Net Energy metering for Farm Waste Electric Generating Systems and NYS Standardized Interconnection Requirements.

Purpose: To effectuate changes to PSL Sections 66-j and 66-l for Net Energy Metering and NYS Standardized Interconnection Requirements.

Substance of final rule: The Commission, on November 17, 2011 approved, with modifications Orange and Rockland Utilities, Inc.'s amendments to PSC No. 2 – Electricity, effective December 1, 2011 to allow remote net metering for non-residential solar photovoltaic, farm waste, farm wind, and non-residential wind electric customer generators, to apply excess generation credits from the customer's generator to other meters on property that is owned or leased by the same customer and modifying the New York State Standard Interconnection Requirements (SIR) document to incorporate the update to PSL Sections 66-j and 66-l, subject to the terms and conditions set forth in the order.

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

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

Assessment of Public Comment

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

(11-E-0323SA1)

NOTICE OF ADOPTION

Net Energy Metering for Farm Waste Electric Generating Systems and NYS Standardized Interconnection Requirements

I.D. No. PSC-37-11-00007-A

Filing Date: 2011-11-21

Effective Date: 2011-11-21

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

Action taken: On 11/17/11, the PSC approved, with modifications Consolidated Edison Company of New York, Inc. tariff filing to effectuate changes to PSL Sections 66-j and 66-l for Net Energy Metering and NYS Standardized Interconnection Requirements.

Statutory authority: Public Service Law, section 66(12)

Subject: Net Energy metering for Farm Waste Electric Generating Systems and NYS Standardized Interconnection Requirements.

Purpose: To effectuate changes to PSL Sections 66-j and 66-l for Net Energy Metering and NYS Standardized Interconnection Requirements.

Substance of final rule: The Commission, on November 17, 2011 approved, with modifications Consolidated Edison Company of New York, Inc.'s amendments to PSC No. 9 – Electricity, effective December 1, 2011

to allow remote net metering for non-residential solar photovoltaic, farm waste, farm wind, and non-residential wind electric customer generators, to apply excess generation credits from the customer's generator to other meters on property that is owned or leased by the same customer and modifying the New York State Standard Interconnection Requirements (SIR) document to incorporate the update to PSL Sections 66-j and 66-l, subject to the terms and conditions set forth in the order.

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

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

Assessment of Public Comment

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

(11-E-0319SA1)

NOTICE OF ADOPTION

Net Energy Metering for Farm Waste Electric Generating Systems and NYS Standardized Interconnection Requirements

I.D. No. PSC-37-11-00009-A

Filing Date: 2011-11-21

Effective Date: 2011-11-21

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

Action taken: On 11/17/11, the PSC approved, with modifications Central Hudson Gas and Electric Corporation tariff filing to effectuate changes to PSL Sections 66-j and 66-l for Net Energy Metering and NYS Standardized Interconnection Requirements.

Statutory authority: Public Service Law, section 66(12)

Subject: Net Energy metering for Farm Waste Electric Generating Systems and NYS Standardized Interconnection Requirements.

Purpose: To effectuate changes to PSL Sections 66-j and 66-l for Net Energy Metering and NYS Standardized Interconnection Requirements.

Substance of final rule: The Commission, on November 17, 2011 approved, with modifications Central Hudson Gas and Electric Corporation's amendments to PSC No. 15 – Electricity, effective December 1, 2011 to allow remote net metering for non-residential solar photovoltaic, farm waste, farm wind, and non-residential wind electric customer generators, to apply excess generation credits from the customer's generator to other meters on property that is owned or leased by the same customer and modifying the New York State Standard Interconnection Requirements (SIR) document to incorporate the update to PSL Sections 66-j and 66-l, subject to the terms and conditions set forth in the order.

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

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

Assessment of Public Comment

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

(11-E-0318SA1)

NOTICE OF ADOPTION

Net Energy Metering for Farm Waste Electric Generating Systems and NYS Standardized Interconnection Requirements

I.D. No. PSC-37-11-00010-A

Filing Date: 2011-11-21

Effective Date: 2011-11-21

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

Action taken: On 11/17/11, the PSC approved, with modifications Roch-

ester Gas and Electric Corporation tariff filing to effectuate changes to PSL Sections 66-j and 66-l for Net Energy Metering and NYS Standardized Interconnection Requirements.

Statutory authority: Public Service Law, section 66(12)

Subject: Net Energy metering for Farm Waste Electric Generating Systems and NYS Standardized Interconnection Requirements.

Purpose: To effectuate changes to PSL Sections 66-j and 66-l for Net Energy Metering and NYS Standardized Interconnection Requirements.

Substance of final rule: The Commission, on November 17, 2011 approved, with modifications Rochester Gas and Electric Corporation's amendments to PSC No. 19 – Electricity, effective December 1, 2011 to allow remote net metering for non-residential solar photovoltaic, farm waste, farm wind, and non-residential wind electric customer generators, to apply excess generation credits from the customer's generator to other meters on property that is owned or leased by the same customer and modifying the New York State Standard Interconnection Requirements (SIR) document to incorporate the update to PSL Sections 66-j and 66-l, subject to the terms and conditions set forth in the order.

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

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

Assessment of Public Comment

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

(11-E-0322SA1)

NOTICE OF ADOPTION

Net Energy Metering for Farm Waste Electric Generating Systems and NYS Standardized Interconnection Requirements

I.D. No. PSC-37-11-00014-A

Filing Date: 2011-11-21

Effective Date: 2011-11-21

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

Action taken: On 11/17/11, the PSC approved, with modifications New York State Electric and Gas Corporation tariff filing to effectuate changes to PSL Sections 66-j and 66-l for Net Energy Metering and NYS Standardized Interconnection Requirements.

Statutory authority: Public Service Law, section 66(12)

Subject: Net Energy metering for Farm Waste Electric Generating Systems and NYS Standardized Interconnection Requirements.

Purpose: To effectuate changes to PSL Sections 66-j and 66-l for Net Energy Metering and NYS Standardized Interconnection Requirements.

Substance of final rule: The Commission, on November 17, 2011 approved, with modifications New York State Electric and Gas Corporation's amendments to PSC No. 120 – Electricity, effective December 1, 2011 to allow remote net metering for non-residential solar photovoltaic, farm waste, farm wind, and non-residential wind electric customer generators, to apply excess generation credits from the customer's generator to other meters on property that is owned or leased by the same customer and modifying the New York State Standard Interconnection Requirements (SIR) document to incorporate the update to PSL Sections 66-j and 66-l, subject to the terms and conditions set forth in the order.

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

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

Assessment of Public Comment

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

(11-E-0320SA1)

NOTICE OF ADOPTION

Net Energy Metering for Farm Waste Electric Generating Systems and NYS Standardized Interconnection Requirements

I.D. No. PSC-37-11-00015-A

Filing Date: 2011-11-21

Effective Date: 2011-11-21

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

Action taken: On 11/17/11, the PSC approved, with modifications Niagara Mohawk Power Corporation d/b/a National Grid tariff filing to effectuate changes to PSL Sections 66-j and 66-l for Net Energy Metering and NYS Standardized Interconnection Requirements.

Statutory authority: Public Service Law, section 66(12)

Subject: Net Energy metering for Farm Waste Electric Generating Systems and NYS Standardized Interconnection Requirements.

Purpose: To effectuate changes to PSL Sections 66-j and 66-l for Net Energy Metering and NYS Standardized Interconnection Requirements.

Substance of final rule: The Commission, on November 17, 2011 approved, with modifications Niagara Mohawk Power Corporation d/b/a National Grid's amendments to PSC No. 220 – Electricity, effective December 1, 2011 to allow remote net metering for non-residential solar photovoltaic, farm waste, farm wind, and non-residential wind electric customer generators, to apply excess generation credits from the customer's generator to other meters on property that is owned or leased by the same customer and modifying the New York State Standard Interconnection Requirements (SIR) document to incorporate the update to PSL Sections 66-j and 66-l, subject to the terms and conditions set forth in the order.

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

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

Assessment of Public Comment

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

(11-E-0321SA1)

NOTICE OF ADOPTION

Approval of a Financing

I.D. No. PSC-39-11-00016-A

Filing Date: 2011-11-22

Effective Date: 2011-11-22

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

Action taken: On 11/17/11, the PSC adopted an order approving the petition of DMP New York, Inc. and Laser Northeast Gathering Company LLC for a long term credit agreement up to the maximum amount of \$290 million.

Statutory authority: Public Service Law, section 69

Subject: Approval of a financing.

Purpose: To approve financing up to the maximum amount of \$290 million.

Substance of final rule: The Commission, on November 17, 2011 adopted an order approving the petition of DMP New York, Inc. and Laser Northeast Gathering Company LLC for a long-term credit agreement up to the maximum amount of \$290 million, subject to the terms and conditions set forth in the order.

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

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

Assessment of Public Comment

An assessment of public comment is not submitted with this notice because the rule is within the definition contained in section 102(2)(a)(ii) of the State Administrative Procedure Act.
(11-G-0413SA1)

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

Whether a Proposed Agreement for the Provision of Water Service by Saratoga Water Services, Inc. is in the Public Interest

I.D. No. PSC-49-11-00004-P

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

Proposed Action: The Public Service Commission is considering whether to approve, deny, or modify, in whole or in part, the petition of Saratoga Water Services, Inc. for a waiver of the company's tariff and approval of the terms of a service agreement.

Statutory authority: Public Service Law, sections 4(1), 20(1) and 89-b

Subject: Whether a proposed agreement for the provision of water service by Saratoga Water Services, Inc. is in the public interest.

Purpose: Whether the Commission should issue an order approving the proposed provision of water service.

Substance of proposed rule: The Commission is considering whether to approve, deny, or modify, in whole or in part a Petition in which Saratoga Water Services, Inc. (Saratoga) seeks issuance of an Order (a) approving the terms and conditions of a certain "Agreement For The Provision of Water Service", dated February 9, 2011 (Agreement) between Saratoga and Columbia Malta 2539, LLC as being in the public interest; (b) determining that the provision of water service by Saratoga in accordance with the terms set forth in the Agreement is in the public interest; (c) waiving Saratoga's tariff provisions to the extent they are inconsistent with the Agreement, and (d) waiving the applicability of the provisions of 16 N.Y.C.R.R. Parts 501 and 502 to the extent they are inconsistent with the Agreement. The Commission may consider these or related matters and may apply its decision to other utilities.

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.state.ny.us/f96dir.htm>. For questions, contact: Leann Ayer, Public Service Commission, 3 Empire State Plaza, Albany, New York 12223-1350, (518) 486-2655, email: leann.ayer@dps.ny.gov

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

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

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

Statements and analyses are not submitted with this notice because the proposed rule is within the definition contained in section 102(2)(a)(ii) of the State Administrative Procedure Act.
(11-W-0108SP1)

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

Approval of a Contract for the Sale of Capacity and Energy from NYSEG to Nucor

I.D. No. PSC-49-11-00005-P

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

Proposed Action: The Commission is considering a petition from Nucor Steel Auburn, Inc. (Nucor) and New York State Electric & Gas Corporation (NYSEG) requesting approval of a contract for the sale of capacity and energy from NYSEG to Nucor.

Statutory authority: Public Service Law, sections 5(1)(b), 64, 65(1), (2), (3), 66(1), (5), (9), (10), (12) and (12-b)

Subject: Approval of a contract for the sale of capacity and energy from NYSEG to Nucor.

Purpose: Consider the approval of a contract for the sale of capacity and energy from NYSEG to Nucor.

Substance of proposed rule: The Public Service Commission is considering a petition filed on November 14, 2011 from Nucor Steel Auburn, Inc. (Nucor) and New York State Electric & Gas Corporation (NYSEG) requesting approval of the extension of a contract for the sale of electric capacity and energy from NYSEG to Nucor for service to its manufacturing facility located in Auburn, NY. The Commission may adopt, reject or modify, in whole or in part, the relief proposed.

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.state.ny.us/f96dir.htm>. For questions, contact: Leann Ayer, Public Service Commission, 3 Empire State Plaza, Albany, New York 12223-1350, (518) 486-2655, email: leann_ayer@dps.state.ny.us

Data, views or arguments may be submitted to: Jaclyn A. Brillling, Secretary, Public Service Commission, 3 Empire State Plaza, Albany, New York 12223-1350, (518) 474-6530, email: secretary@dps.state.ny.us

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.
(11-E-0641SP1)

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

Water Rates and Charges

I.D. No. PSC-49-11-00006-P

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

Proposed Action: The Public Service Commission is considering a filing by Pabst Water Company, Inc. requesting approval to increase its annual revenues by approximately \$4,172 or 9.9%, and establish an escrow account funded by a \$20 customer surcharge per billing period.

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

Subject: Water rates and charges.

Purpose: To approve an increase in annual revenues by about \$4,172 or 9.9%, and establish a \$20 customer surcharge per billing period.

Substance of proposed rule: On November 4, 2011, Pabst Water Company, Inc. (Pabst or the company) filed tariff amendment Leaf No.12 Revision 3, Leaf No. 5 Revision 1, and Statement No.1 to become effective April 1, 2012 to its tariff PSC No. 3- Water. Under the company proposed changes the annual residential customer charge would increase from \$463.20 to \$509.10; Pabst's proposed rates are designed to produce additional annual revenues of approximately \$4,172 or 9.9%.

The company is also requesting to establish a replenishable interest bearing escrow account with a maximum balance of \$24,000 to cover the cost of extraordinary repairs and/or plant replacement. The escrow account would be funded through a customer surcharge of \$20 per billing period effective April 1, 2012.

In addition, the company is proposing to make a change to Leaf No. 5, under paragraph J, stating that "All mains, services (up to the property line including the curb valve) and other water system facilities will be maintained and replaced by the company." Instead of "All mains, services (up to the property line) and other water system facilities will be maintained and replaced by the company."

Pabst provides flat rate water service to 65 year-round residential customers in an area known as Northern Westchester County Club in the Town of North Salem, Westchester County. Fire protection service is not provided.

The company's tariff and the pending rate increase request will be available online on the Commission's web site on the World Wide Web (www.dps.state.ny.us) located under Commission (Document-Tariffs). The Commission may approve or reject, in whole or in part, or modify the company's rates.

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.state.ny.us/f96dir.htm>. For questions, contact: Leann Ayer, Public Service Commission, 3 Empire State Plaza, Albany, NY 12223-1350, (518) 486-2655, email: leann_ayer@dps.state.ny.us

Data, views or arguments may be submitted to: Jaclyn A. Brillling, Secretary,

tary, Public Service Commission, 3 Empire State Plaza, Albany, NY 12223-1350, (518) 474-6530, email: secretary@dps.state.ny.us

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.

(11-W-0604SP1)

Racing and Wagering Board

EMERGENCY RULE MAKING

Electronic Application Procedure to Open an Advanced Deposit Wagering Account

I.D. No. RWB-35-11-00008-E

Filing No. 1267

Filing Date: 2011-11-22

Effective Date: 2011-11-23

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

Action taken: Amendment of section 5300.4 of Title 9 NYCRR.

Statutory authority: Racing, Pari-Mutuel Wagering and Breeding Law, sections 101, 235, 301, 305, 401, 405, 520 and 1002

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

Specific reasons underlying the finding of necessity: This emergency rulemaking is necessary to preserve the general welfare. Article I Section 9 of the New York State Constitution states that pari-mutuel wagering is authorized so that "the state shall derive a reasonable revenue for the support of government." In November 2011, financial analysts announced that New York State is facing a projected 2012 budget deficit of nearly \$3.5 billion in addition to a current budget shortfall of \$350 million in the \$131.7 billion 2011 state budget. As a cumulative result of this and previous budget shortfalls, layoffs have occurred and further cutbacks in governmental services loom large. Similarly, local governments which benefit from pari-mutuel wagering activity conducted by OTBs are facing layoffs and curtailment of services as revenues decline. On August 31, 2011 the Board published a Notice of Proposed Rulemaking to permanently adopt the provisions of this emergency rulemaking, and the rulemaking will become effective when the Notice of Adoption is published on December 14, 2011. This re-adoption of a September 14, 2011 emergency rulemaking is necessary to allow pari-mutuel wagering entities to continue to accept electronic applications pending the completion of the proposed rulemaking process. This emergency rulemaking will allow customers to safely and securely continue internet and telephone wagering with trustworthy New York State-based pari-mutuel wagering entities. This emergency rulemaking will facilitate the procedure to open new advanced deposit wagering accounts at other authorized pari-mutuel entities within the State of New York that offer internet and telephone wagering. Without this rulemaking, potential ADW customers may elect to open accounts with internet wagering entities that offer electronic registration but operate outside out-of-state and outside of the United States and do not contribute in the same manner and to the same extent as in-state pari-mutuel operators. By adopting this measure, the wagering public will be able to conveniently open ADW accounts with OTBs and pari-mutuel wagering entities in New York State. This emergency rulemaking is needed to preserve and provide valuable revenue for New York State.

Subject: Electronic application procedure to open an advanced deposit wagering account.

Purpose: To provide guidelines and procedures for online applications for advanced deposit wagering accounts.

Text of emergency rule: Paragraphs (4) and (5) of subdivision (a) of Section 5300.4 of 9 NYCRR are amended to read as follows:

(4) Application shall be signed attesting to its accuracy. *In the case of an online application, the applicant shall provide an electronic signature to attest to the accuracy of the information provided.* "Electronic

signature" shall mean an electronic sound, symbol, or process, attached to or logically associated with an electronic record and executed or adopted by a person with the intent to sign the record.

(5) *Except in the case of an online application, [T]he name of each new account holder will be confirmed in accordance with the Federal Government's standards for evaluating and confirming government issued identification and credentials (U.S. Department of [Justice] Homeland Security Employment Verification Form I9[, which can be obtained online at <http://www.usdoj.gov/usao/nh/pdfreleases/Forms/i9.pdf>].) A copy of each properly validated credential will be maintained with the appropriate account application. A copy of a social security card is not required to be maintained at the time of the application if the number is verified with a credit reporting agency and such report is maintained with the account application. *In the case of an online application, the pari-mutuel wagering entity shall verify the applicant's identity using, at a minimum, the name, address, social security number and date of birth of the applicant through a credit reporting agency, public database, or similarly reliable sources as provided for in the plan of operation. If there is a discrepancy between the minimum information submitted and the information provided by the electronic verification described above or if no information on the applicant is available from such electronic verification, then the pari-mutuel wagering entity shall not open the account and shall require verification through the Federal Government's standards for evaluating and confirming government issued identification and credentials (U.S. Department of Homeland Security Employment Verification Form I9).**

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. RWB-35-11-00008-P, Issue of August 31, 2011. The emergency rule will expire December 14, 2011.

Text of rule and any required statements and analyses may be obtained from: John Googas, New York State Racing & Wagering Board, One Broadway Center, Suite 600, Schenectady, New York 12305-2553, (518) 395-5400, email: info@racing.state.ny.us

Regulatory Impact Statement

1. **Statutory authority:** Racing, Pari-Mutuel Wagering and Breeding Law Sections 101, 235, 301, 305, 401, 405, 520, and 1002. Section 101 vests the Board with general jurisdiction over all horse racing and all pari-mutuel wagering activities in New York State. Section 235 grants the Board the authority to make rules regarding the conduct of pari-mutuel wagering activities associated with thoroughbred horse racing events. Section 301 grants the Board the authority to supervise generally all harness race meetings in New York State at which pari-mutuel betting is conducted and the authority to adopt rules accordingly. Section 305 grants the Board the authority to make rules regarding the conduct of pari-mutuel wagering activities associated with harness horse racing events. Section 401 grants the Board the authority to supervise generally all quarterhorse race meetings in New York State at which pari-mutuel betting is conducted and the authority to adopt rules accordingly. Section 405 grants the Board the authority to make rules regarding the conduct of pari-mutuel wagering activities associated with quarter horse racing events. Section 520 grants the Board general jurisdiction over the operation of off-track betting facilities within the state and the authority to adopt rules accordingly. Section 1002 grants the Board general jurisdiction over the simulcasting of horse races within the state and the authority to adopt rules accordingly.

2. **Legislative objectives:** This proposed amendment advances the legislative objective of regulating the conduct of pari-mutuel wagering activity in a manner designed to maintain the integrity of racing while generating a reasonable revenue for the support of government.

3. **Needs and benefits:** This rule is necessary to allow persons to apply on-line to wager through advanced deposit wagering (ADW). Pari-mutuel operators, such as Nassau Downs OTB, Catskill OTB, and Yonkers Raceway will be able to process electronic application for telephone and internet accounts on the same day without having to appear in person to submit an application.

The Board adopted its Internet and Telephone Wagering Rules (Part 5300 of 9 NYCRR) in January 2009. This rulemaking will amend those rules to expressly authorize the online applications for opening an internet or telephone wagering account.

This rule is needed to compete with various internet wagering sites located off-shore and out-of-state. The Board has received concerns from pari-mutuel wagering entities in New York State that they may be losing customers to these competing internet wagering sites. This rulemaking is necessary for New York State OTBs and racetracks to remain competitive in the realm of internet and telephone wagering.

4. **Costs:**

(a) **Costs to regulated parties for the implementation of and continuing compliance with the rule.** None. This rule is permissive in nature and doesn't impose costs on pari-mutuel wagering entities with internet and telephone wagering systems.

(b) Costs to the agency, the state and local governments for the implementation and continuation of the rule: None. Local governments would bear no costs because the regulation of pari-mutuel wagering is exclusively regulated by the New York State Racing and Wagering Board. This rule would not impose costs upon the New York State Racing and Wagering Board because the amendments would not alter the regulatory practices employed by the Board.

(c) The information related to costs was obtained by the New York State Racing and Wagering Board based upon analysis of current practices by authorized pari-mutuel wagering entities in the State of New York.

5. Paperwork: This rule will not require any additional paperwork. In fact, by authorizing the electronic submission of applications, pari-mutuel wagering companies should experience a decrease in paperwork compared to the current application submission requirements.

6. Local government mandates: Since the New York State Racing and Wagering Board is solely responsible for the regulation of pari-mutuel wagering activities in the State of New York, there is no program, service, duty or responsibility imposed by the rule upon any county, city, town, village, school district, fire district or other special district.

7. Duplication: There are no relevant rules or legal requirements of the state and federal governments that duplicate, overlap or conflict with the rule.

8. Alternatives: This Board considered various requirements for proof of identification. It considered a number of various sources that could be utilized to verify a person's identity electronically, and whether those sources should be expressly identified in the rule. Ultimately, the Board determined that the language in the current text is general enough to provide practical implementation of the rule, and specific enough to be enforceable.

9. Federal standards: There are no federal standards for pari-mutuel wagering. The New York State Racing and Wagering Board is solely responsible for regulating pari-mutuel wagering activity in New York State.

10. Compliance schedule: This rule will go into effect on November 23, 2011.

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

As is evident by the nature of this rulemaking, this proposal affects the procedures for same-day electronic enrollment for advanced deposit wagering and does not require a Regulatory Flexibility Statement, Rural Area Flexibility Statement or Job Impact Statement because it will not impose an adverse impact on rural areas, nor will it affect jobs. A Regulatory Flexibility Statement and a Rural Area Flexibility Statement are not required because the rule does not adversely affect small business, local governments, public entities, private entities, or jobs in rural areas. The rule will have a positive impact on local governments by facilitating the enrollment of potential off-track betting customers with New York State OTBs that support local government through surcharges and dividend payments. There will be no impact for reporting, recordkeeping or other compliance requirements on public or private entities in rural areas. There will also be no adverse impact on small businesses and jobs in rural areas. A Job Impact Statement is not required because this rule amendment will not adversely impact jobs. This rulemaking may help preserve government service jobs. This rulemaking does not impact upon a small business pursuant to such definition in the State Administrative Procedure Act § 102(8) nor does it negatively affect employment. The proposal will not impose adverse economic impact on reporting, recordkeeping or other compliance requirements on small businesses in rural or urban areas nor on employment opportunities. The rule does not impose any technological changes on the industry either. This rulemaking merely explains the procedures for processing an application using technology adopted by the pari-mutuel wagering entities.

Department of State

PROPOSED RULE MAKING HEARING(S) SCHEDULED

Use of Variable Refrigerant Flow (VRF) Air Conditioning Systems

I.D. No. DOS-49-11-00001-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 section 1240.1 of Title 19 NYCRR.

Statutory authority: Energy Law, section 11-103(2)

Subject: Use of Variable Refrigerant Flow (VRF) air conditioning systems.

Purpose: To amend the Energy Code to permit use of VRF systems.

Public hearing(s) will be held at: 10:00 a.m., Jan. 25, 2012 at Department of State, One Commerce Plaza, 99 Washington Ave., Conference Rm. 1135, Albany, NY.

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

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

Text of proposed rule: Subdivision (b) of section 1240.1 of Title 19 NYCRR is amended to read as follows:

(b) Referenced standards.

(1) Certain published standards are denoted in the 2010 ECCCNY as incorporated by reference into 19 NYCRR Part 1240. Such standards are identified in the 2010 ECCCNY, and the names and addresses of the publishers of such standards from which copies of such standards may be obtained are specified in the 2010 ECCCNY. Such standards are available for public inspection and copying at the office of the New York State Department of State specified in subdivision (a) of this section.

(2) In addition to the published standards referred to in paragraph (1) of this subdivision, the publication entitled "ANSI/ASHRAE/IES Addendum cp to ANSI/ASHRAE/IESNA Standard 90.1-2007, Energy Standard for Buildings Except Low-rise Residential Buildings" (as approved by the ASHRAE Standards Committee on June 10, 2010, by the ASHRAE Board of Directors on June 23, 2010, and by the American National Standards Institute on July 1, 2010, copyright 2010 by the American Society of Heating, Refrigerating and Air-Conditioning Engineers, Inc.) is incorporated by reference into this Part 1240. Said publication (hereafter referred to as "Addendum cp to ASHRAE 90.1-2007") is referenced in, and is part of, Exception 2 in 2010 ECCCNY section 503.3.1, as added by 19 NYCRR section 1240.1(c)(1). Addendum cp to ASHRAE 90.1-2007 is published by the American Society of Heating, Refrigerating and Air-Conditioning Engineers, Inc. Copies of Addendum cp to ASHRAE 90.1-2007 may be obtained from the publisher at the following address: 1791 Tullie Circle, NE, Atlanta, GA 30329-2305. Addendum cp to ASHRAE 90.1-2007 is available for public inspection and copying at the office of the New York State Department of State specified in subdivision (a) of this section.

Section 1240.1 of Title 19 NYCRR is amended by adding a new subdivision (c) to read as follows:

(c) Changes to the text of the 2010 ECCCNY. For the purpose of applying the 2010 ECCCNY in this State, the 2010 ECCCNY shall be deemed to be amended in the manner specified in this subdivision (c).

(1) 2010 ECCCNY Section 503.3.1. Section 503.3.1 of the 2010 ECCCNY shall be deemed to be amended by the addition of new Exceptions 2 and 3, to read as follows:

"2. Variable Refrigerant Flow Air Conditioning and Heat Pumps Systems (multi-split systems) that (1) employ multiple indoor DX type fan coils sharing a common compressor(s) and condenser(s) and (2) meet Addendum cp to ASHRAE 90.1-2007 (said Addendum cp to ASHRAE 90.1-2007 being the publication referred to, and incorporated by reference, in 19 NYCRR section 1240.1(b)(2))."

"3. Building HVAC systems that do not incorporate central fan systems for mechanical cooling in any portion of the system(s)."

Text of proposed rule and any required statements and analyses may be obtained from: Joseph Ball, Department of State, 99 Washington Ave., Albany, NY 12231-0001, (518) 474-6740, email: Joseph.Ball@dos.state.ny.us

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

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

Consensus Rule Making Determination

Subdivision 11 of the State Administrative Procedure Act Section 102 provides that "consensus rule means a rule proposed by an agency for adoption on an expedited basis pursuant to the expectation that no person is likely to object to its adoption because it merely. . . makes technical changes or is otherwise non-controversial." The Department of State has concluded that this rule is non-controversial and, therefore, no person is likely to object to its adoption.

The State energy conservation construction code (the "Energy Code")

is a building energy code adopted pursuant to Article 11 of the Energy Law. The provisions of the Energy Code are set forth in the Energy Conservation Construction Code of New York State (the "ECCCNYS"), a publication that is incorporated by reference in Part 1240 of Title 19 of the NYCRR, and in certain reference standards which are mentioned in the ECCCNYS and which are also incorporated by reference in Part 1240. Section 503.3.1 of the ECCCNYS provides that supply air economizers must be provided for cooling systems of 54,000 or more Btu/hour in climate zones 4, 5 and 6. This rule would amend Section 503.3.1 to provide that an economizer need not be used in certain Variable Refrigerant Flow ("VRF") cooling systems.

An economizer is a duct and damper arrangement and automatic control system used in traditional cooling systems. An economizer efficiently uses outside air to reduce or eliminate the need for mechanical cooling during mild or cool weather. VRF systems operate differently than conventional air circulating cooling systems. Rather than using conventional ducts to distribute cooled air throughout the building, VRF systems cool buildings by placing an evaporator in each area to be cooled, and using very small diameter refrigerant lines to connect the evaporators to a unit cooler (similar to a fan coil unit).

VRF systems have been in use in other parts of the world for almost three decades, but are relatively new to the U.S HVAC market. The Energy Code does not currently except VRF systems from the economizer requirement. However, a VRF system does not require an economizer and, indeed, a VRF system cannot incorporate economizer technology into its normal operation. Therefore, Section 503.3.1 of the ECCCNYS may effectively preclude the use of VRF systems in some applications.

VRF systems can offer a number of advantages over conventional HVAC systems, including independent temperature control in each area of a building, better energy efficiency, quieter operation, and more design flexibility for architects and engineers. For example:

VRF systems constantly monitor and supply the amount of refrigerant being sent to each evaporator. This permits independent control of temperature in each area of a building.

By operating at varying speeds, VRF units work only at the needed rate. As a result, VRF units consume less energy than traditional on/off systems, even if they run more frequently.

VRF technology is in heat pumps and in heat recovery units. Heat pumps can be used to heat all areas in the building or to cool all areas in the building. Heat recovery systems can also be used to heat all areas in the building or to cool all areas in the building; however, heat recovery systems can also be used to heat some areas and to cool other areas at the same time.

Chillers required for traditional air conditioning systems often require cranes for installation. VRF systems are typically lightweight and modular. Each module can be transported easily and fitted into a standard elevator, reducing installation costs.

A building cooled by a conventional system requires ductwork for the building's HVAC system and for the building's ventilation system. In a building cooled by a VRF system, the ductwork can be small and lighter in weight, because ductwork would be required only for the building's ventilation system. This may reduce building height and costs. The relatively light weight of the ventilation system may also reduce requirements for structural reinforcement of the roof.

Because VRF systems do not require ducts, they are particularly suitable for retrofitting historical buildings and other existing buildings with no air conditioning.

Finally, because the condensing units in a VRF system are normally placed outdoors, the need for a machine room may be eliminated.

Under this rule, Section 503.3.1 of the ECCCNYS would be amended to provide that supply air economizers will not be required for (1) VRF air conditioning and heat pump systems (multi-split systems) that employ multiple indoor DX type fan coils sharing a common compressor(s) and condenser(s) and meet Addendum cp to ASHRAE 90.1-2007, or (2) building HVAC systems that do not incorporate central fan systems for mechanical cooling in any portion of the system(s).

The subject of this rule making makes it highly unlikely that any one will object to its adoption. Rather than impose a requirement upon a regulated party, the this rule will add new exceptions to Section 503.3.1 of the ECCCNYS that will permit, but not require, builders, engineers, architects, and building owners to use VRF technology. The Department of State believes that it is not likely that any interested party will object to the adoption of this rule.

Job Impact Statement

The Department of State has concluded after reviewing the nature and purpose of the proposed rule that it will not have a substantial adverse impact on jobs and employment opportunities in New York.

The State energy conservation construction code (the "Energy Code") is a building energy code adopted pursuant to Article 11 of the Energy Law. The provisions of the Energy Code are set forth in the Energy Con-

servation Construction Code of New York State (the "ECCCNYS"), a publication that is incorporated by reference in Part 1240 of Title 19 of the NYCRR, and in certain reference standards which are mentioned in the ECCCNYS and which are also incorporated by reference in Part 1240. Section 503.3.1 of the ECCCNYS currently provides that supply air economizers must be provided for cooling systems of 54,000 or more Btu/hour in climate zones 4, 5 and 6. This rule would amend Section 503.3.1 of the ECCCNYS to provide that an economizer need not be used in certain Variable Refrigerant Flow ("VRF") cooling systems.

An economizer is a duct and damper arrangement and automatic control system used in conventional cooling systems. An economizer allows a cooling system to supply outside air, reducing or eliminating the need for mechanical cooling during mild or cool weather. VRF systems, by their nature and design, do not use air handling units. However, Section 503.3.1 of the ECCCNYS does not currently except VRF systems for the economizer requirement. As a result, Section 503.3.1 now effectively precludes the use of VRF systems.

This rule will permit, but not require, building owners to use VRF systems rather than conventional cooling systems. In many cases, this may reduce building costs and result in energy savings. This may also permit historical buildings and other existing buildings that do not now have air conditioning to be retrofitted with air conditioning. The Department finds that it is evident from the subject matter of the rule that it will have no adverse impact on jobs and employment opportunities.

Workers' Compensation Board

EMERGENCY RULE MAKING

Filing Written Reports of Independent Medical Examinations (IMEs)

I.D. No. WCB-49-11-00008-E

Filing No. 1266

Filing Date: 2011-11-22

Effective Date: 2011-11-23

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

Action taken: Amendment of section 300.2(d)(11) of Title 12 NYCRR.

Statutory authority: Workers' Compensation Law, sections 117 and 137

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

Specific reasons underlying the finding of necessity: This amendment is adopted as an emergency measure because time is of the essence. Memorandum of Decisions issued by Panels of three members of the Workers' Compensation Board (Board) have interpreted the current regulation as requiring reports of independent medical examinations to be received by the Board within ten calendar days of the exam. Due to the time it takes to prepare the report and mail it, the fact the Board is not open on legal holidays, Saturdays and Sundays to receive the report, and the U.S. Postal Service is not open on legal holidays and Sundays, it is extremely difficult to timely file said reports. If a report is not timely filed it is not accepted into evidence and is not considered when a decision is rendered. As the medical professional preparing the report must send the report on the same day and in the same manner to the Board, the workers' compensation insurance carrier/self-insured employer, the claimant's treating provider, the claimant's representative and the claimant it is not possible to send the report by facsimile or electronic means. The Decisions have greatly, negatively impacted the professionals who conduct independent medical examinations and the entities that arrange and facilitate these exams, as well as the workers' compensation insurance carriers and self-insured employers. When untimely reports are not accepted into evidence, the insurance carriers and self-insured employers are prevented from adequately defending their position in a workers' compensation claim. Accordingly, emergency adoption of this rule is necessary.

Subject: Filing written reports of Independent Medical Examinations (IMEs).

Purpose: To amend the time for filing written reports of IMEs with the Board and furnished to all others.

Text of emergency rule: Paragraph (11) of subdivision (d) of section 300.2 of Title 12 NYCRR is amended to read as follows:

(11) A written report of a medical examination duly sworn to, shall

be filed with the Board, and copies thereof furnished to all parties as may be required under the Workers' Compensation Law, within 10 *business* days after the examination, or sooner if directed, except that in cases of persons examined outside the State, such reports shall be filed and furnished within 20 *business* days after the examination. *A written report is filed with the Board when it has been received by the Board pursuant to the requirements of the Workers' Compensation Law.*

This notice is intended to serve only as an emergency adoption, to be valid for 90 days or less. This rule expires February 19, 2012.

Text of rule and any required statements and analyses may be obtained from: Heather MacMaster, Workers' Compensation Board, Office of General Counsel, 20 Park Street, Albany, NY 12207, (518) 486-9564, email: regulations@wcb.state.ny.us

Regulatory Impact Statement

1. Statutory authority:

The Workers' Compensation Board (hereinafter referred to as Board) is clearly authorized to amend 12 NYCRR 300.2(d)(11). Workers' Compensation Law (WCL) Section 117(1) authorizes the Chair to make reasonable regulations consistent with the provisions of the Workers' Compensation Law and the Labor Law. Section 141 of the Workers' Compensation Law authorizes the Chair to make administrative regulations and orders providing, in part, for the receipt, indexing and examining of all notices, claims and reports, and further authorizes the Chair to issue and revoke certificates of authorization of physicians, chiropractors and podiatrists as provided in sections 13-a, 13-k, and 13-l of the Workers' Compensation Law. Section 137 of the Workers' Compensation Law mandates requirements for the notice, conduct and reporting of independent medical examinations. Specifically, paragraph (a) of subdivision (1) requires a copy of each report of an independent medical examination to be submitted by the practitioner on the same day and in the same manner to the Board, the carrier or self-insured employer, the claimant's treating provider, the claimant's representative and the claimant. Sections 13-a, 13-k, 13-l and 13-m of the Workers' Compensation Law authorize the Chair to prescribe by regulation such information as may be required of physicians, podiatrists, chiropractors and psychologists submitting reports of independent medical examinations.

2. Legislative objectives:

Chapter 473 of the Laws of 2000 amended Sections 13-a, 13-b, 13-k, 13-l and 13-m of the Workers' Compensation Law and added Sections 13-n and 137 to the Workers' Compensation Law to require authorization by the Chair of physicians, podiatrists, chiropractors and psychologists who conduct independent medical examinations, guidelines for independent medical examinations and reports, and mandatory registration with the Chair of entities that derive income from independent medical examinations. This rule would amend one provision of the regulations adopted in 2001 to implement Chapter 473 regarding the time period within which to file written reports from independent medical examinations.

3. Needs and benefits:

Prior to the adoption of Chapter 473 of the Laws of 2000, there were limited statutory or regulatory provisions applicable to independent medical examiners or examinations. Under this statute, the Legislature provided a statutory basis for authorization of independent medical examiners, conduct of independent medical examinations, provision of reports of such examinations, and registration of entities that derive income from such examinations. Regulations were required to clarify definitions, procedures and standards that were not expressly addressed by the Legislature. Such regulations were adopted by the Board in 2001.

Among the provisions of the regulations adopted in 2001 was the requirement that written reports from independent medical examinations be filed with the Board and furnished to all parties as required by the WCL within 10 days of the examination. Guidance was provided in 2002 to some to participants in the process from executives of the Board that filing was accomplished when the report was deposited in a U.S. mailbox and that "10 days" meant 10 calendar days. In 2003 claimants began raising the issue of timely filing with the Board of the written report and requesting that the report be excluded if not timely filed. In response some representatives for the carriers/self-insured employers presented the 2002 guidance as proof they were in compliance. In some cases the Workers' Compensation Law Judges (WCLJs) found the report to be timely, while others found it to be untimely. Appeals were then filed to the Board and assigned to Panels of Board Commissioners. Due to the differing WCLJ decisions and the appeals to the Board, Board executives reviewed the matter and additional guidance was issued in October 2003. The guidance clarified that filing is accomplished when the report is received by the Board, not when it is placed in a U.S. mailbox. In November 2003, the Board Panels began to issue decisions relating to this issue. The Panels held that the report is filed when received by the Board, not when placed in a U.S. mailbox, the CPLR provision providing a 5-day grace period for

mailing is not applicable to the Board (WCL Section 118), and therefore the report must be filed within 10 days or it will be precluded.

Since the issuance of the October 2003 guidance and the Board Panel decisions, the Board has been contacted by numerous participants in the system indicating that ten calendar days from the date of the examination is not sufficient time within which to file the report of the exam with the Board. This is especially true if holidays fall within the ten day period as the Board and U.S. Postal Service do not operate on those days. Further the Board is not open to receive reports on Saturdays and Sundays. If a report is precluded because it is not filed timely, it is not considered by the WCLJ in rendering a decision.

By amending the regulation to require the report to be filed within ten business days rather than calendar days, there will be sufficient time to file the report as required. In addition by stating what is meant by filing there can be no further arguments that the term "filed" is vague.

4. Costs:

This proposal will not impose any new costs on the regulated parties, the Board, the State or local governments for its implementation and continuation. The requirement that a report be prepared and filed with the Board currently exists and is mandated by statute. This rule merely modifies the manner in which the time period to file the report is calculated and clarifies the meaning of the word "filed".

5. Local government mandates:

Approximately 2511 political subdivisions currently participate as municipal employers in self-insured programs for workers' compensation coverage in New York State. These self-insured municipal employers will be affected by the proposed rule in the same manner as all other employers who are self-insured for workers' compensation coverage. As with all other participants, this proposal merely modifies the manner in which the time to file a report is calculated, and clarifies the meaning of the word "filed".

6. Paperwork:

This proposed rule does not add any reporting requirements. The requirement that a report be provided to the Board, carrier, claimant, claimant's treating provider and claimant's representative in the same manner and at the same time is mandated by WCL Section 137(1). Current regulations require the filing of the report with the Board and service on all others within ten days of the examination. This rule merely modifies the manner in which the time period to file the report is calculated and clarifies the meaning of the word "filed".

7. Duplication:

The proposed rule does not duplicate or conflict with any state or federal requirements.

8. Alternatives:

One alternative discussed was to take no action. However, due to the concerns and problems raised by many participants, the Board felt it was more prudent to take action. In addition to amending the rule to require the filing within ten business days, the Board discussed extending the period within which to file the report to fifteen days. In reviewing the law and regulations the Board felt the proposed change was best. Subdivision 7 of WCL Section 137 requires the notice of the exam be sent to the claimant within seven business days, so the change to business days is consistent with this provision. Further, paragraphs (2) and (3) of subdivision 1 of WCL Section 137 require independent medical examiners to submit copies of all request for information regarding a claimant and all responses to such requests within ten days of receipt or response. Further, in discussing this issue with participants to the system, it was indicated that the change to business days would be adequate.

The Medical Legal Consultants Association, Inc., suggested that the Board provide for electronic acceptance of IME reports directly from IME providers. However, at this time the Board cannot comply with this suggestion as WCL Section 137(1)(a) requires reports to be submitted by the practitioners on the same day and in the same manner to the Board, the insurance carrier, the claimant's attending provider and the claimant. Until such time as the report can be sent electronically to all of the parties, the Board cannot accept it in this manner.

9. Federal standards:

There are no federal standards applicable to this proposed rule.

10. Compliance schedule:

It is expected that the affected parties will be able to comply with this change immediately.

Regulatory Flexibility Analysis

1. Effect of rule:

Approximately 2511 political subdivisions currently participate as municipal employers in self-insured programs for workers' compensation coverage in New York State. Any independent medical exams conducted at their request must be filed by the physician, chiropractor, psychologist or podiatrist conducting the exam or by an independent medical examination (IME) entity. Workers' Compensation Law § 137 (1)(a) does not permit self-insured employers or insurance carriers to file these reports,

therefore there is no direct action a self-insured local government must or can take with respect to this rule. However, self-insured local governments are concerned about the timely filing of an IME report as one filed late will not be admissible as evidence in a workers' compensation proceeding. This rule makes it easier for a report to be timely filed as it expands the timeframe from 10 calendar days to 10 business days. Small businesses that are self-insured will also be affected by this rule in the same manner as self-insured local governments.

Small businesses that derive income from independent medical examinations are a regulated party and will be required to file reports of independent medical examinations conducted at their request within ten business days of the exam, rather than ten calendar days, in order that such reports may be admissible as evidence in a workers' compensation proceeding.

Individual providers of independent medical examinations who own their own practices or are engaged in partnerships or are members of corporations that conduct independent medical examinations also constitute small businesses that will be affected by the proposed rule. These individual providers will be required to file reports of independent medical examinations conducted at their request within ten business days of the exam, rather than ten calendar days, in order that such reports may be admissible as evidence in a workers' compensation proceeding.

2. Compliance requirements:

This rule requires the filing of IME reports within 10 business days rather than 10 calendar days. Prior to this rule medical providers authorized to conduct IMEs and IME entities hired to perform administrative functions for IME examiners, such as filing the report with the Board, had less time to file such reports. Self-insured local governments and small employers, who are not authorized or registered with the Chair to perform IMEs or related administrative services, are not required to take any action to comply with this rule. As noted above, WCL § 137(1)(a) does not permit self-insured employers or insurance carriers to file IME reports with the Board. The new requirement is solely the manner in which the time period to file reports of independent medical examinations is calculated.

3. Professional services:

It is believed that no professional services will be needed to comply with this rule.

4. Compliance costs:

This proposal will not impose any compliance costs on small business or local governments. The rule solely changes the manner in which a time period is calculated and only requires the use of a calendar.

5. Economic and technological feasibility:

No implementation or technology costs are anticipated for small businesses and local governments for compliance with the proposed rule. Therefore, it will be economically and technologically feasible for small businesses and local governments affected by the proposed rule to comply with the rule.

6. Minimizing adverse impact:

This proposed rule is designed to minimize adverse impacts due to the current regulations for small businesses and local governments. This rule provides only a benefit to small businesses and local governments.

7. Small business and local government participation:

The Board received input from a number of small businesses who derive income from independent medical examinations, some providers of independent medical examinations and the Medical Legal Consultants Association, Inc. which is a non-for-profit association of independent medical examination firms and practitioners across the State.

Rural Area Flexibility Analysis

1. Types and estimated numbers of rural areas:

This rule applies to all claimants, carriers, employers, self-insured employers, independent medical examiners and entities deriving income from independent medical examinations, in all areas of the state.

2. Reporting, recordkeeping and other compliance requirements:

Regulated parties in all areas of the state, including rural areas, will be required to file reports of independent medical examinations within ten business days, rather than ten calendar days, in order that such reports may be admissible as evidence in a workers' compensation proceeding. The new requirement is solely the manner in which the time period to file reports of independent medical examinations is calculated.

3. Costs:

This proposal will not impose any compliance costs on rural areas. The rule solely changes the manner in which a time period is calculated and only requires the use of a calendar.

4. Minimizing adverse impact:

This proposed rule is designed to minimize adverse impact for small businesses and local government that already exist in the current regulations. This rule provides only a benefit to small businesses and local governments.

5. Rural area participation:

The Board received input from a number of entities who derive income

from independent medical examinations, some providers of independent medical examinations and the Medical Legal Consultants Association, Inc. which is a non-for-profit association of independent medical examination firms and practitioners across the State.

Job Impact Statement

The proposed regulation will not have an adverse impact on jobs. The regulation merely modifies the manner in which the time period to file a written report of an independent medical examination is filed and clarifies the meaning of the word "filed". These regulations ultimately benefit the participants to the workers' compensation system by providing a fair time period in which to file a report.