

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.

Banking Department

EMERGENCY RULE MAKING

Registration and Financial Responsibility Requirements for Mortgage Loan Servicers

I.D. No. BNK-37-11-00002-E

Filing No. 762

Filing Date: 2011-08-24

Effective Date: 2011-08-24

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 MB 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, goes 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 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 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 require-

ments, 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 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 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.

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 an emergency adoption, to be valid for 90 days or less. This rule expires November 21, 2011.

Text of rule and any required statements and analyses may be obtained from: Sam L. Abram, Secretary of the Banking Board, New York State Banking Department, One State Street, New York, NY 10004-1417, (212) 709-1658, email: sam.abram@banking.state.ny.us

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. 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 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 August 23, 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.

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 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 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. 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 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 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 Division of the Banking Department.

MLSs are required to meet certain financial responsibility requirements based on their level of business. The regulations authorize the Superintendent 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. 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 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.

EMERGENCY RULE MAKING

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

I.D. No. BNK-37-11-00003-E

Filing No. 763

Filing Date: 2011-08-24

Effective Date: 2011-08-24

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 MB107 and MB108; addition of new Part 420 and Supervisory Procedure MB107 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 Banks.

Substance of emergency rule: 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.

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 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.

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 November 21, 2011.

Text of rule and any required statements and analyses may be obtained from: Sam L. Abram, New York State Banking Department, One State Street, New York, NY 10004-1417, (212) 709-1658, email: sam.abram@banking.state.ny.us

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's 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 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 previ-

ously 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:

1. 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.

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

3. 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.

4. Individuals who have applied for "authorization" under the prior version of Article 12-E and Part 420 have a simplified process for becoming licensed and may continue to originate loans until they are licensed under the revised regulation or their applications are denied.

5. 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.

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

7. 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 businesses 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.

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 Banking Department currently 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 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 Division of the Banking 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 requirements, 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 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.

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Filing and Certification of Call Reports

I.D. No. BNK-37-11-00004-P

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

Proposed Action: Amendment of Part 23; and addition of Part 342 to Title 3 NYCRR.

Statutory authority: Banking Law, sections 14(1)(l), 37 and 204

Subject: Filing and certification of call reports.

Purpose: Requires all banks, trust companies, private bankers and branches and agencies of foreign banking organizations to file and certify the correctness of call reports.

Text of proposed rule: Part 23

CALL REPORTS

(Statutory authority: Banking Law §§ 14(1)(l), 37)

23.1 Call Reports

(a) Section 14(1)(l) of the Banking Law empowers the Banking Board to prescribe the form and contents of periodical reports of condition ("Call Reports") to be rendered to the Superintendent by banks, trust companies and private bankers. [A periodical report of condition shall be deemed rendered to the superintendent if the superintendent shall have such access as he or she deems appropriate at either the principal office of the bank or trust company, or through the facilities of the Federal Deposit Insurance Corporation or Federal Reserve Board, as the case may be, to such reports of condition as have been rendered to the Federal Deposit Insurance Corporation or Federal Reserve Board, as the case may be, in compliance with their rules and regulations. With respect to reports of banks and trust companies not otherwise reporting to the Federal Reserve or FDIC, such reports shall be rendered to the superintendent on the forms prescribed by the Banking Board.]

(b) Such reports shall be in the form and shall include the content required by the Consolidated Reports of Condition and Income promulgated by the Federal Financial Institutions Examination Council ("FFIEC"), whether or not such reporting entity is otherwise required to

file a Call Report with a federal banking regulator. Forms and instructions for such reports may be found on the website of the FFIEC (www.ffiec.gov/).

23.2 Filing; Deemed Filing

[A reporting entity that is not required to file a periodical report of condition with a federal banking regulator shall file such report, either electronically or in hard copy, with the Superintendent.]

(a) A reporting entity shall render a periodical report of condition, either electronically or in hard copy, to the Superintendent.

(b) A Call Report shall be deemed rendered to the Superintendent if the Superintendent shall have such access as he or she deems appropriate through the facilities of the Federal Deposit Insurance Corporation or Federal Reserve Board, as the case may be (the "appropriate federal regulatory authority"), to such Call Reports as have been rendered to such appropriate federal regulatory authority, in compliance with rules and regulations of such appropriate federal regulatory authority.

23.3 Certification

By virtue of filing its Call Report with the appropriate federal regulatory authority, the reporting entity, through its Chief Financial Officer (or equivalent officer), and its attesting directors or trustees, shall be deemed to have made the appropriate certification set forth below.

(a) CFO (or equivalent):

I attest that the Reports of Condition and Income (including the supporting schedules) for this report date have been prepared in conformance with the instructions issued by the appropriate federal regulatory authority and are true and correct to the best of my knowledge and belief.

(b) Each director or trustee:

I attest to the correctness of the Reports of Condition and Income (including the supporting schedules) for this report date and declare that the Reports of Condition and Income have been examined by me and to the best of my knowledge and belief have been prepared in conformance with the instructions issued by the appropriate federal regulatory authority and are true and correct.

23.4 Corrected Filings

If the reporting entity files a corrected Call Report with the appropriate federal regulatory authority, it will immediately notify the Superintendent in writing of such corrected filing.

Part 342

CALL REPORTS

(Statutory authority: Banking Law §§ 37, 204, 255, 404)

342.1 Call Reports

(a) Section 204 of the Banking Law requires every foreign banking corporation doing business in this state to make written reports to the Superintendent under oath showing the amount of its assets and liabilities and containing such other matters as the superintendent shall prescribe.

(b) Section 255 of the Banking Law requires savings banks to make a written report to the superintendent annually which shall contain a statement of its condition and shall include such information and be in such form as the superintendent may prescribe. This section also requires savings banks to make such other special reports as the superintendent shall from time to time require.

(c) Section 404 of the Banking Law requires every savings and loan association to make a written report to the superintendent annually which shall contain a statement of its condition and shall include such information and be in such form as the superintendent may prescribe. This section also requires savings and loan associations to make such other special reports as the superintendent shall from time to time require.

(d) Such reports shall be in the form and shall include the content required by the Report of Assets and Liabilities of U.S. Branches and Agencies of Foreign Banks or the Consolidated Report of Condition and Income promulgated by the Federal Financial Institutions Examination Council ("FFIEC"), whichever is applicable, whether or not such reporting entity is otherwise required to file a report of condition with a federal banking regulator. Forms and instructions for such reports may be found on the website of the FFIEC (<http://www.ffiec.gov/>).

342.2 Filing; Deemed Filing

(a) A reporting entity shall render a periodical report of condition, either electronically or in hard copy, to the superintendent.

(b) A periodical report of condition shall be deemed rendered to the

superintendent if the superintendent shall have such access as he or she deems appropriate through the facilities of the Federal Deposit Insurance Corporation or the Federal Reserve Board, as the case may be (the "appropriate federal regulatory authority"), to such reports of condition as have been rendered to the appropriate federal regulatory authority, in compliance with the rules and regulations of such appropriate federal regulatory authority.

342.3 Certification

By virtue of filing its periodical report of condition with the appropriate federal regulatory authority, the reporting entity, through its Chief Financial Officer (or equivalent officer), and its attesting senior executive officer, shall be deemed to have made the appropriate certification set forth below:

(a) CFO (or equivalent):

I attest that this Report of Assets and Liabilities or Report of Condition, whichever is applicable, (including the supporting schedules and supplement) for this report date has been prepared in conformance with the instructions issued by the appropriate federal regulatory authority and is true and correct to the best of my knowledge and belief.

(b) Attesting Senior Executive Officer of foreign bank branch or agency or Each Director or Trustee of Savings Bank or Savings and Loan Association.

I attest to the correctness of this Report of Assets and Liabilities or Report of Condition, whichever is applicable, (including the supporting schedules and supplement) for this report date and declare that it has been examined by me and to the best of my knowledge and belief has been prepared in conformance with the instructions issued by the appropriate federal regulatory authority and is true and correct.

342.4 Corrected Filings

If the reporting entity files a corrected Report of Assets and Liabilities or Report of Condition with the appropriate Federal regulatory authority, it will immediately notify the superintendent in writing of such corrected filing.

Text of proposed rule and any required statements and analyses may be obtained from: Sam L. Abram, Secretary of the Banking Board, New York State Banking Department, One State Street, New York, NY 10004-1417, (212) 709-1658, email: sam.abram@banking.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

1. Statutory authority.

Section 14(1)(l) of the Banking Law authorizes the Banking Board to adopt rules and regulations to, among other things, prescribe the form and contents of periodical reports of condition to be rendered to the Superintendent by banks and trust companies.

Section 37(4) of the Banking Law authorizes the Superintendent to prescribe the form and content of all periodical and special reports, except as otherwise expressly provided in the Banking Law.

Section 204 of the Banking Law requires every foreign banking corporation licensed by the Superintendent to engage in business in this state to make written reports to the Superintendent at such times and in such form as the Superintendent shall prescribe, under the oath of one of its officers, managers or agents transacting business in this state, showing the amount of its assets and liabilities and containing such other matters as the Superintendent shall prescribe.

Section 255 of the Banking Law requires every savings bank, on or before the first day of February in each year, to make a written report to the Superintendent which shall contain a statement of its condition as of the morning of the first day of January of such year and shall contain such information and be in such form as the Superintendent may prescribe. That section also requires every savings bank to make such other special reports to the Superintendent as he may from time to time require, in such form and as of such date as may be prescribed by him.

Section 404 of the Banking Law requires every savings and loan association, on or before the first day of February in each year, to make a written report to the Superintendent which shall contain a statement of its condition as of the morning of the first day of January of such year and shall contain such information and be in such form as the Superintendent may prescribe. That section also requires every savings and loan associa-

tion to make such other special reports to the Superintendent as he may from time to time require, in such form and as of such date as may be prescribed by him.

2. Legislative objectives.

The periodic reports of condition filed by regulated banking organizations are generally referred to as "call reports".

The provisions of the Banking Law cited in the previous section reflect the Legislature's understanding that the Department and other bank supervisory agencies use call reports in connection with the on-site examination of regulated banking organizations and for analysis of their operations. Call report data is also used by the Department, as well as other public and private sector organizations, in tracking conditions in the banking system and the financial markets.

Periodic, consistent and accurate data about the financial condition of regulated institutions is an essential tool of effective bank supervision and regulation. The Banking Law provisions requiring regulated institutions to render call reports to the Department recognize this fundamental element of banking regulation.

By having the individuals signing the call report, as well as the institution, certify the accuracy and completeness of the report directly to the Department, whether the entity files its call report with its primary federal regulator or directly with the Department, these amendments further the underlying legislative objective.

3. Needs and benefits.

As noted in the previous section, the Department and other bank supervisory agencies use call reports in connection with the on-site examination of regulated banking organizations and for analysis of their operations. Call report data is also used by the Department in the process of assessing regulated institutions for the expenses of the Department pursuant to Section 17 of the Banking Law, and is used by the Department as well as other public and private sector organizations, in tracking conditions in the banking system and the financial markets. For all of these purposes, consistent and accurate periodic data about the financial condition of regulated institutions is essential.

Most banking institutions regulated by the Department, including licensed branches and agencies of foreign banking organizations, are required to file call reports with their primary federal regulator on forms specified by the Federal Financial Institutions Examination Council (FFIEC). The regulatory changes here proposed will have the effect of (1) formalizing the requirement that such reports also be filed with the Department, (2) formalizing the requirement that those relatively few banking institutions regulated by the Department which are not required to file call reports with a federal regulator file such reports with the Department using the same forms as the federal filers, and (3) requiring that banking institutions filing call reports with the Department provide the same certification as to the accuracy and completeness of the reports that federal filers provide to their principal federal regulator.

Taken together, these requirements will ensure that the Department has an explicit and direct legal basis on which to take appropriate enforcement action against any of its regulated banking institutions which fails to file a call report or files a report which is not true and correct, or against any individual who certifies an inaccurate report.

4. Costs.

Most banking institutions regulated by the State are already required to file call reports in the form specified by the FFIEC with their principal federal regulator. The Department has access to such reports through the Board of Governors of the Federal Reserve System ("Federal Reserve") or the Federal Deposit Insurance Corporation ("FDIC"), as the case may be.

Existing Part 23 minimizes the cost and burden of compliance with the State's reporting requirements by providing that a call report is deemed rendered to the Superintendent if appropriate access to the institution's federally filed call report is available.

The amendments to Part 23 and new Part 342 retain this basic approach. They provide, among other things, that entities which are not federal filers should file their call reports with the Department on the FFIEC forms. Acceptance of the FFIEC forms by the Department will minimize the cost and burden associated with the reporting process. These forms are well known throughout the banking industry and have very detailed and extensive instructions. Moreover, accounting software and other forms of technical assistance in filling out the forms is readily available from accounting and consulting firms that work with the industry.

While the proposed amendments require that call reports be certified to the Department as true and correct, they do so in a way that minimizes regulatory cost and burden. Federal filers are deemed to have made the appropriate certification to the Department by virtue of filing their reports of condition with the appropriate federal entity. Entities that are not federal filers will also file using the FFIEC call report forms, which include a form of certification.

5. Local government mandates.

None.

6. Paperwork.

Under the regulation, entities that are federal filers are deemed to have met the State filing requirement so long as the Department has adequate access to the federally filed call reports. At present, the Department can access the complete reports of federal filers as soon as the reports are filed.

The regulation gives entities that are not federal filers the option of filing their reports with the Department electronically.

7. Duplication.

The regulation effectively avoids duplication by specifying that Department access to an institution's federal call report filing satisfies State filing and certification requirements.

8. Alternatives.

The Department could continue its present regulatory regime, under which a call report is deemed rendered to the Department as long as the Department has appropriate access to the federally filed report.

Under that regime, however, it is not entirely clear that the individuals certifying that the report is true and correct are making the certification to the Department as well as to the federal regulatory agency with which the report is filed.

While the Department could presumably take enforcement action regarding failure to file a true and correct call report under various provisions of the Banking Law, these amendments make it clear that the individuals signing the call report, as well as the institution, are directly certifying its accuracy and completeness to the Department.

The Department could have developed its own call report form, including its own form of certification, for use by institutions that do not file federally. However, as discussed in Section 4 on "Costs" above, acceptance of the FFIEC forms by the Department should reduce the cost and burden associated with the reporting process. These forms are well known throughout the banking industry and have very detailed and extensive instructions. Moreover, accounting software and other forms of technical assistance in filling out the forms are readily available from accounting and consulting firms that work with the industry.

9. Federal standards.

Federally insured depository institutions, as well as U.S. branches and agencies of foreign banking organizations, are required to file call reports on the forms specified by the FFIEC with their appropriate federal regulator.

The regulation permits institutions subject to a federal filing requirement to use compliance with that requirement to satisfy the state's requirement. It permits institutions which are not federal filers to file using the FFIEC forms.

10. Compliance schedule.

The regulatory changes are effective upon adoption.

Regulatory Flexibility Analysis

1. Effect of the Rule:

The amendments will not have any impact on local governments. Of the banking institutions regulated by the Department which may be deemed to be small businesses, only a handful will be subject to additional requirements by reason of the amendments.

2. Compliance Requirements:

All federally insured banking institutions licensed by the state, as well as all state-licensed branches and agencies of foreign banks, are presently required to submit periodic reports of condition (call reports) on forms prescribed by the Federal Financial Institutions Examination Council (FFIEC) to their appropriate federal regulator.

Part 23 of the Department's regulations presently requires banks and trust companies which do not file call reports with a federal regulator to file such reports with the Superintendent.

The amended Part 23, as well as new Part 342, make it clear that institutions which are not federal filers should use the FFIEC call report forms in filing with the state. They further provide for deemed certification of call report information to the Department by federal filers. In the case of non-federal filers, the FFIEC call report forms they are required to file with the Department include a certification.

3. Professional Services:

None.

4. Compliance Costs:

All of the entities covered by the regulation are already required to file call reports with their principal federal regulator, if any. Entities that are not federal filers are already required to file call reports directly with the Department.

For federal filers, the regulation effectively treats compliance with the federal call report requirements as compliance with the state requirements, except that they are required to immediately notify the Department if they file a corrected call report with their principal federal regulator. For non-federal filers, requiring use of the FFIEC call report form, including the form of certification, will minimize compliance costs.

5. Economic and Technological Feasibility:

The proposed rule-making should impose no adverse economic or technological burden on banking institutions which are small businesses. Federal regulations already require federal filers to file their call reports electronically. Non-federal filers, which are already required by existing regulations to file call reports with the Department, are given the choice of filing electronically or in hard copy.

6. Minimizing Adverse Impacts:

The regulations minimize any potential costs and burdens by permitting regulated institutions to rely on their federal filings, if any, and the federal call report forms in order to meet the state call report requirements.

7. Small Business and Local Government Participation:

The regulation has no impact on local governments. The Department maintains regular contact with representatives of the financial institutions associations, which include financial institutions that are small businesses.

The Department has utilized this knowledge base in drafting this regulation.

Rural Area Flexibility Analysis

Types and Estimated Numbers: Some of the banking institutions regulated by the Department are located in rural areas of New York State and would be impacted by the proposal. It is believed that all such institutions are federally insured. It is not believed that any state-licensed branches or agencies of foreign banks are located in rural areas.

Compliance Requirements. All federally insured banking institutions licensed by the state, including those located in rural areas, are presently required to submit periodic reports of condition (call reports) on forms prescribed by the Federal Financial Institutions Examination Council (FFIEC) to their appropriate federal regulator.

Part 23 of the Department's regulations presently requires banks and trust companies which do not file call reports with a federal regulator to file such reports with the Superintendent.

The amended Part 23, as well as new Part 342, make it clear that institutions which are not federal filers should use the FFIEC call report forms in filing with the state. They further provide for deemed certification of call report information to the Department by federal filers. In the case of non-federal filers, the FFIEC call report forms they are required to file with the Department include a certification.

Costs. For federal filers, the regulation effectively treats compliance with the federal call report requirements as compliance with the state requirements. Thus, there should be minimal cost for such filers, including those located in rural areas.

Minimizing Adverse Impacts. The regulations minimize any potential costs and burdens by permitting regulated institutions, including those in rural areas, to rely on their federal filings in order to meet the state call report requirements.

Rural Area Participation. The Department maintains regular contact with representatives of the financial institutions associations, which include financial institutions that are located in rural areas. The Department has utilized this knowledge base in drafting the instant regulation.

Job Impact Statement

The requirement to comply with the proposed regulations is not expected to have a significant adverse effect on jobs or employment activities within the banking industry.

All of the entities covered by the regulation are already required to file call reports with their principal federal regulator, if any. Entities that are not federal filers are already required to file call reports directly with the Department.

The amended regulation simply makes it clear that institutions which are not federal filers should use the FFIEC call report forms in filing with the state. It further provides for deemed certification of call report information to the Department by federal filers. In the case of non-federal filers, the FFIEC call report forms they are required to file with the Department include a certification.

Department of Corrections and Community Supervision

NOTICE OF ADOPTION

Residential Mental Health Treatment Units

I.D. No. CCS-24-11-00004-A

Filing No. 766

Filing Date: 2011-08-26

Effective Date: 2011-09-14

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

Action taken: Addition of Part 320 to Title 7 NYCRR.

Statutory authority: Correction Law, sections 2, 112, 137 and 401

Subject: Residential Mental Health Treatment Units.

Purpose: To define models of residential mental health treatment units operated by the Department and the Office of Mental Health.

Text or summary was published in the June 15, 2011 issue of the Register, I.D. No. CCS-24-11-00004-P.

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

Text of rule and any required statements and analyses may be obtained from: Maureen E. Boll, Deputy Commissioner and Counsel, NYS Department of Corrections and Community Supervision, Harriman State Campus - Building 2 - 1220 Washington Avenue, Albany, NY 12226-2050, (518) 457-4951, email: Rules@DOCCS.ny.gov

Assessment of Public Comment

The agency received no public comment.

Division of Criminal Justice Services

EMERGENCY/PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Probation State Aid Block Grant Funding

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

Filing No. 772

Filing Date: 2011-08-30

Effective Date: 2011-09-04

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

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

Statutory authority: Executive Law, sections 243 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/proposed rule: Part 345 of 9 NYCRR is REPEALED and a new Part 345 is added to read as follows:

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 as both a notice of emergency adoption and a notice of proposed rule making. The emergency rule will expire October 28, 2011.

Text of rule and any required statements and analyses may be obtained from: Linda J. Valenti, Assistant Counsel, Division of Criminal Justice Services, 4 Tower Place, Albany, NY 12203-3764, (518) 457-8413, email: linda.valenti@dcjs.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.

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-imbursement 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-imbursement.

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, record keeping and compliance requirements are similar to those of prior years. This regulation has no effect 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, record keeping, 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, record keeping 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.

NOTICE OF ADOPTION**Elements of Test Battery to be Used for Physical Fitness Screening**

I.D. No. CJS-25-11-00014-A

Filing No. 770

Filing Date: 2011-08-30

Effective Date: 2011-09-14

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

Action taken: Amendment of section 6000.8(b) of Title 9 NYCRR.

Statutory authority: Executive Law, sections 837(13) and 840(2)

Subject: Elements of test battery to be used for physical fitness screening.

Purpose: The proposal updates the table used for the physical fitness screening test for police officer candidates.

Text or summary was published in the June 22, 2011 issue of the Register, I.D. No. CJS-25-11-00014-P.

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

Text of rule and any required statements and analyses may be obtained from: Natasha M. Harvin, Division of Criminal Justice Services, 4 Tower Place, Albany, NY 12203, (518) 457-8413, email: natasha.harvin@dcjs.state.ny.us

Assessment of Public Comment

The agency received no public comment.

Education Department**PROPOSED RULE MAKING
NO HEARING(S) SCHEDULED****Waiver of Corporate Professional Practice Restrictions for Certain Mental Health Professions**

I.D. No. EDU-37-11-00016-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 59.14 of Title 8 NYCRR.

Statutory authority: Education Law, sections 207(not subdivided), 6503-a(1)(a), (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 59.14 of the Regulations of the Commissioner of Education as amended by Ch. 187, L. 2011.

Text of proposed rule: Paragraphs (1) and (2) of subdivision (c) of section 59.14 of the Regulations of the Commissioner of Education are amended, effective September 20, 2011, as follows:

(1) To provide the services described in subdivision (a) of this section, an eligible entity shall have [obtained a waiver from] *applied to* the department *for a waiver* no later than [July] *February* 1, 2012. The department may[, however,] issue a waiver to a qualified entity after July 1, 2012, regardless of the date on which the entity was created, upon a demonstration of need for the entity's services satisfactory to the department (e.g., the entity provides services to an underserved population or in a shortage area).

(2) [Within 120 days after the posting of the application form on the department's website,] *No later than February 1, 2012*, any entity described in subdivision (b) of this section providing services described in subdivision (a) of this section on or after June 18, 2010, shall submit an application for a waiver on forms prescribed by the commissioner. Upon submission of an application for a waiver under this section, the entity may continue to operate and provide services until the department either denies or approves the entity's application.

Text of proposed rule and any required statements and analyses may be obtained from: Chris Moore, State Education Department, Office of Counsel, State Education Building, Room 148, 89 Washington Ave., Albany, NY 12234, (518) 473-8296, email: legal@mail.nysed.gov

Data, views or arguments may be submitted to: Douglas Lentivech, Deputy Commission, State Education Department, Office of Professional Education, State Education Building, 2M, 89 Washington Ave., Albany, NY 12234, (518) 473-3817, email: opdecom@mail.nysed.gov

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

1. STATUTORY AUTHORITY:

Education Law section 207 grants general rule making authority to the Board of Regents to carry into effect the laws and policies of the State relating to education.

Education Law section 6503-a authorizes the Board of Regents to issue a waiver to qualified entities that seek to provide certain professional services, as defined in the Education Law.

Education Law section 6504 authorizes the Board of Regents to supervise the admission to and regulation of the practice of the professions.

Education Law section 6507(2)(a) authorizes the Commissioner of Education to promulgate regulations relating to the professions.

Chapter 187 of the Laws of 2011 was approved on July 21, 2011 and amends Education Law section 6503-a to extend until February 1, 2012, the date by which certain not-for-profit corporations and education corporations must apply for a waiver of the corporate practice restrictions in the Education Law.

2. LEGISLATIVE OBJECTIVES:

The proposed amendment is necessary to conform the Commissioner's regulations to Education Law section 6503-a, as amended by Chapter 187 of the Laws of 2011. Consistent with the statute, the proposed amendment extends to February 1, 2012 the the date by which certain not-for-profit corporations and education corporations must apply for a waiver from restrictions on corporate practice for professional services provided under Articles 154 and 163 of the Education Law and psychotherapy services under section 8401(2) of the Education Law and authorized and provided under Articles 131, 139 or 153 of the Education Law.

3. NEEDS AND BENEFITS:

On June 18, 2010, Governor Paterson signed into law Chapters 130 and 132 of the Laws of 2010, which amended the Education Law to address critical issues relating to the authority of certain entities to employ licensed master social workers (LMSW), licensed clinical social workers (LCSW), licensed mental health counselors (LMHC), licensed marriage and family therapists (LMFT), licensed creative arts therapists (LCAT), licensed psychoanalysts (LP), and licensed psychologists and to provide services within the scopes of practice of those professions. Prior to the restrictions on practice of those professions established by laws enacted in 2002, any individual or entity could provide psychotherapy and other services that are now restricted. While the new licensing laws provided exemptions for individuals in certain programs, these exemptions did not extend to thousands of not-for-profit and educational corporations throughout New

York that provide essential services. This affected not only access to services for vulnerable persons, but also the ability of new graduates to meet the experience requirements for licensure in authorized settings, thereby restricting access to the licensed professions.

Chapter 130 of the Laws of 2010 added a new Education Law section 6503-a, which authorizes the Department to issue waivers of the corporate professional practice restrictions to certain not-for-profit or educational corporations that were in existence on the effective date of the law and that apply for the waiver by a specified deadline. As noted above, Chapter 187 of the Laws of 2011 amended Education Law section 6503-a to extend the time during which waiver applications can be submitted. An entity must now submit a waiver application by February 1, 2012 and may continue to provide services until the application is approved or denied. If an application is denied by the Department, the entity must cease providing professional services in New York.

The proposed amendment of section 59.14 of the Commissioner's regulations is necessary to conform the Commissioner's regulations to Education Law section 6503-a, as amended by Chapter 187 of the Laws of 2011. Consistent with the statute, the proposed amendment merely extends to February 1, 2012 the date by which certain not-for-profit corporations and education corporations must apply for a waiver from corporate professional practice restrictions in the Education Law.

4. COSTS:

(a) Costs to State government: The proposed amendment is necessary to conform the Commissioner's regulations to Education Law section 6503-a, as amended by Chapter 187 of the Laws of 2011, and does not impose any additional costs on State government.

(b) Cost to local government: The proposed amendment applies to certain not-for-profit corporations and education corporations and does not impose any costs on local government.

(c) Cost to private regulated parties: Consistent with Chapter 187 of the Laws of 2011, the proposed amendment merely extends the deadline for certain not-for-profit corporations and education corporations to apply for a waiver of corporate professional practice restrictions and will not impose any costs on applicants for the waiver.

(d) Cost to the regulatory agency: As stated above in Costs to State government, the proposed amendment does not impose any additional costs on the State Education Department.

5. LOCAL GOVERNMENT MANDATES:

The proposed amendment is necessary to conform the Commissioner's regulations to Education Law section 6503-a, as amended by Chapter 187 of the Laws of 2011, by extending until February 1, 2012 the deadline for certain not-for-profit corporations and education corporations to apply for a waiver to provide certain professional services under Title VIII of the Education Law. The proposed amendment does not impose any program, service, duty or responsibility upon local governments.

6. PAPERWORK:

The proposed amendment imposes no additional reporting or record-keeping requirements beyond those imposed by section 6503-a of the Education Law. In accordance with section 6503-a, entities applying for a waiver will be required to submit to the State Education Department an application and evidence satisfactory to the Department that the entity meets the requirements in law and regulation for a waiver. Consistent with Chapter 187 of the Laws of 2011, the proposed amendment merely extends the deadline for submission of such application to February 1, 2012.

7. DUPLICATION:

The proposed regulation does not duplicate other existing State or Federal requirements, and is necessary to conform the Commissioner's regulations to Chapter 187 of the New York State Laws of 2011.

8. ALTERNATIVES:

The proposed amendment is necessary to conform the Commissioner's regulations to Education Law section 6503-a, as amended by Chapter 187 of the Laws of 2011. Consistent with the statute, the proposed amendment merely extends until February 1, 2012, the date by which certain not-for-profit corporations and education corporations must apply to the Department for a waiver of corporate professional practice restrictions under Education Law section 6503-a. Therefore, there are no viable alternatives and none were considered.

9. FEDERAL STANDARDS:

There are no Federal standards for the waiver of corporate practice prohibitions for certain not-for-profit or educational corporations, as defined in Education Law section 6503-a.

10. COMPLIANCE SCHEDULE:

The proposed amendment conforms the Commissioner's regulations to Education Law section 6503-a, as amended by Chapter 187 of the Laws of 2011. Consistent with the statute, the proposed amendment merely extends until February 1, 2012, the date by which certain not-for-profit corporations and education corporations must apply to the Department for a waiver of corporate professional practice restrictions under Education law section 6503-a. It is anticipated that regulated parties will be able to achieve compliance with the proposed amendment by its effective date.

Regulatory Flexibility Analysis

The proposed amendment of section 59.14 of the Commissioner's regulations is necessary to conform the Commissioner's regulations to Education Law section 6503-a, as amended by Chapter 187 of the Laws of 2011. The statute authorizes certain not-for-profit corporations and education corporations that were in existence on the statute's effective date to apply by a specified deadline for a waiver from the corporate professional practice restrictions in the Education Law. Issuance of the waiver permits such corporations to provide professional services within the scopes of practice of the professions of licensed master social workers (LMSW), licensed clinical social workers (LCSW), licensed mental health counselors (LMHC), licensed marriage and family therapists (LMFT), licensed creative arts therapists (LCAT), licensed psychoanalysts (LP), and/or licensed psychologists.

Section 6503-a was amended by Chapter 187 of the Laws of 2011, which was signed on July 21, 2011 and extended until February 1, 2012 the deadline for submitting a waiver application. The proposed amendment merely conforms section 59.14 of the Commissioner's regulations to the February 1, 2012 date extension for submission of a waiver application by certain not-for-profit corporations and education corporations, and will not impose any compliance requirements or costs, or have an adverse impact on, small businesses and local governments as they are not authorized to apply for a waiver. Because it is clear from the nature of the proposed amendment that there will be no effect on small businesses or local governments, no further steps were needed to ascertain that fact and none were taken.

Rural Area Flexibility Analysis**1. TYPES AND ESTIMATED NUMBER OF RURAL AREAS:**

Chapter 187 of the Laws of 2011 was signed on July 21, 2011 to amend Education Law section 6503-a by extending until February 1, 2012 the date by which certain not-for-profit corporations and education corporations as specified in the statute, must apply for a waiver from the corporate professional practice restrictions in the Education Law. The amendment does not change the purpose of the law establishing the waiver, which was signed into law on June 18, 2010 to address critical issues relating to the authority of these corporations to provide professional services within the scope of practice of licensed master social workers (LMSW), licensed clinical social workers (LCSW), licensed mental health counselors (LMHC), licensed marriage and family therapists (LMFT), licensed creative arts therapists (LCAT), licensed psychoanalysts (LP), and licensed psychologists. The proposed amendment is applicable to not-for-profit corporations and education corporations that provide these professional services in the 44 rural counties with less than 200,000 inhabitants and the 71 towns in urban counties with a population density of 150 per square mile or less.

2. REPORTING, RECORDKEEPING AND OTHER COMPLIANCE REQUIREMENTS; AND PROFESSIONAL SERVICES:

The proposed amendment is necessary to conform section 59.14 of the Commissioner's regulations to Education Law section 6503-a, as amended by Chapter 187 of the Laws of 2011. Consistent with the statute, the proposed amendment merely extends until February 1, 2012, the date by which certain not-for-profit corporations and education corporations must apply to the Department for a waiver of corporate professional practice restrictions under Education law section 6503-a. There is no cost for the application and the proposed amendment does not impose any additional reporting, recordkeeping or other compliance requirements, or professional service requirements, on entities located in rural areas.

3. COSTS:

Consistent with Chapter 187 of the Laws of 2011, the proposed amendment merely extends to February 1, 2012 the deadline for certain not-for-profit corporations and education corporations to apply to the Department for a waiver of corporate professional practice restrictions, and will not impose any additional costs on entities in rural areas.

4. MINIMIZING ADVERSE IMPACT:

The proposed amendment is necessary to conform section 59.14 of the Commissioner's regulations to Education Law section 6503-a, as amended by Chapter 187 of the Laws of 2011. The proposed amendment does not impose any additional compliance or costs on entities in rural areas. Consistent with the statute, the proposed amendment merely extends until February 1, 2012, the date by which certain not-for-profit corporations and education corporations must apply to the Department for a waiver of corporate professional practice restrictions under Education law section 6503-a. The waiver ensures that not-for-profit corporations or education corporations that provide certain professional services are subject to oversight by the Board of Regents to safeguard the public.

Because the proposed amendment merely conforms the Commissioner's regulations to a statutory requirement that is uniformly applicable throughout the State, it is neither appropriate nor warranted to establish different requirements for entities located in rural areas.

5. RURAL AREA PARTICIPATION:

Comments on the proposed amendment were solicited from the State Board for Mental Health Practitioners, the State Board for Social Work and from statewide professional associations whose memberships include individuals who live or work in rural areas.

Job Impact Statement

Education Law section 6503-a was signed into law on June 18, 2010 to address critical issues relating to the authority of certain entities to employ licensed master social workers (LMSW), licensed clinical social workers (LCSW), licensed mental health counselors (LMHC), licensed marriage and family therapists (LMFT), licensed creative arts therapists (LCAT), licensed psychoanalysts (LP), and licensed psychologists to provide services within the scopes of practice of those professions. The statute authorizes certain not-for-profit corporations and education corporations that were in existence prior to the statute's effective date to apply by a specified deadline for a waiver from the corporate practice restrictions in the Education Law. Section 6503-a was amended by Chapter 187 of the Laws of 2011, which was signed on July 21, 2011 and extended until February 1, 2012 the deadline for submitting a waiver application.

The proposed amendment merely conforms section 59.14 of the Commissioner's regulations to the February 1, 2012 date extension for submission of a waiver application, and will not have an adverse impact on jobs or employment opportunities. Because it is evident from the nature of the proposed regulation that it will have no impact on jobs or employment opportunities, no further steps were needed to ascertain that fact and none were taken. Accordingly, a job impact statement is not required and one has not been prepared.

Department of Health

EMERGENCY RULE MAKING

Hospital Temporary Rate Adjustments**I.D. No.** HLT-37-11-00005-E**Filing No.** 767**Filing Date:** 2011-08-26**Effective Date:** 2011-08-26

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

Action taken: Amendment of section 86-1.31 of Title 10 NYCRR.

Statutory authority: Public Health Law, section 2807-c(35)

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

Specific reasons underlying the finding of necessity: Paragraph (b) of subdivision 35 of section 2807-c of the Public Health Law (as added by Section 2 of Part C of Chapter 58 of the Laws of 2009) specifically provides the Commissioner of Health with authority, effective for periods on and after December 1, 2009, to issue emergency regulations in order to compute hospital inpatient rates as authorized in accordance with the provisions of such subdivision 35.

Subject: Hospital Temporary Rate Adjustments.

Purpose: No longer require that a merger, acquisition or consolidation needs to occur on or after the year the rate is based upon.

Text of emergency rule: Paragraph (1) of subdivision (b) of section 86-1.31 is amended to read as follows:

(1) The commissioner may grant approval of a temporary adjustment to rates calculated pursuant to this section for hospitals subject to mergers, acquisitions or consolidations [occurring on or after the year the rate is based upon,] provided such hospitals demonstrate through submission of a written proposal that the merger, acquisition or consolidation will result in an improvement to:

- (i) cost effectiveness of service delivery;
- (ii) quality of care; and
- (iii) factors deemed appropriate by the commissioner.

Such written proposal shall be submitted to the department 60 days prior to the requested effective date of the temporary rate adjustment. The temporary rate adjustment shall consist of the various *operating* rate components of [the surviving entity] *that portion of the facility originally associated with the surviving provider number and shall be*

in effect for a specified period of time as approved by the commissioner. At the end of the specified timeframe, the hospital will be reimbursed in accordance with the statewide methodology set forth in this Subpart. *The commissioner may establish, as a condition of receiving such a temporary rate adjustment, benchmarks and goals to be achieved as a result of the ongoing consolidation efforts and may also require that the hospital submit such periodic reports concerning the achievement of such benchmarks and goals as the commissioner deems necessary. Failure to achieve satisfactory progress, as determined by the commissioner, in accomplishing such benchmarks and goals shall be a basis for ending the hospital's temporary rate adjustment prior to the end of the specified timeframe.*

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 November 23, 2011.

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

Regulatory Impact Statement

Statutory Authority:

The statutory authority for this regulation is contained in Section 2807-c(35)(b) of the Public Health Law (PHL) which authorizes the Commissioner to promulgate regulations, including emergency regulations, with regard to Medicaid reimbursement rates for general hospital inpatient services. Such inpatient rate regulations are set forth in Subpart 86-1 of Title 10 (Health) of the Official Compilation of Codes, Rules, and Regulation of the State of New York.

Legislative Objectives:

Subpart 86-1 of Title 10 (Health) of the Official Compilation of Codes, Rules and Regulation of the State of New York, Paragraph (1) of subdivision (b) of section 1.31 will be amended to eliminate the requirement that the merger, acquisition or consolidation needs to occur on or after the year the rate is based upon. The current base year for hospital inpatient rate purposes is 2005, as required pursuant to PHL § 2807-c(35)(a). Thus, the proposed amendment will permit temporary rate adjustments in connection regard to mergers, acquisitions and/or consolidations that occurred prior to 2005, provided that the hospital is engaged in an ongoing process of consolidation and/ restructuring related to such merger, acquisition and/or consolidation. The temporary rate adjustment will also be revised to consist of the operating rate components of that portion of the facility originally associated with the surviving provider number and shall be in effect for a specified period of time as approved by the Commissioner. This regulation is necessary in order to provide needed relief to providers who meet the criteria.

The existing section 86-1.31(b) requires hospitals seeking temporary rate adjustments to submit a written proposal demonstrating how the temporary additional reimbursement will be utilized to enhance the facility's long-term efficiency and quality of care. The proposed amendments permits the Commissioner to establish benchmarks and goals concerning the facility's implementation of its proposal as a condition for receipt of the temporary rate adjustment. Such hospitals may also be required to submit such periodic reports concerning the achieving of such benchmarks and goals as the Commissioner deems necessary. Failure to achieve satisfactory progress, as determined by the Commissioner, in accomplishing such benchmarks and goals shall be a basis for ending the hospital's temporary rate adjustment prior to the end of the specified timeframe.

Needs and Benefits:

This regulation can promote the elimination of underutilized services or the consolidation of others. Hospitals can identify the persistent inefficiencies and resource limitations within their system so that scarce health care dollars are not at risk. Teaching programs can be integrated to better serve patients. The combination hospitals licensed under Article 28, where such a combination is consistent with the public need, could create a new, more economical entity and may result in the potential reduction of excess beds and/or improved service delivery. The additional reimbursement provided by this adjustment

can support any resulting hospital in achieving these goals, thus improving quality while reducing health care costs.

Costs:

Costs to Private Regulated Parties:

There will be no additional costs to private regulated parties. Hospitals are currently required to file annual certified cost reports and submit claim forms for Medicaid reimbursement. The only additional data requested from providers would be periodic reports demonstrating progress against benchmarks and goals.

Costs to State Government:

The estimated net aggregate increase in gross Medicaid expenditures attributable to this proposed initiative for State fiscal year 2010/2011 is \$2.6 million, which on a full annual basis would increase to \$7.9 million. This estimate is based on current cost projections concerning existing mergers, acquisitions and/or consolidations which may qualify for a temporary rate adjustment in accordance with the specified criteria.

Costs to Local Government:

Local districts' share of Medicaid costs is statutorily capped; therefore, there will be no additional costs to local governments as a result of this proposed regulation.

Costs to the Department of Health:

There will be no additional costs to the Department of Health as a result of this proposed regulation.

Local Government Mandates:

The proposed regulation does not impose any new programs, services, duties or responsibilities upon any county, city, town, village, school district, fire district or other special district.

Paperwork:

Since meeting benchmarks and goals is required in order to receive this temporary rate adjustment, a hospital is required to submit periodic reports, as determined by the Commissioner, concerning the achievement of such benchmarks and goals.

Duplication:

This is an amendment to an existing State regulation and does not duplicate any existing federal, state or local regulations.

Alternatives:

No significant alternatives are available. Any potential hospital projects that would otherwise qualify for funding pursuant to the revised regulation would, in the absence of this amendment, either not go forward or would have to be attempted with existing facility resources.

Federal Standards:

The proposed regulation does not exceed any minimum standards of the federal government for the same or similar subject area.

Compliance Schedule:

The proposed regulation provides the Commissioner of Health the authority to grant approval of temporary adjustments to rates calculated for hospitals subject to mergers, acquisitions or consolidations for inpatient payment rates for rate periods on and after December 2, 2010.

Regulatory Flexibility Analysis

Effect of Rule:

For the purpose of this regulatory flexibility analysis, small businesses were considered to be general hospitals with 100 or fewer full time equivalents. Based on recent financial and statistical data extracted from the Institutional Cost Report, seven hospitals were identified as employing fewer than 100 employees.

No health care providers subject to this regulation will see a decrease in average per discharge Medicaid funding as a result of this regulation.

This rule will have no direct effect on local governments.

Compliance Requirements:

Hospitals that receive the temporary rate adjustment under this regulation will be required to submit periodic reports demonstrating their progress against benchmarks and goals established by the Commissioner.

The rule will have no direct effect on local governments.

Professional Services:

No new or additional professional services are required in order to comply with the proposed amendments.

Compliance Costs:

No initial capital costs will be imposed as a result of this rule, nor will there be an annual cost of compliance.

Economic and Technological Feasibility:

Small businesses will be able to comply with the economic and technological aspects of this rule. The proposed amendments are technologically feasible because it requires the use of existing technology. The overall economic impact to comply with the requirements of this regulation is expected to be minimal.

Minimizing Adverse Impact:

This regulation provides needed relief to eligible providers, thus a positive impact for small businesses that are eligible and no impact for the remainder. In addition, local districts' share of Medicaid costs is statutorily capped; therefore, there will be no adverse impact to local governments as a result of this proposal.

Small Business and Local Government Participation:

The State filed a Federal Public Notice, published in the State Register, prior to the effective date of the change. The Notice provided a summary of the action to be taken and instructions as to where the public, including small businesses and local governments, could locate copies of the corresponding proposed State plan amendment. The Notice further invited the public to review and comment on the related proposed State plan amendment. In addition, contact information for the Department of Health was provided for anyone interested in further information.

Rural Area Flexibility Analysis

Effect on Rural Areas:

Rural areas are defined as counties with populations less than 200,000 and, for counties with populations greater than 200,000, includes towns with population densities of 150 persons or less per square mile. The following 43 counties have populations of less than 200,000:

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

The following nine counties have certain townships with population densities of 150 persons or less per square mile:

Albany	Erie	Oneida
Broome	Monroe	Onondaga
Dutchess	Niagara	Orange

Compliance Requirements:

For hospitals that receive the temporary rate adjustment, periodic reports must be submitted which demonstrate the achievement of benchmarks and goals set by the Commissioner.

Professional Services:

No new additional professional services are required in order for providers in rural areas to comply with the proposed amendments.

Compliance Costs:

No initial capital costs will be imposed as a result of this rule, nor is there an annual cost of compliance.

Minimizing Adverse Impact:

This regulation provides needed relief to eligible providers, thus a positive impact for small businesses that are eligible and no impact for the remainder. In addition, local districts' share of Medicaid costs is statutorily capped; therefore, there will be no adverse impact to local governments as a result of this proposal.

Rural Area Participation:

Draft regulations, prior to filing with the Secretary of State, were shared with the industry associations representing hospitals and comments were solicited from all affected parties. Such associations include members from rural areas.

Job Impact Statement

A Job Impact Statement is not required pursuant to Section 201-a(2)(a) of the State Administrative Procedure Act. It is apparent, from the nature and purpose of the proposed rule, that it will not have a substantial adverse impact on jobs or employment opportunities. The proposed regulation eliminates the requirement that a merger, acquisition or consolidation needs to occur on or after the year the rate is based upon in such cases where a hospital receives a temporary adjustment to rates as a result of a merger, acquisition or consolidation. The proposed regulation has no implications for job opportunities.

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

Qualified Health Information Technology Entities

I.D. No. HLT-37-11-00017-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 504.9 of Title 18 NYCRR.

Statutory authority: Public Health Law, sections 201 and 206; and Social Services Law, sections 363-a and 365-a(2)

Subject: Qualified Health Information Technology Entities.

Purpose: To broaden the definition of a Service Bureau to include Qualified Entities.

Text of proposed rule: Subdivision (h) of section 504.9 is added to read as follows:

(h)(1) A Qualified Health Information Technology Entity, as defined in paragraph (2) of this subdivision, seeking access to medical assistance information must enroll in the medical assistance program in accordance with this Part and must meet the appropriate additional requirements set forth in this section.

(2) Qualified Health Information Technology Entities, which may include but are not limited to regional health information organizations (RHIOs), are entities to whom recipient-specific medical assistance information is released, with the consent of the medical assistance recipient, for the purpose of sharing such information with one or more of its members that are providing medical care, services, or supplies to such recipient. The release of such information is intended to improve the quality of care delivered to medical assistance recipients, reduce the occurrence of medically adverse events, and reduce costs through better coordination of care.

(3) As a condition of enrollment and of receipt of medical assistance information pursuant to this subdivision, Qualified Health Information Technology Entities must develop and maintain policies and procedures:

(a) to ensure that informed consent is obtained from medical assistance recipients for the release of confidential information;

(b) to handle and safeguard confidential information in compliance with all applicable federal and state laws and regulations; and

(c) to ensure that their members comply with all applicable federal and state laws and regulations regarding confidential information.

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:
 Social Services Law section 363-a and Public Health Law section 201(1)(v) provide that the Department of Health is the single state agency responsible for supervising the administration of the State's medical assistance ("Medicaid") program and for adopting such regulations, not inconsistent with law, as may be necessary to implement the State's Medicaid program. In addition, Public Health Law section 206(18-a)(b) authorizes the Commissioner to promulgate regulations to implement provisions of the federal American Recovery and Reinvestment Act of 2009 relating to the use of electronic health record ("EHR") technology by Medicaid providers.

Legislative Objectives:
 Federal law at 42 U.S.C. section 1396b(t) establishes a program for incentive payments to Medicaid providers who demonstrate meaningful use of certified EHR technology through a means that is approved by the State, with the ultimate goal of promoting health care quality and health information exchange. In furtherance of this goal, Public Health Law section 206(18-a) creates a demonstration program to promote the development of EHR technologies and authorizes the Commissioner to promulgate regulations necessary to disburse the incentive payments provided for in 42 U.S.C. section 1396b(t). These incentive payments will be made to Medicaid providers who purchase, implement, and operate certified EHR technology. These providers will be the end users of data that is compiled and analyzed by Qualified Health Information Technology Entities.

Needs and Benefits:
 The proposed regulatory amendment would define the term "Qualified Health Information Technology Entity" to mean an entity that, with the consent of a Medicaid recipient, is given recipient-specific information to share with Medicaid providers who are members of the entity and who are providing medical care, services, or supplies to the recipient. In addition, the regulation would require entities seeking to act as Qualified Health Information Technology Entities to enroll in the Medicaid program for such purpose, to enable the Department to regulate and control the terms under which Medicaid data is made available to such entities and to assure the confidentiality of individually identifiable confidential enrollee health information.

Costs:
 There should be no additional costs associated with this regulatory amendment.

Local Government Mandates:
 The proposed regulatory amendment does not impose any new mandates to local social services districts.

Paperwork:
 The proposed regulatory amendment will result in a minimal amount of additional paperwork for medical providers, since the Qualified Entities will be required to submit the same documentation to the Medicaid program as other such enrolled providers.

Duplication:
 This proposed regulatory amendment does not duplicate, overlap, or conflict with any other State or federal law or regulations.

Alternatives:
 One alternative would be for Medicaid to take responsibility for distributing beneficiary specific information to thousands of individual providers, and establish interfaces with dozens of different electronic health records systems directly. Given that the Department has already established a governance policy and technical infrastructure to manage those responsibilities through the existing RHIOs, this alternative is not practical. The other alternative would be to take no action, which in turn would limit access to data for Medicaid providers and potentially make it more difficult for them to qualify for the EHR incentive payment program. This alternative would result in reduced federal funds coming to New York State and slow down the process of physicians adopting and using EHRs.

Federal Standards:
 The proposed regulatory amendment does not exceed any minimum federal standards.

Compliance Schedule:
 The proposed regulatory amendment will become effective upon publication of a Notice of Adoption in the New York State Register.

Regulatory Flexibility Analysis

A Regulatory Flexibility Analysis is not required because the proposed rule will not have a substantial adverse impact on small businesses or local governments.

Rural Area Flexibility Analysis

A Rural Area Flexibility Analysis is not required because the proposed rule will not have any adverse impact on rural areas.

Job Impact Statement

A Job Impact Statement is not required because the proposed rule will not have any adverse impact on jobs and employment opportunities.

Public Service Commission

ERRATUM

A Notice of Proposed Rule Making, I.D. No. PSC-27-11-00006-P, pertaining to Water Rates and Charges published in the July 6, 2011 issue of the *State Register* contained an incorrect county in the substance of the proposed rule. Following is the correct substance.

Substance of proposed rule making: On June 15, 2011, Woodbury Heights Estates Water Co., Inc. (Woodbury Heights or the company) filed Leaf No. 12 Revision 2 as an amendment to its electronic tariff schedule, P.S.C No. 1- Water to become effective on October 1, 2011. The company proposes to increase its current annual revenue by \$43,103 or 43%. The company's current rates have been in effect since October 31, 2000. Woodbury Heights provides metered water service to 67 residential customers located in a real estate subdivision known as County Crossing in the Town of Woodbury, Orange County. The company proposes to increase its quarterly service charge from \$133.00 to \$256.00 (no water allowance) and its usage rate from \$3.93 to \$6.00 per thousand gallons. Details of the company's filing are available on the Commission's Home Page on the World Wide Web (www.dps.state.ny.us) located under Commission Documents – Tariffs). The Commission may approve or reject, in whole or in part, or modify the company's rates.

NOTICE OF WITHDRAWAL

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

The following rule makings have been withdrawn from consideration:

I.D. No.	Publication Date of Proposal
PSC-38-00-00011-P	September 5, 2000
PSC-14-02-00005-P	April 3, 2002
PSC-18-02-00025-P	May 1, 2002
PSC-21-02-00010-P	May 22, 2002
PSC-21-02-00011-P	May 22, 2002
PSC-34-02-00017-P	August 21, 2002
PSC-05-03-00012-P	February 5, 2003
PSC-10-03-00006-P	March 12, 2003
PSC-14-03-00005-P	April 9, 2003
PSC-15-03-00012-P	April 16, 2003
PSC-15-03-00013-P	April 16, 2003
PSC-17-03-00010-P	April 30, 2003
PSC-41-03-00012-P	October 15, 2003
PSC-13-04-00009-P	March 31, 2004
PSC-36-04-00008-P	September 8, 2004
PSC-39-04-00009-P	September 29, 2004
PSC-43-04-00019-P	October 27, 2004
PSC-08-05-00010-P	February 23, 2005
PSC-19-05-00017-P	May 11, 2005
PSC-43-05-00016-P	October 26, 2005
PSC-07-06-00013-P	February 15, 2006
PSC-21-06-00007-P	May 24, 2006
PSC-21-06-00008-P	May 24, 2006
PSC-28-06-00015-P	April 12, 2006
PSC-31-06-00024-P	August 2, 2006
PSC-52-06-00019-P	December 27, 2006
PSC-18-07-00014-P	May 2, 2007
PSC-18-07-00015-P	May 2, 2007
PSC-18-07-00016-P	May 2, 2007
PSC-18-07-00018-P	May 2, 2007
PSC-19-07-00007-P	May 9, 2007
PSC-19-07-00008-P	May 9, 2007
PSC-23-07-00023-P	June 6, 2007
PSC-28-07-00011-P	July 11, 2007

PSC-49-07-00011-P	December 5, 2007
PSC-41-08-00012-P	October 8, 2008
PSC-42-08-00014-P	October 15, 2008
PSC-47-08-00004-P	November 19, 2008
PSC-33-09-00010-P	August 19, 2009

NOTICE OF ADOPTION**Transfer of Water Supply Assets****I.D. No.** PSC-12-10-00013-A**Filing Date:** 2011-08-24**Effective Date:** 2011-08-24

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

Action taken: On 8/18/11, the PSC adopted an order approving the joint petition of Braeside Aqua Corp. (Braeside) and the Town of Blooming Grove, to transfer its real property and water plant assets to the Town of Blooming Grove.

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

Subject: Transfer of water supply assets.

Purpose: To approve the transfer of water supply assets.

Substance of final rule: The Commission, on August 18, 2011, adopted an order approving the joint petition of Braeside Aqua Corp. (Braeside) and the Town of Blooming Grove, to transfer its real property and water plant assets to the Town of Blooming Grove and authorized Braeside to file a dissolution with the Department of State. Once the transfer and dissolution of Braeside is completed, the company will be removed from the list of water companies, 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-0091SA1)

NOTICE OF ADOPTION**Reinstatement of Authority to Submeter Electricity****I.D. No.** PSC-46-10-00010-A**Filing Date:** 2011-08-24**Effective Date:** 2011-08-24

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

Action taken: On 8/18/11, the PSC adopted an order approving, with conditions, the reinstatement of authority to submeter electricity at 1295 Fifth Avenue, New York, New York, (Frawley Plaza, LLC).

Statutory authority: Public Service Law, sections 2, 51, 53 and 66

Subject: Reinstatement of authority to submeter electricity.

Purpose: To approve, with conditions the reinstatement of authority to submeter electricity.

Substance of final rule: The Commission, on August 18, 2011 adopted an order approving, with conditions, the reinstatement of authority to submeter electricity at 1295 Fifth Avenue, New York, New York, (Frawley Plaza, LLC), 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.

(08-E-0836SA6)

NOTICE OF ADOPTION**Reinstatement of Authority to Submeter Electricity****I.D. No.** PSC-46-10-00011-A**Filing Date:** 2011-08-24**Effective Date:** 2011-08-24

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

Action taken: On 8/18/11, the PSC adopted an order approving, with conditions, the reinstatement of authority to submeter electricity at 1940-1966 First Avenue and 420 East 102nd Street, New York, New York, (Metro North Owners, LLC).

Statutory authority: Public Service Law, sections 2, 51, 53 and 66

Subject: Reinstatement of authority to submeter electricity.

Purpose: To approve, with conditions the reinstatement of authority to submeter electricity.

Substance of final rule: The Commission, on August 18, 2011 adopted an order approving, with conditions, the reinstatement of authority to submeter electricity at 1940-1966 First Avenue and 420 East 102nd Street, New York, New York, (Metro North Owners, LLC), 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.

(08-E-0837SA6)

NOTICE OF ADOPTION**Reinstatement of Authority to Submeter Electricity****I.D. No.** PSC-46-10-00014-A**Filing Date:** 2011-08-24**Effective Date:** 2011-08-24

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

Action taken: On 8/18/11, the PSC adopted an order approving, with conditions, the reinstatement of authority to submeter electricity at 1890 Lexington Avenue and 1990 Lexington Avenue, New York, New York, (KNW Apartments, LLC).

Statutory authority: Public Service Law, sections 2, 51, 53 and 66

Subject: Reinstatement of authority to submeter electricity.

Purpose: To approve, with conditions the reinstatement of authority to submeter electricity.

Substance of final rule: The Commission, on August 18, 2011 adopted an order approving, with conditions, the reinstatement of authority to submeter electricity at 1890 Lexington Avenue and 1990 Lexington Avenue, New York, New York, (KNW Apartments, LLC), 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.

(08-E-0839SA6)

NOTICE OF ADOPTION**Reinstatement of Authority to Submeter Electricity****I.D. No.** PSC-49-10-00009-A**Filing Date:** 2011-08-24**Effective Date:** 2011-08-24

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

Action taken: On 8/18/11, the PSC adopted an order approving, with conditions, the reinstatement of authority to submeter electricity at 1309 Fifth Avenue and 1660 Madison Avenue, New York, New York, (Frawley Plaza, LLC).

Statutory authority: Public Service Law, sections 2, 51, 53 and 66

Subject: Reinstatement of authority to submeter electricity.

Purpose: To approve, with conditions the reinstatement of authority to submeter electricity.

Substance of final rule: The Commission, on August 18, 2011 adopted an order approving, with conditions, the reinstatement of authority to submeter electricity at 1309 Fifth Avenue and 1660 Madison Avenue, New York, New York, (Frawley Plaza, LLC), 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.

(08-E-0836SA7)

NOTICE OF ADOPTION**Waiver of 16 NYCRR Sections 894.1 to 894.4 and 894.9****I.D. No.** PSC-07-11-00003-A**Filing Date:** 2011-08-24**Effective Date:** 2011-08-24

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

Action taken: On 8/18/11, the PSC adopted an order approving the Town of Angelica's request for a waiver of the rules contained in 16 NYCRR sections 894.1 to 894.4 and 894.9 for a cable television franchise with Time Warner Entertainment - Advance/Newhouse Partnership.

Statutory authority: Public Service Law, section 216(1)

Subject: Waiver of 16 NYCRR sections 894.1 to 894.4 and 894.9.

Purpose: To approve waiver of the rules contained in 16 NYCRR sections 894.1 to 894.4 and 894.9 for an initial cable television franchise.

Substance of final rule: The Commission, on August 18, 2011 adopted an order approving the Town of Angelica's request for a waiver of the rules contained in 16 NYCRR sections 894.1 to 894.4 and 894.9 for a cable television franchise with Time Warner Entertainment - Advance/Newhouse Partnership, 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-V-0039SA1)

NOTICE OF ADOPTION**Transfer of Water Supply Assets****I.D. No.** PSC-26-11-00010-A**Filing Date:** 2011-08-24**Effective Date:** 2011-08-24

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

Action taken: On 8/18/11, the PSC adopted an order approving Joint Petition of Four Corners Water Works Corporation and the Town of East Fishkill for the transfer of all of the water supply assets serving the Four Corners Subdivision to the Town of East Fishkill.

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

Subject: Transfer of water supply assets.

Purpose: To approve the transfer of water supply assets.

Substance of final rule: The Commission, on August 18, 2011 adopted an order approving Joint Petition of Four Corners Water Works Corporation and the Town of East Fishkill (Dutchess County) for the transfer of all of the water supply assets serving the Four Corners Subdivision to the Town of East Fishkill and authorized Four Corners Water Works to file a dissolution with the Department of State, 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-W-0315SA1)

PROPOSED RULE MAKING**NO HEARING(S) SCHEDULED****Net Energy Metering for Farm Waste Electric Generating Systems and Standardized Interconnection Requirements (SIR)****I.D. No.** PSC-37-11-00006-P

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

Proposed Action: The Commission is considering a proposed tariff filing by Orange and Rockland Utilities, Inc. to make various changes in rates, charges, rules and regulations contained in Schedule for Electric Service, PSC No. 2.

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

Subject: Net Energy Metering for Farm Waste Electric Generating Systems and Standardized Interconnection Requirements (SIR).

Purpose: To effectuate changes to Public Service Law, sections 66-j and 66-l in relation to Net Energy Metering and SIR.

Substance of proposed rule: The Commission is considering whether to approve, modify or reject, in whole or in part, a tariff filing by Orange and Rockland Utilities, Inc. to effectuate changes to Public Service Law (PSL) Sections 66-j and 66-l in relation to net energy metering for farm and non-residential solar photovoltaic or farm waste, and farm and non-residential wind electric customer generators. The amendments allow for the application of excess generation credits from the customer's generator to other meters on property that is owned or leased by the same customer (referred to as "Remote Net Metering The New York State Standard Interconnection Requirements (SIR) document would be modified to incorporate this update to PSL Sections 66-j and 66-l. The filing has an effective date of December 1, 2011. The Commission may apply aspects of its decision here to the requirements for tariffs of 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.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-0323SP1)

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

Net Energy Metering for Farm Waste Electric Generating Systems and Standardized Interconnection Requirements (SIR)

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

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

Proposed Action: The Commission is considering a proposed tariff filing by Consolidated Edison Company of New York, Inc. to make various changes in rates, charges, rules and regulations contained in Schedule for Electric Service, PSC No. 9.

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

Subject: Net Energy Metering for Farm Waste Electric Generating Systems and Standardized Interconnection Requirements (SIR).

Purpose: To effectuate changes to Public Service Law, sections 66-j and 66-l in relation to Net Energy Metering and SIR.

Substance of proposed rule: The Commission is considering whether to approve, modify or reject, in whole or in part, a tariff filing by Consolidated Edison Company of New York, Inc. to effectuate changes to Public Service Law (PSL) Sections 66-j and 66-l in relation to net energy metering for farm and non-residential solar photovoltaic or farm waste, and farm and non-residential wind electric customer generators. The amendments allow for the application of excess generation credits from the customer's generator to other meters on property that is owned or leased by the same customer (referred to as "Remote Net Metering The New York State Standard Interconnection Requirements (SIR) document would be modified to incorporate this update to PSL Sections 66-j and 66-l. The filing has an effective date of December 1, 2011. The Commission may apply aspects of its decision here to the requirements for tariffs of 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.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-0319SP1)

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

New Service Classification No. 4 - Residential Off-Peak Charging Service

I.D. No. PSC-37-11-00008-P

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

Proposed Action: The Commission is considering a proposed tariff filing by Central Hudson Gas and Electric Corporation to make various changes in rates, charges, rules and regulations contained in Schedule for Electric Service, PSC No. 15.

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

Subject: New Service Classification No. 4 - Residential Off-Peak Charging Service.

Purpose: To implement a residential off-peak charging rate covering both delivery and supply.

Substance of proposed rule: The Commission is considering whether to approve, modify or reject, in whole or in part, a tariff filing by Central Hudson Gas and Electric Corporation to establish a new service classification ("SC"), SC No. 4 - Residential Off-Peak Charging Service, covering both delivery and supply. The proposed filing is meant to encourage customers owning and/or operating plug-in electric and plug-in hybrid electric vehicles (collectively, "PEV") to charge these vehicles during off-peak periods. The filing has an effective date of December 1, 2011. The Commission may apply aspects of its decision here to the requirements for tariffs of 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.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-0465SP1)

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

Net Energy Metering for Farm Waste Electric Generating Systems and Standardized Interconnection Requirements (SIR)

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

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

Proposed Action: The Commission is considering a proposed tariff filing by Central Hudson Gas and Electric Corporation to make various changes in rates, charges, rules and regulations contained in Schedule for Electric Service, PSC No. 15.

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

Subject: Net Energy Metering for Farm Waste Electric Generating Systems and Standardized Interconnection Requirements (SIR).

Purpose: To effectuate changes to Public Service Law, sections 66-j and 66-l in relation to Net Energy Metering and SIR.

Substance of proposed rule: The Commission is considering whether to approve, modify or reject, in whole or in part, a tariff filing by Central Hudson Gas and Electric Corporation to effectuate changes to Public Service Law (PSL) Sections 66-j and 66-l in relation to net energy metering for farm and non-residential solar photovoltaic or farm waste, and farm and non-residential wind electric customer generators. The amendments allow for the application of excess generation credits from the customer's generator to other meters on property that is owned or leased by the same customer (referred to as "Remote Net Metering The New York State Standard Interconnection Requirements (SIR) document would be modified to incorporate this update to PSL Sections 66-j and 66-l. The filing has an effective date of December 1, 2011. The Commission may apply aspects of its decision here to the requirements for tariffs of 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.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-0318SP1)

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

Net Energy Metering for Farm Waste Electric Generating Systems and Standardized Interconnection Requirements (SIR)

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

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

Proposed Action: The Commission is considering a proposed tariff filing by Rochester Gas and Electric Corporation to make various changes in rates, charges, rules and regulations contained in Schedule for Electric Service, PSC No. 19.

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

Subject: Net Energy Metering for Farm Waste Electric Generating Systems and Standardized Interconnection Requirements (SIR).

Purpose: To effectuate changes to Public Service Law, sections 66-j and 66-l in relation to Net Energy Metering and SIR.

Substance of proposed rule: The Commission is considering whether to approve, modify or reject, in whole or in part, a tariff filing by Rochester Gas and Electric Corporation to effectuate changes to Public Service Law (PSL) Sections 66-j and 66-l in relation to net energy metering for farm and non-residential solar photovoltaic or farm waste, and farm and non-residential wind electric customer generators. The amendments allow for the application of excess generation credits from the customer's generator to other meters on property that is owned or leased by the same customer (referred to as "Remote Net Metering The New York State Standard Interconnection Requirements (SIR) document would be modified to incorporate this update to PSL Sections 66-j and 66-l. The filing has an effective date of December 1, 2011. The Commission may apply aspects of its decision here to the requirements for tariffs of 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.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-0322SP1)

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

Authorization to Transfer Certain Real Property

I.D. No. PSC-37-11-00011-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 the petition of Niagara Mohawk Power Corporation d/b/a National Grid to transfer an approximately 1.7 acre parcel of unimproved real property in the Town of Amherst, Erie County to Timothy J. Waterman.

Statutory authority: Public Service Law, section 70

Subject: Authorization to transfer certain real property.

Purpose: To decide whether to approve the transfer certain real property.

Substance of proposed rule: By petition dated July 15, 2011, Niagara Mohawk Power Corporation d/b/a National Grid seeks to transfer an approximately 1.7 acre parcel of unimproved real property in the Town of Amherst, Erie County to Timothy J. Waterman. The Commission may approve, modify, or reject, in whole or in part, the actions requested in the petition.

Text of proposed rule and any required statements and analyses may be obtained by filing a Document Request Form (F-96) located on our website <http://www.dps.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-0379SP1)

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

New Targets for NYSEG's Customer Contact Satisfaction Survey

I.D. No. PSC-37-11-00012-P

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

Proposed Action: The Commission is considering a filing from New York State Electric and Gas Corporation (NYSEG) proposing new targets for its customer contact satisfaction survey.

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

Subject: New targets for NYSEG's customer contact satisfaction survey.

Purpose: Consideration of new targets for NYSEG's customer contact satisfaction survey.

Substance of proposed rule: The Commission is considering a filing from New York State Electric and Gas Corporation (NYSEG) made on August 26, 2011 proposing targets for its new customer contact satisfaction survey that would replace its existing survey measures. The targets would be effective January 2012. 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.

(09-E-0715SP2)

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

Stock Acquisition

I.D. No. PSC-37-11-00013-P

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

Proposed Action: The Commission is considering the joint petition of Corning Natural Gas Corporation and Mirabito Holdings, Inc. whereas Miabito Holdings, Inc. proposes to acquire additional shares of Corning Natural Gas Corporation to a level not exceeding 15 percent.

Statutory authority: Public Service Law, section 70

Subject: Stock Acquisition.

Purpose: To authorize the acquisition by certain entities, including corporations, of more than 10 percent of the voting capital stock.

Substance of proposed rule: The Public Service Commission is considering whether to approve, deny or modify, in whole or in part, a joint petition of Corning Natural Gas Corporation and Mirabito Holdings, Inc. pursuant to Section 70 of the PSL of stock acquisition. Mirabito Holdings, Inc. proposes to acquire additional shares of Corning Natural Gas Corporation voting capital stock to increase their ownership position to a level not exceeding 15 percent. The Commission shall consider all other related matters.

Text of proposed rule and any required statements and analyses may be obtained by filing a Document Request Form (F-96) located on our website <http://www.dps.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-G-0417SP1)

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

Net Energy Metering for Farm Waste Electric Generating Systems and Standardized Interconnection Requirements (SIR)

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

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

Proposed Action: The Commission is considering a proposed tariff filing by New York State Electric & Gas Corporation to make various changes in rates, charges, rules and regulations contained in Schedule for Electric Service, PSC No. 120.

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

Subject: Net Energy Metering for Farm Waste Electric Generating Systems and Standardized Interconnection Requirements (SIR).

Purpose: To effectuate changes to Public Service Law, sections 66-j and 66-l in relation to Net Energy Metering and SIR.

Substance of proposed rule: The Commission is considering whether to approve, modify or reject, in whole or in part, a tariff filing by New York State Electric & Gas Corporation to effectuate changes to Public Service Law (PSL) Sections 66-j and 66-l in relation to net energy metering for farm and non-residential solar photovoltaic or farm waste, and farm and non-residential wind electric customer generators. The amendments allow for the application of excess generation credits from the customer's generator to other meters on property that is owned or leased by the same customer (referred to as "Remote Net Metering The New York State Standard Interconnection Requirements (SIR) document would be modified to incorporate this update to PSL Sections 66-j and 66-l. The filing has an effective date of December 1, 2011. The Commission may apply aspects of its decision here to the requirements for tariffs of 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.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-0320SP1)

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

Net Energy Metering for Farm Waste Electric Generating Systems and Standardized Interconnection Requirements (SIR)

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

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

Proposed Action: The Commission is considering a proposed tariff filing by Niagara Mohawk Power Corporation d/b/a National Grid to make various changes in rates, charges, rules and regulations contained in Schedule for Electric Service, PSC No. 220.

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

Subject: Net Energy Metering for Farm Waste Electric Generating Systems and Standardized Interconnection Requirements (SIR).

Purpose: To effectuate changes to Public Service Law, sections 66-j and 66-l in relation to Net Energy Metering and SIR.

Substance of proposed rule: The Commission is considering whether to approve, modify or reject, in whole or in part, a tariff filing by Niagara Mohawk Power Corporation d/b/a National Grid to effectuate changes to Public Service Law (PSL) Sections 66-j and 66-l in relation to net energy metering for farm and non-residential solar photovoltaic or farm waste, and farm and non-residential wind electric customer generators. The amendments allow for the application of excess generation credits from the customer's generator to other meters on property that is owned or leased by the same customer (referred to as "Remote Net Metering The New York State Standard Interconnection Requirements (SIR) document would be modified to incorporate this update to PSL Sections 66-j and 66-l. The filing has an effective date of December 1, 2011. The Commission may apply aspects of its decision here to the requirements for tariffs of 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.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-0320SP1)

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. 765

Filing Date: 2011-08-25

Effective Date: 2011-08-25

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(a)(4) and (5) 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 October, 2009, financial analysts announced that New York State faces a deficit of nearly \$50 billion over the next three and a half years. As a result of this budget crisis, layoffs have occurred and 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 December 7, 2010, the New York City Off-Track Betting Corporation voted to cease operations, which included \$166 million a year in handle through its telephone (\$144 million) and internet (\$21 million) wagering accounts. As a result of that closure, the Racing and Wagering Board adopted an emergency rule that allowed pari-mutuel entities to accept electronic applications of people seeking to open advanced deposit wagering accounts. That emergency rulemaking expired on March 8, 2011. This emergency rulemaking is necessary to again allow pari-mutuel wagering entities to continue to accept electronic applications pending the completion of the proposed rulemaking process. The proposed rulemaking for ADW Electronic Applications will appear in August 31, 2011 State Register. 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 November 22, 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. Alternative approaches: 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 the day that it is submitted to the Department of State on August 25, 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 former New York City Off-Track Betting customers with other 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.

Office of Temporary and Disability Assistance

NOTICE OF ADOPTION

Child Support

I.D. No. TDA-35-10-00005-A

Filing No. 771

Filing Date: 2011-08-30

Effective Date: 2011-09-14

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

Action taken: Amendment of sections 347.2, 347.6, 347.7 and 347.8 of Title 18 NYCRR.

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

111-a(1), (2), 111-b(3), (4), 111-g, 111-h(9), 111-k(1), 111-r, 111-s(1), 111-v and 143; Family Court Act, section 542; 45 CFR sections 301.1, 303.3(b)(1) and 303.101(b)(1); 42 USC section 666(c)(1)

Subject: Child Support.

Purpose: To conform Title 18 NYCRR to State and federal statutes and federal requirements concerning the use of locate sources.

Text of final rule: Subdivision (a) of section 347.2 of Title 18 of the NYCRR is amended to read as follows:

(a) Absent parent. An absent parent includes the biological parent, step-parent or adoptive parent of any child where such parent is reported to be absent from the *child's* household. With respect to a child in foster care, an absent parent also includes a biological parent, stepparent or adoptive parent of any child where such parent was present in the *child's* household when the child entered foster care.

A new subdivision (h) is added to section 347.2 of Title 18 of the NYCRR to read as follows:

(h) *Noncustodial parent.* A noncustodial parent is an absent parent, as defined in subdivision (a) of this section.

Paragraph (1) of subdivision (a) of section 347.6 is amended to read as follows:

(1) File a petition with the family court to establish paternity, complete service of process or document on the Child Support Management System (CSMS) the unsuccessful diligent efforts to serve process, as defined in section [347.7(a)] 347.7(b)(7) of this Part.

Section 347.7 of Title 18 of the NYCRR is amended to read as follows:

§ 347.7 Location of [absent] *noncustodial* parents [and] / putative fathers and sources of income or assets.

(a) Location means obtaining information concerning the physical whereabouts of [an absent] *a noncustodial* parent/putative father, [an absent] *a noncustodial* parent's/putative father's employer(s), or other sources of income, [or] assets, or *medical support information* [which belong to an absent parent,] as appropriate, which [is] are sufficient and *necessary* to take the next appropriate action in a case. [Financial investigation of a putative father may not be conducted until paternity has been established.]

(b) For [each case] *all cases referred to the child support enforcement unit or applying for child support services under section 347.17 of this Part* in which the location of [an absent] *the noncustodial* parent/putative father or the income, assets, or *medical support information of such person* is unknown or *unverified*, the child support enforcement unit must:

(1) *Use appropriate location sources such as the Federal Parent Locator Service (PLS) and State PLS; interstate location networks, local officials and employees administering public assistance, general assistance, medical assistance, food stamps, and social services; records of State agencies and departments, as authorized by State law, including those departments which maintain records of public assistance, wages and employment, unemployment insurance, income taxation, drivers licenses and vehicle registration, and criminal records; relatives and friends of the noncustodial parent/putative father; current or past employers; utilities, the local telephone company and the U.S. Postal Service; financial references; unions and fraternal organizations; and police, corrections, parole, and probation records, if appropriate; and other sources.*

(2) *Establish working relationships with all appropriate agencies in order to utilize location resources effectively.*

(3) *Employ methodologies that safeguard all confidential information and data pertaining to the noncustodial parent/putative father obtained through location sources as provided in section 111-v of the Social Services Law.*

[(1) As soon as possible, but no later] (4) *Within no more than 75 calendar days [after] of determining that [it is] location efforts are necessary [to locate an absent parent/putative father, initiate location activities using the CSMS, location leads and other local sources, and], access all appropriate location sources including transmitting appropriate cases to the State and the Federal PLS where there is sufficient information to initiate automated location efforts, ensure that [the case] location information [obtained] is sufficient to take the next appropriate action in a case, and update [CSMS] the automated case record as appropriate. Information critical to location activities includes the [absent] noncustodial parent's/putative father's name, social security number, last known address(es) and employer(s), and the date of birth of his or her children.*

[(2) Upon receipt of new information which may aid in location, immediately update CSMS and attempt to locate the absent parent/putative father. CSMS will submit these cases automatically to appropriate PLS sources based on the updated data.]

(5) *Refer appropriate cases to the IV-D agency of any other state. The IV-D agency of the other State shall follow the procedures as described in paragraphs (1), (2), (3) and (4) above; except that the responding State is not required to access the Federal PLS under paragraph (4).*

(6) Repeat location attempts in cases in which previous attempts to locate the noncustodial parent/putative father or sources of income and/or assets have failed but adequate identifying and other information exists to warrant submittal for location either immediately upon receipt of new information, or quarterly, whichever occurs sooner. Repeated attempts based on new information must meet the requirements of paragraph (4) of this subdivision. Quarterly attempts may be limited to automated sources but must include accessing State employment security files, including new hire reporting, wage reporting, and unemployment insurance benefits.

[(3)] (7) Make a diligent effort to serve process on the [absent] noncustodial parent/putative father, in cases in which previous attempts have failed but new information adequate to serve such process exists. Diligent effort to serve process on a noncustodial parent/putative father means an attempt to serve process as soon as adequate information with respect to the location of the [absent] noncustodial parent/putative father is obtained, but no later than 90 calendar days after receipt of such information.

[(b)] (c) The child support enforcement unit is designated as the local agent to accept applications for State PLS services from agencies and individuals authorized by [OCSE] the Division of Child Support Enforcement within the Office of Temporary and Disability Assistance.

Subparagraph (v) of paragraph (3) of subdivision (a) of section 347.8 is amended to read as follows:

(v) Ascertain the ability of both parents to support, as set forth in subparagraph [(1)] (iii) of paragraph (1) of this subdivision [, unless paternity is still an issue. In the latter case, do not conduct a financial investigation of the putative father until after paternity is adjudicated].

Final rule as compared with last published rule: Nonsubstantive changes were made in section 347.2(a) and (h).

Text of rule and any required statements and analyses may be obtained from: Kathryn Mazzeo, New York State Office of Temporary and Disability Assistance, 40 North Pearl Street, 16C, Albany, NY 12243, (518) 473-3271, email: Kathryn.Mazzeo@otda.state.ny.us

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

The nonsubstantive revisions made to sections 347.2(a) and 347.2(h) were merely technical changes concerning the clarification of definitions. These changes do not necessitate revisions to the previously published Regulatory Impact Statement, Regulatory Flexibility Analysis, Rural Area Flexibility Analysis and Job Impact Statement.

Assessment of Public Comment

During the public comment period on the proposed rule to conform to State and federal statutes and federal requirements concerning the use of locate sources, including the State and federal parent locator services, by local districts in providing child support services, the Office of Temporary and Disability Assistance (OTDA) received four comments. Two were submitted from another State agency and two were submitted from a local district. One of the comments has resulted in a nonsubstantive change to the proposed rule.

Comment: One State agency commenter expressed a concern that the use of child welfare or child protective records to locate missing noncustodial parents or putative fathers is not authorized under New York State statute or the Office of Children and Family Services regulations.

Response: OTDA maintains that the proposed regulation's language is authorized by Social Services Law section 111-s and by 18 NYCRR 422.5, but shares the concern that child support workers must not request information from child welfare or child protective records that is sensitive and unnecessary for the task of establishing paternity or establishing, modifying, or enforcing support orders. The proposed regulation relates to investigations seeking the parent's identity and address, and would not authorize a request for other types of records, such as abuse or neglect reports, medical records or information related to treatment, counseling or services. OTDA will emphasize this point in communications with the local districts and in future training materials.

Comment: The State agency commenter also expressed a technical concern about introducing the term noncustodial parent as a replacement for absent parent and recommended that the associated regulatory definition be revised to reflect this new term.

Response: OTDA agrees with this concern and is revising the associated regulatory definition accordingly.

Comment: One local district commenter discussed requirements under the United States Code to establish paternity and enforce support orders through administrative processes rather than court processes and inquired as to how those same requirements could be applied to the establishment or modification of a support order.

Response: OTDA maintains that an order of support or a modification to an order of support must be established through court processes pursuant to New York State statute, and that this requirement applies to agreements to support made pursuant to Social Services Law section 111-k and Family Court Act section 425.

Comment: The local district commenter also questioned whether the changes made are limited to regulatory changes.

Response: OTDA confirms that the changes being made are limited to regulatory changes.

Office of Victim Services

NOTICE OF ADOPTION

Submission of Claim Applications and Changes of Contact Information to the Office of Victim Services

I.D. No. OVS-28-11-00003-A

Filing No. 769

Filing Date: 2011-08-30

Effective Date: 2011-09-14

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

Action taken: Amendment of sections 525.4 and 525.15 of Title 9 NYCRR.

Statutory authority: Executive Law, sections 623(3), 625(3) and 33(1); and Public Officers Law, art. 6 and sections 94(1)(c), (d), (2), (3), (6), 95 and 96(1)

Subject: Submission of claim applications and changes of contact information to the Office of Victim Services.

Purpose: To specify where and how claim applications and changes in contact information may be delivered to the Office.

Text or summary was published in the July 13, 2011 issue of the Register, I.D. No. OVS-28-11-00003-P.

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

Text of rule and any required statements and analyses may be obtained from: John Watson, General Counsel, Office of Victim Services, One Columbia Circle, Suite 200, Albany, New York 12203-8727, (518) 457-8066, email: john.watson@ovs.ny.gov

Assessment of Public Comment

The agency received no public comment.

Workers' Compensation Board

EMERGENCY RULE MAKING

Filing Written Reports of Independent Medical Examinations (IMEs)

I.D. No. WCB-37-11-00001-E

Filing No. 761

Filing Date: 2011-08-24

Effective Date: 2011-08-25

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 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 November 21, 2011.

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.