

RULE MAKING ACTIVITIES

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

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

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

Department of Environmental Conservation

EMERGENCY RULE MAKING

Recreational Harvest Regulations for Summer Flounder (Fluke), Scup and Black Sea Bass

I.D. No. ENV-18-12-00010-E
Filing No. 682
Filing Date: 2012-07-10
Effective Date: 2012-07-10

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

Action taken: Amendment of Part 40 of Title 6 NYCRR.
Statutory authority: Environmental Conservation Law, sections 13-0105, 13-0340-b, 13-0340-e and 13-0340-f
Finding of necessity for emergency rule: Preservation of general welfare.
Specific reasons underlying the finding of necessity: This rule making is necessary for New York to maintain consistent recreational angling regulations in effect. DEC submitted a Notice of Emergency Adoption and Proposed Rule Making to the Department of State on April 17, 2012, amending Part 40 of 6 NYCRR to modify the recreational seasons, minimum size and possession limits for summer flounder, scup and black sea bass. The new regulations became effective that day and will expire on July 15, 2012. This amendment is necessary for the State to maintain the current regulations until a Notice of Adoption, already in progress, can be promulgated. Allowing the rule to expire will result in a reversion to older, more restrictive regulations and cause confusion among both anglers and

law enforcement personnel. To prevent regulatory discontinuity, angler confusion, and possible loss of recreational industry revenue, these regulations must be promulgated through the emergency rule making process.

The promulgation of this regulation on an emergency basis is necessary because the normal rulemaking process would not promulgate these regulations before the current emergency rule expires on July 15, 2012. This emergency rule making will maintain consistent angling regulations in place until the proposed rule is adopted.

Subject: Recreational harvest regulations for summer flounder (fluke), scup and black sea bass.

Purpose: To maximize recreational angler opportunities for popular finfish species while staying in compliance with the ASMFC and MAFMC.

Text of emergency rule: Existing subdivision 40.1(f) of 6 NYCRR is amended to read as follows: Species Striped bass through Atlantic cod remain the same. Species Summer flounder is amended to read as follows:
 40.1(f) Table A - Recreational Fishing.

Species	Open Season	Minimum Length	Possession Limit
Summer flounder	May 1 - Sept 30	[20.5]19.5" TL	[3]4

Species Yellowtail flounder through Winter flounder remain the same. Species Scup (porgy) licensed party/charter boat anglers through Black sea bass are amended to read as follows:

Species	Open Season	Minimum Length	Possession Limit
Scup (porgy) licensed party/charter boat anglers****	[June 8 - Sept. 6] May 1 - <i>Aug. 31</i> Sept. [7]1 - Oct. [11]31 Nov. 1 - Dec. 31	11" TL 11" TL 11" TL	[10]20 40 20
Scup (porgy) all other anglers	May [24]1 - [Sept. 26]Dec. 31	10.5" TL	[10]20
Black sea bass	June [13]15 [- Oct. 1 and Nov. 1] - Dec. 31	13" TL	[10]15

Species American shad through Oyster toadfish remain the same.

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. ENV-18-12-00010-EP, Issue of May 2, 2012. The emergency rule will expire September 7, 2012.

Text of rule and any required statements and analyses may be obtained from: Stephen Heins, New York State Department of Environmental Conservation, 205 North Belle Mead Road, Suite 1, East Setauket, New York 11733, (631) 444-0435, email: swheins@gw.dec.state.ny.us

Additional matter required by statute: Pursuant to the State Environmental Quality Review Act, a negative declaration is on file with the department.

Regulatory Impact Statement

1. Statutory authority:

Environmental Conservation Law (ECL) sections 13-0105, 13-0340-b, 13-0340-e and 13-0340-f authorize the Department of Environmental Conservation (DEC or the department) to establish by regulation the open season, size, catch limits, possession and sale restrictions and manner of taking for summer flounder, scup and black sea bass.

2. Legislative objectives:

It is the objective of the above-cited legislation that DEC manages marine fisheries to optimize resource use for commercial and recreational harvesters consistent with marine fisheries conservation and management policies, and interstate fishery management plans.

3. Needs and benefits:

These regulations are necessary for New York to maintain compliance with the Interstate Fishery Management Plan (FMP) for Summer Flounder, Scup and Black Sea Bass adopted by the Atlantic States Marine Fisheries Commission (ASMFC). New York, as a member state of ASMFC, must comply with the provisions of the Interstate Fishery Management Plans adopted by ASMFC. These FMPs are designed to promote the long-term sustainability of marine species, preserve the States' marine resources, and protect the interests of both commercial and recreational fishermen. All member states must promulgate any necessary regulations that implement the provisions of the FMPs to remain in compliance with the FMPs. If ASMFC determines a state to be in non-compliance with a specific FMP, the state may be subject to a complete prohibition on all fishing for the associated species in the waters of the non-compliant state until the state comes into compliance with the FMP.

Under the Summer Flounder, Scup and Black Sea Bass FMP, ASMFC will assign New York an annual allotment for each species for the 2012 recreational season. For all three species, the 2012 quota is greater than the 2011 quota. Under the current rules, the 2011 regulations, it is unlikely that New York will meet the 2012 assigned quota for any of the three species. The proposed regulations use a combination of decreased minimum size limits, increased possession limits and expanded seasons to allow New York State recreational anglers to utilize the increased fishing opportunities made available by the larger 2012 quotas. Recreational fishing in New York generates hundreds of millions of dollars in total sales. Summer flounder is one the most popular fish taken by recreational harvesters in New York.

The promulgation of this regulation is necessary for DEC to remain in compliance with the FMP for summer flounder, scup and black sea bass. The regulatory changes in this emergency rule have been reviewed by the Marine Resources Advisory Council and have been approved by ASMFC. The proposed rule will allow New York State recreational anglers to achieve the harvest level provided by the 2012 quotas, yet prevent these anglers from exceeding the assigned quotas.

Specific amendments to the current regulations include the following:

A. Summer Flounder: Reduce the minimum size to 19.5 inches, and increase the possession limit to 4 fish. The open season for the summer flounder recreational fishery, from May 1 through September 30, will remain the same.

B. Scup: Expand the season for both private anglers and anglers fishing from licensed for-hire vessels to May 1 through December 31, and increase the possession limit to 20 fish per angler per day. In addition, anglers fishing from licensed for-hire vessels may possess up to 40 scup from September 1 through October 31. The minimum size limits will not change.

C. Black Sea Bass: Expand the season to June 15 through December 31 and increase the possession limit to 15 fish.

4. Costs:

(a) Cost to State government:

There are no new costs to state government resulting from this action.

(b) Cost to local government:

There will be no costs to local governments.

(c) Cost to private regulated parties:

There are no new costs to regulated parties resulting from this action.

(d) Costs to the regulating agency for implementation and continued administration of the rule:

The department will incur limited costs associated with both the implementation and administration of these rules, including the costs relating to notifying recreational harvesters, party and charter boat operators and other recreational support industries of the new rules.

5. Local government mandates:

The proposed rule does not impose any mandates on local government.

6. Paperwork:

None.

7. Duplication:

The proposed amendment does not duplicate any state or federal requirement.

8. Alternatives:

The measures proposed in this rule making are one of a suite of different combinations of season length, minimum size, and possession limit that would liberalize New York's recreational fisheries regulations while fulfilling the State's obligations to ASMFC and the Mid-Atlantic Fisheries Management Council (MAFMC) to control harvest. The proposed regulations for black sea bass and scup are part of multi-state management programs that seek to make recreational fishing regulations more contiguous for neighboring states. The different combinations of management

measures were presented to MRAC for review and discussion. A majority of those present at MRAC voted and chose the measures proposed here.

No Action Alternative: The proposed rule making is a relaxation of existing recreational fishing regulations. If New York State does not amend 6 NYCRR Part 40 and implement the changes described above, the State will not be out of compliance with ASMFC or MAFMC. The regulations currently in place from the 2011 fishing season will keep New York's recreational harvest of summer flounder, scup, and black sea bass well below the 2012 targets. However, the State will lose the opportunity to liberalize its fishery regulations and provide additional fishing opportunities for recreational anglers. Furthermore, party and charter boat businesses and bait and tackle shops may lose the chance to increase business prospects and income with the expanded fishing opportunities and customer base. Failure for New York to promulgate this rule making may be to the detriment of its recreational fishing industry and the public. In addition, angler dissatisfaction may result in non-compliance and increase fishing effort upon other less robust stocks. The No Action Alternative was rejected.

9. Federal standards:

The amendments to Part 40 are in compliance with the ASMFC and Regional Fishery Management Council FMPs.

10. Compliance schedule:

Regulated parties will be notified by mail, through appropriate news releases and via DEC's website of the changes to the regulations. The emergency regulations will take effect upon filing with the Department of State.

Regulatory Flexibility Analysis

1. Effect of rule:

The Atlantic State Marine Fisheries Commission (ASMFC) facilitates cooperative management of marine and anadromous fish species among the fifteen Atlantic Coast member states. The principal mechanism for implementation of cooperative management of migratory fish is the ASMFC's Interstate Fishery Management Plans (FMPs) for individual species or groups of fish. The FMPs are designed to promote the long-term health of these species, preserve resources, and protect the interests of both commercial and recreational fishers.

ASMFC recently adopted quota changes for summer flounder, scup and black sea bass. The Department of Environmental Conservation (DEC or the department) now seeks to amend its regulations to comply with the requirements of the FMP. There are severe consequences for failure to comply with FMPs. If ASMFC determines a state to be in non-compliance with a specific FMP, the state may be subject to a complete prohibition on all fishing for the associated species in the waters of the non-compliant state until the state comes into compliance with the FMP. Furthermore, failure to take required actions to protect our marine and anadromous resources may lead to the collapse of the targeted species' populations. Either situation could have a significant adverse impact on the commercial and recreational fisheries for that species, as well as the supporting industries for those fisheries.

Those most affected by the proposed rule are recreational anglers, licensed party and charter businesses, and retail and wholesale marine bait and tackle shops operating in New York State. The department consulted with the Marine Resources Advisory Council (MRAC) and other individuals who chose to share their views on marine recreational fishing management measures. The new regulations will reduce the minimum size, and increase the possession limit, and expand the open seasons. It is hoped that these more liberal regulations will encourage anglers to fish and support the recreational fishing industries.

There are no local governments involved in the recreational fish harvesting business, nor do any participate in the sale of marine bait fish or tackle. Therefore, no local governments are affected by these proposed regulations.

2. Compliance requirements:

None.

3. Professional services:

None.

4. Compliance costs:

There are no initial capital costs that will be incurred by a regulated business or industry to comply with the proposed rule.

5. Economic and technological feasibility:

The proposed regulations do not require any expenditure on the part of affected businesses in order to comply with the changes. The proposed regulations may increase the income of party and charter businesses and marine bait and tackle shops because of the increase in fishing opportunities for recreational anglers who pursue summer flounder, scup and black sea bass.

There is no additional technology required for small businesses, and this action does not apply to local governments; there are no economic or technological impacts for either.

6. Minimizing adverse impact:

The promulgation of this regulation is necessary for DEC to maintain compliance with the FMPs for summer flounder, scup and black sea bass while optimizing opportunities for its recreational fishing industry and recreational anglers. Since these regulatory amendments are consistent with the Interstate FMPs, DEC anticipates that New York State will remain in compliance with the FMPs.

Ultimately, the maintenance of long-term sustainable fisheries will have a positive effect on employment for the fisheries in question, including party and charter boat fisheries as well as wholesale and retail bait and tackle shops and other support industries for recreational fisheries. Failure to comply with FMPs and take required actions to protect our natural resources could cause the collapse of a stock and have a severe adverse impact on the commercial and recreational fisheries for that species, as well as the supporting industries for those fisheries. These regulations are being proposed in order to provide the appropriate level of protection and allow for harvest consistent with the capacity of the resource to sustain such effort.

7. Small business and local government participation:

The department received recommendations from the Marine Resources Advisory Council, which is comprised of representatives from recreational and commercial fishing interests. The proposed regulations are also based upon comments received from recreational fishing organizations, party and charter boat owners and operators, retail and wholesale bait and tackle shop owners, recreational anglers and state law enforcement personnel. There was no special effort to contact local governments because the proposed rule does not affect them.

8. Cure period or other opportunity for ameliorative action:

Pursuant to SAPA 202-b (1-a)(b), no such cure period is included in the rule because of the potential adverse impact on the resource. Cure periods for the illegal taking of fish or wildlife are neither desirable nor recommended. Immediate compliance is required to ensure the general welfare of the public and the resource is protected.

Rural Area Flexibility Analysis

The Department of Environmental Conservation has determined that this rule will not impose an adverse impact on rural areas. There are no rural areas within the marine and coastal district. The summer flounder, scup and black sea bass fisheries directly affected by the proposed rule are entirely located within the marine and coastal district, and are not located adjacent to any rural areas of the State. Further, the proposed rule does not impose any reporting, record-keeping, or other compliance requirements on public or private entities in rural areas. Since no rural areas will be affected by the proposed amendments of 6 NYCRR Part 40, a Rural Area Flexibility Analysis is not required.

Job Impact Statement

1. Nature of impact:

The promulgation of this regulation is necessary for the Department of Environmental Conservation (DEC) to maintain compliance with the Fishery Management Plan for Summer Flounder, Scup and Black Sea Bass, and to optimize recreational fishing opportunities available to New Yorkers. The proposed rule reduces the recreational summer flounder minimum size limit to 19.5 inches, and increases the summer flounder possession limit to 4 fish per angler per day. The summer flounder season remains the same. For scup, anglers targeting scup while on board licensed party/charter vessels can fish for scup from May 1 through December 31 and have a possession limit of 20 fish per angler per day. Anglers on board licensed party/charter vessels have a bonus season from September 1 through October 31, and may take 40 scup per angler per day. For all other anglers the recreational season is the same, May 1 through December 31 and the possession limit is 20 fish per angler per day. Finally, the proposed rule increases the length of the recreational season for black sea bass to a period from June 15 through December 31 and increases the possession limit to 15 fish. The minimum size limit remains 13 inches.

Many currently licensed party and charter boat owners and operators, as well as bait and tackle businesses, will be affected by these regulations. Due to the expanded open seasons, decreased minimum sizes and increased possession limits there may be an increase in angler participation. This could result in a corresponding increase in the number of fishing trips, boat usage, and bait and tackle sales during the upcoming fishing season.

2. Categories and numbers affected:

In 2011, there were 503 licensed party and charter businesses in New York State. There were also a number of retail and wholesale marine bait and tackle shop businesses operating in New York; however, DEC does not have a record of the actual number. Last year, New York anglers took 1.5 million fishing trips in search of summer flounder, 239,415 trips fishing for scup, and 114,912 trips for black sea bass. The numbers of trips have decreased considerably from several years ago when regulations were considerably more relaxed. Despite this decrease in activity, marine recreational fishing continues to be a major outdoor activity in New York and a generator of revenue.

3. Regions of adverse impact:

This rule making will result in a liberalization of current harvest limits and therefore should not result in any adverse impacts.

4. Minimizing adverse impact:

There will not be any substantial adverse impact on jobs or employment opportunities as a consequence of this rule making.

NOTICE OF ADOPTION

Exemption for Sale and Shipment of Cultivated Bay Scallops and Oysters of Less Than Legal Size for Consumption and Resale

I.D. No. ENV-14-12-00005-A

Filing No. 683

Filing Date: 2012-07-10

Effective Date: 2012-07-25

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

Action taken: Amendment of Parts 42, 48 and 49 of Title 6 NYCRR.

Statutory authority: Environmental Conservation Law, sections 13-0316, 13-0319, 13-0323 and 13-0327

Subject: Exemption for sale and shipment of cultivated bay scallops and oysters of less than legal size for consumption and resale.

Purpose: To authorize the sale and shipment of cultivated bay scallops and oysters of less than legal size for consumption and resale.

Substance of final rule: The Department of Environmental Conservation (the department) proposes to amend 6 NYCRR section 42.7 Recordkeeping requirements and section 42.11 Receiving, packing, repacking, and processing of shellfish. The following proposed changes will affect receiving and shipping records, commingling of shellfish and shellfish identification for shellfish dealers.

1. Shellfish dealers shall maintain receiving and shipping records that include the identification of shellfish as wild or farm-raised and the on/off-bottom culture permit number for farm-raised shellfish.

2. No person shall pack or repack shellfish that have been cultured or farm-raised from more than one culture or cultivation site or from more than one on/off-bottom culture permit holder within the State, in the same container.

3. No person shall pack or repack shellfish that have been cultured or farm-raised in the same container with wild shellfish that are taken from any cultivation site or harvest area within the State.

4. All shellfish dealer tags must include the following indelible statement, or an equivalent statement, on one side of the tag: "RETAILERS, INFORM YOUR CUSTOMERS: Consuming raw or undercooked meats, poultry, seafood, shellfish, or eggs may increase your risk of foodborne illness, especially if you have certain medical conditions."

5. All shellfish dealer tags must indicate whether the shellfish are wild or farm-raised and include the on/off-bottom culture permit number for shellfish cultured within the State.

6. An original shipper or packer must remove harvesters' tags from containers of shellfish, and keep them on file in an orderly manner for 90 days; except when the tag is required to remain attached.

The department proposes to amend 6 NYCRR Part 48 Marine Hatcheries, On-Bottom and Off-Bottom Culture of Marine Plant and Animal Life. The proposed changes relate to sale of cultivation products, marking and identification of cultivation products, and records and reporting requirements for the holders of marine hatchery, on-bottom and off-bottom culture permits.

1. Oysters and bay scallops produced through cultivation which are less than legal size or the sale of which is otherwise restricted through sections 13-0323 and 13-0327 of the Environmental Conservation Law and regulations adopted pursuant thereto, may be sold for consumption and resale under the following conditions. The exemption for sale of cultivated bay scallops of less than legal size is subject to the following provisions: a) the exemption shall only apply to such bay scallops that are cultivated under an off-bottom culture permit issued by the department; and b) that are offered for sale or sold as shellstock (unshucked) bay scallops. No exemption shall apply to cultivated bay scallops that are offered for sale or sold as shucked product.

2. The off-bottom culture permit holder shall report all purchases of bay scallop seed to the department on a form prescribed by the department within 15 days after purchase and receipt of seed scallops. Such report shall include all purchases of bay scallops measuring less than two and one quarter inches from the middle of the hinge to the middle of the bill and that do not contain an annual growth line which shall be subject to off-bottom culture under a permit issued by the department.

3. The holder of a marine hatchery, on-bottom or off-bottom culture

permit shall report all purchases of oyster seed to the department on a form prescribed by the department within 15 days after purchase and receipt of seed oysters. Such report shall include all purchases of oysters measuring less than three inches in longest diameter which shall be subject to cultivation under a permit issued by the department.

4. The department shall establish an exemption for the sale of cultivated oysters of less than legal size. The exemption shall apply to oysters that are cultivated under a marine hatchery, on-bottom or off-bottom culture permit issued by the department pursuant to section 13-0316 of the Environmental Conservation Law. Cultivated oysters of any size may be offered for sale or sold to commercial markets for consumption or resale.

5. The department shall establish the following tagging requirements for the sale of cultivated shellfish for consumption or resale:

a) Prior to sale of cultivated shellfish for consumption or resale, except for shellstock (unshucked) bay scallops, to the holder of a valid class A or B shellfish dealer's permit who has a place of business in the County of Nassau or Suffolk, the culturist shall affix to each container a shellfish tag required by the provisions of paragraph 42.13(a)(5) of this Title. In addition to the tagging requirements in paragraph 42.13(a)(5), each shellfish tag must indicate, in waterproof ink, the following: 1) the marine hatchery, on-bottom or off-bottom culture permit number and identification as "farm-raised" and 2) the statement "Keep Refrigerated" or an equivalent statement.

b) Prior to the sale and shipment of cultivated shellfish for consumption or resale, except for shellstock (unshucked) bay scallops, the culturist shall affix to each container a shellfish dealer tag as required by the provisions of paragraph 42.11(a)(3) of this Title. In addition to the tagging requirements in paragraph 42.11(a)(3), each shellfish tag must indicate, in waterproof ink, the following: 1) the marine hatchery, on-bottom or off-bottom culture permit number and identification as "farm-raised" and 2) the statement "Keep Refrigerated" or an equivalent statement.

c) Prior to the sale and shipment of cultivated shellstock (unshucked) bay scallops authorized pursuant to the provisions of subdivision 48.4(c) of this Part to commercial markets for consumption or resale, the culturist shall affix to each container a shellfish dealer tag as required by the provisions of paragraph 42.11(a)(3) of this Title. In addition to the tagging requirements in paragraph 42.11(a)(3), each shellfish dealer tag shall be yellow in color with black lettering and must indicate, in waterproof ink, the following: 1) the off-bottom culture permit number and identification as "farm-raised" and 2) the statement "Keep Refrigerated" or an equivalent statement. The shellfish dealer tag affixed to each container of cultivated shellstock bay scallops shall remain attached to such container until the bay scallops are prepared for final consumption or sold to the final consumer.

6. No culturist shall be in possession of cultivated shellstock (unshucked) bay scallops and wild bay scallops on the same day.

7. No culturist shall pack cultivated shellfish from more than one cultivation site, as specified on a permit issued pursuant to this Part, in the same container.

8. No culturist shall pack cultivated shellfish in the same container with wild shellfish, when taken from any cultivation site or harvest area in the State.

9. The department shall establish reporting requirements for the holders of marine hatchery, on-bottom and off-bottom culture permits as follows: a) the holder of a marine hatchery, on-bottom or off-bottom culture permit shall file a report to the department on a form prescribed by the department of all sales of bay scallops of less than legal size that are sold to the holders of marine hatchery, on-bottom or off-bottom culture permits issued pursuant to section 13-0316 of the Environmental Conservation Law. The report shall be filed 15 days after the end of the month in which bay scallop seed sales were undertaken; and b) the holder of a marine hatchery, on-bottom or off-bottom culture permit issued pursuant to section 13-0316 of the Environmental Conservation Law shall file a report of all sales of oysters and shellstock (unshucked) bay scallops subject to the exemption authorized under subdivision 48.4(c) on a form prescribed by the department 15 days after the end of each month. A report shall not be required to be filed for any month where sales of bay scallops or oysters, under such exemption, were not undertaken by the holder pursuant to this Part.

The department proposes to add new subdivision 49.1(h) to 6 NYCRR Part 49 Shellfish Management. The proposed change allows for an exemption for cultivated bay scallops as follows:

1. Exemption for cultivated bay scallops. The harvest, possession and sale of bay scallops of less than legal size that are cultivated under a marine hatchery, on-bottom or off-bottom culture permit issued by the department, and subject to the provisions of section 13-0316 of the Environmental Conservation Law and Part 48 of this Title, shall be exempt from the provisions of subdivisions 49.1(b) through 49.1(f) of this Part.

Final rule as compared with last published rule: Nonsubstantive changes were made in sections 42.11(a)(2), 48.5(b)(1), (c)(1) and (d)(1).

Text of rule and any required statements and analyses may be obtained from: Debra Barnes, New York State Department of Environmental Conservation, 205 North Belle Mead Road, Suite 1, East Setauket, New York 11733, (631) 444-0483, email: dabarnes@gw.dec.state.ny.us

Additional matter required by statute: Pursuant to the State Environmental Quality Review Act, a negative declaration is on file with the department.

Revised Regulatory Impact Statement

A revised Regulatory Impact Statement is not required to accompany this Notice of Adoption. A non-substantive change was made to the text of the proposed rule in paragraph 42.11(a)(2) to clarify that cultivated (farm-raised) shellfish may not be packed or repacked in the same container with wild shellfish when taken from any cultivation site or harvest area in the State. This is consistent with the applicable sections of 6 NYCRR Part 42 that pertain to tagging, receiving, packing, repacking and processing of shellfish, and recordkeeping requirements for receipt and shipment of wild and farm-raised shellfish. Non-substantive changes were made to section 48.5 to eliminate the term "cultured" from the tagging requirements and only use the term "farm-raised" which is consistent with the proposed text for amendments to 6 NYCRR Part 42. The original Regulatory Impact Statement, as published in the Notice of Proposed Rule Making, remains valid and does not need to be amended.

Revised Regulatory Flexibility Analysis

A revised Regulatory Flexibility Analysis is not required to accompany this Notice of Adoption. A non-substantive change was made to the text of the proposed rule in paragraph 42.11(a)(2) to clarify that cultivated (farm-raised) shellfish may not be packed or repacked in the same container with wild shellfish when taken from any cultivation site or harvest area in the State. This is consistent with the applicable sections of 6 NYCRR that pertain to tagging, receiving, packing, repacking and processing of shellfish, and recordkeeping requirements for receipt and shipment of wild and farm-raised shellfish. Non-substantive changes were made to section 48.5 to eliminate the term "cultured" from the tagging requirements and only use the term "farm-raised" which is consistent with the proposed text for amendments to 6 NYCRR Part 42. The original Regulatory Flexibility Analysis for small businesses and local governments Statement, as published in the Notice of Proposed Rule Making, remains valid and does not need to be amended.

Revised Rural Area Flexibility Analysis

A revised Rural Area Flexibility Analysis is not required to accompany this Notice of Adoption. The commercial cultivation of oysters and scallops is primarily undertaken in marine waters located within the counties of Nassau and Suffolk. The department has determined that there are no rural areas within the marine and coastal district. Therefore, the department has determined that this rule does not impact rural areas or any public or private entities located within rural areas. Furthermore, the proposed rule does not impose any reporting, record keeping, or other compliance requirements on public or private entities in rural areas. A revised Rural Area Flexibility Analysis was not required.

Revised Job Impact Statement

A revised Job Impact Statement is not required to accompany this Notice of Adoption. A non-substantive change was made to the text of the proposed rule in paragraph 42.11(a)(2) to clarify that cultivated (farm-raised) shellfish may not be packed or repacked in the same container with wild shellfish when taken from any cultivation site or harvest area in the State. This is consistent with the applicable sections of 6 NYCRR Part 42 that pertain to tagging, receiving, packing, repacking and processing of shellfish, and recordkeeping requirements for receipt and shipment of wild and farm-raised shellfish. Non-substantive changes were made to section 48.5 to eliminate the term "cultured" from the tagging requirements and only use the term "farm-raised" which is consistent with the proposed text for amendments to 6 NYCRR Part 42. The original Job Impact Statement, as published in the Notice of Proposed Rule Making, remains valid and does not need to be amended.

Assessment of Public Comment

The New York State Department of Environmental Conservation (DEC) received a total of eight written comments on the proposed rule making to amend 6 NYCRR Parts 42, 48 and 49 to provide an exemption for sale of cultivated shellstock bay scallops and oysters of less than legal size for consumption and resale and establish tagging, reporting and record keeping requirements for shellfish culturists and shippers. Six of the comments were supportive of the proposed rule making as having a positive economic impact on the aquaculture industry. One of the supporters of the proposed rule making also expressed concern about the record keeping requirements for oyster culture. One comment expressed concerns with the proposed rule raising the issue of sovereignty rights on Indian Nation lands and potential infringement with Interstate Commerce. One comment also recognized the sovereignty rights of a federally-recognized Indian Nation but expressed the desire to work collaboratively to assure the safety of shellfish related activity and supply.

The comments are summarized below, followed by the department's response:

1. Comment: Although supportive of the general purpose of the regulatory change, the increased amount of record keeping, especially for oysters, is considered to be onerous for both the grower and the regulators.

DEC response: DEC acknowledges that there will be an increase in record keeping associated with the purchase of seed oysters and sale of cultured (farm-raised) oysters of less than legal size under the exemption. However, the record keeping requirements are necessary to assist law enforcement with compliance requirements for the exemption and to trace cultured products from initial seed purchase to final sale to commercial markets for consumption. The new record keeping requirements are expected to minimize the potential for poaching of sub-legal sized wild harvest oysters and their illegal sale as cultured products and allow for traceability of cultured shellfish in commercial markets. DEC does not consider these record keeping requirements to be burdensome on the aquaculture industry and will allow for greater flexibility and market-ability of cultured products when offered for sale at any size.

2. Comment: The proposed rule will help to sustain the community of marine life animals such as shellfish and the individuals consuming these products. Additionally, the rule ensures that products are fresh and packaged in the right manner.

DEC response: DEC expects this rule to have positive impacts on the economic viability of the shellfish aquaculture industry by creating an exemption that will allow for increased production of cultured (farm-raised) shellfish products that may be sold to commercial markets for consumption. The new requirements for tagging of cultured (farm-raised) and wild harvest shellfish by shippers will provide additional information to consumers on the origin of the shellfish.

3. Comment: The change in the rule on oysters and bay scallops of less than legal size for sale for aquaculturists is a positive move for the shellfish industry which creates opportunities to establish niche markets. Additional product for New York shellfish producers would be good especially since there is already a market being served by growers from out-of-state. Out-of-state growers currently supply the niche market for whole, live bay scallops in the New York Metropolitan Region. Adoption of the rule changes will enable farmers to cultivate an additional shellfish species that grows quickly on their leased grounds in the Peconic Estuary; take advantage of the marketing opportunity that exists in the greater New York Metropolitan Region; and increase the viability and profitability of their operations. They commend the DEC in this effort to amend regulations to allow for the sale of cultivated shellfish of less than legal size.

DEC response: DEC concurs with this comment and expects the rule to have a positive economic impact on the shellfish aquaculture industry.

4. Comment: The rule changes will also clarify an inconsistency in the regulations by providing an exemption that allows for the sale of cultivated oysters of less than legal size for consumption and resale. These changes would be a positive step that would allow for greater opportunities for current and future shellfish farmers that are participating in the Suffolk County Lease Program in Peconic and Gardiners Bays. They support this rule change in an effort to promote the shellfish aquaculture industry in the state.

DEC response: DEC concurs.

5. Comment: This rule will be a benefit for fishermen, suppliers of seed and materials, and the consumer. This will help to sustain their operations in an ever increasingly expensive environment since they will have increased opportunities for creation of niche markets.

DEC response: DEC concurs with this comment and expects the rule to have a positive economic impact on the shellfish aquaculture industry with little or no impacts to wild fisheries.

6. Comment: The proposed amendment infringes on the sovereignty rights of a federally-recognized Indian nation because it would require cultured oysters to be identified by a shellfish tag that includes the "on-bottom or off-bottom culture permit number" of the permit issued by New York State. The State lacks jurisdiction over Indian nation lands and the imposition of a New York State permit requirement for oyster farming on federally-recognized Indian nation lands would be invalid. The tagging requirements for cultured oysters apply to any oysters that are destined and delivered for export outside of the United States, and/or outside of the State of New York, and as such, a New York conflicting local tag requirement may violate the Interstate Commerce Clause of the Constitution of the United States.

DEC response: DEC respectfully disagrees with this comment. The State recognizes and respects the sovereignty rights of the nation, and would not, as such, impose its jurisdiction on shellfish harvested and consumed by the nation's citizens. However, any shellfish that are sold in interstate commerce must meet the requirements established under the National Shellfish Sanitation Program (NSSP) and all DEC regulations that have been adopted to be consistent with these requirements in order to protect the public health of consumers of raw molluscan shellfish. The

State's shellfish program is administered consistent with the stringent guidelines established under the NSSP that are designed to protect the public health of consumers of shellfish. The NSSP is the federal/state cooperative program recognized by the U.S. Food and Drug Administration and the Interstate Shellfish Sanitation Conference for the sanitary control of shellfish produced and sold for human consumption. The NSSP Guide for the Control of Molluscan Shellfish consists of the Model Ordinance which includes guidelines to ensure that the shellfish produced in States are in compliance with the uniform standards for public health protection of consumers which includes a national standard for the tagging of shellfish that are sold in interstate commerce. The purpose of the NSSP is to promote and improve the sanitation of shellfish sold in interstate commerce through federal/state cooperation and uniformity of State shellfish programs. The requirement for a shellfish aquaculture permit for any cultured (farm-raised) shellfish that are sold in intra or interstate commerce is consistent with the Model Ordinance under the NSSP and would apply to an Indian nation involved in the sale of cultured oysters in commerce. Furthermore, DEC's proposed tagging requirements for cultured or farm-raised shellfish are consistent with the guidelines in the NSSP and also other states that allow an exemption for sale of cultured shellfish of less than legal size. This tagging requirement is not a conflicting local tag but consistent with a national standard for tagging of shellfish offered for sale or sold in interstate commerce for consumption. Other states that allow for exemptions for cultured shellfish use a similar tagging requirement as DEC has proposed in the regulatory amendment that is pending adoption. Additionally, the U.S. Department of Agriculture's (USDA) Country of Origin Labeling law (COOL) requires all shellfish that are sold at retail to be labeled with the country of origin and indicate if they are "wild" or "farm-raised" so that this information is readily available to consumers. DEC's proposed regulations will incorporate the minimum requirements of the USDA COOL labeling law and minimum guidelines in the NSSP for tagging of all shellfish to readily identify "wild" versus "cultured (farm-raised)" and also allow for increased traceability of product back to its initial harvest area or culture site in the event of a shellfish-related illness. Since the Shinnecock Indian Nation does not have an international agreement (Memorandum of Understanding) with the U.S. FDA for foreign nations under the NSSP, the Nation will need to comply with New York State's regulations for their shellfish to be sold in interstate commerce and also be listed on the Interstate Certified Shellfish Shippers List. DEC's regulations for tagging requirements of shellfish apply to all shellfish sold in intrastate or interstate commerce.

7. Comment: A federally-recognized Indian nation expressed a desire to continue to pursue safe approaches to shellfish cultivation and harvesting, in the exercise of all sovereign and aboriginal fishing rights in and about its homelands. Farming and fishing the seas are ancestral activities of the nation; these and related activities continue to this day for food supply and as recreational, ceremonial and income-producing activities. The tribal trustees should be contacted to assure appropriate collaborative efforts to assure the safety of shellfish related activity and supply.

DEC response: DEC acknowledges and respects the sovereignty and federal recognition and rights of the Indian nation and their desire to work collaboratively to assure the safety of shellfish related activity and supply. The State's shellfish program is administered consistent with the stringent guidelines established under the National Shellfish Sanitation Program (NSSP) that are designed to protect the public health of consumers of shellfish. The purpose of the NSSP is to provide a uniform standard for public health protection of consumers of shellfish and also to ensure that both wild and cultured (farm-raised) shellfish are harvested from shellfish lands that meet an acceptable bacteriological standard (certified for shellfish harvest) and adheres to permitting requirements that allow for traceability of shellfish from approved sources. DEC is eager to work collaboratively with the Indian nation to ensure that any shellfish cultured or harvested and sold in commerce is safe for consumption and meets the requirements of the NSSP for sanitary control over shellfish.

Department of Financial Services

EMERGENCY RULE MAKING

Business Conduct of Mortgage Loan Servicers

I.D. No. DFS-30-12-00002-E

Filing No. 680

Filing Date: 2012-07-09

Effective Date: 2012-07-12

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

Action taken: Addition of Part 419 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: The legislature required the registration of mortgage loan servicers as part of the Mortgage Lending Reform Law of 2008 (Ch. 472, Laws of 2008, hereinafter, the "Mortgage Lending Reform Law") to help address the existing foreclosure crisis in the state. By registering servicers and requiring that servicers engage in the business of mortgage loan servicing in compliance with rules and regulations adopted by the Superintendent, the legislature intended to help ensure that servicers conduct their business in a manner acceptable to the Department. However, since the passage of the Mortgage Lending Reform Law, foreclosures continue to pose a significant threat to New York homeowners. The Department continues to receive complaints from homeowners and housing advocates that mortgage loan servicers' response to delinquencies and their efforts at loss mitigation are inadequate. These rules are intended to provide clear guidance to mortgage loan servicers as to the procedures and standards they should follow with respect to loan delinquencies. The rules impose a duty of fair dealing on loan servicers in their communications, transactions and other dealings with borrowers. In addition, the rule sets standards with respect to the handling of loan delinquencies and loss mitigation. The rule further requires specific reporting on the status of delinquent loans with the Department so that it has the information necessary to assess loan servicers' performance.

In addition to addressing the pressing issue of mortgage loan delinquencies and loss mitigation, the rule addresses other areas of significant concern to homeowners, including the handling of borrower complaints and inquiries, the payment of taxes and insurance, crediting of payments and handling of late payments, payoff balances and servicer fees. The rule also sets forth prohibited practices such as engaging in deceptive practices or placing homeowners' insurance on property when the servicer has reason to know that the homeowner has an effective policy for such insurance.

Subject: Business conduct of mortgage loan servicers.

Purpose: To implement the purpose and provisions of the Mortgage Lending Reform Law of 2008 with respect to mortgage loan servicers.

Substance of emergency rule: Section 419.1 contains definitions of terms that are used in Part 419 and not otherwise defined in Part 418, including "Servicer", "Qualified Written Request" and "Loan Modification".

Section 419.2 establishes a duty of fair dealing for Servicers in connection with their transactions with borrowers, which includes a duty to pursue loss mitigation with the borrower as set forth in Section 419.11.

Section 419.3 requires compliance with other State and Federal laws relating to mortgage loan servicing, including Banking Law Article 12-D, RESPA, and the Truth-in-Lending Act.

Section 419.4 describes the requirements and procedures for handling to consumer complaints and inquiries.

Section 419.5 describes the requirements for a servicer making payments of taxes or insurance premiums for borrowers.

Section 419.6 describes requirements for crediting payments from borrowers and handling late payments.

Section 419.7 describes the requirements of an annual account statement which must be provided to borrowers in plain language showing

the unpaid principal balance at the end of the preceding 12-month period, the interest paid during that period and the amounts deposited into and disbursed from escrow. The section also describes the Servicer's obligations with respect to providing a payment history when requested by the borrower or borrower's representative.

Section 419.8 requires a late payment notice be sent to a borrower no later than 17 days after the payment remains unpaid.

Section 419.9 describes the required provision of a payoff statement that contains a clear, understandable and accurate statement of the total amount that is required to pay off the mortgage loan as of a specified date.

Section 419.10 sets forth the requirements relating to fees permitted to be collected by Servicers and also requires Servicers to maintain and update at least semi-annually a schedule of standard or common fees on their website.

Section 419.11 sets forth the Servicer's obligations with respect to handling of loan delinquencies and loss mitigation, including an obligation to make reasonable and good faith efforts to pursue appropriate loss mitigation options, including loan modifications. This Section includes requirements relating to procedures and protocols for handling loss mitigation, providing borrowers with information regarding the Servicer's loss mitigation process, decision-making and available counseling programs and resources.

Section 419.12 describes the quarterly reports that the Superintendent may require Servicers to submit to the Superintendent, including information relating to the aggregate number of mortgages serviced by the Servicer, the number of mortgages in default, information relating to loss mitigation activities, and information relating to mortgage modifications.

Section 419.13 describes the books and records that Servicers are required to maintain as well as other reports the Superintendent may require Servicers to file in order to determine whether the Servicer is complying with applicable laws and regulations. These include books and records regarding loan payments received, communications with borrowers, financial reports and audited financial statements.

Section 419.14 sets forth the activities prohibited by the regulation, including engaging in misrepresentations or material omissions and placing insurance on a mortgage property without written notice when the Servicer has reason to know the homeowner has an effective policy in place.

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 October 6, 2012.

Text of rule and any required statements and analyses may be obtained from: Sam L. Abram, NYS Department of Financial Services, 1 State Street, New York, NY 10004, (212) 709-1658, email:sam.abram@dfs.gov.

Regulatory Impact Statement

1. Statutory authority.

Article 12-D of the Banking Law, as amended by the Legislature in the Mortgage Lending Reform Law of 2008 (Ch. 472, Laws of 2008, hereinafter, the "Mortgage Lending Reform Law"), creates a framework for the regulation of mortgage loan servicers. Mortgage loan servicers 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 Mortgage Lending Reform 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. The functions and powers of the banking board have since been transferred to the Superintendent of Financial Services, pursuant to Part A of Chapter 62 of the Laws of 2011, Section 89.

New Paragraph (d) was added to Subsection (5) of Section 590 by the Mortgage Lending Reform 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 Mortgage Lending Reform 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 Mortgage Lending Reform 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 Mortgage Lending Reform 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 Mortgage Lending Reform 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 Mortgage Lending Reform 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 Mortgage Lending Reform 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 mortgage loan servicer registration and branch applications are established in accordance with Banking Law Section 18-a.

2. Legislative objectives.

The Mortgage Lending Reform Law was intended to address various problems related to residential mortgage loans in this State. The 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 had previously been no general regulation of servicers by the state or the Federal government.

The Mortgage Lending Reform 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 Superintendent to promulgate appropriate rules and regulations for the regulation of servicers in this state.

Part 418 of the Superintendent's Regulations, initially adopted on an emergency basis on July 1 2009, addresses the first component of the mortgage servicing statute by setting standards and procedures for applications for registration as a mortgage loan servicer, for approving and denying applications to be registered as a mortgage loan servicer, for approving changes of control, for suspending, terminating or revoking the registration of a mortgage loan servicer as well as setting financial responsibility standards for mortgage loan servicers.

Part 419 addresses the business practices of mortgage loan servicers in connection with their servicing of residential mortgage loans. This part addresses the obligations of mortgage loan servicers in their communications, transactions and general dealings with borrowers, including the handling of consumer complaints and inquiries, handling of escrow payments, crediting of payments, charging of fees, loss mitigation procedures and provision of payment histories and payoff statements. This part also imposes certain recordkeeping and reporting requirements in order to enable the Superintendent to monitor servicers' conduct and prohibits certain practices such as engaging in deceptive business practices.

Collectively, the provisions of Part 418 and 419 implement the intent of the Legislature to register and supervise mortgage loan servicers.

3. Needs and benefits.

The Mortgage Lending Reform Law adopted a multifaceted approach to the lack of supervision of the mortgage loan industry, particularly with respect to servicing and foreclosure. It addressed 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.

Until July 1, 2009, when the mortgage loan servicer registration provisions first became effective, the Department regulated 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 act as agents for owners of mortgages in negotiations relating to loss mitigation when a mortgage becomes delinquent. 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; erroneously force-placing insurance when borrowers already have insurance; and failing to engage in prompt and appropriate loss mitigation efforts.

More than 2,000,000 loans on residential one-to-four family properties are being serviced in New York. Of these over 9% were seriously delinquent as of the first quarter of 2012. Despite various initiatives adopted at the state level and the creation of federal programs such as Making Home Affordable to encourage loan modifications and help at risk homeowners, the number of loans modified, have not kept pace with the number of foreclosures. Foreclosures impose costs not only on borrowers and lenders but also on neighboring homeowners, cities and towns. They drive down home prices, diminish tax revenues and have adverse social consequences and costs.

As noted above, Part 418, initially adopted on an emergency basis on July 1 2009, relates to the first component of the mortgage servicing statute - the registration of mortgage loan servicers. It was 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. It also provided for the suspension, revocation and termination of licensees involved in wrongdoing and establishes minimum financial standards for mortgage loan servicers.

Part 419 addresses the business practices of mortgage loan servicers and establishes certain consumer protections for homeowners whose residential mortgage loans are being serviced. These regulations provide standards and procedures for servicers to follow in their course of dealings with borrowers, including the handling of borrower complaints and inquiries, payment of taxes and insurance premiums, crediting of borrower payments, provision of annual statements of the borrower's account, authorized fees, late charges and handling of loan delinquencies and loss mitigation. Part 419 also identifies practices that are prohibited and imposes certain reporting and record-keeping requirements to enable the Superintendent to determine the servicer's compliance with applicable laws, its financial condition and the status of its servicing portfolio.

Since the adoption of Part 418, 67 entities have been approved for registration or have pending applications and nearly 400 entities have indicated that they are a mortgage banker, broker, bank or other organization exempt from the registration requirements.

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 are required to comply with the conduct of business and consumer protection rules applicable to mortgage loan servicers.

These regulations will improve accountability and the quality of service in the mortgage loan industry and will help promote alternatives to foreclosure in the state.

4. Costs.

The requirements of Part 419 do not impose any direct costs on mortgage loan servicers. Although mortgage loan servicers may incur some additional costs as a result of complying with Part 419, the overwhelming majority of mortgage loan servicers are banks, operating subsidiaries or affiliates of banks, large independent servicers or other financial services entities that service millions, and even billions, of dollars in loans and have the experience, resources and systems to comply with these requirements. Moreover, any additional costs are likely to be mitigated by the fact that many of the requirements of Part 419, including those relating to the handling of residential mortgage delinquencies and loss mitigation (419.11) and quarterly reporting (419.12), are consistent with or substantially similar to standards found in other federal or state laws, federal mortgage modification programs or servicers own protocols.

For example, Fannie Mae and Freddie Mac, which own or insure approximately 90% of the nation's securitized mortgage loans, have similar guidelines governing various aspects of mortgage servicing, including handling of loan delinquencies. In addition, over 100 mortgage loan servicers participate in the federal Making Home Affordable (MHA) program which requires adherence to standards for handling of loan delinquencies and loss mitigation similar to those contained in these regulations. Those servicers not participating in MHA have, for the most part, adopted programs which parallel many components of MHA.

Reporting on loan delinquencies and loss mitigation has likewise become increasingly common. The OCC publish quarterly reports on credit performance, loss mitigation efforts and foreclosures based on data provided by national banks and thrifts. And, states such as Maryland and North Carolina have adopted similar reporting requirements to those contained in section 419.12.

Many of the other requirements of Part 419 such as those related to handling of taxes, insurance and escrow payments, collection of late fees and charges, crediting of payments derive from federal or state laws and reflect best industry practices. The periodic reporting and bookkeeping and record keeping requirements are also standard among financial services businesses, including mortgage bankers and brokers (see, for example section 410 of the Superintendent's Regulations).

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 should assist in decreasing the number of foreclosures in this state.

The regulations will not result in any fiscal implications to the State. The 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.

Part 419 requires mortgage loan servicers to keep books and records related to its servicing for a period of three years and to produce quarterly reports and financial statements as well as annual and other reports requested by the Superintendent. It is anticipated that the quarterly reporting relating to mortgage loan servicing will be done electronically and would therefore be virtually paperless. The other recordkeeping and reporting requirements are consistent with standards generally required of mortgage bankers and brokers and other regulated financial services entities.

7. Duplication.

The regulation does not duplicate, overlap or conflict with any other regulations. The various federal laws that touch upon aspects of mortgage loan servicing are noted in Section 9 "Federal Standards" below.

8. Alternatives.

The Mortgage Lending Reform Law required the registration of mortgage loan servicers and empowered the Superintendent to prescribe rules and regulations to guide the business of mortgage servicing. The purpose of the regulation is to carry out this statutory mandate to register mortgage loan servicers and regulate the manner in which they conduct business. The Department circulated a proposed draft of Part 419 and received comments from and met with industry and consumer groups. The current Part 419 reflects the input received. The alternative to these regulations is to do nothing or to wait for the newly created federal bureau of consumer protection to promulgate national rules, which could take years, may not happen at all or may not address all the practices covered by the rule. Thus, neither of those alternatives would effectuate the intent of the legislature to address the current foreclosure crisis, help at-risk homeowners vis-à-vis their loan servicers and ensure that mortgage loan servicers engage in fair and appropriate servicing practices.

9. Federal standards.

Currently, mortgage loan servicers are not required to be registered by any federal agencies, and there are no comprehensive federal rules governing mortgage loan servicing. Federal laws such as the Real Estate Settlement Procedures Act of 1974, 12 U.S.C. § 2601 et seq. and regulations adopted thereunder, 24 C.F.R. Part 3500, and the Truth-in-Lending Act, 15 U.S.C. section 1600 et seq. and Regulation Z adopted thereunder, 12 C.F.R. section 226 et seq., govern some aspects of mortgage loan servicing, and there have been some recent amendments to those laws and regulations regarding mortgage loan servicing. For example, Regulation Z, 12 C.F.R. section 226.36(c), was recently amended to address the crediting of payments, imposition of late charges and the provision of payoff statements. In addition, the recently enacted Dodd-Frank Wall Street Reform and Protection Act of 2010 (Dodd-Frank Act) establishes requirements for the handling of escrow accounts, obtaining force-placed insurance, responding to borrower requests and providing information related to the owner of the loan.

Additionally, the newly created Bureau of Consumer Financial Protection established by the Dodd-Frank Act may soon propose additional regulations for mortgage loan servicers.

10. Compliance schedule.

Similar emergency regulations first became effective on October 1, 2010.

Regulatory Flexibility Analysis

1. Effect of the Rule:

The rule will not have any impact on local governments. The

Mortgage Lending Reform Law of 2008 (Ch. 472, Laws of 2008, hereinafter, the "Mortgage Lending Reform Law") requires all mortgage loan servicers, whether registered or exempt from registration under the law, to service mortgage loans in accordance with the rules and regulations promulgated by the Banking Board or Superintendent. The functions and powers of the Banking Board have since been transferred to the Superintendent of Financial Services, pursuant to Part A of Chapter 62 of the Laws of 2011, Section 89. Of the 67 entities which have been approved for registration or have pending applications and the nearly 400 entities which have indicated that they are exempt from the registration requirements, it is estimated that very few are small businesses.

2. Compliance Requirements:

The provisions of the Mortgage Lending Reform Law relating to mortgage loan servicers has two main components: it requires the registration by the Department of servicers who are not a bank, mortgage banker, mortgage broker or other 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 Mortgage Lending Reform Law relating to mortgage loan servicers (the "Mortgage Loan Servicer Business Conduct Regulations").

The provisions of the Mortgage Lending Reform Law requiring registration of mortgage loan servicers which are not mortgage bankers, mortgage brokers or exempt organizations became effective on July 1, 2009. Part 418 of the Superintendent's Regulations, initially adopted on an emergency basis on July 1 2009, sets for the standards and procedures for applications for registration as a mortgage loan servicer, for approving and denying applications to be registered as a mortgage loan servicer, for approving changes of control, for suspending, terminating or revoking the registration of a mortgage loan servicer as well as the financial responsibility standards for mortgage loan servicers.

Part 419 implements the provisions of the Mortgage Lending Reform Law by setting the standards by which mortgage loan servicers conduct the business of mortgage loan servicing. The rule sets the standards for handling complaints, payments of taxes and insurance, crediting of borrower payments, late payments, account statements, delinquencies and loss mitigation, fees and recordkeeping.

3. Professional Services:

None.

4. Compliance Costs:

The requirements of Part 419 do not impose any direct costs on mortgage loan servicers. Although mortgage loan servicers may incur some additional costs as a result of complying with Part 419, the overwhelming majority of mortgage loan servicers are banks, operating subsidiaries or affiliates of banks, large independent servicers or other financial services entities that service millions, and even billions, of dollars in loans and have the experience, resources and systems to comply with these requirements. Moreover, any additional costs are likely to be mitigated by the fact that many of the requirements of Part 419, including those relating to the handling of residential mortgage delinquencies and loss mitigation (419.11) and quarterly reporting (419.12), are consistent with or substantially similar to standards found in other federal or state laws, federal mortgage modification programs or servicers own protocols.

For example, Fannie Mae and Freddie Mac, which own or insure approximately 90% of the nation's securitized mortgage loans, have similar guidelines governing various aspects of mortgage servicing, including handling of loan delinquencies. In addition, over 100 mortgage loan servicers participate in the federal Making Home Affordable (MHA) program which requires adherence to standards for handling of loan delinquencies and loss mitigation similar to those contained in these regulations. Those servicers not participating in MHA have, for the most part, adopted programs which parallel many components of MHA.

Reporting on loan delinquencies and loss mitigation has likewise become increasingly common. The OCC publishes quarterly reports

on credit performance, loss mitigation efforts and foreclosures based on data provided by national banks and thrifts. And, states such as Maryland and North Carolina have adopted similar reporting requirements to those contained in section 419.12.

Many of the other requirements of Part 419 such as those related to handling of taxes, insurance and escrow payments, collection of late fees and charges, crediting of payments derive from federal or state laws and reflect best industry practices. The periodic reporting and bookkeeping and record keeping requirements are also standard among financial services businesses, including mortgage bankers and brokers (see, for example section 410 of the Superintendent's Regulations).

Compliance with the rule should improve the servicing of residential mortgage loans in New York, including the handling of mortgage delinquencies, help prevent unnecessary foreclosures and reduce consumer complaints regarding the servicing of residential mortgage loans.

5. Economic and Technological Feasibility:

For the reasons noted in Section 4 above, the rule should impose no adverse economic or technological burden on mortgage loan servicers that are small businesses.

6. Minimizing Adverse Impacts:

As noted in Section 1 above, most servicers are not small businesses. Many of the requirements contained in the rule derive from federal or state laws, existing servicer guidelines utilized by Fannie Mae and Freddie Mac and best industry practices.

Moreover, 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, help borrowers at risk of foreclosure and decrease the number of foreclosures in this state.

7. Small Business and Local Government Participation:

The Department distributed a draft of proposed Part 419 to industry representatives, received industry comments on the proposed rule and met with industry representatives in person. The Department likewise distributed a draft of proposed Part 419 to consumer groups, received their comments on the proposed rule and met with consumer representatives to discuss the proposed rule in person. The rule reflects the input received from both industry and consumer groups.

Rural Area Flexibility Analysis

Types and Estimated Numbers: Since the adoption of the Mortgage Lending Reform Law of 2008 (Ch. 472, Laws of 2008, hereinafter, the "Mortgage Lending Reform Law"), which required mortgage loan servicers to be registered with the Department unless exempted under the law, 67 entities have pending applications or have been approved for registration and nearly 400 entities have indicated that they are a mortgage banker, broker, bank or other organization exempt from the registration requirements. Only one of the non-exempt entities applying for registration is located in New York and operating in a rural area. Of the exempt organizations, all of which are required to comply with the conduct of business contained in Part 419, approximately 400 are located in New York, including several in rural areas. However, the overwhelming majority of exempt organizations, regardless of where located, are banks or credit unions that are already regulated and are thus familiar with complying with the types of requirements contained in this regulation.

Compliance Requirements: The provisions of the Mortgage Lending Reform Law relating to mortgage loan servicers has two main components: it requires the registration by the Department of servicers that are not a bank, mortgage banker, mortgage broker or other exempt organization (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 Mortgage Lending Reform Law relating to mortgage loan servicers (the "MLS Business Conduct Regulations").

The provisions of the Mortgage Lending Reform Law of 2008 requiring registration of mortgage loan servicers which are not

mortgage bankers, mortgage brokers or exempt organizations became effective on July 1, 2009. Part 418 of the Superintendent's Regulations, initially adopted on an emergency basis on July 1, 2010, sets forth the standards and procedures for applications for registration as a mortgage loan servicer, for approving and denying applications to be registered as a mortgage loan servicer, for approving changes of control, for suspending, terminating or revoking the registration of a mortgage loan servicer as well as the financial responsibility standards for mortgage loan servicers.

Part 419 implements the provisions of the Mortgage Lending Reform Law of 2008 by setting the standards by which mortgage loan servicers conduct the business of mortgage loan servicing. The rule sets the standards for handling complaints, payments of taxes and insurance, crediting borrower payments, late payments, account statements, delinquencies and loss mitigation and fees. This part also imposes certain recordkeeping and reporting requirements in order to enable the Superintendent to monitor services' conduct and prohibits certain practices such as engaging in deceptive business practices.

Costs: The requirements of Part 419 do not impose any direct costs on mortgage loan servicers. The periodic reporting requirements of Part 419 are consistent with those imposed on other regulated entities. In addition, many of the other requirements of Part 419, such as those related to the handling of loan delinquencies, taxes, insurance and escrow payments, collection of late fees and charges and crediting of payments, derive from federal or state laws, current federal loan modification programs, servicing guidelines utilized by Fannie Mae and Freddie Mac or servicers' own protocols. Although mortgage loan servicers may incur some additional costs as a result of complying with Part 419, the overwhelming majority of mortgage loan servicers are banks, credit unions, operating subsidiaries or affiliates of banks, large independent servicers or other financial services entities that service millions, and even billions, of dollars in loans and have the experience, resources and systems to comply with these requirements. Of the 67 entities that have been approved for registration or that have pending applications, only one is located in a rural area of New York State. Of the few exempt organizations located in rural areas of New York, virtually all are banks or credit unions. Moreover, compliance with the rule should improve the servicing of residential mortgage loans in New York, including the handling of mortgage delinquencies, help prevent unnecessary foreclosures and reduce consumer complaints regarding the servicing of residential mortgage loans.

Minimizing Adverse Impacts: As noted in the "Costs" section above, while mortgage loan servicers may incur some higher costs as a result of complying with the rules, the Department does not believe that the rule will impose any meaningful adverse economic impact upon private or public entities in rural areas.

In addition, it should be noted that Part 418, which establishes the application and financial requirements for mortgage loan servicers, authorizes the Superintendent to reduce or waive the otherwise applicable financial responsibility requirements in the case of mortgage loans servicers that service not more than 12 mortgage loans or more than \$5,000,000 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 on mortgage loan servicers operating in rural areas.

Rural Area Participation: The Department issued a draft of Part 419 in December 2009 and held meetings with and received comments from industry and consumer groups following the release of the draft rule. The Department also maintains continuous contact with large segments of the servicing industry through its regulation of mortgage bankers and brokers and its work in the area of foreclosure prevention. The Department likewise maintains close contact with a variety of consumer groups through its community outreach programs and foreclosure mitigation programs. The Department has utilized this knowledge base in drafting the regulation.

Job Impact Statement

Article 12-D of the Banking Law, as amended by the Mortgage 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. Part 418 of the Superintendent's Regulations, initially adopted on an emergency basis on July 1, 2009, sets forth the application, exemption and approval procedures for registration as a mortgage loan servicer, as well as financial responsibility requirements for applicants, registrants and exempted persons.

Part 419 addresses the business practices of mortgage loan servicers in connection with their servicing of residential mortgage loans. Thus, this part addresses the obligations of mortgage loan servicers in their communications, transactions and general dealings with borrowers, including the handling of consumer complaints and inquiries, handling of escrow payments, crediting of payments, charging of fees, loss mitigation procedures and provision of payment histories and payoff statements. This part also imposes certain recordkeeping and reporting requirements in order to enable the Superintendent to monitor services' conduct and prohibits certain practices such as engaging in deceptive business practices.

Compliance with Part 419 is not expected to have a significant adverse effect on jobs or employment activities within the mortgage loan servicing industry. The vast majority of mortgage loan servicers are sophisticated financial entities that service millions, if not billions, of dollars in loans and have the experience, resources and systems to comply with the requirements of the rule. Moreover, many of the requirements of the rule reflect derive from federal or state laws and reflect existing best industry practices.

Office of Mental Health

NOTICE OF ADOPTION

Medical Assistance Rates of Payment for Residential Treatment Facilities for Children and Youth

I.D. No. OMH-21-12-00016-A

Filing No. 685

Filing Date: 2012-07-10

Effective Date: 2012-07-25

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

Action taken: Amendment of Part 578 of Title 14 NYCRR.

Statutory authority: Mental Hygiene Law, sections 7.09 and 43.02

Subject: Medical Assistance Rates of Payment for Residential Treatment Facilities for Children and Youth.

Purpose: To freeze rates paid to residential treatment facilities consistent with the enacted 2012-2013 State Budget.

Text or summary was published in the May 23, 2012 issue of the Register, I.D. No. OMH-21-12-00016-P.

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

Text of rule and any required statements and analyses may be obtained from: Sue Watson, NYS Office of Mental Health, 44 Holland Avenue, Albany, NY 12229, (518) 474-1331, email: Sue.Watson@omh.ny.gov

Assessment of Public Comment

The agency received no public comment.

Office of Parks, Recreation and Historic Preservation

NOTICE OF WITHDRAWAL

Designation of Non-Smoking Areas in Certain Outdoor Settings

I.D. No. PKR-16-12-00004-W

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

Action taken: Notice of proposed rule making, I.D. No. PKR-16-12-00004-P, has been withdrawn from consideration. The notice of proposed rule making was published in the *State Register* on April 18, 2012.

Subject: Designation of non-smoking areas in certain outdoor settings.

Reason(s) for withdrawal of the proposed rule: An objection was received so OPRHP must withdraw the rule and initiate the normal rule making process as required by SAPA.

Public Service Commission

PROPOSED RULE MAKING HEARING(S) SCHEDULED

Orange and Rockland Utilities, Inc. Proposes to Retain a Portion of Property Tax Refunds

I.D. No. PSC-30-12-00008-P

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

Proposed Action: The PSC is considering a petition filed by Orange and Rockland Utilities, Inc. for approval to retain a portion of property tax refunds from the Town of Monroe and the City of Middletown.

Statutory authority: Public Service Law, sections 2, 5, 89-b and 113(2)

Subject: Orange and Rockland Utilities, Inc. proposes to retain a portion of property tax refunds.

Purpose: To consider Orange and Rockland Utilities, Inc.'s proposal to retain a portion of property tax refunds.

Public hearing(s) will be held at: 11:00 a.m.,* Nov. 8, 2012 at Department of Public Service, Three Empire State Plaza, 3rd Fl. Hearing Rm., Albany, NY.

*On occasion there are requests to reschedule or postpone hearing dates. If such a request is granted, notification of any subsequent scheduling changes will be available at the DPS website (www.dps.ny.gov) under Case 12-M-0205.

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

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

Substance of proposed rule: The Public Service Commission is considering the petition of Orange and Rockland Utilities, Inc. (Orange and Rockland), pursuant to Public Service Law § 113(2), for approval of a proposed allocation between the company and ratepayers of property tax refunds, from the Town of Monroe and the City of Middletown. Orange and Rockland proposes to allocate the refunds 86% to ratepayers and 14% to the company. Accordingly, Orange and Rockland requests Commission authorization to retain 14% of the estimated net tax savings from both the settlement with Monroe (\$121,863) and the settlement with Middletown (\$39,055). Orange and Rockland seeks Commission authorization to retain these amounts in recognition of the company's tax reduction efforts and provision of an incentive to the company to continue such efforts in the future. The Commission may grant, deny or modify, in whole or in part, the petition and it may consider 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.ny.gov/f96dir.htm>. For questions, contact: Leann Ayer, Public Service Commission, 3 Empire State Plaza, Albany, New York 12223-1350, (518) 486-2655, email: leann.ayer@dps.ny.gov

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

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

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

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

(12-M-0205SP1)

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Criteria for Interruptible Gas Service

I.D. No. PSC-30-12-00004-P

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

Proposed Action: The Commission is considering a filing by KeySpan Gas East Corp. d/b/a Brooklyn Union of L.I. to propose revisions to the Company's rules and regulations contained in P.S.C. No. 1 — Gas to become effective August 1, 2012.

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

Subject: Criteria for Interruptible Gas Service.

Purpose: To reflect the provision of an affidavit option to certain interruptible gas customers.

Substance of proposed rule: The Commission is considering whether to approve, modify or reject, in whole or in part, KeySpan Gas East Corp. d/b/a Brooklyn Union of L.I.'s filing to reflect the provision of an affidavit option to certain interruptible gas customers who choose to shut down operations during periods of called interruption in lieu of maintaining a full alternate fuel supply inventory. The amendments were filed pursuant to Commission Order Directing Certain Utilities to Submit Tariff Amendments, issued May 23, 2012 in Case 11-G-0543. The filing has a proposed effective date of August 1, 2012. The Commission may resolve related matters and may apply its decision here to other companies.

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

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

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

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

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

(11-G-0543SP7)

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Criteria for Interruptible Gas Service

I.D. No. PSC-30-12-00005-P

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

Proposed Action: The Commission is considering a filing by Niagara Mohawk Power Corporation d/b/a National Grid to propose revisions to the Company's rules and regulations contained in P.S.C. No. 219 — Gas to become effective August 1, 2012.

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

Subject: Criteria for Interruptible Gas Service.

Purpose: To reflect the provision of an affidavit option to certain interruptible gas customers.

Substance of proposed rule: The Commission is considering whether to approve, modify or reject, in whole or in part, Niagara Mohawk Power Corporation d/b/a National Grid's filing to reflect the provision of an affidavit option to certain interruptible gas customers who choose to shut down operations during periods of called interruption in lieu of maintaining a full alternate fuel supply inventory. The amendments were filed pursuant to Commission Order Directing Certain Utilities to Submit Tariff Amendments, issued May 23, 2012 in Case 11-G-0543. The filing has a proposed effective date of August 1, 2012. The Commission may resolve related matters and may apply its decision here to other companies.

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

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

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

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

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

(11-G-0543SP5)

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

Criteria for Interruptible Gas Service

I.D. No. PSC-30-12-00006-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 filing by The Brooklyn Union Gas Company d/b/a National Grid to propose revisions to the Company's rules and regulations contained in P.S.C. No. 12 — Gas to become effective August 1, 2012.

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

Subject: Criteria for Interruptible Gas Service.

Purpose: To reflect the provision of an affidavit option to certain interruptible gas customers.

Substance of proposed rule: The Commission is considering whether to approve, modify or reject, in whole or in part, The Brooklyn Union Gas Company d/b/a National Grid's filing to reflect the provision of an affidavit option to certain interruptible gas customers who choose to shut down operations during periods of called interruption in lieu of maintaining a full alternate fuel supply inventory. The amendments were filed pursuant to Commission Order Directing Certain Utilities to Submit Tariff Amendments, issued May 23, 2012 in Case 11-G-0543. The filing has a proposed effective date of August 1, 2012. The Commission may resolve related matters and may apply its decision here to other companies.

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

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

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

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

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

(11-G-0543SP6)

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

Approval of a Financing Under Lightened Regulation

I.D. No. PSC-30-12-00007-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 petition from affiliates of Alliance Energy Group LLC requesting approval under lightened regulation of a financing in the amount of \$14.0 million.

Statutory authority: Public Service Law, section 69

Subject: Approval of a financing under lightened regulation.

Purpose: To consider approval of a financing under lightened regulation.

Substance of proposed rule: The Public Service Commission is considering a petition filed on June 27, 2012 by Alliance NYGT LLC, Seneca Power Partners, L.P., Sterling Power Partners, L.P., Alliance Energy

Transmissions LLC, and Alliance Energy Transmissions-Syracuse LLC, which are affiliates of Alliance Energy Group LLC, requesting approval under lightened regulation of a financing in the amount of \$14.0 million. The financing will be secured by all of the assets of the affiliates. 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.ny.gov/f96dir.htm>. For questions, contact: Leann Ayer, Public Service Commission, 3 Empire State Plaza, Albany, New York 12223-1350, (518) 486-2655, email: leann.ayer@dps.ny.gov

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

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

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

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

(12-E-0294SP1)

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

Waiver of 16 NYCRR Sections 894.1 Through 894.4 and 894.9

I.D. No. PSC-30-12-00009-P

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

Proposed Action: The Public Service Commission is considering whether to approve or reject, in whole or in part, a petition by the Town of Rathbone (Steuben County), for a waiver of 16 NYCRR sections 894.1 through 894.4 and 894.9 pertaining to the cable franchising process.

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

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

Purpose: To allow the Town of Rathbone and Time Warner Cable to waive certain franchising standards to expedite the franchising process.

Substance of proposed rule: The Public Service Commission is considering whether to approve, modify or deny, in whole or in part, a petition by the Town of Rathbone (Steuben County) for a waiver of 16 NYCRR sections 894.1 through 894.4 and 894.9 pertaining to franchising procedures.

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

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

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

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

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

(12-V-0292SP1)

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

Waiver of 16 NYCRR Sections 894.1 Through 894.4

I.D. No. PSC-30-12-00010-P

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

Proposed Action: The PSC is considering whether to approve or reject, in whole or in part, a petition by the Town of Andes (Delaware County) to waive sections 894.1-4 regarding franchising procedures.

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

Subject: Waiver of 16 NYCRR Sections 894.1 through 894.4.

Purpose: To allow the Town of Andes to waive certain preliminary franchising procedures to expedite the franchising process.

Substance of proposed rule: The Public Service Commission is considering whether to approve, modify or reject the Petition of the Town of Andes to waive Sections 894.1, 894.2, 894.3, and 894.4 regarding franchising procedures for the Town of Andes, Delaware County, New York.

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

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

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

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

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

(12-V-0301SP1)

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

To Increase the Company's Existing Escrow Account

I.D. No. PSC-30-12-00011-P

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

Proposed Action: The Commission is considering a petition filed by Boniville Water Company Inc., requesting approval to increase the Company's existing escrow account set for unexpected/extraordinary expenses from \$10,000 to \$20,000.

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

Subject: To increase the Company's existing escrow account.

Purpose: To approve an increase to the Company's existing escrow account.

Substance of proposed rule: The Commission is considering whether to approve, modify or reject, in whole or in part, a petition filed by Boniville Water Company Inc., requesting approval to increase the Company's existing escrow account set for unexpected/extraordinary expenses from \$10,000 to \$20,000. The Commission may resolve related matters and may take this action for 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.ny.gov/f96dir.htm>. For questions, contact: Leann Ayer, Public Service Commission, 3 Empire State Plaza, Albany, New York 12223-1350, (518) 486-2655, email: leann.ayer@dps.ny.gov

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

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

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

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

(12-W-0298SP1)

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

To Increase the Company's Existing Escrow Account

I.D. No. PSC-30-12-00012-P

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

Proposed Action: The Commission is considering a petition filed by Arbor Hills Waterworks Company Inc., requesting approval to increase the Company's existing escrow account set for unexpected/extraordinary expenses from \$10,000 to \$20,000.

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

Subject: To increase the Company's existing escrow account.

Purpose: To approve an increase to the Company's existing escrow account.

Substance of proposed rule: The Commission is considering whether to approve, modify or reject, in whole or in part, a petition filed by Arbor Hills Waterworks Company Inc., requesting approval to increase the Company's existing escrow account set for unexpected/extraordinary expenses from \$10,000 to \$20,000. The Commission may resolve related matters and may take this action for 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.ny.gov/f96dir.htm>. For questions, contact: Leann Ayer, Public Service Commission, 3 Empire State Plaza, Albany, New York 12223-1350, (518) 486-2655, email: leann.ayer@dps.ny.gov

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

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

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

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

(12-W-0300SP1)

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

To Increase the Company's Existing Escrow Account

I.D. No. PSC-30-12-00013-P

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

Proposed Action: The Commission is considering a petition filed by Knolls Water Co., Inc., requesting approval to increase the Company's existing escrow account set for unexpected/extraordinary expenses from \$4,500 to \$20,000.

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

Subject: To increase the Company's existing escrow account.

Purpose: To approve an increase to the Company's existing escrow account.

Substance of proposed rule: The Commission is considering whether to approve, modify or reject, in whole or in part, a petition filed by Knolls Water Co., Inc., requesting approval to increase the Company's existing escrow account set for unexpected/extraordinary expenses from \$4,500 to \$20,000. The Commission may resolve related matters and may take this action for 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.ny.gov/f96dir.htm>. For questions, contact: Leann Ayer, Public Service Commission, 3 Empire State Plaza, Albany, New York 12223-1350, (518) 486-2655, email: leann.ayer@dps.ny.gov

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

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

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

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

(12-W-0299SP1)

Racing and Wagering Board

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Procedures and Penalties for the Testing of Thoroughbred and Harness Race Horses for the Presence of Excess TCO2 Levels

I.D. No. RWB-30-12-00001-P

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

Proposed Action: Amendment of sections 4043.8(a), (b), (e), 4043.9(a), (b), 4120.13(a), (b), (e), 4120.14(a), (b); and addition of sections 4043.9(c) and 4120.14(c) to Title 9 NYCRR.

Statutory authority: Racing, Pari-Mutuel Wagering and Breeding Law, sections 101(1), 301(1), (2)(a) and 902(1)

Subject: Procedures and penalties for the testing of thoroughbred and harness race horses for the presence of excess TCO2 levels.

Purpose: To revise the TCO2 testing rule to reflect current scientific developments and revise penalties to best deter violations.

Text of proposed rule: Subdivisions (a), (b) and (e) of Section 4043.8 of 9 NYCRR are amended to read as follows:

(a) The board may obtain pre-race blood samples from horses for subsequent testing for total carbon dioxide level (TCO2). The board may also obtain post-race blood samples from horses for subsequent testing for TCO2, after a minimum one-hour standing at rest period for the horse after its race. It shall be a violation of this rule where the horse's TCO2 level equals or exceeds 37 millimoles per liter or, for horses administered furosemide pursuant to section 4043.2(b)(6) [of this Part] *during the four hours before the blood sample was taken*, 39 millimoles per liter.

(b) It shall be an affirmative defense that the horse's physiologically *natural* [normal] TCO2 level was not exceeded. To demonstrate [a horse's physiologically] *natural* TCO2, its owner or trainer must [comply with the following procedure. The owner or trainer must, in writing] *make a written* request to the stewards, within three calendar days of receiving notice of the horse's TCO2 test result, [contend that the horse's reported TCO2 level is physiologically normal and request] that the horse be held in guarded quarantine *for this purpose*. [If so, t] The racetrack operator shall make available a *three-day* guarded quarantine for a time determined by the State steward, [not to exceed 72 hours,] at the sole expense of the requesting party, [licensee. During the quarantine,] *where blood samples shall be periodically taken for subsequent testing by the board. If the owner or trainer properly arranges with the board in advance, then samples shall also be taken and sent for independent testing at another laboratory at the sole expense of the requesting party. During quarantine* [the horse shall be retested periodically, and although] the horse shall not race, *but* it may be exercised and trained at *prescribed* times [prescribed by the racetrack operator provided this] *that do[es] not interfere with monitoring, sampling, and testing the horse. After the quarantine, the* [The] State steward shall [then] determine whether the horse's [pre-race] TCO2 level was physiologically *natural* [normal] for it. The [state] State steward may also require, at least 45 days later, that the horse re-establish its *natural* [normal] TCO2 level with another guarded quarantine to be made available at the sole expense of the racetrack operator.

(c) For a violation of this rule, a horse shall be disqualified, any purse monies shall be forfeited and redistributed pursuant to section 4043.5 [of this Part], and *the horse shall be subject to pre-race detention* [shall be imposed] *and shall be ineligible to race until it tests in compliance with this rule and tests negative for drugs.*

Subdivisions (a) and (b) of Section 4043.9 of 9 NYCRR are amended, and new Subdivision (c) is added to Section 4043.9 to read as follows:

(a) A horse that tests in violation of section 4043.8 [of this Part] shall be [placed under] *subject to pre-race detention*, without regard to

whether the horse is transferred to a new *owner or trainer*, for a period of six months [from the date of violation] *and then until it tests in compliance with section 4043.8 and tests negative for drugs.* If during the detention period a horse again tests in violation of section 4043.8 [of this Part], then the detention period shall be extended as the stewards shall deem appropriate. The racetrack operator sponsoring the race shall make such pre-race detention available, at the sole expense of the trainer, for at least six hours before the start of the race program and as required by the stewards. Where a claimed horse is found to [have excess TCO2] *be in violation of section 4043.8*, the costs of a pre-race detention shall be the responsibility of the party requesting detention. *A buyer who was not aware of its pre-race detention requirement for testing positive may void the purchase of a horse, provided it is done within 10 days after receiving notice of the horse's pre-race detention requirement.*

(b) *Each owner who is using a trainer at the time the trainer commits a repeat violation of section 4043.8 shall be required for four months to subject in pre-race detention all horses that were under the care or control of this trainer and any replacements of them. The pre-race detention requirement shall not continue to apply to a horse that is sold during the detention period to a third party in a good-faith, arms-length transaction. The pre-race detention requirement shall not apply unless the trainer's earlier violation happened within the past 12 months and the State steward made a ruling on the earlier TCO2 violation at least 10 days before the trainer's repeat violation.* [All horses of a trainer who has violated section 4043.8 of this Part more than once in the preceding 12 months shall be placed under pre-race detention, without regard to whether the horses are transferred to a new trainer, for a period of eight months from the date of the most recent violation.] The racetrack operator sponsoring the race shall make such pre-race detention available, at the sole expense of the trainer, for at least six hours before the start of the race program and as required by the stewards.

(c) If during a detention period a trainer violates section 4043.8 [of this Part], then the detention period shall be extended for such time as the stewards deem appropriate.

Subdivisions (a), (b) and (e) of Section 4120.13 of 9 NYCRR are amended to read as follows:

(a) The board may obtain pre-race blood samples from horses for subsequent testing for total carbon dioxide level (TCO2). The board may also obtain post-race blood samples from horses for subsequent testing for TCO2, after a minimum one-hour standing at rest period for the horse after its race. It shall be a violation of this rule where the horse's TCO2 level equals or exceeds 37 millimoles per liter or, for horses administered furosemide pursuant to section 4120.2(b)(6) [of this Part] *during the four hours before the blood sample was taken*, 39 millimoles per liter.

(b) It shall be an affirmative defense that the horse's physiologically *natural* [normal] TCO2 level was not exceeded. To demonstrate [a horse's physiologically normal] *natural* TCO2, its owner or trainer must [comply with the following procedure. The owner or trainer must, in writing] *make a written request* to the judges, within three calendar days of receiving notice of the horse's TCO2 test result, [contend that the horse's reported TCO2 level is physiologically normal and request] that the horse be held in guarded quarantine *for this purpose*. [If so, t] The racetrack operator shall make available a *three day* guarded quarantine for a time determined by the presiding judge, not to exceed 72 hours, at the sole expense of the requesting party, [licensee. During the quarantine,] *where blood samples shall be periodically taken for subsequent testing by the board. If the owner or trainer properly arranges with the board in advance, then samples shall also be taken and sent for independent testing at another laboratory at the sole expense of the requesting party. During quarantine* [the horse shall be retested periodically, and although] the horse shall not race, *but* it may be exercised and trained at *prescribed* times [prescribed by the racetrack operator provided this] *that do[es] not interfere with monitoring, sampling, and testing the horse. After the quarantine, the* [The] presiding judge shall [then] determine whether the horse's [pre-race] TCO2 level was physiologically *natural* [normal] for it. The presiding judge may also require, at least 45 days later, that the horse re-establish its *natural* [normal] TCO2 level with

another guarded quarantine to be made available at the sole expense of the racetrack operator.

(e) For a violation of this rule, a horse shall be disqualified, any purse monies shall be forfeited and redistributed pursuant to section 4120.5 [of this Part], and *the horse shall be subject to pre-race detention [shall be imposed], and shall be ineligible to race until it tests in compliance with this rule and tests negative for drugs.*

Subdivisions (a) and (b) of Section 4120.14 of 9 NYCRR are amended, and new Subdivision (c) is added to Section 4120.14 to read as follows:

(a) A horse that tests in violation of section 4120.13 [of this Part] shall be [placed under] *subject to pre-race detention*, without regard to whether the horse is transferred to a new *owner or trainer*, for a period of six months [from the date of violation] *and then until it tests in compliance with section 4120.13 and tests negative for drugs.* If during the detention period a horse again tests in violation of section 4120.13 [of this Part], then the detention period shall be extended as the judges shall deem appropriate. The racetrack operator sponsoring the race shall make such pre-race detention available, at the sole expense of the trainer, for at least six hours before the start of the race program and as required by the judges. Where a claimed horse is found to [have excess TCO2] *be in violation of section 4120.13*, the costs of a pre-race detention shall be the responsibility of the party requesting detention. *A buyer who was not aware of its pre-race detention requirement for testing positive may void the purchase of a horse, provided it is done within 10 days after receiving notice of the horse's pre-race detention requirement.*

(b) *Each owner who is using a trainer at the time the trainer commits a repeat violation of section 4120.13 shall be required for four months to subject to pre-race detention all horses that were under the care or control of this trainer and any replacements of them. The pre-race detention requirement shall not continue to apply to a horse that is sold during the detention period to a third party in a good-faith, arms-length transaction. The pre-race detention requirement shall also not apply unless the trainer's earlier violation happened within the past 12 months and the judges made their ruling on the earlier TCO2 violation at least 10 days before the trainer's repeat violation.* [All horses of a trainer who has violated section 4120.13 of this Part more than once in the preceding 12 months shall be placed under pre-race detention, without regard to whether the horses are transferred to a new trainer, for a period of eight months from the date of the most recent violation.] The racetrack operator sponsoring the race shall make such pre-race detention available, at the sole expense of the trainer, for at least six hours before the start of the race program and as required by the judges.

(c) If during a detention period a trainer violates section 4120.13 [of this Part], then the detention period shall be extended for such time as the judges deem appropriate.

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

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

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

Regulatory Impact Statement

1. Statutory authority and legislative objectives of such authority: The Board is authorized to promulgate these rules pursuant to Racing, Pari-Mutuel Wagering and Breeding Law sections 101(1), 301(1), 301(2)(a), and 902(1). Under section 101, the Board has general jurisdiction over all horse racing activities and all pari-mutuel betting activities in the state, both on track and off-track, and the persons engaged therein, including the authority to regulate the use of drugs to manipulate race performance. Section 301, subdivision (1), authorizes the Board to prescribe rules and regulations for harness racing. Section 301, subdivision (2), paragraph (a) directs the Racing and Wagering Board to prescribe rules and regulations for effectually preventing the administration of drugs or improper acts for the purpose of affecting the speed of harness horses in races in which they are about to participate. Section 902(1) prescribes that a state college within New

York with an approved equine science program shall conduct equine drug testing to assure public confidence in and to continue the high degree of integrity at pari-mutuel race meetings, and authorizes the Board to promulgate any rules and regulations necessary to implement such equine drug testing program and to impose substantial administrative penalties for racing a drugged horse.

2. Legislative objectives: To enable the New York State Racing and Wagering Board to preserve the integrity of pari-mutuel racing, while generating reasonable revenue for the support of government.

3. Needs and benefits: This rulemaking is necessary to bring the Board's TCO2 testing rule for harness and thoroughbred horses in line with current enforcement needs and realities.

The amendment is necessary to restrict the higher TCO2 threshold for horses that were administered race day furosemide ("lasix") to the duration of its effect on TCO2. The board samples horses on race day by withdrawing plasma tested for TCO2. If the TCO2 concentration is substantially higher than normal, that is an indication that the horse has been alkalinized on race day to unfairly improve its performance. The current rule applies a higher TCO2 threshold for horses that received lasix before racing, a drug that can be administered in small doses to a race horse at four-and-one-half to four hours before the scheduled start time of its race (9 NYCRR sections 4043.2(b)(6) and 4120(b)(6)). But lasix causes only a temporary elevation of TCO2 in the horse's blood stream; the effect is gone before the horse races (e.g., within four hours). The plasma samples occasionally are withdrawn by the board more than four hours after its lasix shot, because sampling may occur as little as 20 minutes before a horse races. The new rule limits the extra 2 mmol/L allowance for lasix horses to the actual duration of the lasix-effect on TCO2. After four hours, when the effect of lasix on the horse's TCO2 has disappeared, the new rule will require that a lasix horse also meet the standard TCO2 concentration of 37 mmol/L. As a result, the new rule will close a loophole that could allow a lasix horse, at the time it actually raced, to compete with TCO2 above the level of non-lasix horses. This may create an advantage for a lasix horse because it could race after having been alkalinized (the main cause of elevated TCO2), a practice associated with improving a horse's race performance. The new rule clearly applies the 2 mmol/mL allowance only to pre-race TCO2 samples taken during the four hours after a lawful administration of lasix to a horse on race day.

The rulemaking will also change the rule that required pre-race detention of a horse, despite its subsequent sale, because its owner had entrusted it to the care of a trainer who incurred two TCO2 violations in twelve months. The new rule releases the horse from the detention requirement when it is sold, and requires any substitute horse acquired by its original owner to undergo pre-race detention. [9 NYCRR 4043.9(b) and 4120.13(b)]. The benefit to changing the rule is that it keeps the pre-detention requirement on the owner who was willing to entrust horses to a suspect trainer, and does not penalize the horse's new owner, who may be blameless. The ownership of horses routinely changes under various circumstances, such as through claiming races or out of state sales, in which the board cannot ensure that the seller provides notice of the pre-race detention of the horse. The alternatives of having the board or a court adjudicate whether a new owner was unwitting or not would result in a time-consuming and uncertain process to assign liability. The new rule keeps a reasonable and consistent detention requirement on the original owner, who relied on a trainer who failed to guard the horses effectively or was willing to use unlawful means to seek an unfair advantage, at a level in proportion to the owner's initial error.

The amendment is also necessary to make pre-race detention less onerous and costly to licensees. The current eight-month pre-race requirement applies to all horses trained by a trainer who has a second TCO2 violation in a 12-month period, even though the horse that tests positive for excess TCO2 is subject to only a six-month pre-race detention. This rule change will now apply to owners for only four months. (The horse that tests positive will still face a six-month pre-race detention requirement.) This will benefit trainers and owners of race horses, and will free up stall space otherwise needed for detention at race tracks. The purpose of the pre-race detention is mainly preventative. It is intended to create a controlled environment where

all of the owner's horses can be prepared for a race without potential exposure to or contamination by prohibited substances. A controlled environment also provides a protective environment to prevent tampering with the horses. A four-month period provides enough time to accomplish these goals, where eight months is disproportionately long, costly, and has the potential to tie up an inordinate amount of race-track stall space for one trainer or owner.

This rulemaking is also necessary to assure licensees of the opportunity to request split samples of blood during quarantine tests. The owner or trainer must pre-arrange to have a second sample taken daily and shipped to an independent laboratory, because TCO2 in a plasma sample rapidly dissipates making the board's own samples usually unsuitable for retesting. This will allow owners and trainers to obtain independent testing of the blood samples of a horse during the quarantine setting, which they may challenge at a hearing. [9 NYCRR 4340.8(b) and 4120.13(b)]. The rule will not automatically require split samples, but it will allow the licensees to request splits. This will ensure fairness and due process for licensees during the administrative adjudication process.

This rulemaking will require that a horse test negative for excess TCO2 at the end of its pre-race detention period. [9 NYCRR 4043.8(e) and 4120.13(e).] This is necessary to ensure that a horse is clean before returning to racing. Similar to the requirement that a horse that is found to have drugs in its system test "clean" before allowing it to race, this is a common sense requirement that allows the Board to confirm that the horse's system has normalized and the horse is in compliance with the allowable TCO2 thresholds.

This rulemaking is also necessary to create a 10-day "safe harbor" provision to allow an owner to remove horses to a new trainer after the owner has been notified that a current trainer is charged with violating the TCO2 rule. [9 NYCRR 4043.9(b) and 4120.14(b)]. This protects careful owners and allows them to keep their horses racing. If they fail to move the horses to a new trainer within the 10-day period, then the horses will be subject to pre-race detention if the current trainer has another TCO2 violation within 12 months.

4. Costs:

(a) Costs to regulated parties for the implementation of and continuing compliance with the rule: These amendments will not add any new mandated costs to the existing rules. If a licensee wishes to obtain a split sample, the costs of obtaining the split sample will be borne by the person requesting the split sample. Costs of pre-race detention will be lessened for owners who entrust their horses to a trainer who incurs two or more TCO2 violations within 12 months, by reducing their detention period from eight to four months. Owners will also be able to incur fewer detention orders if they take advantage of the new 10-day "safe harbor" in which they can remove horses from a trainer who has incurred a TCO2 positive.

(b) Costs to the agency, the state and local governments for the implementation and continuation of the rule: None.

(c) The information, including the source(s) of such information and the methodology upon which the cost analysis is based: Board staff conducted a basic review of this rule based upon experience and current practices and customs. There will be no new cost to the agency. There will be no costs to local government because the New York State Racing and Wagering Board is the only governmental entity authorized to regulate pari-mutuel harness racing activities.

(d) Where an agency finds that it cannot provide a statement of costs, a statement setting forth the agency's best estimate, which shall indicate the information and methodology upon which the estimate is based and the reason(s) why a complete cost statement cannot be provided. Not applicable.

5. Local government mandates: None. The New York State Racing and Wagering Board is the only governmental entity authorized to regulate pari-mutuel harness racing activities.

6. Paperwork: There will be no additional paperwork. The Board will utilize the existing documents for administrative adjudication to determine whether the suspension of a pre-race detention order is appropriate.

7. Duplication: None.

8. Alternatives. The Board considered reducing the owners' pre-race detention period to six months to make it equivalent to the pre-race detention period that is placed on a horse that tests positive for excessive TCO2. We rejected this alternative because it did not give sufficient relief to the owners or tracks involved in these detentions.

The Board considered changing the owners' pre-race detention to be triggered by two or more TCO2 positives of horses of the particular owner. We rejected this alternative because an owner who used more than one trainer could be exposed to detention based on the unforeseen failure of both, and instead created a 10-day "safe harbor" to allow every owner an opportunity to remove horses from a trainer who incurs a TCO2 violation before being exposed to a possible detention order. The new rule will apply only to owners who are on notice that the trainer has raced horses with excess TCO2 levels, assuring the owners a chance to remove their horses to a safe environment.

The Board considered requiring an owner to place all horses under pre-race detention upon failing to select a trainer who does not race horses with excess TCO2, with an exception only for horses the owner placed with a trainer who could safely guard them. This alternative would have potentially imposed a disproportionate burden on an owner whose stable was growing, as each new horse would have to undergo detention during the four month detention period. We rejected this alternative and tailored the detention burden to the size of the owner's error, the number of horses entrusted to a known problem trainer (and to the extent the owner might sell any of those horses, to any replacement of them).

The Board considered leaving the owner detention to apply to all the owner's horses (even after transfer) and creating various remedies and requirements to address the need to allow horses to participate in claiming races, which depend on the ability of qualified owners to buy the horses at the claiming price. While it is possible to allow an unwitting buyer to promptly void a sale once the buyer realizes the horse is subject to a detention order (and we added this to the situation in which a TCO2-positive horse is sold during its detention period), the ramifications for the integrity of the claiming races and the potentially enormous administrative and private legal burdens associated with the very large number of horses that could be subject to this led the board to reject this alternative.

9. Federal standards: None.

10. Compliance schedule: The rule can be implemented immediately.

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

This proposal does not require a Regulatory Flexibility Statement, Rural Area Flexibility Statement or Job Impact Statement as the amendment merely simplifies and reduces the regulatory burden from enforcing of the Racing and Wagering Board's rules against doping a horse with alkalizing agents. These amendments do not impact upon State Administrative Procedure Act § 102(8), nor do they affect employment. The proposal will not impose an 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 significant technological changes on the industry for the reasons set forth above.

Pursuant to Section 202-b of the State Administrative Procedure Act (as amended by Chapter 524 of the Laws of 2011), when considering the promulgation of a rule or regulation that would establish or modify a violation or penalty associated with a violation, the Board is required to give ample consideration to include a provision in the rule's text affording small business or local governments a period of time or other opportunity, prior to the rule's enforcement, to come into compliance with the rule before it is enforced. This rule does not contain such a provision prescribing a period of time or other opportunity for several reasons. Local governments are not affected by this rule. Even though small businesses that own and train thoroughbred and harness horses will be affected, the use of alkalizing agents in horses has been prohibited since 2003. The nature of TCO2 violations is not conducive to Section 202-b "grace periods." The modification of penalties contained in this rulemaking is designed to make the penalties more equitable by differentiating between a penalty imposed

on a trainer or owner that knew or should have known of the TCO2 violation, and those imposed on an unknowing third-party owner that acquired a horse after the TCO2 violation occurred. In terms of penalty that a horse may not be allowed to compete until it tests clean, there is no rational purpose for creating such a period of time or opportunity to come into compliance since the offense has already occurred and the horse is unfit for racing until it is cleared. Creating a period of time to cure the offense would be irrational given the nature of a drug test positive.

State University of New York

EMERGENCY/PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

State University of New York Tuition and Fees Schedule

I.D. No. SUN-30-12-00003-EP

Filing No. 681

Filing Date: 2012-07-10

Effective Date: 2012-07-10

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

Proposed Action: Amendment of section 302.1(b) of Title 8 NYCRR.

Statutory authority: Education Law, section 355(2)(b) and (h)

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

Specific reasons underlying the finding of necessity: Amendment of these regulations needs to proceed on an emergency basis because tuition increases are intended to be effective for the Fall 2012 semester. Billing for these new tuition rates occurs during the summer of 2012; therefore, notice of the new rates needs to occur as soon as possible.

Subject: State University of New York Tuition and Fees Schedule.

Purpose: To amend the Tuition and Fees Schedule to increase tuition for students in all programs in the State University of New York.

Substance of emergency/proposed rule (Full text is posted at the following State website: www.suny.edu/sunypp): This emergency and proposed rulemaking changes the tuition and fee schedule of the State University of New York effective for the Fall 2012 semester.

The tuition increases on an annual basis proposed by this rulemaking are as follows:

Undergraduate Degree: Tuition would increase by \$300 to \$5,570 for resident students. Tuition would increase by \$1,470 to \$16,190 for out-of-state students at the University Centers at Buffalo and Stony Brook; by \$1,340 to \$14,720 at the University Centers at Albany and Binghamton; and, by \$500 to \$14,820 for all other campuses.

Graduate Degree Programs: Tuition would increase by \$500 for resident students, to \$9,370. Tuition would increase by \$1,520 for out-of-state students, to \$16,680. For students enrolled in programs leading to a Masters in Business Administration degree, tuition would increase by \$920 to \$11,130 for residents and by \$1,670 to \$18,320 for out-of-state students. For students enrolled in programs leading to a Masters in Architecture degree, tuition would increase by \$830 to \$10,040 for residents and by \$1,520 to \$16,680 for out-of-state students. For students enrolled in programs leading to a Masters in Social Work degree, tuition would increase by \$830 to \$10,000 for residents and by \$1,520 to \$16,680 for out-of-state students.

Medicine: Tuition would increase by \$2,440 to \$29,530 for residents and by \$1,000 to \$54,650 for out-of-state residents.

Law: The tuition at the Law School of the University at Buffalo would be increased by \$1,710 to \$20,730 for residents and by \$3,200 to \$35,220 for out-of-state residents.

Pharmacy: The tuition at the School of Pharmacy at the University at Buffalo would increase by \$1,780 to \$21,530 for residents and by \$3,800 to \$41,750 for out-of-state residents.

Physical Therapy and Doctor of Nursing Practice: Tuition for the Doctor of Physical Therapy and Nursing Practice at the University at Buffalo and the University at Stony Brook would increase by \$1,480 to \$17,940 for residents and by \$2,930 to \$32,220 for out-of-state residents.

Dentistry: Tuition for the D.D.S programs at the Universities at Stony

Brook and Buffalo would increase by \$2,100 to \$25,450 for residents and by \$5,200 to \$57,230 for out-of-state residents.

Optometry: Tuition for the Optometry program at the College of Optometry would increase by \$1,300 to \$19,900 for residents and by \$2,500 to \$38,210 for out-of-state residents.

Physician Assistant: Tuition for the Physicians' Assistant graduate program at Stony Brook and Upstate would increase by \$820 to \$9,940 for residents and by \$1,650 to \$18,190 for out-of-state residents.

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 7, 2012.

Text of rule and any required statements and analyses may be obtained from: Lisa S. Campo, State University of New York, State University Plaza, S-325, 353 Broadway, Albany, NY, (518) 320-1400, email: Lisa.Campo@SUNY.edu

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:** Education Law, Sections 355(2)(b) and 355(2)(h). Section 355(2)(b) authorizes the State University Trustees to make and amend rules and regulations for the governance of the State University and institutions therein. Section 355(2)(h) authorizes the State University Trustees to regulate the admission of students, tuition charges and other fees and charges, curricula and all other matters pertaining to the operation and administration of each State-operated institution of the University.

2. **Legislative Objectives:** The present measure will provide essential financial support for the operations of the State University of New York, in accordance with the NY-SUNY 2020 Challenge Grant Program Act, Chapter 260, Laws of 2011.

3. **Needs and Benefits:** The present measure establishes a series of tuition increases in the degree programs of the State University of New York.

- In accordance with the NY-SUNY 2020 Challenge Grant Program Act, resident undergraduate tuition will increase by \$300 for all students, and pursuant to approval by the Governor and Chancellor of a long term economic and academic plan submitted by each University Center, non-resident undergraduate tuition for students at the University Centers will increase by 10%

- Non-resident undergraduate tuition for students at the Comprehensive Colleges, Colleges of Technology, and the Other Research/Doctoral institutions will be increased by 3.5%

- For graduate students enrolled in masters' and doctoral programs not otherwise specified, resident tuition will be increased by 5.6% and non-resident tuition will be increased by 10%

- Tuition rates for identified professional programs (dental, law, pharmacy, doctorate of physical therapy, doctorate of nursing practice) will be increased by 9% for resident students and by 10% for non-resident students

- Tuition rates for the professional program in medicine will be increased by 9% for resident students and by 1.9% for non-resident students

- For students enrolled in the MBA program, rates for resident students will be increased 9.1% and by 10% for non-resident students

- For students enrolled in the Masters of Architecture program, rates for resident students will be increased by 9% and by 10% for non-resident students

- For students enrolled in the Masters of Social Work program rates for resident students will be increased by 9% and by 10% for non-resident students

- For students enrolled in the Physician Assistant (Masters) program, rates will be increased by 9% for resident students and by 10% for non-resident students

- For students enrolled in the Optometry program, rates for resident and non-resident students will increase by 7%.

Even with the recommended increases, the tuition charged at the State-operated campuses of State University of New York is still competitive when compared to peer institutions in other university systems. Accordingly, the tuition increases on an annual basis proposed by this resolution are as follows:

Undergraduate Degree: Tuition would increase by \$300 to \$5,570 for resident students.

Undergraduate Degree: Tuition would increase by \$1,470 to \$16,190 for out-of-state students at the University Centers at Buffalo and Stony Brook; by \$1,340 to \$14,720 at the University Centers at Albany and Binghamton; and, by \$500 to \$14,820 for all other campuses.

Graduate Degree Programs: Tuition would increase by \$500 for resident students, to \$9,370. Tuition would increase by \$1,520 for out-of-state

students, to \$16,680. For students enrolled in programs leading to a Masters in Business Administration degree, tuition would increase by \$920 to \$11,130 for residents and by \$1,670 to \$18,320 for out-of-state students. For students enrolled in programs leading to a Masters in Architecture degree, tuition would increase by \$830 to \$10,040 for residents and by \$1,520 to \$16,680 for out-of-state students. For students enrolled in programs leading to a Masters in Social Work degree, tuition would increase by \$830 to \$10,000 for residents and by \$1,520 to \$16,680 for out-of-state students.

Medicine: Tuition would increase by \$2,440 to \$29,530 for residents and by \$1,000 to \$54,650 for out-of-state residents.

Law: The tuition at the Law School of the University at Buffalo would be increased by \$1,710 to \$20,730 for residents and by \$3,200 to \$35,220 for out-of-state residents.

Pharmacy: The tuition at the School of Pharmacy at the University at Buffalo would increase by \$1,780 to \$21,530 for residents and by \$3,800 to \$41,750 for out-of-state residents.

Physical Therapy and Doctor of Nursing Practice: Tuition for the Doctor of Physical Therapy and Nursing Practice at the University at Buffalo and the University at Stony Brook would increase by \$1,480 to \$17,940 for residents and by \$2,930 to \$32,220 for out-of-state residents.

Dentistry: Tuition for the D.D.S programs at the Universities at Stony Brook and Buffalo would increase by \$2,100 to \$25,450 for residents and by \$5,200 to \$57,230 for out-of-state residents.

Optometry: Tuition for the Optometry program at the College of Optometry would increase by \$1,300 to \$19,900 for residents and by \$2,500 to \$38,210 for out-of-state residents.

Physician Assistant: Tuition for the Physicians' Assistant graduate program at Stony Brook and Upstate would increase by \$820 to \$9,940 for residents and by \$1,650 to \$18,190 for out-of-state residents.

The tuition rates were last increased in the Fall 2011.

4. Costs: Students enrolled in these programs of the State University of New York will be required to pay additional tuition ranging from \$300 per year for resident associate degrees to \$5,200 for non-resident students at the Schools of Dentistry. In setting the new tuition schedule, the State University has examined its appropriation levels, the prevailing tuition rates charged by other public universities and the status of various State and Federal student financial aid programs.

5. Local Government Mandates: There are no local government mandates. The amendment does not affect students enrolled in the community colleges operating under the program of the State University of New York.

6. Paperwork: No parties will experience any new reporting responsibilities. State University of New York publications and documents containing notices regarding costs of attendance will need to be revised to reflect these changes.

7. Duplication: None.

8. Alternatives: Delays in tuition increases as well as higher increases were considered, however, there is no acceptable alternative to the proposed increases. The revenue from these tuition increases is necessary in order for the University to maintain quality of instruction and essential services to students, especially given the high cost professional programs.

9. Federal Standards: None.

10. Compliance Schedule: The amendment to the tuition schedule will go into effect for the Fall 2012 semester.

Regulatory Flexibility Analysis

No regulatory flexibility analysis is submitted with this notice because the proposed rule does not impose any requirements on small businesses and local governments. This proposed rule making will not impose any adverse economic impact on small businesses and local governments or impose any reporting, recordkeeping or other compliance requirements on small businesses and local governments.

Rural Area Flexibility Analysis

No rural area flexibility analysis is submitted with this notice because the proposed rule does not impose any requirements on rural areas. The rule will not impose any adverse economic impact on rural areas or impose any reporting, record-keeping, professional services or other compliance requirements on rural areas.

Job Impact Statement

No job impact statement is submitted with this notice because the proposed rule does not impose any adverse economic impact on existing jobs, employment opportunities, or self-employment. This regulation governs tuition charges for State University of New York and will not have any adverse impact on the number of jobs or employment.

EMERGENCY/PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

State Basic Financial Assistance for Operating Expenses of Community Colleges Under the Program of the State and City Universities

I.D. No. SUN-30-12-00014-EP

Filing No. 684

Filing Date: 2012-07-10

Effective Date: 2012-07-10

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

Proposed Action: Amendment of section 602.8(c) of Title 8 NYCRR.

Statutory authority: Education Law, sections 355(1)(c) and 6304(1)(b); and L. 2012, ch. 53

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

Specific reasons underlying the finding of necessity: The State University of New York finds that immediate adoption of amendments to the Code of Standards and Procedures for the Administration and Operation of Community Colleges (the Code) is necessary for the preservation of the general welfare and that compliance with the requirements of subdivision 1 Section 202 of the State Administrative Procedures Act would be contrary to the public interest. The 2012-2013 Education, Labor and Social Services Budget Bill (the Budget) requires amendments to the existing funding formula for State financial assistance for operating expenses of community colleges of the State and City Universities of New York. The funding formula is to be developed jointly with the City University of New York, subject to the approval of the Director of the Budget. Amendments to the Code on an emergency basis for the 2012-2013 fiscal year are necessary to:

1. provide timely State operating assistance to public community colleges of the State and City Universities of New York;

2. obtain the necessary revenue to maintain essential staffing levels, program quality, and accessibility. Compliance with the provision of subdivision 1 of Section 202(6) of the State Administrative Procedures Act would not be contrary to the public interest. The requirements of subdivision (1) of Section 202(6) of SAPA would not allow implementation of the State fiscal assistance provided in the Budget Bill in time for the 2012-2013 community college fiscal year.

Subject: State basic financial assistance for operating expenses of community colleges under the program of the State and City Universities.

Purpose: To modify existing limitations formula for basic State Financial assistance for operating expenses of community colleges.

Text of emergency/proposed rule:

(c) Basic State financial assistance.

(1) Full opportunity colleges. The basic State financial assistance for community colleges, implementing approved full opportunity programs, shall be the lowest of the following:

(i) two-fifths (40%) of the net operating budget of the college, or campus of a multiple campus college, as approved by the State University trustees;

(ii) two-fifths (40%) of the net operating costs of the college, or campus of a multiple campus college; or

(iii) for the current college fiscal year the total of the following:

(a) the budgeted or actual number (whichever is less) of full-time equivalent students enrolled in programs eligible for State financial assistance multiplied by [\$2,675] \$2,272; and

(b) up to one-half (50%) of rental costs for physical space.

(2) Non-full opportunity colleges. The basic State financial assistance for community colleges not implementing approved full opportunity programs shall be the lowest of the following:

(i) one-third (33%) of the net operating budget of the college, or campus of a multiple campus college, as approved by the State University trustees;

(ii) one-third (33%) of the net operating costs of the college, or campus of a multiple campus college; or

(iii) for the college fiscal year current, the total of the following:

(a) the budgeted or actual number (whichever is less) of full-time equivalent students enrolled in programs eligible for State financial assistance multiplied by [\$2,230] \$1,894; and

(b) up to one-half (50%) of rental cost for physical space.

Notwithstanding the provisions of paragraphs (1) and (2) of this subdivision, a community college or a new campus of a multiple campus

community college in the process of formation shall be eligible for basic State financial assistance in the amount of one-third of the net operating budget or one-third of the net operating costs, whichever is the lesser, for those colleges not implementing an approved full opportunity program plan, or two-fifths of the net operating budget or two-fifths of the net operating costs, whichever is the lesser, for those colleges implementing an approved full opportunity program, during the organization year and the first two fiscal years in which students are enrolled.

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 7, 2012.

Text of rule and any required statements and analyses may be obtained from: Dona S. Bulluck, State University of New York, State University Plaza, Albany, New York 12246, (518) 320-1400, email: Dona.Bulluck@suny.edu

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

This is a technical amendment to implement the provisions of the 2012-2013 Budget Bill. The amendment provides for the provision of State financial assistance for operating expenses of community colleges operating under the program of the State University of New York and the City University of New York.

Regulatory Flexibility Analysis

This is a technical amendment to implement the provisions of the 2012-2013 Budget Bill. The amendment provides for the provision of State financial assistance for operating expenses of community colleges operating under the program of the State University of New York and the City University of New York. It will have no impact on small businesses and local governments.

Rural Area Flexibility Analysis

This is a technical amendment to implement the provisions of the 2012-2013 Budget Bill. The amendment provides for the provision of State financial assistance for operating expenses of community colleges operating under the program of the State University of New York and the City University of New York. This rule making will have no impact on rural areas or the recordkeeping or other compliance requirements on public or private entities in rural areas.

Job Impact Statement

No job impact statement is submitted with this notice because the adoption of this rule does not impose any adverse economic impact on existing jobs, employment opportunities, or self-employment. This rule making governs the financing of community colleges operating under the program of the State University and will not have any adverse impact on the number of jobs or employment opportunities in the state.