

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 Corrections and Community Supervision

NOTICE OF ADOPTION

Temporary Release Program and Short Term Temporary Release Program

I.D. No. COR-16-11-00001-A

Filing No. 138

Filing Date: 2012-02-15

Effective Date: 2012-03-07

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

Action taken: Amendment of sections 1900.3(a)(1), 1901.1(a)(1)(i)(a) and (c)(2)(i)(a)(3) of Title 7 NYCRR.

Statutory authority: Correction Law, section 112 and 851(2)

Subject: Temporary Release Program and Short Term Temporary Release Program.

Purpose: To add language to recognize same-sex marriages under certain circumstances.

Text of final rule: Section 1900.3 (a)(1) of Title 7 NYCRR is amended as follows:

(1) To visit his/her spouse, child, brother, sister, grandchild, parent, grandparent or ancestral aunt or uncle during his or her last illness if death appears imminent; *(For the purposes of this section the term "spouse" includes a person who is the same sex as the inmate, if the same-sex marriage was performed in New York State or if a same sex marriage or civil union was performed in any other jurisdiction that authorizes such marriage or union. Counsel's Office may be consulted*

to determine whether the outside jurisdiction does authorize same-sex marriages or civil unions.)

Section 1901.1 (a) of Title 7 NYCRR is amended as follows:

(a) Upon receipt of the inmate's application, the temporary release committee chairperson shall verify the facts of the case. A leave of absence can be granted to inmates who wish to visit their spouse, child, brother, sister, grandchild, parent (natural or legally adoptive), grandparent or ancestral aunt or uncle only. *(For the purposes of this section the term "spouse" includes a person who is the same sex as the inmate, if the same-sex marriage was performed in New York State or if a same sex marriage or civil union was performed in any other jurisdiction that authorizes such marriage or union. Counsel's Office may be consulted to determine whether the outside jurisdiction does authorize same-sex marriages or civil unions.)* For a deathbed visit, it is necessary that the temporary release committee chairperson contact the patient's doctor or hospital administrator directly in order to verify the patient's medical condition and to ascertain if death is imminent. The chairperson must also verify the name, address and telephone number of the hospital and attending physician along with any other facts necessary to consider this case.

Section 1901.1 (c)(2)(i)(a)(3) of Title 7 NYCRR to be amended as follows:

(3) spouse *(see section 1901.1 (a)(1)(i)(a) for the scope of the term);*

Final rule as compared with last published rule: Nonsubstantive changes were made in sections 1900.3(a)(1), 1901.1(a)(1) and (c)(2)(i)(a)(3).

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

Revised Regulatory Impact Statement

Statutory Authority

Section 112 of Correction Law grants the Commissioner of DOCS the superintendence, management and control of the correctional facilities and inmates confined therein and to promulgate rules and regulations for this purpose. Section 851(2) requires the commissioner to promulgate regulations to give direction to the temporary release committees at each facility.

Legislative Objective

By vesting the commissioner with this rulemaking authority, the legislature intended the commissioner to ensure that the agency complies with all court decisions and directions provided from the Governor's Office in legally defining spousal relationships.

Needs and Benefits

These rules are being proposed, in accordance with the Governor's direction, in order to bring the agency into compliance with the recent Appellate Division decision that dealt with the recognition of same-sex marriage or civil union under certain circumstances. Specifically, if a same-sex marriage or civil union was performed in another jurisdiction that authorizes such marriages or unions, then under the full faith and credit clause of the United States Constitution, New York must also recognize the validity of such marriage or civil union. In addition, these rules are also being proposed to acknowledge that with the recent enactment of § 10-a of the Domestic Relations Law, same-sex marriages are now authorized in New York.

Costs

- a) To agency, the state and local governments: None.
- b) Costs to private regulated parties: None. The proposed amendment does not apply to private parties.
- c) This cost analysis is based upon the fact that this proposal merely defines spousal relationships.

Local Government Mandates

There are no new mandates imposed upon local governments by these proposals. The proposed amendments do not apply to local governments.

Paperwork

There are no new reports, forms or paperwork that would be required as a result of amending these rules.

Duplication

These proposed amendments do not duplicate any existing State or Federal requirement.

Alternatives

No alternatives are apparent and none have been considered as this is a legal court ruling.

Federal Standards

None.

Compliance Schedule

The Department of Correctional Services will achieve compliance with the proposed rules immediately.

Revised Regulatory Flexibility Analysis

A regulatory flexibility analysis is not required for this proposal since it will not impose any adverse economic impact or reporting, recordkeeping or other compliance requirements on small businesses or local governments. This proposal merely adds language to recognize same-sex marriage under certain circumstances.

Revised Rural Area Flexibility Analysis

A rural area flexibility analysis is not required for this proposal since it will not impose any adverse economic impact or reporting, recordkeeping or other compliance requirements on rural areas. This proposal merely adds language to recognize same-sex marriages under certain circumstances.

Revised Job Impact Statement

A job impact statement is not submitted because this proposed rule will have no adverse impact on jobs or employment opportunities. This proposal merely adds language to recognize same-sex marriages under certain circumstances.

Assessment of Public Comment

Comment: The Department of Corrections and Community Supervision received comments from two assemblymen who supported the efforts of the Department to ensure that its regulations provide due recognition to same-sex marriages or civil unions performed in an outside jurisdiction that authorizes such marriages or unions. They recommended that the Department make similar changes to those regulations applicable to the Family Reunion Program.

Response: The Department of Corrections and Community Supervision appreciates the assemblymen's support for the changes currently adopted by the Department and are making similar changes to regulations governing the Family Reunion Program.

NOTICE OF ADOPTION**Urinalysis Testing**

I.D. No. CCS-51-11-00009-A

Filing No. 157

Filing Date: 2012-02-21

Effective Date: 2012-03-07

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

Action taken: Renumbering of section 1020.4(e) to (f); addition of new section 1020.4(e); and amendment of section 1020.4(d)(3), (4) and (f)(1)(iii) of Title 7 NYCRR.

Statutory authority: Correction Law, section 112

Subject: Urinalysis Testing.

Purpose: To introduce urinalysis testing procedures for inmates for inmates alleging to have a "shy bladder" and other minor amendments.

Text or summary was published in the December 21, 2011 issue of the Register, I.D. No. CCS-51-11-00009-P.

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

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

Assessment of Public Comment

The agency received no public comment.

Education Department**NOTICE OF ADOPTION****Tuition Assistance Program**

I.D. No. EDU-50-11-00007-A

Filing No. 156

Filing Date: 2012-02-17

Effective Date: 2012-03-07

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

Action taken: Amendment of sections 145-2.1, 145-2.2 and 145-2.4 of Title 8 NYCRR.

Statutory authority: Education Law, sections 207 and 661

Subject: Tuition Assistance Program.

Purpose: Revise and clarify the criteria for determining student eligibility to participate in the tuition assistance program.

Text or summary was published in the December 14, 2011 issue of the Register, I.D. No. EDU-50-11-00007-P.

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

Text of rule and any required statements and analyses may be obtained from: Mary Gammon, NYS Education Department, 89 Washington Avenue, Room 148 EB, Albany, NY 12234, (518) 473-2183, email: legal@mail.nysed.gov

Assessment of Public Comment

The agency received no public comment.

Department of Financial Services**EMERGENCY
RULE MAKING****License, Financial Responsibility, Education and Test Requirements for Mortgage Loan Originators**

I.D. No. DFS-10-12-00001-E

Filing No. 154

Filing Date: 2012-02-17

Effective Date: 2012-02-21

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

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

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

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

Specific reasons underlying the finding of necessity: Article 12-E of the

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Section 420.12 sets out the requirement that pre-licensing education

and continuing education courses and education course providers must be approved by the Nationwide Mortgage Licensing System and Registry (the "NMLS"). This represents a change from the prior law pursuant to which the Superintendent issued such approvals.

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

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

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

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

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

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

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

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

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

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

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

Section 107.5 covers inactive status.

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

Supervisory Procedure MB 108 is hereby repealed.

This notice is intended to serve only as a notice of emergency adoption. This agency intends to adopt this emergency rule as a permanent rule and will publish a notice of proposed rule making in the *State Register* at some future date. The emergency rule will expire May 16, 2012.

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

Regulatory Impact Statement

1. Statutory authority.

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

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

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

notes that the new regulatory scheme is to be consistent with the SAFE Act.

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

Section 599-c sets forth the requirements for being licensed as an MLO, the effective date for licensing and exemptions from the licensing requirements. Exemptions include ones for individuals who work for insured financial institutions, licensed attorneys who negotiate the terms of a loan for a client as an ancillary to the attorney’s representation of the client, and, unless required to be licensed by the U.S. Department of Housing and Urban Development (“HUD”), certain individuals employed by a mortgage loan servicer.

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

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

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

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

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

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

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

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

2. Legislative objectives.

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

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

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

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

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

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

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

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

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

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

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

3. Needs and benefits.

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

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

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

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

4. Costs.

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

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

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

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

5. Local government mandates.

None.

6. Paperwork.

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

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

7. Duplication.

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

8. Alternatives.

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

9. Federal standards.

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

10. Compliance schedule.

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

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

Regulatory Flexibility Analysis

1. Effect of the Rule:

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

2. Compliance Requirements:

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

3. Professional Services:

None.

4. Compliance Costs:

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

5. Economic and Technological Feasibility:

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

6. Minimizing Adverse Impacts:

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

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

7. Small Business and Local Government Participation:

See response to Item 6 above.

Rural Area Flexibility Analysis

Types and Estimated Numbers. The New York State Department of Financial Services (formerly the Banking Department) licenses over 1,800 mortgage bankers and brokers, of which over 1,200 are located in the state. It has received almost 15,000 applications from MLOs under the present regulations and anticipates receiving approximately 2,700 applications from individuals who were previously exempted but will be required to be licensed under the revised regulations. Many of these entities and MLOs will be operating in rural areas of New York State and would be impacted by the regulation. If individuals who originate mobile home loans are required to be licensed, a relatively small number of additional applications is anticipated.

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

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

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

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

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

Job Impact Statement

Revised Article 12-E of the Banking Law, effective on July 11, 2009, replaces the prior version of Article 12-E with respect to the licensing and regulation of mortgage loan servicers. This proposed regulation sets forth the application, exemption and approval procedures for licensing registration as a Mortgage Loan Originator (MLO), as well as financial responsi-

bility requirements for individuals engaging in MLO activities. The proposed regulation also provides transition rules for individuals who engaged in MLO activities under the prior version of the article to become licensed under the new statute.

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

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

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

NOTICE OF ADOPTION

Workers' Compensation Insurance

I.D. No. DFS-52-11-00004-A

Filing No. 158

Filing Date: 2012-02-21

Effective Date: 2012-03-07

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

Action taken: Addition of Subpart 151-6 (Regulation 119) to Title 11 NYCRR.

Statutory authority: Financial Services Law, sections 202 and 302; Insurance Law, section 301; and Workers' Compensation Law, sections 15(8)(h)(4) and 151(2)(b)

Subject: Workers' Compensation Insurance.

Purpose: This regulation is necessary to standardize the basis upon which the workers' compensation assessments are calculated.

Text or summary was published in the December 28, 2011 issue of the Register, I.D. No. DFS-52-11-00004-P.

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

Text of rule and any required statements and analyses may be obtained from: David Neustadt, Department of Financial Services, One State Street, New York, NY 10004-1511, (212) 709-1691, email: david.neustadt@dfs.ny.gov

Assessment of Public Comment

The agency received no public comment.

Action taken: Amendment of Subpart 86-8 of Title 10 NYCRR.

Statutory authority: Public Health Law, section 2807(2-a)(e)

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

Specific reasons underlying the finding of necessity: It is necessary to issue the proposed regulation on an emergency basis in order to meet the regulatory requirement found within the regulation itself to update the Ambulatory Patient Group (APG) weights at least once a year. To meet that requirement, the weights needed to be revised and published in the regulation for January 2010 and updated thereafter. Additionally, the regulation needs to reflect the many software changes made to the APG payment software, known as the APG grouper-pricer, which is a sub-component of the eMedNY Medicaid payment system. These changes include revised lists of payable and non-payable APGs, a new list of APGs that are not eligible for a capital add-on, and a list of APGs that are not subject to having their payment "blended" with provider-specific historical payment amounts. Finally, a brand new payment software enhancement, which allows payment on a procedure code-specific basis rather than an APG basis, needs to be reflected in the regulation.

There is a compelling interest in enacting these amendments immediately in order to secure federal approval of associated Medicaid State Plan amendments and assure there are no delays in implementation of these provisions. APGs represent the cornerstone to health care reform. Their continued refinement is necessary to assure access to preventive services for all Medicaid recipients.

Subject: October 2011 Ambulatory Patient Groups (APGs) Payment Methodology.

Purpose: To refine the APG payment methodology.

Text of emergency rule: Subdivision (r) of section 86-8.2 is hereby repealed.

Section 86-8.7 is hereby repealed effective October 1, 2011 and a new section 86-8.7 is added to read as follows:

(a) *The table of APG Weights, Procedure Based Weights and units, and APG Fee Schedule Fees and units for each effective period are published on the New York State Department of Health website at: http://www.health.state.ny.us/health_care/medicaid/rates/apg/docs/apg_payment_components.xls*

Subdivision (c) of section 86-8.9 is repealed and a new subdivision (c) is added, to read as follows:

(c) *Drugs purchased under the 340B drug benefit program and billed under the APG reimbursement methodology shall be reimbursed at a reduced rate comparable to the reduced cost of drugs purchased through the 340B drug benefit program.*

Subdivision (d) of section 86-8.9 is amended to read as follows:

* * *

94 CARDIAC REHABILITATION
274 PHYSICAL THERAPY, GROUP
275 SPEECH THERAPY AND EVALUATION, GROUP
322 MEDICATION ADMINISTRATION AND OBSERVATION
414 LEVEL I IMMUNIZATION AND ALLERGY IMMUNOTHERAPY
415 LEVEL II IMMUNIZATION
416 LEVEL III IMMUNIZATION
428 PATIENT EDUCATION, INDIVIDUAL
429 PATIENT EDUCATION, GROUP
451 SMOKING CESSATION TREATMENT

Subdivision (h) of section 86-8.10 is amended to read as follows:

* * *

065 RESPIRATORY THERAPY
066 PULMONARY REHABILITATION
117 HOME INFUSION
190 ARTIFICIAL FERTILIZATION
311 FULL DAY PARTIAL HOSPITALIZATION FOR SUBSTANCE ABUSE
313 HALF DAY PARTIAL HOSPITALIZATION FOR SUBSTANCE ABUSE
314 HALF DAY PARTIAL HOSPITALIZATION FOR MENTAL ILLNESS

Department of Health

EMERGENCY RULE MAKING

October 2011 Ambulatory Patient Groups (APGs) Payment Methodology

I.D. No. HLT-50-11-00015-E

Filing No. 159

Filing Date: 2012-02-21

Effective Date: 2012-02-21

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

319 ACTIVITY THERAPY
 371 ORTHODONTICS
 430 CLASS I CHEMOTHERAPY DRUGS
 431 CLASS II CHEMOTHERAPY DRUGS
 432 CLASS III CHEMOTHERAPY DRUGS
 433 CLASS IV CHEMOTHERAPY DRUGS
 434 CLASS V CHEMOTHERAPY DRUGS
 441 CLASS VI CHEMOTHERAPY DRUGS
 443 CLASS VII CHEMOTHERAPY DRUGS
 452 DIABETES SUPPLIES
 453 MOTORIZED WHEELCHAIR
 454 TPN FORMULAE
 456 MOTORIZED WHEELCHAIR ACCESSORIES
 465 CLASS XIII COMBINED CHEMOTHERAPY AND PHARMACOTHERAPY
 999 UNASSIGNED
 Subdivision (i) of section 86-8.10 is amended to read as follows:

* * *

281 MAGNETIC RESONANCE ANGIOGRAPHY - HEAD AND/OR NECK
 282 MAGNETIC RESONANCE ANGIOGRAPHY - CHEST
 283 MAGNETIC RESONANCE ANGIOGRAPHY - OTHER SITES
 284 MYELOGRAPHY
 285 MISCELLANEOUS RADIOLOGICAL PROCEDURES WITH CONTRAST
 286 MAMMOGRAPHY
 287 DIGESTIVE RADIOLOGY
 288 DIAGNOSTIC ULTRASOUND EXCEPT OBSTETRICAL AND VASCULAR OF LOWER EXTREMITIES
 289 VASCULAR DIAGNOSTIC ULTRASOUND OF LOWER EXTREMITIES
 290 PET SCANS
 291 BONE DENSITOMETRY
 292 MRI - ABDOMEN
 293 MRI - JOINTS
 294 MRI - BACK
 295 MRI - CHEST
 296 MRI - OTHER
 297 MRI - BRAIN
 298 CAT SCAN BACK
 299 CAT SCAN - BRAIN
 300 CAT SCAN - ABDOMEN
 301 CAT SCAN - OTHER
 302 ANGIOGRAPHY, OTHER
 303 ANGIOGRAPHY, CEREBRAL
 330 LEVEL I DIAGNOSTIC NUCLEAR MEDICINE
 331 LEVEL II DIAGNOSTIC NUCLEAR MEDICINE
 332 LEVEL III DIAGNOSTIC NUCLEAR MEDICINE
 373 LEVEL I DENTAL FILM
 374 LEVEL II DENTAL FILM
 375 DENTAL ANESTHESIA
 380 ANESTHESIA
 390 LEVEL I PATHOLOGY
 391 LEVEL II PATHOLOGY
 392 PAP SMEARS
 393 BLOOD AND TISSUE TYPING
 394 LEVEL I IMMUNOLOGY TESTS
 395 LEVEL II IMMUNOLOGY TESTS
 396 LEVEL I MICROBIOLOGY TESTS
 397 LEVEL II MICROBIOLOGY TESTS

398 LEVEL I ENDOCRINOLOGY TESTS
 399 LEVEL II ENDOCRINOLOGY TESTS
 400 LEVEL I CHEMISTRY TESTS
 401 LEVEL II CHEMISTRY TESTS
 402 BASIC CHEMISTRY TESTS
 403 ORGAN OR DISEASE ORIENTED PANELS
 404 TOXICOLOGY TESTS
 405 THERAPEUTIC DRUG MONITORING
 406 LEVEL I CLOTTING TESTS
 407 LEVEL II CLOTTING TESTS
 408 LEVEL I HEMATOLOGY TESTS
 409 LEVEL II HEMATOLOGY TESTS
 410 URINALYSIS
 411 BLOOD AND URINE DIPSTICK TESTS
 413 CARDIOGRAM
 435 CLASS I PHARMACOTHERAPY
 436 CLASS II PHARMACOTHERAPY
 437 CLASS III PHARMACOTHERAPY
 438 CLASS IV PHARMACOTHERAPY
 439 CLASS V PHARMACOTHERAPY
 440 CLASS VI PHARMACOTHERAPY
 444 CLASS VII PHARMACOTHERAPY
 448 AFTER HOURS SERVICES
 [451 SMOKING CESSATION TREATMENT]
 455 IMPLANTED TISSUE OF ANY TYPE
 457 VENIPUNCTURE
 460 CLASS VIII COMBINED CHEMOTHERAPY AND PHARMACOTHERAPY
 461 CLASS IX COMBINED CHEMOTHERAPY AND PHARMACOTHERAPY
 462 CLASS X COMBINED CHEMOTHERAPY AND PHARMACOTHERAPY
 463 CLASS XI COMBINED CHEMOTHERAPY AND PHARMACOTHERAPY
 464 CLASS XII COMBINED CHEMOTHERAPY AND PHARMACOTHERAPY
 470 OBSTETRICAL ULTRASOUND
 471 PLAIN FILM
 472 ULTRASOUND GUIDANCE
 473 CT GUIDANCE
 490 INCIDENTAL TO MEDICAL, SIGNIFICANT PROCEDURE OR THERAPY VISIT

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. HLT-50-11-00015-P, Issue of December 14, 2011. The emergency rule will expire April 20, 2012.

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

Regulatory Impact Statement

Statutory Authority:

Authority for the promulgation of these regulations is contained in section 2807(2-a)(e) of the Public Health Law, as amended by Part C of Chapter 58 of the Laws of 2008 and Part C of Chapter 58 of the Laws of 2009, which authorize the Commissioner of Health to adopt and amend rules and regulations, subject to the approval of the State Director of the Budget, establishing an Ambulatory Patient Groups methodology for determining Medicaid rates of payment for diagnostic and treatment center services, free-standing ambulatory surgery services and general hospital outpatient clinics, emergency departments and ambulatory surgery services.

Legislative Objective:

The Legislature’s mandate is to convert, where appropriate, Medicaid reimbursement of ambulatory care services to a system that pays differential amounts based on the resources required for each patient visit, as determined through Ambulatory Patient Groups (“APGs”). The APGs refer to the Enhanced Ambulatory Patient Grouping classification system which is owned and maintained by 3M Health Information Systems. The Enhanced Ambulatory Group classification system and the clinical logic underlying that classification system, the EAPG software, and the Definitions Manual associated with that classification system, are all proprietary to 3M Health Information Systems. APG-based Medicaid Fee For Service payment systems have been implemented in several states including: Massachusetts, New Hampshire, and Maryland.

Needs and Benefits:

This amendment replaces the actual APG weights, APG procedure based weights, and the APG fee schedule amounts listed in section 86-8.7 with a link to the New York State Department of Health website where all of the APG weights, APG procedure based weights, and the APG fee schedule amounts are posted for all periods. Removing this specificity from the regulation text obviates the need for quarterly amendments to the APG regulation.

COSTS:

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

There will be no additional costs to providers as a result of these amendments.

Costs to Local Governments:

There will be no additional costs to local governments as a result of these amendments.

Costs to State Governments:

There will be no additional costs to NYS as a result of these amendments.

Costs to the Department of Health:

There will be no additional costs to the Department of Health as a result of these amendments.

Local Government Mandates:

There are no local government mandates.

Paperwork:

There is no additional paperwork required of providers as a result of these amendments.

Duplication:

This regulation does not duplicate other state or federal regulations.

Alternatives:

These regulations are in conformance with Public Health Law section 2807(2-(a)(e)). Although the 2009 amendments to PHL 2807(2-a) authorize the Commissioner to adopt rules to establish alternative payment methodologies or to continue to utilize existing payment methodologies where the APG is not yet appropriate or practical for certain services, the utilization of the APG methodology is in its relative infancy and is otherwise continually monitored, adjusted and evaluated for appropriateness by the Department and the providers. This rulemaking is in response to this continually evaluative process.

Federal Standards:

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

Compliance Schedule:

The proposed amendment will become effective upon filing with the Secretary of State.

Regulatory Flexibility Analysis

Effect on Small Business and Local Governments:

For the purpose of this regulatory flexibility analysis, small businesses were considered to be general hospitals, diagnostic and treatment centers, and free-standing ambulatory surgery centers. Based on recent data extracted from providers’ submitted cost reports, seven hospitals and 245 DTCs were identified as employing fewer than 100 employees.

Compliance Requirements:

No new reporting, record keeping or other compliance requirements are being imposed as a result of these rules.

Professional Services:

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

Compliance Costs:

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

Economic and Technological Feasibility:

Small businesses will be able to comply with the economic and technological aspects of this rule. The proposed amendments are intended to further reform the outpatient/ambulatory care fee-for-service Medicaid payment system, which is intended to benefit health care providers, including those with fewer than 100 employees.

Minimizing Adverse Impact:

The proposed amendments apply to certain services of general hospitals, diagnostic and treatment centers and freestanding ambulatory surgery centers. The Department of Health considered approaches specified in section 202-b(1) of the State Administrative Procedure Act in drafting the proposed amendments and rejected them as inappropriate given that this reimbursement system is mandated in statute.

Small Business and Local Government Participation:

Local governments and small businesses were given notice of these proposals by the Department’s issuance in the State Register of a federal public notice on October 5, 2011.

Rural Area Flexibility Analysis

Effect on Rural Areas:

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

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

The following 9 counties have certain townships with population densities of 150 persons or less per square mile:

Albany	Erie	Oneida
Broome	Monroe	Onondaga
Dutchess	Niagara	Orange

Compliance Requirements:

No new reporting, recordkeeping, or other compliance requirements are being imposed as a result of this proposal.

Professional Services:

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

Compliance Costs:

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

Minimizing Adverse Impact:

The proposed amendments apply to certain services of general hospitals, diagnostic and treatment centers and freestanding ambulatory surgery centers. The Department of Health considered approaches specified in section 202-bb(2) of the State Administrative Procedure Act in drafting the proposed amendments and rejected them as inappropriate given that the reimbursement system is mandated in statute.

Opportunity for Rural Area Participation:

Local governments and small businesses were given notice of these proposals by the Department's issuance in the State Register of a federal public notice on October 5, 2011.

Job Impact Statement

A Job Impact Statement is not required pursuant to Section 201-a(2)(a) of the State Administrative Procedure Act. It is apparent, from the nature and purpose of the proposed regulations, that they will not have a substantial adverse impact on jobs or employment opportunities.

Assessment of Public Comment

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

NOTICE OF ADOPTION

Amendment to Limitations of Operating Certificates

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

Filing No. 160

Filing Date: 2012-02-21

Effective Date: 2012-03-07

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

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

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

Subject: Amendment to Limitations of Operating Certificates.

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

Text or summary was published in the December 7, 2011 issue of the Register, I.D. No. HLT-49-11-00007-P.

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

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

Assessment of Public Comment

The agency received no public comment.

Public Service Commission

NOTICE OF WITHDRAWAL

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

The following rule making has been withdrawn from consideration:

I.D. No.	Publication Date of Proposal
PSC-03-12-00014-P	January 18, 2012

NOTICE OF ADOPTION

Rehearing Petitions for the 2/4/10 Rate Order

I.D. No. PSC-28-10-00009-A

Filing Date: 2012-02-17

Effective Date: 2012-02-17

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

Action taken: On 2/16/12, the PSC adopted an order denying the rehearing petitions submitted by Sprint and wireless petitioners and granting, in part XChange Telecom's request for rehearing to provide additional clarification of the 2/4/10 Rate Order.

Statutory authority: Public Service Law, sections 97(3) and 22

Subject: Rehearing petitions for the 2/4/10 Rate Order.

Purpose: To deny the rehearing petitions submitted by wireless petitioners and grant in part additional clarification of the Rate Order.

Substance of final rule: The Commission, on March 17, 2011 adopted an order denying the rehearing petitions submitted by Sprint Nextel Corporation, CTIA - the Wireless Association®, New Cingular Wireless PCS, LLC, MetroPCS Communications, Inc., T-Mobile Northeast LLC, and Celco Partnership and granted, in part XChange Telecom's request for rehearing to provide additional clarification of the determinations in the February 4, 2010 Rate Order, subject to the terms and conditions set forth in the order.

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

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

Assessment of Public Comment

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

(07-C-1541SA1)

NOTICE OF ADOPTION

Petition to Amend the June 23, 2011 Order Approving Submetering of Electricity

I.D. No. PSC-30-11-00005-A

Filing Date: 2012-02-17

Effective Date: 2012-02-17

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

Action taken: On 2/16/12, the PSC adopted an order approving the modification of the June 23, 2011 Order approving submetering at 1468 Hoe Avenue, Bronx, New York to allow Union Grove Associates, LLC.

Statutory authority: Public Service Law, sections 2, 4(1), 22, 30, 32-48, 52, 53, 65(1), 66(1), (2), (3), (4), (12) and (14)

Subject: Petition to amend the June 23, 2011 Order approving submetering of electricity.

Purpose: To approve the petition to amend the June 23, 2011 Order approving submetering of electricity.

Substance of final rule: The Commission, on February 16, 2012 adopted an order approving the modification of the June 23, 2011 Order approving submetering at 1468 Hoe Avenue, Bronx, New York to allow Union Grove Associates, LLC or its successor to terminate submetered electric service for nonpayment of electric charges, only after all of the Home Energy Fair Practices Act provisions and protections have been exhausted, subject to the terms and conditions set forth in the order.

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

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

Assessment of Public Comment

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

(10-E-0489SA2)

NOTICE OF ADOPTION

Amendments to PSC No. 10—Electricity, Effective 11/1/11 and Postponed to 2/20/12**I.D. No.** PSC-31-11-00015-A**Filing Date:** 2012-02-16**Effective Date:** 2012-02-16

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

Action taken: On 2/16/12, the PSC adopted an order approving Consolidated Edison Company of New York, Inc.'s amendments to PSC No. 10—Electricity, effective 11/1/11 and postponed to 2/20/12, to convert its electric tariff schedules into electronic format.

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

Subject: Amendments to PSC No. 10—Electricity, effective 11/1/11 and postponed to 2/20/12.

Purpose: To approve amendments to PSC No. 10—Electricity, effective 11/1/11 and postponed to 2/20/12, to convert its electric tariff.

Substance of final rule: The Commission, on February 16, 2012, adopted an order approving Consolidated Edison Company of New York, Inc.'s revision to its electric tariff schedule PSC No. 9—Electricity and PSC No. 2—Retail Access to a new electricity rate schedule PSC No. 10—Electricity, effective November 1, 2011 and postponed to February 20, 2012, to convert its electric tariff schedules into electronic format compatible with the Commission's Electronic Tariff System (ETS).

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

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

Assessment of Public Comment

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

(08-E-0539SA7)

NOTICE OF ADOPTION

Revised Utility Energy Efficiency Portfolio Standard Electric and Gas Savings Targets**I.D. No.** PSC-33-11-00010-A**Filing Date:** 2012-02-17**Effective Date:** 2012-02-17

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

Action taken: On 2/16/12, the PSC adopted an order approving the revised utility Energy Efficiency Portfolio Standard electric and gas savings targets.

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

Subject: Revised utility Energy Efficiency Portfolio Standard electric and gas savings targets.

Purpose: To approve revised utility Energy Efficiency Portfolio Standard electric and gas savings targets.

Substance of final rule: The Commission, on February 16, 2012 adopted an order modifying the energy savings targets for certain Energy Efficiency Portfolio Standard (EPPS) programs administered by Central Hudson Gas & Electric Corporation, Consolidated Edison Company of New York, Inc., Orange and Rockland Utilities, Inc., New York State Electric & Gas Corporation, Rochester Gas and Electric Corporation, Niagara Mohawk Power Corporation, The Brooklyn Union Gas Company, and KeySpan Gas East Corporation, subject to the terms and conditions set forth in the order.

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

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

Assessment of Public Comment

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

(07-M-0548SA43)

NOTICE OF ADOPTION

Amendments to PSC No. 1—Electricity, Effective March 1, 2012, to Increase Its Annual Electric Revenues**I.D. No.** PSC-43-11-00008-A**Filing Date:** 2012-02-16**Effective Date:** 2012-02-16

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

Action taken: On 2/16/12, the PSC adopted an order approving, with modifications, Village of Fairport's amendments to PSC No. 1—Electricity, effective March 1, 2012, to increase its annual electric revenues by \$475,184 or 2.5%.

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

Subject: Amendments to PSC No. 1—Electricity, effective March 1, 2012, to increase its annual electric revenues.

Purpose: To approve amendments to PSC No. 1—Electricity, effective March 1, 2012, to increase its annual electric revenues.

Substance of final rule: The Commission, on February 16, 2012 adopted an order approving, with modifications, Village of Fairport's amendments to PSC No. 1—Electricity, effective March 1, 2012, to increase its annual electric revenues by \$475,184 or 2.5%, subject to the terms and conditions set forth in the order.

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

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

Assessment of Public Comment

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

(11-E-0537SA1)

NOTICE OF ADOPTION

Amendments to PSC No. 11—Electricity, Effective 2/20/11, to Convert its Electric Tariff**I.D. No.** PSC-51-11-00012-A**Filing Date:** 2012-02-16**Effective Date:** 2012-02-16

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

Action taken: On 2/16/12, the PSC adopted an order approving Consolidated Edison Company of New York, Inc.'s amendments to PSC No. 11—Electricity, effective 2/20/11, to convert its electric tariff schedules into electronic format.

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

Subject: Amendments to PSC No. 11—Electricity, effective 2/20/11, to convert its electric tariff.

Purpose: To approve amendments to PSC No. 11—Electricity, effective 2/20/11, to convert its electric tariff.

Substance of final rule: The Commission, on February 16, 2012, adopted an order approving Consolidated Edison Company of New York, Inc.'s new schedule PSC No. 11—Electricity, effective February 20, 2011, superseding its Economic Development Delivery Service No. 2 tariff schedule to convert its electric tariff schedules into electronic format compatible with the Commission's Electronic Tariff System (ETS).

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

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

Assessment of Public Comment

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

(08-E-0539SA8)

NOTICE OF ADOPTION**Amendments to PSC No. 12—Electricity, Effective 2/20/11, to Convert its Electric Tariff****I.D. No.** PSC-51-11-00016-A**Filing Date:** 2012-02-16**Effective Date:** 2012-02-16

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

Action taken: On 2/16/12, the PSC adopted an order approving Consolidated Edison Company of New York, Inc.'s amendments to PSC No. 12—Electricity, effective 2/20/11, to convert its electric tariff schedules into electronic format.

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

Subject: Amendments to PSC No. 12—Electricity, effective 2/20/11, to convert its electric tariff.

Purpose: To approve amendments to PSC No. 12—Electricity, effective 2/20/11, to convert its electric tariff.

Substance of final rule: The Commission, on February 16, 2012, adopted an order approving Consolidated Edison Company of New York, Inc.'s amendments to PSC No. 12—Electricity, effective February 20, 2011, superseding its Power Authority of the State of New York (PASNY) No. 4 tariff schedule, to convert its electric tariff schedules into electronic format compatible with the Commission's Electronic Tariff System (ETS).

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

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

Assessment of Public Comment

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

(08-E-0539SA9)

NOTICE OF ADOPTION**Installed Reserve Margin for the NY Control Area for the Capability Year Beginning May 1, 2012 to April 30, 2013****I.D. No.** PSC-52-11-00010-A**Filing Date:** 2012-02-17**Effective Date:** 2012-02-17

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

Action taken: On 2/16/12, the PSC adopted the Installed Reserve Margin of 16.0% for the New York Control Area for the Capability Year beginning May 1, 2012 and ending April 30, 2013.

Statutory authority: Public Service Law, sections 4(1), 5(2), 65(1), 66(1), (2), (4) and (5)

Subject: Installed Reserve Margin for the NY Control Area for the Capability Year beginning May 1, 2012 to April 30, 2013.

Purpose: To adopt the Installed Reserve Margin for the NY Control Area for the Capability Year beginning May 1, 2012 to April 30, 2013.

Substance of final rule: The Commission, on February 16, 2012, adopted the Installed Reserve Margin of 16.0% for the New York Control Area for the Capability Year beginning May 1, 2012, and ending April 30, 2013, subject to the terms and conditions set forth in the order.

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

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

Assessment of Public Comment

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

(07-E-0088SA6)

NOTICE OF ADOPTION**Amendments to PSC No. 120—Electricity, Effective 3/1/12, to Modify the Transition Charges****I.D. No.** PSC-52-11-00014-A**Filing Date:** 2012-02-16**Effective Date:** 2012-02-16

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

Action taken: On 2/16/12, the PSC adopted an order approving New York State Electric & Gas Corporation's amendments to PSC No. 120—Electricity, eff. 3/1/12 to modify the Transition Charges to reflect the expiration of the Nine Mile Point No. 2 Purchased Power Agreement.

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

Subject: Amendments to PSC No. 120—Electricity, eff. 3/1/12, to modify the Transition Charges.

Purpose: To approve amendments to PSC No. 120—Electricity, eff. 3/1/12, to modify the Transition Charges.

Substance of final rule: The Commission, on February 16, 2012 adopted an order approving New York State Electric & Gas Corporation's amendments to PSC No. 120—Electricity, effective March 1, 2012, to modify the Transition Charges to reflect the expiration of the Nine Mile Point No. 2 (NMP2) Purchased Power Agreement, and the commencement of the NMP2 Revenue Sharing Agreement.

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

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

Assessment of Public Comment

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

(11-E-0669SA1)

NOTICE OF ADOPTION**Amendments to PSC No. 19—Electricity, Effective 3/1/12, to Modify the Transition Charges****I.D. No.** PSC-52-11-00015-A**Filing Date:** 2012-02-16**Effective Date:** 2012-02-16

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

Action taken: On 2/16/12, the PSC adopted an order approving Rochester Gas and Electric Corporation's amendments to PSC No. 19—Electricity, eff. 3/1/12, to modify the Transition Charges to reflect the expiration of the Nine Mile Point No. 2 Purchased Power Agreement.

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

Subject: Amendments to PSC No. 19—Electricity, eff. 3/1/12, to modify the Transition Charges.

Purpose: To approve amendments to PSC No. 19—Electricity, eff. 3/1/12, to modify the Transition Charges.

Substance of final rule: The Commission, on February 16, 2012 adopted an order approving Rochester Gas and Electric Corporation's amendments to PSC No. 19—Electricity, effective March 1, 2012, to modify the Transition Charges to reflect the expiration of the Nine Mile Point No. 2 (NMP2) Purchased Power Agreement, and the commencement of the NMP2 Revenue Sharing Agreement.

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

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

Assessment of Public Comment

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

(11-E-0670SA1)

Workers' Compensation Board

EMERGENCY RULE MAKING

Filing Written Reports of Independent Medical Examinations (IMEs)

I.D. No. WCB-10-12-00002-E

Filing No. 155

Filing Date: 2012-02-17

Effective Date: 2012-02-17

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

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

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

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

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

Subject: Filing written reports of Independent Medical Examinations (IMEs).

Purpose: To amend the time for filing written reports of IMEs with the Board and furnished to all others.

Text of emergency rule: Paragraph (11) of subdivision (d) of section 300.2 of Title 12 NYCRR is amended to read as follows:

(11) A written report of a medical examination duly sworn to, shall be filed with the Board, and copies thereof furnished to all parties as may be required under the Workers' Compensation Law, within 10 *business* days after the examination, or sooner if directed, except that in cases of persons examined outside the State, such reports shall be filed and furnished within 20 *business* days after the examination. *A written report is filed with the Board when it has been received by the Board pursuant to the requirements of the Workers' Compensation Law.*

This notice is intended to serve only as an emergency adoption, to be valid for 90 days or less. This rule expires May 16, 2012.

Text of rule and any required statements and analyses may be obtained from: Heather MacMaster, Workers' Compensation Board, Office of General Counsel, 20 Park Street, Albany, NY 12207, (518) 486-9564, email: regulations@wcb.ny.gov

Regulatory Impact Statement

1. Statutory authority:

The Workers' Compensation Board (hereinafter referred to as Board) is authorized to amend 12 NYCRR 300.2(d)(11). Workers' Compensation Law (WCL) Section 117(1) authorizes the Chair to make reasonable regulations consistent with the provisions of the Workers' Compensation Law and the Labor Law. Section 141 of the Workers' Compensation Law authorizes the Chair to make administrative regulations and orders providing, in part, for the receipt, indexing and examining of all notices, claims

and reports, and further authorizes the Chair to issue and revoke certificates of authorization of physicians, chiropractors and podiatrists as provided in sections 13-a, 13-k, and 13-l of the Workers' Compensation Law. Section 137 of the Workers' Compensation Law mandates requirements for the notice, conduct and reporting of independent medical examinations. Specifically, paragraph (a) of subdivision (1) requires a copy of each report of an independent medical examination to be submitted by the practitioner on the same day and in the same manner to the Board, the carrier or self-insured employer, the claimant's treating provider, the claimant's representative and the claimant. Sections 13-a, 13-k, 13-l and 13-m of the Workers' Compensation Law authorize the Chair to prescribe by regulation such information as may be required of physicians, podiatrists, chiropractors and psychologists submitting reports of independent medical examinations.

2. Legislative objectives:

Chapter 473 of the Laws of 2000 amended Sections 13-a, 13-b, 13-k, 13-l and 13-m of the Workers' Compensation Law and added Sections 13-n and 137 to the Workers' Compensation Law to require authorization by the Chair of physicians, podiatrists, chiropractors and psychologists who conduct independent medical examinations, guidelines for independent medical examinations and reports, and mandatory registration with the Chair of entities that derive income from independent medical examinations. This rule would amend one provision of the regulations adopted in 2001 to implement Chapter 473 regarding the time period within which to file written reports from independent medical examinations.

3. Needs and benefits:

Prior to the adoption of Chapter 473 of the Laws of 2000, there were limited statutory or regulatory provisions applicable to independent medical examiners or examinations. Under this statute, the Legislature provided a statutory basis for authorization of independent medical examiners, conduct of independent medical examinations, provision of reports of such examinations, and registration of entities that derive income from such examinations. Regulations were required to clarify definitions, procedures and standards that were not expressly addressed by the Legislature. Such regulations were adopted by the Board in 2001.

Among the provisions of the regulations adopted in 2001 was the requirement that written reports from independent medical examinations be filed with the Board and furnished to all parties as required by the WCL within 10 days of the examination. Guidance was provided in 2002 to some to participants in the process from executives of the Board that filing was accomplished when the report was deposited in a U.S. mailbox and that "10 days" meant 10 calendar days. In 2003 claimants began raising the issue of timely filing with the Board of the written report and requesting that the report be excluded if not timely filed. In response some representatives for the carriers/self-insured employers presented the 2002 guidance as proof they were in compliance. In some cases the Workers' Compensation Law Judges (WCLJs) found the report to be timely, while others found it to be untimely. Appeals were then filed to the Board and assigned to Panels of Board Commissioners. Due to the differing WCLJ decisions and the appeals to the Board, Board executives reviewed the matter and additional guidance was issued in October 2003. The guidance clarified that filing is accomplished when the report is received by the Board, not when it is placed in a U.S. mailbox. In November 2003, the Board Panels began to issue decisions relating to this issue. The Panels held that the report is filed when received by the Board, not when placed in a U.S. mailbox, the CPLR provision providing a 5-day grace period for mailing is not applicable to the Board (WCL Section 118), and therefore the report must be filed within 10 days or it will be precluded.

Since the issuance of the October 2003 guidance and the Board Panel decisions, the Board has been contacted by numerous participants in the system indicating that ten calendar days from the date of the examination is not sufficient time within which to file the report of the exam with the Board. This is especially true if holidays fall within the ten day period as the Board and U.S. Postal Service do not operate on those days. Further the Board is not open to receive reports on Saturdays and Sundays. If a report is precluded because it is not filed timely, it is not considered by the WCLJ in rendering a decision.

By amending the regulation to require the report to be filed within ten business days rather than calendar days, there will be sufficient time to file the report as required. In addition by stating what is meant by filing there can be no further arguments that the term "filed" is vague.

4. Costs:

This proposal will not impose any new costs on the regulated parties, the Board, the State or local governments for its implementation and continuation. The requirement that a report be prepared and filed with the Board currently exists and is mandated by statute. This rule merely modifies the manner in which the time period to file the report is calculated and clarifies the meaning of the word "filed".

5. Local government mandates:

Approximately 2511 political subdivisions currently participate as municipal employers in self-insured programs for workers' compensation coverage in New York State. These self-insured municipal employers will be affected by the proposed rule in the same manner as all other employers who are self-insured for workers' compensation coverage. As with all other participants, this proposal merely modifies the manner in which the time to file a report is calculated, and clarifies the meaning of the word "filed".

6. Paperwork:

This proposed rule does not add any reporting requirements. The requirement that a report be provided to the Board, carrier, claimant, claimant's treating provider and claimant's representative in the same manner and at the same time is mandated by WCL Section 137(1). Current regulations require the filing of the report with the Board and service on all others within ten days of the examination. This rule merely modifies the manner in which the time period to file the report is calculated and clarifies the meaning of the word "filed".

7. Duplication:

The proposed rule does not duplicate or conflict with any state or federal requirements.

8. Alternatives:

One alternative discussed was to take no action. However, due to the concerns and problems raised by many participants, the Board felt it was more prudent to take action. In addition to amending the rule to require the filing within ten business days, the Board discussed extending the period within which to file the report to fifteen days. In reviewing the law and regulations the Board felt the proposed change was best. Subdivision 7 of WCL Section 137 requires the notice of the exam be sent to the claimant within seven business days, so the change to business days is consistent with this provision. Further, paragraphs (2) and (3) of subdivision 1 of WCL Section 137 require independent medical examiners to submit copies of all request for information regarding a claimant and all responses to such requests within ten days of receipt or response. Further, in discussing this issue with participants to the system, it was indicated that the change to business days would be adequate.

The Medical Legal Consultants Association, Inc., suggested that the Board provide for electronic acceptance of IME reports directly from IME providers. However, at this time the Board cannot comply with this suggestion as WCL Section 137(1)(a) requires reports to be submitted by the practitioners on the same day and in the same manner to the Board, the insurance carrier, the claimant's attending provider and the claimant. Until such time as the report can be sent electronically to all of the parties, the Board cannot accept it in this manner.

9. Federal standards:

There are no federal standards applicable to this proposed rule.

10. Compliance schedule:

It is expected that the affected parties will be able to comply with this change immediately.

Regulatory Flexibility Analysis

1. Effect of rule:

Approximately 2511 political subdivisions currently participate as municipal employers in self-insured programs for workers' compensation coverage in New York State. Any independent medical exams conducted at their request must be filed by the physician, chiropractor, psychologist or podiatrist conducting the exam or by an independent medical examination (IME) entity. Workers' Compensation Law § 137(1)(a) does not permit self-insured employers or insurance carriers to file these reports, therefore there is no direct action a self-insured local government must or can take with respect to this rule. However, self-insured local governments are concerned about the timely filing of an IME report as one filed late will not be admissible as evidence in a workers' compensation proceeding. This rule makes it easier for a report to be timely filed as it expands the timeframe from 10 calendar days to 10 business days. Small businesses that are self-insured will also be affected by this rule in the same manner as self-insured local governments.

Small businesses that derive income from independent medical examinations are a regulated party and will be required to file reports of independent medical examinations conducted at their request within ten business days of the exam, rather than ten calendar days, in order that such reports may be admissible as evidence in a workers' compensation proceeding.

Individual providers of independent medical examinations who own their own practices or are engaged in partnerships or are members of corporations that conduct independent medical examinations also constitute small businesses that will be affected by the proposed rule. These individual providers will be required to file reports of independent medical examinations conducted at their request within ten business days of the exam, rather than ten calendar days, in order that such reports may be admissible as evidence in a workers' compensation proceeding.

2. Compliance requirements:

This rule requires the filing of IME reports within 10 business days rather than 10 calendar days. Prior to this rule medical providers authorized to conduct IMEs and IME entities hired to perform administrative functions for IME examiners, such as filing the report with the Board, had less time to file such reports. Self-insured local governments and small employers, who are not authorized or registered with the Chair to perform IMEs or related administrative services, are not required to take any action to comply with this rule. As noted above, WCL § 137(1)(a) does not permit self-insured employers or insurance carriers to file IME reports with the Board. The new requirement is solely the manner in which the time period to file reports of independent medical examinations is calculated.

3. Professional services:

It is believed that no professional services will be needed to comply with this rule.

4. Compliance costs:

This proposal will not impose any compliance costs on small business or local governments. The rule solely changes the manner in which a time period is calculated and only requires the use of a calendar.

5. Economic and technological feasibility:

No implementation or technology costs are anticipated for small businesses and local governments for compliance with the proposed rule. Therefore, it will be economically and technologically feasible for small businesses and local governments affected by the proposed rule to comply with the rule.

6. Minimizing adverse impact:

This proposed rule is designed to minimize adverse impacts due to the current regulations for small businesses and local governments. This rule provides only a benefit to small businesses and local governments.

7. Small business and local government participation:

The Board received input from a number of small businesses who derive income from independent medical examinations, some providers of independent medical examinations and the Medical Legal Consultants Association, Inc. which is a non-for-profit association of independent medical examination firms and practitioners across the State.

Rural Area Flexibility Analysis

1. Types and estimated numbers of rural areas:

This rule applies to all claimants, carriers, employers, self-insured employers, independent medical examiners and entities deriving income from independent medical examinations, in all areas of the state.

2. Reporting, recordkeeping and other compliance requirements:

Regulated parties in all areas of the state, including rural areas, will be required to file reports of independent medical examinations within ten business days, rather than ten calendar days, in order that such reports may be admissible as evidence in a workers' compensation proceeding. The new requirement is solely the manner in which the time period to file reports of independent medical examinations is calculated.

3. Costs:

This proposal will not impose any compliance costs on rural areas. The rule solely changes the manner in which a time period is calculated and only requires the use of a calendar.

4. Minimizing adverse impact:

This proposed rule is designed to minimize adverse impact for small businesses and local government that already exist in the current regulations. This rule provides only a benefit to small businesses and local governments.

5. Rural area participation:

The Board received input from a number of entities who derive income from independent medical examinations, some providers of independent medical examinations and the Medical Legal Consultants Association, Inc. which is a non-for-profit association of independent medical examination firms and practitioners across the State.

Job Impact Statement

The proposed regulation will not have an adverse impact on jobs. The regulation merely modifies the manner in which the time period to file a written report of an independent medical examination is filed and clarifies the meaning of the word "filed". These regulations ultimately benefit the participants to the workers' compensation system by providing a fair time period in which to file a report.