

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.

Office for the Aging

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Limits on Administrative Expenses and Executive Compensation

I.D. No. AGE-22-12-00011-P

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

Proposed Action: Addition of Part 6656 to Title 9 NYCRR.

Statutory authority: Elder Law, section 201(3); and Executive Order No. 38

Subject: Limits on Administrative Expenses and Executive Compensation.

Purpose: To implement guidelines regarding placing limitations on Administrative Expenses and Executive Compensation.

Substance of proposed rule (Full text is posted at the following State website: <http://www.aging.ny.gov/Index.cfm>): The State of New York directly or indirectly funds with taxpayer dollars a large number of tax exempt organizations and for-profit entities that provide critical services to New Yorkers in need. The goal of this proposed rule is to ensure that taxpayers' dollars are used properly, efficiently, and effectively to improve the lives of New Yorkers. It is imperative that New York State and the New York State Office for the Aging ensure that state funds and state authorized funds are optimized for the purpose of providing services to those individuals who are in need of them. Utilizing state funds and state authorized funds primarily for the provision of direct care and services helps to guarantee that such funds are providing the greatest benefit to older New Yorkers. These regulations, which are required by Executive Order No. 38, will ensure that State funds or State-authorized payments paid by the New York State Office for the Aging to providers are used predominantly to provide direct care and services to older New Yorkers. In order to

achieve these goals, the New York State Office is proposing a new Part 6656.

Section 6656.1 of the regulations sets forth the entities that are covered by the proposed rule.

Section 6656.2 sets forth the definitions that are applicable to the proposed rule.

Section 6656.3 outlines the limits on administrative expenses. Specifically, this section details the percentage of state funds and state authorized funds that must be used to cover program services. This section also details the fact that subcontractors of covered entities are also subject to these proposed regulations. Section 6656.3 also enumerates the fact that the New York State Office for the Aging is responsible for the covered provider's reporting under and compliance with the proposed regulations.

Section 6656.4 details the limits on executive compensation. Subsections (a) and (b) of section 6656.4 outline how executive compensation will be limited and what methods will be used to determine that compensation limit. Subsections 6656.4 (c), (d) and (e) further detail the factors that will be considered when determining the limits on executive compensation.

Section 6656.5 sets forth the factors and procedures under which waiver of the executive compensation limits and waiver of the reimbursement for administrative expenses will be considered. Subsection (c) of section 6656.5 details the procedure to be followed in the event a request for a waiver of the executive compensation limits and/or reimbursement of administrative expenses is denied.

Section 6656.6 enumerates the reporting procedures that must be followed by the covered entities. This section also outlines the potential penalties for the failure to report.

Section 6656.7 provides the procedure for penalizing and the potential penalties for non-compliant covered entities. This section details the steps that will be taken if non-compliance is suspected. These steps include a preliminary determination of non-compliance, a corrective action period, the filing, review and acceptance of a corrective action plan, the ramifications of a failure to cure the non-compliance issues and the appeal procedure.

Text of proposed rule and any required statements and analyses may be obtained from: Stephen Syzdek, New York State Office for the Aging, Two Empire State Plaza, Albany, NY 12223, (518) 474-5041, email: stephen.syzdek@ofa.state.ny.us

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

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

Regulatory Impact Statement

1. Statutory Authority – Section 201(3) of the New York State Elder Law allows the Director of the New York State Office for the Aging with the advice of the advisory committee for the aging to promulgate, adopt, amend or rescind rules and regulations necessary to carry out the provisions of Article II of the Elder Law.

Governor Cuomo's Executive Order #38 directs each state agency to promulgate regulations to address the extent and nature of administrative costs and executive compensation that providers of NYSOFA programs are reimbursed with State financial assistance or State-authorized payments for operating expenses.

2. Legislative Objectives – It is the objective of the New York State Legislature to ensure that NYSOFA administer programs and utilize program funds in the most effective and efficient manner possible for the benefit of older New Yorkers. This proposed regulation seeks to meet that legislative objective.

3. Needs and Benefits – The New York State Office for the Aging is proposing to adopt the following regulation because the State of New York directly or indirectly funds with taxpayer dollars a large number of tax exempt organizations and for-profit entities that provide critical services to New Yorkers in need and the goal is to ensure that taxpayers' dollars are used properly, efficiently, and effectively to improve the lives of

New Yorkers. It is imperative that New York State and the New York State Office for the Aging ensure that state funds and state authorized funds are optimized for the purpose of providing services to those individuals who are in need of them. Applying state funds and state authorized funds primarily to providing direct care and services helps to guarantee that such funds are providing the greatest benefit to older New Yorkers. These regulations, which are required by Executive Order No. 38, will ensure that State funds or State-authorized payments paid by the New York State Office for the Aging to providers are used predominantly to provide direct care and services to older New Yorkers.

4. Costs – The costs of implementing this rule to affected providers is anticipated to be minimal since most, if not all, of the information that must be reported by such providers is already gathered or reported for other purposes. The costs to the agency of implementation are expected to be very limited as well, and efforts to ensure efficient centralization of certain aspects of such implementation are underway.

5. Paperwork – The proposed regulatory amendments will require limited additional information to be reported to the agency by providers receiving State funds or State-authorized payments. To the extent feasible, such reporting shall be made electronically to avoid unnecessary paperwork costs.

6. Local Government Mandates – The proposed rule does not impose any new program, service, duty or responsibility upon any city, county, town, village, school district or other special district.

7. Duplication – This proposed rule does not duplicate, overlap, or conflict with any State or federal statute or rule. However, the proposed rule seeks to minimize the reporting requirements faced by providers by building upon those requirements in the federal internal revenue code that require certain tax-exempt organizations to report information concerning their executive compensation and administrative costs.

8. Alternatives – Executive Order #38 and Executive Order #43 requires the adoption of this proposed regulation.

9. Federal Standards – This rule does not exceed Federal standards.

10. Compliance Schedule – This rule takes effect January 1, 2013.

Regulatory Flexibility Analysis

This proposed rule will not have an adverse economic impact on small businesses or local governments nor will it impose new reporting, recordkeeping or compliance requirements on small businesses or local governments. This proposed rule is designed to address executive compensation and administrative costs of those providers of program services that receive State funding or State-authorized payments paid by the New York State Office for the Aging.

Rural Area Flexibility Analysis

This proposed rule will not have an adverse economic impact on public or private entities in rural areas nor will it impose new reporting, recordkeeping or compliance requirements on public or private entities in rural areas. This proposed rule is designed to address executive compensation and administrative costs of those providers of program services that receive State fund or State-authorized payments paid by the New York State Office for the Aging.

Job Impact Statement

The New York State Office for the Aging has determined that this proposed rule will not have a substantial adverse impact on jobs. This proposed rule is designed to address executive compensation and administrative costs of those providers of program services that receive State fund or State-authorized payments paid by the New York State Office for the Aging.

Subject: Compliance with Executive Order No. 38 of 2012.

Purpose: To limit administrative costs and executive compensation to ensure that services to New Yorkers are available and well-funded.

Substance of proposed rule (Full text is posted at the following State website: www.agriculture.ny.gov): These regulations, which are required by Executive Order No. 38, will ensure that State funds or State-authorized payments paid by the New York State Department of Agriculture and Markets (Department), to providers covered by the regulations are used predominantly to provide direct care and services. In order to achieve this goal, the Department is proposing a new Part 400 with the following provisions:

Section 400.1 sets forth the entities that are covered by the proposed rule.

Section 400.2 sets forth the definitions that are applicable to the proposed rule.

Section 400.3 sets forth the limits on administrative expenses, including the percentage of state funds and state authorized funds that must be used to cover program services; applicability of the rule to subcontractors of covered providers; and requirements that the Department's responsibilities relating to the covered provider's reporting under and compliance with the proposed regulations.

Section 400.4 sets forth limits on executive compensation, including how executive compensation will be limited and what methods will be used to determine that compensation limit. Section 400.4 also lists the factors that will be considered when determining the limits on executive compensation.

Section 400.5 sets forth the factors and procedures under which waiver of the executive compensation limits and waiver of the reimbursement for administrative expenses will be considered, as well as the procedure to be followed in the event a request for a waiver of the executive compensation limits and/or reimbursement of administrative expenses is denied.

Section 400.6 describes the reporting procedures for covered providers and potential penalties for the failure to report.

Section 400.7 sets forth the procedures and potential penalties for non-compliance with the rule. This section describes the steps that will be taken if non-compliance is suspected, including a preliminary determination of non-compliance, a corrective action period, the filing, review and acceptance of a corrective action plan, the consequences of a failure to cure the non-compliance, and the appeal procedure.

Text of proposed rule and any required statements and analyses may be obtained from: Frederick Brian Arnold, Esq., NYS Department of Agriculture and Markets, 10B Airline Drive, Albany, New York 12235, (518) 457-2449, email: rick.arnold@agriculture.ny.gov

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

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

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

Regulatory Impact Statement

1. Statutory Authority:

Section 18 of the Agriculture and Markets Law provides, in part, that the Commissioner may enact, amend and repeal necessary rules which shall regulate and control the transaction of business by the Department and provide generally for the exercise of the powers and performance of the duties of the Department as prescribed in the Agriculture and Markets Law and the laws of the State and for the enforcement of their provisions and the provisions of the rules that have been enacted.

2. Legislative Objectives:

The statutory provision pursuant to which these regulations are proposed is intended to authorize the Department to promulgate rules necessary to properly exercise its powers and duties.

3. Needs and Benefits:

The proposed amendments implement the requirements set forth in Executive Order #38, which states that New York State directly or indirectly funds or authorizes reimbursements with other taxpayer dollars to contractors that provide critical services to New Yorkers in need; and expresses concern that such monies are being used for excessive administrative costs and executive compensation. The Executive Order directs that State agencies, including the Department, promulgate regulations to prevent excessive payment of taxpayer dollars for administrative expenses and executive compensation for these contractors.

The proposed regulations restrict administrative expenses for contractors to 25 percent and eventually 15 percent of the State's financial assistance or State-authorized payments. The proposed regulations also limit the annual compensation paid from State financial assistance or State-authorized payments to executives of contractors to \$199,000. The regulations provide that contractors may make an application to the Department for a waiver of these requirements. Recordkeeping requirements are also

Department of Agriculture and Markets

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Compliance with Executive Order No. 38 of 2012

I.D. No. AAM-22-12-00013-P

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

Proposed Action: Addition of Part 400 to Title 1 NYCRR.

Statutory authority: Agriculture and Markets Law, section 18

included in the proposal to ensure compliance with these requirements. Finally, the proposed regulations set forth measures in response to failure to comply with these requirements.

The proposed amendments benefit the State by ensuring that the most State and taxpayer monies possible are allocated to delivery of services to the people of the State rather than to excessive funding for administrative costs and executive compensation. The proposed amendments also benefit the people of the State by not only ensuring the proper, efficient and effective use of taxpayer dollars, but also ensuring that those taxpayer dollars are used, to the extent possible, to help New Yorkers in need.

4. Costs:

(a) Costs to private regulated parties: Contractors would incur minimal costs in complying with the reporting requirements in the rule since most, if not all, of the information to be reported is likely already collected or reported by the contractor for other purposes. Contractors would be limited in the dollar amounts they could allocate from State contracts for their administrative costs and executive compensation. However, the overall State funding award amounts would not decrease.

(b) Costs to the department, State and local governments: The cost to the Department is expected to be minimal and consist, in part, of developing a reporting form. The State and local governments will not incur any expenses.

(c) The cost analysis is based upon the requirements for agencies in the proposal.

5. Local Government Mandate:

None.

6. Paperwork:

Contractors would need to complete and file a reporting form, and a waiver application as needed. To the extent feasible, such reporting will be made electronically to avoid unnecessary paperwork costs.

7. Duplication:

This proposed rule does not duplicate, overlap, or conflict with any State or federal statute or rule. However, the proposed rule seeks to minimize the reporting requirements faced by providers by building upon those requirements in the federal internal revenue code that require certain tax-exempt organizations to report information concerning their executive compensation and administrative costs.

8. Alternatives:

Since Executive Order #38 of 2012 directs State agencies to promulgate this regulation, there is no alternative to proposing this rule.

9. Federal Standards:

These amendments do not conflict with federal standards.

10. Compliance Schedule:

This rule takes effect January 1, 2013.

Regulatory Flexibility Analysis

A Regulatory Flexibility Analysis for Small Businesses and Local Governments is not being submitted with this notice because the proposed rule will not impose any adverse economic impact on small businesses, nor will it impose new reporting, recordkeeping or other compliance requirements on small businesses or local governments.

Rural Area Flexibility Analysis

A Rural Area Flexibility Analysis is not being submitted with this notice because the proposed rule will not impose any adverse economic impact on rural areas.

Job Impact Statement

A Job Impact Statement is not being submitted with this notice because it is evident from the subject matter of the regulation that it will have no impact on jobs and employment opportunities.

Office of Alcoholism and Substance Abuse Services

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Limits on Administrative Expenses and Executive Compensation

I.D. No. ASA-22-12-00014-P

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

Proposed Action: Addition of Part 812 to Title 14 NYCRR.

Statutory authority: Mental Hygiene Law, sections 19.07, 19.09, 19.21, 19.40, 32.01, 32.07; and Executive Order No. 38

Subject: Limits on Administrative Expenses and Executive Compensation.

Purpose: Ensure state funds paid by this agency to providers are not used for excessive compensation or unnecessary administrative costs.

Substance of proposed rule (Full text is posted at the following State website: www.oasas.ny.gov): The proposed regulations add a new Part 812 to 14 NYCRR, Limits on Administrative Costs and Executive Compensation.

Section 812.4: Contains definitions for administrative costs, allowable operating expenses, covered executive, covered provider, executive compensation, program services, program services costs, related entity, reporting period, State-authorized payments, and State funds.

Section 812.5: Limits on Administrative Costs. Effective January 1, 2013, no less than 75% of the State funds or State-authorized payments to a covered provider for allowable operating expenses shall be used for program services costs rather than for administrative costs. This percentage shall increase by 5% each year until it shall be at no less than 85% for the calendar year 2015 and for each calendar year thereafter.

The restriction applies to subcontractors of covered providers which provide program and/or management services which meet the specified criteria.

The restriction is applied to providers receiving State funds or State-authorized payments from county or local government.

The proposed regulation addresses how the restriction will apply in the event that a covered provider has multiple sources of State funds or State-authorized payments.

Section 812.6: Limits on Executive Compensation. A limit on executive compensation of \$199,000 per annum is applied to covered executives of covered providers. Where a covered provider is reimbursed with State funds or State-authorized payments using a cost-based methodology or pursuant to a contract that specifies the extent of reimbursement for executive compensation, the limit applies to reimbursement with State funds or State-authorized payments for executive compensation. Otherwise the limit applies to executive compensation.

The limit does not apply to specific program services that also may be rendered by the covered executive outside of his or her managerial or policy-making activities.

A provision discusses the application of this limit if the covered provider has multiple sources of State funds or State-authorized payments.

Section 812.7: Waivers.

Processes are established for covered providers to seek waivers of the limit on administrative costs and the limit on executive compensation.

Section 812.8: Reporting by Covered Providers.

Covered providers are required to report information pertinent to administrative costs and executive compensation on an annual basis.

Section 812.9: Enforcement and Penalties.

A process is established for the imposition of penalties in the event of non-compliance with the limit on administrative costs, the limit on executive compensation, and/or the reporting requirement.

Section 812.10: Severability.

Text of proposed rule and any required statements and analyses may be obtained from: Sara Osborne, Senior Attorney, NYS Office of Alcoholism and Substance Abuse Services, 1450 Western Ave., Albany, NY 12203, (518) 485-2317, email: SaraOsborne@oasas.ny.gov

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

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

Regulatory Impact Statement

1. Statutory Authority:

a) Section 19.07(c) of the Mental Hygiene Law (MHL) charges OASAS with the responsibility of seeing that persons who abuse or are dependent on alcohol and/or substances and their families are provided with care and treatment that is effective and of high quality.

b) Section 19.07(e) of the MHL authorizes the Commissioner of OASAS to adopt standards including necessary rules and regulations pertaining to chemical dependence treatment services.

c) Section 19.09(b) of the MHL authorizes the Commissioner to adopt regulations necessary and proper to implement any matter under his/her jurisdiction.

d) Section 19.21(b) of the MHL requires the Commissioner to establish and enforce regulations concerning the licensing, certification, and inspection of chemical dependence treatment services.

f) Section 19.21(d) of the MHL requires OASAS to establish reasonable performance standards for providers of services certified by OASAS.

g) Section 19.40 of the MHL authorizes the Commissioner to issue operating certificates for the provision of chemical dependence treatment services.

h) Section 32.01 of the MHL authorizes the Commissioner to adopt any regulation reasonably necessary to implement and effectively exercise the powers and perform the duties conferred by Article 32 of the MHL.

i) Section 32.07(a) of the MHL authorize the commissioner to adopt regulations to effectuate the provisions and purposes of article 32 of the MHL.

j) Executive Order No. 38 directs certain executive agencies to promulgate regulations addressing the extent and nature of a funded service provider's administrative costs and executive compensation eligible for reimbursement with State financial assistance or State-authorized payments for operating expenses.

2. Legislative Objectives:

To comply with the requirements of Executive Order No. 38.

3. Needs and Benefits:

OASAS is proposing to adopt the following regulation because the State of New York directly or indirectly funds with taxpayer dollars a large number of tax exempt organizations and for-profit entities that provide critical services to New Yorkers in need and the goal is to ensure that taxpayers' dollars are used properly, efficiently, and effectively to improve the lives of New Yorkers. In certain instances, providers of services that receive State funds or State-authorized payments have used such funds to pay for excessive administrative costs or inflated compensation for their senior executives, rather than devoting a greater proportion of such funds to providing direct care or services to their clients. Such abuses involving public funds harm both the people of New York who are paying for such services, and those persons who must depend upon such services to be available and well-funded. These regulations, which are required by Executive Order No. 38, will ensure that State funds or State-authorized payments paid by OASAS to providers are not used to support excessive compensation or unnecessary administrative costs.

4. Costs:

The costs of implementing this rule to affected providers is anticipated to be minimal; most, if not all, of the information that must be reported by such providers is already gathered or reported for other purposes. Current regulations require the submission of substantial financial information, some of which will be additional to current requirements, or collected in another form. The costs to OASAS and providers of such implementation is expected to be limited, and efforts to ensure efficient centralization of certain aspects of such implementation are underway. OASAS estimates that minimal compliance activities will be needed to satisfy any additional reporting requirements.

5. Paperwork:

The proposed regulatory amendments will require limited additional information to be reported to the agency by providers receiving State funds or State-authorized payments. To the extent feasible, such reporting shall be made electronically to avoid unnecessary paperwork costs.

6. Local Government Mandates:

As this regulation does not apply to state and local governments, there are no new local government mandates.

7. Duplications:

This proposed rule does not duplicate, overlap, or conflict with any State or federal statute or rule. However, the proposed rule seeks to minimize the reporting requirements faced by providers by building upon those requirements in the federal internal revenue code that require certain tax-exempt organizations to report information concerning their executive compensation and administrative costs.

8. Alternatives:

Executive Order No. 38 requires the adoption of this proposed regulation.

9. Federal Standards:

These amendments do not conflict with federal standards.

10. Compliance Schedule:

This rule takes effect January 1, 2013.

Regulatory Flexibility Analysis

A Regulatory Flexibility Analysis for Small Businesses and Local Governments (RFASBLG) is not being submitted with this notice because the proposed rule will not impose any adverse economic impact on small businesses, nor will it impose new reporting, recordkeeping or other compliance requirements on small businesses or local governments.

Rural Area Flexibility Analysis

A Rural Area Flexibility Analysis (RAFA) is not being submitted with this notice because the proposed rule will not impose any adverse economic impact on rural areas.

Job Impact Statement

A Job Impact Statement (JIS) is not being submitted with this notice because it is evident from the subject matter of the regulation that it will have no impact on jobs and employment opportunities.

Office of Children and Family Services

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Establishing Limitations on Administrative Expenses and Executive Compensation of Service Providers Supported by State Funds

I.D. No. CFS-22-12-00010-P

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

Proposed Action: Addition of Part 409 to Title 18 NYCRR; addition of Subpart 166-5 to Title 9 NYCRR.

Statutory authority: Social Services Law, sections 20(3)(d) and 34(3)(f); and Executive Law, section 501(5)

Subject: Establishing limitations on administrative expenses and executive compensation of service providers supported by State funds.

Purpose: To comply with Executive Order numbers 38 and 43.

Substance of proposed rule (Full text is posted at the following State website: www.ocfs.state.ny.us): The proposed regulations would add a new Part 409 to Title 18 of NYCRR and a new Subpart 166-5 to Title 9 of NYCRR. The language of the two sets of regulations would be substantively the same.

Each set of regulations would have the following:

The first section would set forth the background and intent underlying the regulations. Both Part 409 and Subpart 166-5 are being added to comply with the requirements of Executive Order #38, which requires that the executive agencies promulgate regulations establishing limits on administrative costs and executive compensation of service providers where such costs and compensation are supported by State funds.

There would be a section setting forth the statutory basis for promulgating the regulations.

There would be a section setting forth the applicability of the regulations.

There would be a definitions section, which would include definitions of what service providers are covered, what administrative expenses are covered, what constitutes executive compensation, and what constitutes State funds for purposes of the regulations, as well as other useful definitions. The covered service providers would basically be entities or individuals having contracts or other agreements with the Office of Children and Family Services (Office) or another government entity for at least two years prior to and during the covered reporting period during which time the provider received an average amount greater than \$500,000 each year where at least 30 percent of the provider's total annual in-state revenues were derived from State funds, directly or indirectly. Governmental units and individual professionals providing program services under agreement with the State would not be covered. Also, Part 409 would provide that individuals or entities providing child day care services who are in receipt of child care subsidies under the Social Services Law would not be covered based on the receipt of such subsidies. However, such providers could be subject to the regulations if they receive State funds other than child day care subsidies.

There would be a section discussing the limitations on use of State funds to support administrative expenses. The limitation would basically be that no more than 25 percent of the State funds could be used for administrative expenses for the year commencing January 1, 2013, with the percentage decreasing five percent each year thereafter until the limit would be 15 percent for calendar year 2015.

There would be a section discussing the limitations on use of State funds to support executive compensation. Commencing on January 1, 2013, the limitation would basically be that no more than \$199,000 per year in executive compensation could be supported by State funds. This section also addresses certain variances from the standard limitation.

There would next be a section under which service providers who exceed the limitations on use of State funds to support administrative expenses and executive compensation could seek waivers from those limitations. The section would establish standards for granting waivers and a process for determining whether to grant waivers.

There would be a section on reporting requirements for service providers subject to the new regulations, and provision for the consequences of failing to comply with the reporting requirements.

The final section would set forth the penalties to which a service provider would be subject if the service provider fails to comply with the limitations on use of State funds to support administrative expenses or executive compensation and fails to obtain a waiver of those limitations. This section would also set forth the procedure to be followed in assessing such penalties.

Text of proposed rule and any required statements and analyses may be obtained from: Public Information Office, NYS Office of Children and Family Services, 52 Washington Street, Rensselaer, N.Y. 12144, (518) 473-7793

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

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

Regulatory Impact Statement

1. Statutory authority:

Section 20(3)(d) of the Social Services Law (SSL) authorizes the Office of Children and Family Services (OCFS) to establish rules and regulations to carry out its powers and duties pursuant to the provisions of the SSL.

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

Section 501(5) of the Executive Law authorizes the Commissioner of OCFS to promulgate regulations necessary to establish, operate and maintain programs operated and oversee by OCFS under the Executive Law.

2. Legislative objectives:

The proposed regulations are necessary in order for New York State to maintain appropriate controls on administrative expenses and the amount of State funds going toward the purpose of executive compensation. This will support the legislative goal that State funds be expended in a manner consistent with the best fiscal interests of the State, as provided for throughout the State Finance Law.

3. Needs and benefits:

OCFS is proposing to adopt the regulation because the State of New York directly or indirectly funds with taxpayer dollars a large number of tax exempt not-for-profit organizations and for-profit entities that provide critical services to New Yorkers in need. The goal of the regulation is to establish appropriate controls so that taxpayer dollars are used properly, efficiently, and effectively to improve the lives of New Yorkers. In certain instances, providers of services that receive State funds or State-authorized payments have used such funds to pay for excessive administrative costs or inflated compensation for their senior executives, rather than devoting a greater proportion of such funds to providing direct care or services to their clients. Such abuses involving public funds harm both the people of New York who are paying for such services, and those persons who must depend upon such services to be available and well-funded. These regulations, which are required by Executive Order No. 38, will establish standards to prevent the use of State funds or State-authorized payments that come through OCFS for support of excessive executive compensation or unnecessary administrative costs.

4. Costs:

The compliance cost to providers of services is expected to be minimal because most, if not all, of the information that will be required to be reported by providers of services is already gathered and reported by such providers for other purposes.

It is estimated that the cost to OCFS of implementing this rule will be minimal, as the State will be making efforts to centralize as many of the functions associated with the rule as possible in order to efficiently implement the rule.

5. Local government mandates:

The proposed regulations will impose very minimal additional mandates on social services districts. The social services districts will be required to provide some information to OCFS concerning service providers with which the local districts have contractual relationships, but the administrative functions required by the proposed regulations will be carried out by OCFS.

6. Paperwork:

The proposed regulations will require some additional reporting of information to the State by service providers receiving State funds or State-authorized payments. The State will, to the extent feasible, provide that such reporting be done electronically to avoid unnecessary paperwork costs.

7. Duplication

The proposed regulations do not duplicate, overlap, or conflict with any other State of federal requirements. However, the proposed regulations seek to minimize the reporting requirements faced by service providers by building upon existing requirements in the federal Internal Revenue Code that require certain tax-exempt organizations to report information concerning their executive compensation and administrative costs.

8. Alternatives:

Since Executive Order #38 requires the adoption of the proposed regulations, there is no viable alternative to implementing the proposed regulations.

9. Federal standards:

The regulatory amendments do not conflict with any federal standards.

10. Compliance schedule:

The proposed rule will be effective as of January 1, 2013.

Regulatory Flexibility Analysis

A Regulatory Flexibility Analysis for Small Businesses and Local Governments is not being submitted with this notice because the proposed rule will not impose any adverse economic impact on small businesses, nor will it impose new reporting, recordkeeping or other compliance requirements on small businesses or local governments.

Rural Area Flexibility Analysis

A Rural Area Flexibility Analysis is not being submitted with this notice because the proposed rule will not impose any adverse economic impact on rural areas.

Job Impact Statement

A Job Impact Statement is not being submitted with this notice because it is evident from the subject matter of the regulation that it will have no impact on jobs and employment opportunities.

Department of Corrections and Community Supervision

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Limits on Administrative Expenses and Executive Compensation

I.D. No. CCS-22-12-00015-P

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

Proposed Action: Addition of Part 513 to Title 7 NYCRR.

Statutory authority: Correction Law, section 112

Subject: Limits on Administrative Expenses and Executive Compensation.

Purpose: To ensure the proper use of taxpayer dollars and the most effective provision of such services to the public.

Substance of proposed rule (Full text is posted at the following State website: doccs.ny.gov/RulesReg/index.html): The Department of Corrections and Community Supervision is adding a new Part 513 to 7NYCRR.

The purpose of this Part is to implement Executive Order No. 38, issued by Governor Andrew Cuomo on January 18, 2012, by exercising the authority of the Commissioner of the Department of Corrections and Community Supervision to issue regulations governing the use of State funds and State-authorized payments in connection with providing program services to members of the public. This new Part provides for a limit on administrative expenses and executive compensation of providers of program services in order to meet the State's ongoing obligation to ensure the proper use of taxpayer dollars and the most effective provision of such services to the public.

Text of proposed 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 Harri-man State Campus - Building 2, 1220 Washington Avenue, Albany, NY 12226-2050, (518) 457-4951, email: Rules@doccs.ny.gov

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

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

Regulatory Impact Statement

Statutory Authority: Correction Law, Section 112.

Legislative Objectives: Correction Law section 112 authorizes the Commissioner of the Department of Corrections and Community Supervision to promulgate regulations in the best interest of meeting the agencies objectives while ensuring the proper use of taxpayer dollars and the effective provision for the delivery of services to the public.

Needs and Benefits: The Department of Corrections and Community Supervision is proposing to adopt the following regulation because the State of New York directly or indirectly funds with taxpayer dollars a large number of tax exempt organizations and for-profit entities that provide critical services to New Yorkers in need and the goal is to ensure that taxpayers' dollars are used properly, efficiently, and effectively to improve the lives of New Yorkers. In certain instances, providers of services that receive State funds or State-authorized payments have used such funds to pay for excessive administrative costs or inflated compensation for their senior executives, rather than devoting a greater proportion of such funds to providing direct care or services to their clients. Such abuses involving public funds harm both the people of New York who are paying for such services, and those persons who must depend upon such services to be available and well-funded. These regulations, which are required by Executive Order No. 38, will ensure that State funds or State-authorized payments paid by this agency to providers are not used to support excessive compensation or unnecessary administrative costs.

Costs: The costs of implementing this rule to affected providers is anticipated to be minimal as most, if not all, of the information that must be reported by such providers is already gathered or reported for other purposes. The costs to the agency of such implementation are expected to be very limited as well, and efforts to ensure efficient centralization of certain aspects of such implementation are underway.

Paperwork/Reporting Requirements: The proposed regulatory amendments will require limited additional information to be reported to the agency by providers receiving State funds or State-authorized payments. To the extent feasible, such reporting shall be made electronically to avoid unnecessary paperwork costs.

Local Government Mandates: The proposed regulatory amendments does not anticipate any additional mandates.

Duplication: This proposed rule does not duplicate, overlap, or conflict with any State or federal statute or rule. However, the proposed rule seeks to minimize the reporting requirements faced by providers by building upon those requirements in the federal internal revenue code that require certain tax-exempt organizations to report information concerning their executive compensation and administrative costs.

Alternatives: Executive Order #38 and Executive Order #43 require the adoption of this proposed regulation; therefore no alternatives were considered.

Federal Standards: These amendments do not conflict with federal standards.

Compliance Schedule: This rule takes effect January 1, 2013.

Regulatory Flexibility Analysis

A Regulatory Flexibility Analysis for Small Businesses and Local Governments is not being submitted with this notice because the proposed rule will not impose any adverse economic impact on small businesses, nor will it impose new reporting, record keeping or other compliance requirements on small businesses or local governments. This regulation will ensure the proper use of taxpayer dollars and the effective provision for the delivery of services to the public.

Rural Area Flexibility Analysis

A Rural Area Flexibility Analysis is not being submitted with this notice because the proposed rule will not impose any adverse economic impact on rural areas. This regulation will ensure the proper use of taxpayer dollars and the effective provision for the delivery of services to the public.

Job Impact Statement

A Job Impact Statement is not being submitted with this notice because it is evident from the subject matter of the regulation that it will have no impact on jobs and employment opportunities. This regulation will ensure the proper use of taxpayer dollars and the effective provision for the delivery of services to the public.

Division of Criminal Justice Services

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Limits on Administrative Expenses and Executive Compensation

I.D. No. CJS-22-12-00016-P

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

Proposed Action: Addition of Part 6157 to Title 9 NYCRR.

Statutory authority: NYS Constitution, arts. IV, section 3 and V, section 4; Executive Order No. 38; and Executive Law, section 837(13)

Subject: Limits on administrative expenses and executive compensation.

Purpose: To implement Executive Order No. 38 issued by Governor Andrew Cuomo on January 18, 2012.

Substance of proposed rule (Full text is posted at the following State website: <http://www.criminaljustice.ny.gov/>): 6157.1 Statement of Purpose.

The purpose of this Part is to implement Executive Order No. 38, issued by Governor Andrew Cuomo on January 18, 2012, by exercising the authority of the Commissioner of the Division of Criminal Justice Services to issue regulations governing the use of State funds and State-authorized payments in connection with providing program services to members of the public. E.O. #38 provides for a limit on administrative expenses and executive compensation of providers of program services in order to meet the State's ongoing obligation to ensure the proper use of taxpayer dollars and the most effective provision of such services to the public.

6157.2 Applicability.

This Part shall be applicable to covered providers as defined in section 6157.3 of this Part which receive, pursuant to contract or other agreement with the Division or with another governmental agency, State funds from the Division or payments of funds that are not State funds but which are distributed or disbursed upon approval of the Division or by another governmental entity upon such approval or by virtue of the provider having an operating certificate from the Division.

6157.3 Definitions.

The following definitions were added to this Part: Administrative expenses; Commissioner, which means the Commissioner of the Division of Criminal Justice Services; Covered operating expense; Covered executive; Covered provider; Division, which means the Division of Criminal Justice Services; Executive compensation; Program services; Program services expenses; Related entity; Reporting period; State-authorized payments; and State funds.

6157.4 Limits on Administrative Expenses.

This section provides that for the period commencing January 1, 2013, no less than seventy-five percent of the covered operating expenses paid for with State funds or State-authorized payments shall be program services expenses rather than administrative expenses. This percentage shall increase by five percent each year until it shall be no less than eighty-five percent for the calendar year 2015 and for each calendar year thereafter.

This section further provides that if the contract, grant, or other agreement is subject to more stringent limits on administrative expenses, whether through law or contract, such limits shall control and shall not be affected by the less stringent limits imposed by these regulations.

6157.5 Limits on Executive Compensation.

This section provides that for the period commencing January 1, 2013, except if a covered provider has obtained a waiver pursuant to section 6157.6 of this Part, neither a covered provider nor a related entity shall use State funds or State-authorized payments for executive compensation given directly or indirectly to a covered executive in an amount greater than \$199,000 per annum; provided, however, that the Division shall have discretion to adjust this figure annually based on appropriate factors and subject to the approval of the Director of the Division of the Budget.

This section also provides that for the period commencing January 1, 2013, except if a covered provider has obtained a waiver pursuant to section 6157.6 of this Part, where a covered provider or a related entity's executive compensation given to a covered executive is greater than \$199,000 per annum (including not only State funds and State-authorized payments but also any other sources of funding) and

- greater than the 75th percentile of that compensation provided to

comparable executives in other providers of the same size and within the same program service sector and the same or comparable geographic area as established by a compensation survey identified or recognized by the Office and the Director of the Division of the Budget; or

- was not reviewed and approved by the covered provider's board of directors or equivalent governing body including at least two independent directors or voting members, or such review did not include an assessment of appropriate comparability data; and
- the covered provider or related entity is unable, upon request by the Commissioner or his or her designee, to substantiate the requirements found above with contemporaneous documentation in a form and level of detail sufficient to allow a determination whether such requirements have been satisfied;

then such covered provider or related entity shall be subject to the penalties set forth in section 6157.8 of this Part.

This section further provides that if the contract, grant, or other agreement is subject to more stringent limits on executive compensation, whether through law or contract, such limits shall control and shall not be affected by the less stringent limits imposed by these regulations.

6157.6 Waivers.

This section provides that the Commissioner or his or her designee and the Director of the Division of the Budget may grant a waiver to the limits on executive compensation in section 6157.5 of this Part for executive compensation for one or more covered executives during the reporting period upon a showing of good cause.

This section also provides that the Commissioner or his or her designee and the Director of the Division of the Budget may grant a waiver to obtain reimbursement for administrative expenses incurred during the reporting period in excess of the limit set forth in section 6157.4 upon a showing of good cause.

6157.7 Reporting.

This section provides that beginning after the effective date of this regulation, covered providers shall complete and submit an E.O. #38 Disclosure Form for each reporting period. Such form shall be submitted electronically or in hard copy to the Division on or before March 31 each year. Covered providers shall further provide the information requested in that form, and any other information requested, upon the request of the Commissioner or his or her designee at any time during the term of or prior to the execution of any contract or agreement with such provider.

Additionally, covered providers receiving State funds or State-authorized payments from county or local government must report directly to the Division as required by this section. The county or local government shall advise such covered providers of their obligation to report directly to the Division under this section, but shall not be responsible for receiving or forwarding such reports to the department.

Furthermore, a covered provider's failure to submit a completed E.O. #38 Disclosure Form, or to provide additional or clarifying information at the request of the Commissioner or his or her designee, may result in the termination or non-renewal of a contract or agreement for State funds or State-authorized payments.

6157.8 Enforcement and penalties.

This section provides the following:

- Whenever it is determined that a covered provider may not be in compliance with the requirements of sections 6157.4 or 6157.5 of this Part and has not obtained a waiver, the provider shall be notified in writing of the basis for that determination. Such notice shall provide the covered provider with an opportunity and a procedure to submit additional or clarifying information within fifteen (15) days of the provider's receipt of such notice to demonstrate compliance with this Part. Failure to submit additional or clarifying information within the required time period shall result in the determination of non-compliance becoming final;
- If the determination of non-compliance becomes final or if the Commissioner or his or her designee determines, after reviewing and considering any information submitted by the covered provider, that such provider is not in compliance with the requirements of sections 6157.4 or 6157.5 of this regulation, the provider shall receive notice of such determination and a notice to cure. Such notice shall allow the covered provider a period of not less than six months to correct the violation(s) identified (the "corrective action period") prior to additional enforcement action or penalties being imposed, and shall require that the covered provider submit within fifteen (15) business days a corrective action plan ("CAP") for approval by the Commissioner or his or her designee;
- Within thirty (30) days of receipt of the covered provider's CAP, the Commissioner or his or her designee shall either approve such CAP or request clarification or alterations. The covered provider shall make such alterations to the CAP as may be reasonably required by the Commissioner or his or her designee. Once the CAP has been ap-

proved and the covered provider notified, and unless otherwise provided in the approved CAP, the covered provider shall have six months to complete the CAP and comply with this Part;

- At the conclusion of the period for implementation of an approved CAP, the Commissioner or his or her designee may request information from the covered provider to determine whether the CAP has been fully and properly completed. If it has been so completed, the matter shall be considered closed and no further action on the part of the Division or the provider shall be required. If the Commissioner or his or her designee determines that the CAP has not been fully and properly implemented within the designated corrective action period, the Commissioner or his or her designee shall provide written notice to the provider and may take one or more of the following actions, taking into account the seriousness of the violations, the nature of the provider's services, and the provider's efforts to correct the violations, if any:

(1) At its sole discretion, modify the CAP and/or extend the time for the provider to complete implementation.

(2) Issue a final determination of non-compliance, together with a notice of the sanctions which the Division seeks to impose. Such sanctions may include:

(a) Redirection of State funds or State-authorized payments to be used to provide program services, where possible and consistent with federal and state laws;

(b) Suspension, modification, limitation, or revocation of the provider's license(s) to operate program(s) for the delivery of program services;

(c) Suspension, modification or termination of contracts or other agreements with the covered provider; and

(d) Any other lawful actions or penalties deemed appropriate by the Commissioner or his or her designee.

- Within ten (10) days of receipt of a final determination of noncompliance and notice of proposed sanctions, a covered provider may request an administrative appeal by submitting a written request to the name and address set forth in the notice. The request must include a detailed explanation of the legal and factual bases for the provider's challenge to the determination and all documentation in support of the provider's position. If a request for an administrative appeal is not made within the required ten days, the determination of noncompliance shall become final and the proposed sanction shall be imposed. Unless the Division seeks to impose a sanction for which an administrative hearing is otherwise required by statute or regulation, covered the provider's appeal shall be limited to an administrative review of the record. Following the review, the covered provider shall be provided with a final written determination setting forth the findings of fact and conclusions of law that support the determination. If the provider is found to be non-compliant, the proposed sanction may be imposed forthwith.

Text of proposed rule and any required statements and analyses may be obtained from: Natasha M. Harvin, NYS Division of Criminal Justice Services, 4 Tower Place, Albany, NY 12203, (518) 485-0857, email: natasha.harvin@dcjs.ny.gov

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

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

Regulatory Impact Statement

Statutory Authority:

N.Y. Const., Art. IV, § 3; N.Y. Const., Art. V, § 4; Executive Order (E.O.) No. 38; Executive Law § 837(13). Executive Law § 837(13) authorizes the Division of Criminal Justice Services to adopt, amend or rescind regulations "as may be necessary or convenient to the performance of the functions, powers and duties of the [D]ivision."

Legislative Objectives:

E.O. No. 38, which was issued by Governor Andrew Cuomo on January 18, 2012, provides for a limit on administrative expenses and executive compensation of providers of program services in order to meet the State's ongoing obligation to ensure the proper use of taxpayer dollars and the most effective provision of such services to the public. The purpose of these regulations is to implement E.O. No. 38 by exercising the authority of the Commissioner of the Division of Criminal Justice Services to issue regulations governing the use of State funds and State-authorized payments in connection with providing program services to members of the public.

Needs and Benefits:

The Division of Criminal Justice Services is proposing to adopt the following regulation because the State of New York directly or indirectly funds with taxpayer dollars a large number of tax exempt organizations and for-profit entities that provide critical services to New Yorkers in need and the goal is to ensure that taxpayer dollars are used properly, efficiently and effectively to improve the lives of New Yorkers. In certain instances,

providers of services that receive State funds or State-authorized payments have used such funds to pay for excessive administrative costs or inflated compensation for their senior executives, rather than devoting a greater proportion of such funds to providing direct care or services to their clients. Such abuses involving public funds harm both the people of New York who are paying for such services, and those persons who must depend upon such services to be available and well-funded. These regulations, which are required by E.O. No. 38, will ensure that State funds or State-authorized payments paid by this agency to providers are not used to support excessive compensation or unnecessary administrative costs.

Costs:

The costs of implementing this rule to affected providers is anticipated to be minimal as most, if not all, of the information that must be reported by such providers is already gathered or reported for other purposes. The costs to the agency of such implementation is expected to be very limited as well, and efforts to ensure efficient centralization of certain aspects of such implementation are underway.

Local Government Mandates:

None. The Commissioner or his or her designee, rather than the county or local unit of government, shall be responsible for obtaining the necessary reporting from and compliance by such covered providers, and shall issue guidance to affected county and local governments to set forth the procedures by which the Commissioner or his or her designee shall do so.

Paperwork/Reporting Requirements:

The proposed regulatory amendments will require limited additional information to be reported to the agency by providers receiving State funds or State-authorized payments. To the extent feasible, such reporting shall be made electronically to avoid unnecessary paperwork costs.

Duplication:

This proposed rule does not duplicate, overlap or conflict with any State or federal statute or rule. However, the proposed rule seeks to minimize the reporting requirements faced by providers by building upon those requirements in the federal internal revenue code that require certain tax-exempt organizations to report information concerning their executive compensation and administrative costs.

Alternatives:

E.O. No. 38 requires the adoption of this proposed regulation.

Federal Standards:

These amendments do not conflict with federal standards.

Compliance Schedule:

This rule takes effect January 1, 2013.

Regulatory Flexibility Analysis

A Regulatory Flexibility Analysis for Small Businesses and Local Governments is not being submitted with this notice because the proposed rule will not impose any adverse economic impact on small businesses, nor will it impose new reporting, record keeping or other compliance requirements on small businesses or local governments.

The proposed regulatory amendments are designed to address executive compensation and administrative costs of those providers of program services that receive State funds or State-authorized payments paid by the Division of Criminal Justice Services.

Rural Area Flexibility Analysis

A Rural Area Flexibility Analysis is not being submitted with this notice because the proposed rule will not impose any adverse economic impact on rural areas or reporting, record keeping or other compliance requirements on public or private entities in rural areas.

The proposed regulatory amendments are designed to address executive compensation and administrative costs of those providers of program services that receive State funds or State-authorized payments paid by the Division of Criminal Justice Services.

Job Impact Statement

A Job Impact Statement is not being submitted with this notice because it is evident from the subject matter of the regulation that it will have no impact on jobs and employment opportunities.

Education Department

EMERGENCY RULE MAKING

Occupational Therapy

I.D. No. EDU-11-12-00010-E

Filing No. 454

Filing Date: 2012-05-15

Effective Date: 2012-05-15

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

Action taken: Amendment of Part 76 of Title 8 NYCRR.

Statutory authority: Education Law, sections 207 (not subdivided), 6504 (not subdivided), 6507(2)(a), 7906(4), (7); and L. 2011, ch. 460

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

Specific reasons underlying the finding of necessity: The proposed amendment to the Regulations of the Commissioner of Education is necessary to conform the Commissioner's Regulations to the requirements of Chapter 460 of the Laws of 2011. Chapter 460 amended Article 156 of the Education Law to amend the scope of practice of occupational therapists, to provide for the supervision of limited permittees in occupational therapy, to provide for practice as exempt individuals by occupational therapy assistant students, to authorize and provide for the definition of practice of occupational therapy assistants, to provide that occupational therapist assistants shall be subject to the disciplinary and regulatory authority of the Board of Regents and the Department, and to make various technical changes to these sections of the Education Law.

The proposed amendment is necessary to implement the new law. The Board of Regents adopted the proposed amendment as an emergency rule at their February meeting, with an effective date of February 14, 2012, consistent with the effective date of the law. A Notice of Proposed Rule Making was published in the State Register on March 14, 2012. The earliest the proposed rule can be presented for permanent adoption is at the May 21-22, 2012 Regents meeting, after expiration of the 45-day public comment period on April 30, 2012. However, the February emergency rule will expire on May 14, 2012. A lapse in the rule could potentially disrupt the practice of occupational therapy pursuant to Chapter 460 of the Laws of 2011. Emergency action is necessary for the preservation of the public safety and general welfare in order to ensure that the emergency rule remains continuously in effect until the rule proposed in the March 14, 2012 State Register can be adopted and made effective as a permanent rule.

It is anticipated that the proposed rule will be presented for adoption as a permanent rule at an upcoming Regents meeting, following expiration of the 45-day public comment period on proposed rule makings required by the State Administrative Procedure Act.

Subject: Occupational Therapy.

Purpose: To implement Chapter 460 of the Laws of 2011, relating to the profession of occupational therapy.

Text of emergency rule: 1. Section 76.4 of the Regulations of the Commissioner of Education is amended, effective May 15, 2012, as follows:

(a) ...

(b) Limited permits may be renewed once for a period not to exceed one year at the discretion of the department because of personal or family illness or other extenuating circumstances which prevented the permittee from becoming licensed[, provided that the permittee has not failed the licensing examination in occupational therapy].

2. Section 76.5 of the Regulations of the Commissioner of Education is repealed, and 76.7 of the Regulations of the Commissioner of Education is renumbered 76.5, effective May 15, 2012.

3. Section 76.6 of the Regulations of the Commissioner of Education is renumbered 76.8, and new sections 76.6, 76.7, and 76.9, are added, effective May 15, 2012, to read as follows:

76.6 Definition of occupational therapy assistant practice and the use of the title occupational therapy assistant.

(a) An "occupational therapy assistant" shall mean a person authorized in accordance with this Part who provides occupational therapy services under the direction and supervision of an occupational therapist or licensed physician and performs client related activities assigned by the supervising occupational therapist or licensed physician. Only a person authorized under this Part shall participate in the practice of occupational therapy as an occupational therapy assistant, and only a person authorized under this Part shall use the title "occupational therapy assistant."

(b) As used in this section, client related activities shall mean:

(1) contributing to the evaluation of a client by gathering data, reporting observations and implementing assessments delegated by the supervising occupational therapist or licensed physician;

(2) consulting with the supervising occupational therapist or licensed physician in order to assist him or her in making determinations related to the treatment plan, modification of client programs or termination of a client's treatment;

(3) the utilization of a program of purposeful activities, a treatment program, and/or consultation with the client, family, caregiver, or other health care or education providers, in keeping with the treatment plan and under the direction of the supervising occupational therapist or licensed physician;

(4) the use of treatment modalities and techniques that are based on approaches taught in an occupational therapy assistant educational program registered by the Department or accredited by a national accreditation agency which is satisfactory to the Department, and that the occupational therapy assistant has demonstrated to the occupational therapist or licensed physician that he or she is competent to use; or

(5) the immediate suspension of any treatment intervention that appears harmful to the client and immediate notification of the occupational therapist or licensed physician.

76.7 Requirements for authorization as an occupational therapy assistant.

To qualify for authorization as an occupational therapy assistant pursuant to section 7906(7) of the Education Law, an applicant shall fulfill the following requirements:

(a) file an application with the Department;

(b) have received an education as follows:

(1) completion of a two-year associate degree program for occupational therapy assistants registered by the Department or accredited by a national accreditation agency which is satisfactory to the Department; or

(2) completion of a postsecondary program in occupational therapy satisfactory to the Department and of at least two years duration;

(c) have a minimum of three months clinical experience satisfactory to the state board for occupational therapy and in accordance with standards established by a national accreditation agency which is satisfactory to the Department;

(d) be at least eighteen years of age;

(e) be of good moral character as determined by the Department;

(f) register triennially with the Department in accordance with the provisions of subdivision (h) of this section, sections 6502 and 7906(8) of the Education Law, and sections 59.7 and 59.8 of this Subchapter;

(g) pay a fee for an initial license and a fee for each triennial registration period that shall be one half of the fee for initial license and for each triennial registration period established in Education law for occupational therapists; and

(h) except as otherwise provided by Education Law section 7907(2), pass an examination acceptable to the Department.

76.9 Occupational therapy assistant student exemption. To be permitted to practice as an exempt person pursuant to section 7906(4) of the Education Law, an occupational therapy assistant student shall be enrolled in a program as set forth in section 76.7(b)(1) of this Part and may work with an occupational therapy assistant who is acting as a fieldwork educator. Such student shall be directly supervised by an occupational therapist in accordance with standards established by a

national accreditation agency which is satisfactory to the Department. Any such work performed by an occupational therapy assistant as a fieldwork educator shall be subject to the supervision requirements of section 76.8 of this Part.

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. EDU-11-12-00010-P, Issue of March 14, 2012. The emergency rule will expire July 13, 2012.

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

Regulatory Impact Statement

1. STATUTORY AUTHORITY:

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

Section 6504 of the Education Law provides that admission to the professions shall be supervised by the Board of Regents, and administered by the Education Department, assisted by a state board for each profession.

Paragraph (a) of subdivision (2) of section 6507 of the Education Law authorizes the Commissioner of Education to promulgate regulations in administering the admission to and practice of the professions.

Subdivision (4) of section 7906 of the Education Law authorizes the Commissioner of Education to define in regulation the direct supervision of an occupational therapy assistant student engaged in occupational therapy as an exempt person.

Subdivision (7) of section 7906 of the Education Law authorizes the Commissioner of Education to define occupational therapy assistants and to promulgate regulations governing standards for authorization to practice as an occupational therapy assistant, including those relating to education, experience, examination and character, and authorizes the Board of Regents to establish an application fee for such authorization to practice.

2. LEGISLATIVE OBJECTIVES:

The proposed amendment to section 76.4(b) of the Regulations of the Commissioner of Education carries out the intent of the aforementioned statutes by removing the provision that prohibits a holder of a limited permit in occupational therapy from receiving a renewal of the permit in the event the holder has failed the licensing examination.

The proposed adoption of a new section 76.6 of the Commissioner's regulations carries out the intent of the aforementioned statutes by defining occupational therapy practice and providing that only a person authorized by the Department shall participate in the practice of occupational therapy assistant and use the title occupational therapy assistant.

The proposed adoption of a new section 76.7 of the Commissioner's regulations carries out the intent of the aforementioned statutes by establishing standards for authorization to practice as an occupational therapy assistant, including those relating to education, experience, examination, and character, and by establishing fees for initial licensure and for triennial registration.

The proposed adoption of a new section 76.9 of the Commissioner's regulations carries out the intent of the aforementioned statutes by setting requirements for an occupational therapy student to qualify for the statutory exemption allowing him or her to practice under supervision.

3. NEEDS AND BENEFITS:

The changes to the existing law governing the practice of occupational therapy that were enacted by Chapter 460 of the Laws of 2011 authorized the Department to establish, in regulation, several significant components of the practice, including the requirements for eligibility and scope of practice for occupational therapy assistants, and requirements for supervision of occupational therapy assistant students. These regulations are necessary to implement the provisions of Chapter 460.

4. COSTS:

(a) Cost to State government: It is anticipated that the costs to the State Education Department in implementing the requirements of Chapter 460 of the Laws of 2011 will be offset by the licensure and registration fees authorized by the law.

(b) Cost to local government: None.

(c) Cost to private regulated parties: As authorized by Chapter 460 of the Laws of 2011, the proposed regulations also establish fees for licensure and triennial registration.

(d) Costs to the regulatory agency: As stated in “Costs to State Government,” the proposed amendment does not impose costs on the State Education Department beyond those covered by the proposed licensure and registration fees for occupational therapy assistants.

5. LOCAL GOVERNMENT MANDATES:

The proposed amendment does not impose any program, service, duty, or responsibility upon local governments.

6. PAPERWORK:

The proposed amendments do not require additional paperwork.

7. DUPLICATION:

The amendment does not duplicate other existing State or Federal requirements.

8. ALTERNATIVES:

Alternatives to the supervision requirements for occupational therapy assistant students were considered. Virtually all of such students in New York State attend programs accredited by the National Board for Certification in Occupational Therapy (NBCOT), and there is no other recognized national body for accreditation of such programs. NBCOT has established accreditation standards governing the fieldwork of occupational therapy assistant students, and it is believed that these are adequate to protect the public. The alternative would be to create new standards, but this may create a duplicative set of standards that may not be consistent with those used by a given educational program. It was also noted that the NBCOT accreditation standards permit supervision of students by either occupational therapists or occupational therapist assistants. The statute is clear, however, in requiring that students be directly supervised by an occupational therapist.

9. FEDERAL STANDARDS:

There are no Federal standards regarding the matters addressed by these regulations.

10. COMPLIANCE SCHEDULE:

The proposed amendment must be complied with on its stated effective date. No additional period of time is necessary to enable regulated parties to comply.

Regulatory Flexibility Analysis

The proposed amendments would implement various changes to existing law governing the practice of occupational therapy that were enacted by Chapter 460 of the Laws of 2011, including requirements for eligibility and scope of practice for occupational therapy assistants, and requirements for supervision of occupational therapy assistant students.

The amendments do not regulate small businesses or local governments. It does not impose any reporting, recordkeeping, or other compliance requirements on small business or local governments beyond those inherent in the statute, or have any adverse economic effect on them. Because it is evident from the nature of the proposed amendments that they do not affect small businesses or local governments, no affirmative steps were needed to ascertain that fact and none were taken. Accordingly, a regulatory flexibility analysis for small businesses and local governments is not required and one has not been prepared.

Rural Area Flexibility Analysis

1. TYPES AND ESTIMATED NUMBER OF RURAL AREAS:

The proposed amendments apply to all occupational therapy assistants and those occupational therapists and physicians who supervise these professionals who live in the 44 rural counties with less than 200,000 inhabitants and the 71 towns in urban counties with a population density of 150 per square mile or less.

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

The purpose of the proposed amendment is to implement chapter 460 of the Laws of 2011 which made a variety of changes to the law affecting the practice of occupational therapy and the authorization of occupational therapy assistants. As authorized by chapter 460, the proposed amendment will establish qualifications to be authorized to practice as an occupational therapy assistant, and will not require regulated parties, including those that are located in rural areas of the State, to hire professional services to comply.

3. COSTS:

The proposed section 76.7(g) of the Commissioner’s regulations establishes a fee for an initial license and for each triennial registration for an occupational therapy assistant. The establishment of this fee is mandated by statute. The proposed regulation would set this fee at one half that amount imposed on occupational therapists, which would yield a fee of \$147 for initial licensure and three year registration, and a fee of \$90 for the subsequent three year re-registrations. Currently, these fees are set at \$103 for initial licensure and three year registration, and at \$54 for the subsequent three year registrations only. The increase is required because occupational therapists are now subject to discipline and moral character review by the Department, and the cost of these processes must be covered by fee revenue.

4. MINIMIZING ADVERSE IMPACT:

The proposed fee structure was determined to be the minimum needed to support additional costs. It is on a par with fee structures in other professions.

5. RURAL AREA PARTICIPATION:

The State Education Department solicited comments on the proposed amendments from the New York State Occupational Therapy Association (NYSOTA), and Department staff attended a meeting of the Capital District NYSOTA (which includes Schenectady, Rensselaer, Columbia and Greene counties) in Albany and the Hudson-Taconic NYSOTA (which includes Ulster, Sullivan, Dutchess and Delaware counties) in Middletown to discuss these proposed amendments.

Job Impact Statement

The proposed amendments would implement various changes to existing law governing the practice of occupational therapy that were enacted by chapter 460 of the Laws of 2011, including requirements for eligibility and scope of practice for occupational therapy assistants, and requirements for supervision of occupational therapy assistant students. Because it is evident from the nature of the amendment that it will not affect job and employment opportunities, no affirmative steps were needed to ascertain that fact and none were taken. Accordingly, a job impact statement is not required, and one has not been prepared.

State Board of Elections

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Amend the Address of the State Board of Elections by Reason of the Move of the Office Under the Re-stacking Program

I.D. No. SBE-22-12-00001-P

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

Proposed Action: This is a consensus rule making to amend sections 6201.3(a)(2), (b)(2), (c)(2), 6208.2(a), 6213.2(b)(1), 6213.3(a), 6216.2(b)(6), (c)(4) and (d)(6) of Title 9 NYCRR.

Statutory authority: Election Law, sections 3-100, 3-102, 3-103, 3-104, 3-105 and 3-106

Subject: Amend the address of the State Board of Elections by reason of the move of the office under the re-stacking program.

Purpose: Amend existing regulation to address by reason of move of agency.

Text of proposed rule: Subtitle V of Title 9 of the Official Compilation of Codes, Rules and Regulations of the State of New York is hereby amended by amending Parts 6201.3(a)(2), 6201.3(b)(2), 6202.1(c), 6208.2(a), 6213.2(b)(1), 6213.3(a), 6216.2(b)(6), 6216.2(c)(4) and 6216.2(d)(6) to read as follows:

§ 6201.3(a)(2) Procedure in fair campaign code proceedings

(2) A complaint shall be filed by mailing to, or by personally serving, the State Board of Elections at [40 Steuben Street, Albany, NY 12207-2109] 40 North Pearl Street, Ste. 5, Albany, NY 12207-2109. A duplicate copy of the complaint shall be mailed to or personally served upon the candidate or the candidate’s representative (herein after “respondent”). Proof of service of the complaint upon the respondent must be filed not later than three days after service of the complaint upon the respondent. This requirement is waived when the respondent is unknown.

§ 6201.3(b)(2) Procedure in fair campaign code proceedings

(2) A respondent shall file a signed answer, after service upon the respondent of the complaint. Such an answer shall be based upon personal knowledge and belief and be specific as to the times, places and names of witnesses to acts relevant to the complaint. Copies of all documentary evidence available to the respondent shall be annexed to the answer. If an answer is based on information and belief, the respondent shall state the source or sources of the information and belief. An answer shall be filed by certified mail or by personally serving the State Board of Elections at [40 Steuben Street, Albany, NY 12207-2109] 40 North Pearl Street, Ste. 5, Albany, NY 12207-2109 and the complainant. An answer to the complaint must be made by the respondent within 10 days after receipt of the complaint. Proof of service of the answer upon the complainant must be filed not later than three days after service of the answer upon the complainant.

§ 6201.3(c)(2) Procedure in fair campaign code proceedings

(2) A respondent shall file an answer, sworn to or affirmed (within seven days or such shorter period as the board may for good reason require) after service upon him of the notice of hearing. Such an answer shall, if possible, be based on the personal knowledge and belief and be specific as to times, places and names of witnesses to acts relevant to the complaint. Copies of all documentary evidence available to the respondent shall be annexed to the answer. If an answer is based on information and belief, the respondent shall state the source or sources of his information and belief. An answer shall be filed by certified mail or by personally serving the State Board of Elections at [40 Steuben Street, Albany, NY 12207-2109] 40 North Pearl Street, Ste. 5, Albany, NY 12207-2109.

§ 6202.1(c) Examination and Copying of Records

(c) Location of records. All available records shall be located at [40 Steuben Street, Albany, NY 12207-2109] 40 North Pearl Street, Ste. 5, Albany, NY 12207-2109.

§ 6208.2(a) Service of petitions; timeliness

(a) The original petition shall be service at the office of the State Board of Elections, [One Commerce Plaza, (99 Washington Avenue) Albany, NY 12260] 40 North Pearl Street, Ste. 5, Albany, NY 12207-2109, or upon any person authorized by the State Board of Elections to receive such service.

§ 6213.2(b)(1) Duties of participating agencies designated by Election Law, section 5-211

(1) Pursuant to Election Law, section 5-211(8)(f), the following shall serve as the address and phone number for use in related circumstances: you may file a complaint with the State Board of Elections at [40 Steuben Street, Albany, NY 12207-2109] 40 North Pearl Street, Ste. 5, Albany, NY 12207-2109 or fax a complaint to (518) 4NY-NVRA.

§ 6213.3(a) Duties of Department of Motor Vehicles under Election Law, section 5-212

(a) Pursuant to Elections Law, section 15-212(4)(e), the following shall serve as the address and phone number for use in related circumstances: you may file a complaint with the State Board of Elections at [40 Steuben Street, Albany, NY 12207-2109] 40 North Pearl Street, Ste. 5, Albany, NY 12207-2109, or fax a complaint to (518) 473-8315; or call 1-800-4NY-NVRA.

§ 6216.2(b)(6) Procedure in administrative complaint proceedings

(6) Complaints must be filed, either in person or by mail, with the New York State Board of Elections, Office of Enforcement Counsel [40 Steuben Street, Albany, NY 12207-2109] 40 North Pearl Street, Ste. 5, Albany, NY 12207-2109.

§ 6216.2(c)(4) Procedure in administrative complaint proceedings

(4) Within five business days of receipt of the SBOE notice of acceptance of complaint, complainant shall send a copy of a complaint, including the complaint form and copies of all documentary evidence submitted with the complaint, and a copy of the notice of acceptance of complaint, to the respondent(s) named or referred to in the complaint, by certified mail, return receipt requested, or by commercial courier service with proof of delivery. Complainant shall file proof of said service on the respondent(s) with the SBOE no later than 10 business days of receipt of the notice of acceptance [if] of complaint. The respondent must submit a written response to the SBOE and to the complainant, to be received by said parties within 10 business days after receipt of both the copy of a complaint that is accepted for filing and a copy of the notice of acceptance of complaint. As an option, the respondent may also include a written request for a hearing if one was not already requested by the complainant. All correspondence required to be submitted to the SBOE pursuant to this paragraph must contain the complaint number and be submitted to: The New York State Board of Elections, Office of Enforcement Counsel, [40 Steuben Street, Albany, NY 12207-2109] 40 North Pearl Street, Ste. 5, Albany, NY 12207-2109.

§ 6216.2(d)(6) Procedure in administrative complaint proceedings

(6) Hearings shall be conducted at the [SBOE] offices located at [40 Steuben Street, Albany, NY 12207-2109] 40 North Pearl Street, Ste. 5, Albany, NY 12207-2109. An alternate location may be selected when deemed necessary upon agreement of the hearing panel.

Text of proposed rule and any required statements and analyses may be obtained from: Paul M. Collins, Deputy Special Counsel, New York State Board of Elections, 40 North Pearl Street, STE 5, Albany, NY 12207-2729, (518) 474-6367, email: paul.collins@elections.ny.gov

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

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

Consensus Rule Making Determination

The Resolution adopted by the State Board of Elections on May 3, 2012 as to these proposed regulations amendments contains the following language:

Whereas it is the opinion of the Commissioners that there will be no objection to the adoption of these regulations as the changes merely involve the Board correcting its published address in order to facilitate access to the Board by the public and by other government agencies and may therefore be adopted as a Consensus Regulation.

Job Impact Statement

These regulations neither create nor eliminate employment positions and/or opportunities, and, therefore, have no adverse impact on employment opportunities in New York State. Amendments to the adopted regulation do not change this analysis.

Department of Environmental Conservation

EMERGENCY/PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Sanitary Condition of Shellfish Lands

I.D. No. ENV-22-12-00008-EP

Filing No. 457

Filing Date: 2012-05-15

Effective Date: 2012-05-15

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

Proposed Action: Amendment of Part 41 of Title 6 NYCRR.

Statutory authority: Environmental Conservation Law, sections 13-0307 and 13-0319

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

Specific reasons underlying the finding of necessity: Shellfish are filter feeders that consume plankton, other minute organisms and particulate matter found in the water column. They are capable of accumulating pathogenic bacteria, viruses and toxic substances within their bodies. Consequently, shellfish harvested from areas that do not meet the bacteriological standards for certification have an increased potential to cause illness in shellfish consumers. Closures of shellfish lands that do not meet the water quality standards provide essential protection of public health. Recent evaluations of current water quality data indicate that the bacteriological standards are not met in the affected areas and an increased risk of illness exists for shellfish consumers. The promulgation of this regulation on an emergency basis is necessary because the normal rule making process would not prevent the harvest and consumption of potentially harmful shellfish in a timely manner.

Subject: Sanitary Condition of Shellfish Lands.

Purpose: To reclassify underwater lands to prohibit the harvest of shellfish.

Text of emergency/proposed rule: 6 NYCRR Part 41, Sanitary Condition of Shellfish Lands is amended to read as follows:

Section 41.0 through subparagraph 41.2(b)(2)(iii) remain unchanged.

Existing subparagraph 41.2(b)(2)(iv) is repealed.

New subparagraph 41.2(b)(2)(iv) is adopted to read as follows:

(iv) Tobay Marina-Boat Basin (local name).

New clauses 41.2(b)(2)(iv)(a) and 41.2(b)(2)(iv)(b) are adopted to read as follows:

(a) All that area of Tobay Heading (local name) and its tributaries in the western boat basin of the Town of Oyster Bay Tobay Marina.

(b) During the period May 15 through September 30, both dates inclusive, all that area of the eastern boat basin at the Town of Oyster Bay Tobay Marina (local name) and its tributaries.

Existing subparagraph 41.2(b)(2)(v) through clause 41.2(b)(3)(i)(a) remain unchanged.

Existing clause 41.2(b)(3)(i)(b) is repealed.

New clause 41.2(b)(3)(i)(b) is adopted to read as follows:

(b) All tributaries of Long Island Sound between Matinecock Point and Middle Chimney west of Oak Neck Point (local names, local landmarks).

Existing subparagraphs 41.2(b)(3)(ii) through 41.2(b)(3)(iii) remain unchanged.

New subparagraph 41.2(b)(3)(iv) is adopted to read as follows:

(iv) Frost Creek. All that area of Frost Creek and all that area of Long Island Sound within 400 yards in all directions of the northernmost end of the jetty located on the eastern side of the entrance to Frost Creek.

Existing paragraph 41.2(b)(4) through clause 41.2(b)(4)(i)(a) remain unchanged.

Existing clause 41.2(b)(4)(i)(b) is repealed.

New clause 41.2(b)(4)(i)(b) is adopted to read as follows:

(b) All tributaries of Long Island Sound between Matinecock Point and Middle Chimney west of Oak Neck Point (local names, local landmarks).

Existing subparagraphs 41.2(b)(4)(ii) through 41.2(b)(3)(iii) remain unchanged.

Subparagraphs 41.2(b)(4)(iv) through 41.2(b)(4)(vi) are renumbered 41.2(b)(4)(v) through 41.2(b)(4)(vii).

New subparagraph 41.2(b)(4)(iv) is adopted to read as follows:

(iv) Frost Creek. All that area of Frost Creek and all that area of Long Island Sound within 400 yards in all directions of the northernmost end of the jetty located on the eastern side of the entrance to Frost Creek.

Renumbered subparagraphs 41.2(b)(4)(v) and 41.2(b)(4)(vi) remain unchanged.

Renumbered subparagraph 41.2(b)(4)(vii) is repealed.

New subparagraph 41.2(b)(4)(vii) is adopted to read as follows:

(vii) Cold Spring Harbor

(a) All that area including tributaries south and east of a line extending southerly from the seaward end of the dock serving the Cold Spring Harbor Beach Club (local landmark) to the western extremity of the white house located on the shoreline immediately west of Cold Spring Beach (local landmark).

(b) During the period May 1 through October 31, both dates inclusive, all that area of Eel Creek (local name) located at the Sagamore Hill National Historic Site and all that area within 250 yards in any direction of the southeastern corner of the bulkheading surrounding the stand of trees on the northern side of the entrance to the boat basin located immediately south of the Sagamore Hill National Historic Site.

Existing section 41.3 through clause 41.3(b)(3)(iii)(b) remain unchanged.

Existing clause 41.3(b)(3)(iii)(c) is repealed.

New clause 41.3(b)(3)(iii)(c) is adopted to read as follows:

(c) During the period May 15 through December 31, both dates inclusive, all that area of Bellport Bay, lying north and east of a line extending southeast from the foot of the flagstaff serving the Bellport Yacht Club, located at the foot of Bellport Lane in Bellport, to the westernmost point of John Boyle Island and continuing southerly to the northernmost point of land east of the dock at Old Inlet and west of Hospital Island.

Existing clause 41.3(b)(3)(iii)(d) through clause 41.3(b)(3)(iii)(f) remain unchanged.

Existing clause 41.3(b)(3)(iii)(g) is repealed.

Subparagraph 41.3(b)(3)(iv) through clause 41.3(b)(4)(x)(a) remain unchanged.

Existing subclause 41.3(b)(4)(x)(a)(1) is amended to read as follows:

(1) All that area of Alwewife Creek (local name) and North Sea Harbor lying south and west of a line extending southeasterly from the northeasternmost point of land at Conscience Point, to the easternmost end of the bulkhead located at 319 Noyack Road, a two-story, wood shingled residence with three flag poles and a gambrel roof on an unnamed point of land, west of the entrance to Fish Cove (local names, local landmarks) and, all that area of North Sea Harbor lying east of a line extending northerly from the easternmost end of the bulkhead located at 319 Noyack Road to the southernmost point of land located at the residence of 102 Towd Point Road, on the opposite shoreline. The residence is 2-story and light in color, with a stand of trees between the shoreline and the residence.

Existing subclauses 41.3(b)(4)(x)(a)(2) and (3) remain unchanged.

New subclause 41.3(b)(4)(x)(a)(4) is adopted to read as follows:

(4) All that area of Davis Creek (local name) lying east of a line extending southeasterly, from the westernmost footbridge that provides foot access to Little Peconic Bay (located in the vicinity of the residence at 40D Cedar Crest Road), and all that area lying west of line extending southerly from a monument located on the northern shore of Davis Creek, immediately west of Turtle Cove (local name), to a monument located on the southern shore of Davis Creek.

Existing clause 41.3(b)(4)(x)(b) remains unchanged.

Existing subclause 41.3(b)(4)(x)(b)(1) is repealed.

New subclause 41.3(b)(4)(x)(b)(1) is adopted to read as follows:

(1) All that area of Davis Creek (local name) lying west of a line extending southeasterly, at the westernmost footbridge that provides foot access to Little Peconic Bay (located in the vicinity of the residence at 40D Cedar Crest Road) and continuing towards the Towd Point Road Bridge, including the entrance of said creek.

Existing subparagraphs 41.3(b)(4)(xi) through 41.3(b)(5)(vii) remain unchanged.

Existing subparagraph 41.3(b)(5)(viii) is amended to read as follows:

(viii) Northwest Harbor.

(‘a’) All that area of Alewife Pond, including entrance channel and all that area of Northwest Harbor, within 50 yards in all directions from the inlet of Alewife Pond.

New clause 41.3(b)(5)(viii)(‘b’) is adopted to read as follows:

(‘b’) *All that area of Northwest Harbor within a 200 yard radius from the western point of the spit of land on the southerly side of the entrance to the old Mile Hill Marina (local name), including the old Mile Hill Marina and the unnamed creek located immediately south of the old marina, which are all located southerly of Mile Hill Road.*

Existing subparagraph 41.3(b)(5)(ix) through clause 41.3(b)(7)(ii)(‘b’) remain unchanged.

Existing clause 41.3(b)(7)(iii)(‘a’) is repealed.

New clause 41.3(b)(7)(iii)(‘a’) is adopted to read as follows:

(‘a’) *Schoolhouse Creek: All that area of Schoolhouse Creek including all that area of Cutchogue Harbor within 100 yards in all directions of the easternmost point of the bulkheading on the south side of the entrance to Schoolhouse Creek.*

Existing clause 41.3(b)(7)(iii)(‘b’) through Section 41.3(b)(9) remains unchanged.

Existing subparagraph 41.3(b)(9)(i) is amended to read:

(‘i’) Port Jefferson Harbor, *Setauket Harbor* and Conscience Bay.

Existing clauses 41.3(b)(9)(i)(a) and 41.3(b)(9)(i)(b) remain unchanged.

Existing clause 41.3(b)(9)(i)(‘c’) is repealed.

New clause 41.3(b)(9)(i)(‘c’) is adopted to read as follows:

(‘c’) *During the period May 1st through October 31st, both dates inclusive all that area of Port Jefferson Harbor and Setauket Harbor, including tributaries, lying southerly and westerly of a line extending easterly from the northernmost chimney of the residence at 10 Preston Lane, Strong’s Neck, (said residence is a two story house protected by a seawall) to channel Marker buoy G “5” FI G 4s BELL and thence continuing southeasterly to the flagpole located at the foot of Washington Street (Village of Poquott).*

Existing clause 41.3(b)(9)(i)(‘d’) remains unchanged.

New clause 41.3(b)(9)(i)(‘e’) is adopted to read as follows:

(‘e’) *During the period January 1 through December 31, both dates inclusive: all that area of Setauket Harbor, including Little Bay and all other tributaries, lying south and west of a line extending westerly from utility pole “NYT #29,” located near the shoreline adjacent to Van Brunt Manor Road at Poquott, to the highest point of the turret of the residence at 18 John’s Road at Strong’s Neck, on the opposite shoreline.*

Existing subparagraph 41.3(b)(9)(ii) is repealed in its entirety.

Existing subparagraphs 41.3(b)(9)(iii) through 41.3(b)(9)(viii) are renumbered 41.3(b)(9)(ii) through 41.3(b)(9)(vii).

Existing paragraph 41.3(b)(10) through 41.3(b)(11)(iii) remain unchanged.

Existing subparagraph 41.3(b)(11)(iv) is repealed.

New subparagraph 41.3(b)(11)(iv) is adopted to read as follows:

(iv) *Cold Spring Harbor.*

(‘a’) *All that area including tributaries south and east of a line extending southerly from the seaward end of the dock serving the Cold Spring Harbor Beach Club (local landmark) to the western extremity of the white house located on the shoreline immediately west of Cold Spring Beach (local landmark).*

(‘b’) *During the period May 1 through October 31, both dates inclusive, all that area of Eel Creek (local name) located at the Sagamore Hill National Historic Site and all that area within 250 yards in any direction of the southeastern corner of the bulkheading surrounding the stand of trees on the northern side of the entrance to the boat basin located immediately south of the Sagamore Hill National Historic Site.*

Existing clause 41.3(b)(11)(v) through Section 41.5 remains unchanged.

This notice is intended: to serve as both a notice of emergency adoption and a notice of proposed rule making. The emergency rule will expire August 12, 2012.

Text of rule and any required statements and analyses may be obtained from: Gina M. Fanelli, NYS Department of Environmental Conservation, 205 N. Belle Meade Rd., Suite 1, East Setauket, NY 11733, (631) 444-0482, email: gmfanell@gw.dec.state.ny.us

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

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

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

Regulatory Impact Statement

1. Statutory authority:

The statutory authority for designating shellfish lands as certified or uncertified is Environmental Conservation Law (ECL) section 13 0307. Subdivision 1 of section 13 0307 of the ECL requires the department to periodically conduct examinations of shellfish lands within the marine district to ascertain the sanitary condition of said lands. Subdivision 2 of this section requires that the department certify which shellfish lands are in such sanitary condition that shellfish may be taken for food. Such lands are designated as certified shellfish lands. All other shellfish lands are designated as uncertified. The statutory authority for promulgating regulations with respect to the harvest of shellfish is section 13 0319 of the ECL.

2. Legislative objectives:

There are two purposes of the legislation: to protect public health and to ensure that shellfish lands are appropriately classified as certified or uncertified for the harvest of shellfish. This legislation requires the department to examine shellfish lands and determine which shellfish lands meet the sanitary criteria for a certified shellfish land, as set forth in Part 47 of Title 6 NYCRR, promulgated pursuant to section 13 0319 of the ECL. Shellfish lands which meet these criteria must be designated as certified. Shellfish lands which do not meet criteria must be designated as uncertified to prevent the harvest of shellfish from those lands.

3. Needs and benefits:

To protect public health and to comply with ECL 13 0307, the Bureau of Marine Resources’ shellfish sanitation program conducts and maintains sanitary surveys of shellfish growing areas (SGA) in the marine district of New York State. Maintenance of these surveys includes the regular collection and bacteriological examination of water samples, to monitor the sanitary condition of shellfish growing areas, and shoreline surveys to document actual and potential pollution sources. Annually, water quality evaluation reports are prepared by the staff of the shellfish sanitation program for each SGA which contains certified shellfish lands. These reports present the results of statistical analyses of water quality data gathered by the program, and annual updates to the shoreline pollution source surveys. Each report includes a summary and recommendations for the appropriate classification of that particular shellfish growing area. The report summary may state that all or portions of an SGA should be designated as uncertified for the harvest of shellfish or that all, or portions of, an SGA should be designated as certified for the harvest of shellfish based on criteria in 6 NYCRR Part 47. These reports are on file at the Bureau of Marine Resources office in East Setauket, NY. The most recent Triennial Review of Shellfish Growing Area (SGA) #2, dated March 2012, indicates that water quality in southern South Oyster Bay no longer meets bacteriological criteria for seasonally certified shellfish lands, as specified in 6 NYCRR Part 47, during the period October 1 through May 14. It recommends that this area shall be reclassified as uncertified year-round for the harvest of shellfish. The most recent Triennial Review of SGA #7, dated January 2012, indicates the water quality in a portion of northern Bellport Bay no longer meets the bacteriological criteria for certified shellfish lands year-round. It recommends that this area be reclassified as seasonally certified from January 1 - May 14. The portion of Bellport Bay that is seasonally certified from December 15 - May 14, no longer meets bacteriological criteria during the last two weeks in December. The report recommends that the seasonally certified dates be changed to seasonally certified from January - May 14. The most recent Triennial Review of

SGA #17, dated March 2012, indicates that an unnamed creek in Northwest Harbor, (in the NYS Environmental Conservation Area) no longer meets the bacteriological criteria for certified shellfish lands year round. The report recommends that this area be reclassified as seasonally certified from December 15 - April 30. The most recent Annual Review of Shellfish Growing Area #27 (Cutchogue Harbor), indicates that the water quality of the mouth of Schoolhouse Creek no longer meets the criteria for certified shellfish lands. It is recommended that this area be reclassified as uncertified for the harvest of shellfish year-round. The most recent Triennial Review of SGA #33, dated July 2011, indicates that the water quality of the outer Setauket Harbor no longer meets bacteriological criteria for certified shellfish lands year round. It is recommended that the area be reclassified as seasonally certified from November 1-April 30. The most recent Triennial Review of SGA #34 (Western Long Island Sound), dated March 2012, indicates that the water quality at the mouth of Frost Creek no longer meets the bacteriological criteria for certified shellfish lands. It recommends that the area be reclassified as uncertified for the harvest of shellfish. The most recent Triennial Review of SGA #48(Cold Spring Harbor), dated October 2011, indicates that the mouth of Eel Creek and the adjacent private boat basin no longer meet the bacteriological criteria for certified shellfish lands, it recommends that the area be reclassified as seasonally certified November 1- April 30. The most recent Triennial; Review of SGA #63, dated March 2012, indicates that a portion of North Sea Harbor and Davis Creek no longer meet the bacteriological criteria for certified and seasonally uncertified shellfish lands, respectively. It recommends that these areas be reclassified as uncertified to the harvest of shellfish.

4. Costs:

There will be no costs to State or local governments. No direct costs will be incurred by regulated commercial shellfish harvesters in the form of initial capital investment or initial non capital expenses, in order to comply with these proposed regulations. The department cannot provide an estimate of potential lost income to shellfish harvesters when areas are designated as uncertified, due to a number of variables that are associated with commercial shellfish harvesting; nor can the potential benefits be estimated when areas are reopened. Those variables are listed in the following three paragraphs.

As of April 25, 2012, the department had issued 1,505 New York State shellfish digger's permits. However, the actual number of those individuals who harvest shellfish commercially full time is not known. Recreational harvesters who wish to harvest more than the daily recreational limit of 100 hard clams, with no intent to sell their catch, can only do so by purchasing a New York State digger's permit. The number of individuals who hold shellfish diggers permits for that type of recreational harvest is unknown. The department's records do not differentiate between full time and part-time commercial or recreational shellfishing.

The number of harvesters working in a particular area cannot be estimated for the reason stated above. In addition, the number of harvesters in a particular area is dependent upon the season, the amount of shellfish resource in the area, the price of shellfish and other economic factors, unrelated to the department's proposed regulatory action. Harvesters can shift their efforts to other certified areas.

Estimates of the existing shellfish resource in a particular embayment are not known. Recent shellfish population assessments have not been conducted by the department. Without this information, the department cannot determine the effect a closure or reopening would have on the existing shellfish resource.

The department's actions to designate areas as certified or uncertified are not dependent on the resources in a particular area. They are based solely on public health concerns and legal mandates.

There is no cost to the department. Administration and enforcement of the proposed amendment are covered by existing programs.

5. Local government mandates:

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

6. Paperwork:

No new paperwork is required.

7. Duplication:

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

8. Alternatives:

There are no reasonable alternatives. By law (ECL section 13 0307), when the department has determined that a certified shellfish land fails to meet the sanitary criteria for certified shellfish lands, the department shall designate the land as uncertified and close the area to shellfish harvesting. Failing to close these areas would allow the harvest of shellfish from areas that do not meet the water quality standards for the safe harvest of shellfish for human consumption and would put New York's program out of compliance with the NSSP. Failure to comply with the NSSP will result in interstate commerce of NYS shellfish to cease and would cause undue hardship to the commercial harvesting industry.

9. Federal standards:

There are no federal standards regarding the certification of shellfish lands. New York and other shellfish producing and shipping states participate in the National Shellfish Sanitation Program (NSSP) which provides guidelines intended to promote uniformity in shellfish sanitation standards among members. The NSSP is a cooperative program consisting of the federal government, states and the shellfish industry. Participation in the NSSP is voluntary but participating states agree to follow NSSP water quality standards. The U.S. Food and Drug Administration (FDA) evaluates state programs and standards relative to NSSP guidelines. Substantial non conformity with NSSP guidelines can result in sanctions being taken by FDA and the NSSP, including removal of a state's shellfish shippers from the Interstate Certified Shellfish Shippers List. This would effectively bar a non conforming state's shellfish product from interstate commerce.

10. Compliance schedule:

Immediate compliance with any regulation designating shellfish lands as uncertified is necessary to protect public health. Shellfish harvesters are notified of changes to SGA classification by mail either prior to, or concurrent with, the adoption of new regulations.

Compliance with new regulations designating areas as certified or uncertified does not require additional capital expense, paperwork, record keeping or any action by the regulated parties in order to comply, except that harvesters must observe the new closure lines. Therefore, immediate compliance can be readily achieved.

Regulatory Flexibility Analysis

1. Effect on small business and local government:

As of April 25, 2012 there were 1,505 licensed shellfish diggers in New York State. The number of permits issued for areas in the State is as follows: New York City, 38; Westchester, 2; Town of Hempstead, 92; Town of Oyster Bay, 110; Town of North Hempstead, 4; Town of Babylon, 50; Town of Islip, 102; Town of Brookhaven, 252; Town of Southampton, 170; Town of East Hampton, 212; Town of Shelter Island, 29; Town of Southold, 217; Town of Riverhead, 54; Town of Smithtown, 26; Town of Huntington, 136; other, 11.

Any change in the designation of shellfish lands may have an effect on shellfish diggers. Each time shellfish lands or portions of shellfish lands are designated as uncertified; there may be some loss of income for a number of diggers who may be harvesting shellfish from the lands to be closed. This loss is determined by the acreage to be closed, the type of closure (whether year-round or seasonal), the species of shellfish present in the area, the area's productivity, and the market value of the shellfish resource in the particular area.

When uncertified shellfish lands are found to meet the sanitary criteria for a certified shellfish land, and are then designated as certified, there is also an effect on shellfish diggers. More shellfish lands are made available for the harvest of shellfish, and there is a potential for an increase in income. Again, the effect of the re opening of a harvesting area is determined by the shellfish species present, the area's productivity, and the market value of the shellfish resource in the area.

Local governments on Long Island exercise management authority and share law enforcement responsibility for shellfish with the State and the counties of Nassau and Suffolk. These are the towns of

Hempstead, North Hempstead and Oyster Bay in Nassau County and the towns of Babylon, Islip, Brookhaven, Southampton, East Hampton, Southold, Shelter Island, Riverhead, Smithtown and Huntington in Suffolk County. Changes in the classification of shellfish lands impose no additional requirements on local governments above what level of management and enforcement that they normally undertake; therefore, there should be no effect on local governments.

2. Compliance requirements:

There are no reporting or recordkeeping requirements for small businesses or local governments.

3. Professional services:

Small businesses and local governments will not require any professional services to comply with proposed rules.

4. Compliance costs:

There are no capital costs which will be incurred by small businesses or local governments.

5. Economic and technological feasibility:

As specified above, there are no reporting, recordkeeping, or affirmative actions that small businesses or local governments must undertake to comply with the proposed rules. Similarly, small businesses and local governments will not have to retain any professional services or incur any capital costs to comply with such rules. As a result, it should be economically and technically feasible for all small businesses and local governments to comply with rules of this type.

6. Minimizing adverse impact:

The designation of shellfish lands as uncertified may have an adverse impact on commercial shellfish diggers. All diggers in the towns affected by proposed closures will be notified by mail of the designation of shellfish lands as uncertified, prior to the date the closures go into effect. Shellfish lands which fail to meet the sanitary criteria during specified times of the year will be designated as uncertified only during those times. At other times, shellfish may be harvested from those lands (seasonally certified). To further minimize any adverse effects of proposed closures, towns may request that uncertified shellfish lands be considered for conditionally certified designation or for a shellfish transplant project. Under appropriate conditions, shellfish may be harvested from uncertified lands and microbiologically cleansed in a shellfish depuration plant. Shellfish diggers will also be able to shift harvesting effort to nearby certified shellfish lands. There should be no significant adverse impact on local governments from most changes in the classification of shellfish lands.

7. Small business and local government participation:

Impending shellfish closures are discussed at regularly scheduled Shellfish Advisory Committee meetings. This committee, organized by the department, is comprised of representatives of local baymen's associations and local town officials. Through their representatives, shellfish harvesters can express their opinions and give recommendations to the department concerning shellfish land classification. Local governments, state legislators, and baymen's organizations are notified by mail and given the opportunity to comment on any proposed rule making prior to filing the Notice of Adoption with the Department of State.

8. Cure period or other opportunity for ameliorative action:

Pursuant to SAPA 202-b (1-a)(b), no such cure period is included in the rule because of the potential adverse impact that could have on the health of shellfish consumers. Immediate compliance is required to ensure the general welfare of the public is protected.

Rural Area Flexibility Analysis

Amendments to Part 41 will not impose an adverse impact on rural areas. Only the State's marine district will be directly affected by regulatory initiatives to open or close shellfish lands. The Department of Environmental Conservation has determined that there are no rural areas within the marine district, and no shellfish lands within the marine district are located adjacent to any rural areas of the State. The proposed regulations will not impose reporting, record keeping, or other compliance requirements on public or private entities in rural areas. Since no rural areas will be affected by amendments of Part 41 "Sanitary Condition of Shellfish Lands" of Title 6 NYCRR, the Department of Environmental Conservation has determined that a Rural Area Flexibility Analysis is not required.

Job Impact Statement

1. Nature of impact:

Environmental Conservation Law section 13-0307 requires that the department examine shellfish lands and certify which shellfish lands are in such sanitary condition that shellfish may be taken therefrom for use as food. Shellfish lands that do not meet the criteria for certified (open) shellfish lands must be designated as uncertified (closed) to protect public health.

Rule makings to amend 6 NYCRR 41, Sanitary Condition of Shellfish Lands, can potentially have a positive or negative effect on jobs for shellfish harvesters. Amendments to reclassify areas as certified may increase job opportunities, while amendments to reclassify areas as uncertified may limit harvesting opportunities.

The department does not have specific information regarding the locations in which individual diggers harvest shellfish, and therefore is unable to assess the specific job impacts on individual shellfish diggers. In general terms, amendments of 6 NYCRR Part 41 to designate areas as uncertified can have negative impacts on harvesting opportunities. The extent of the impact will be determined by the acreage closed, the type of closure (year-round or seasonal), the area's productivity, and the market value of the shellfish. In general, any negative impacts are small because the department's actions to designate areas as uncertified typically only affect a small portion of the shellfish lands in the state. Negative impacts are also diminished in many instances by the fact that shellfish harvesters are able to redirect effort to adjacent certified areas.

2. Categories and numbers affected:

Licensed commercial shellfish diggers can be affected by amendments to 6 NYCRR Part 41. Most harvesters are self-employed, but there are some who work for companies with privately controlled shellfish lands or who harvest surf clams or ocean quahogs in the Atlantic Ocean.

As of April 25, 2012 there were 1,505 licensed shellfish diggers in New York State. The numbers of permits issued for areas in the State are as follows: New York City, 38; Westchester, 2; Town of Hempstead, 92; Town of Oyster Bay, 110; Town of North Hempstead, 4; Town of Babylon, 50; Town of Islip, 102; Town of Brookhaven, 252; Town of Southampton, 170; Town of East Hampton, 212; Town of Shelter Island, 29; Town of Southold, 217; Town of Riverhead, 54; Town of Smithtown, 26; Town of Huntington, 136; other, 11.

It is estimated that ten (10) to twenty-five (25) percent of the diggers are full-time harvesters. The remainders are seasonal or part-time harvesters.

3. Regions of adverse impact:

Certified shellfish lands that could potentially be affected by amendments to 6 NYCRR Part 41 are located in or adjacent to Nassau County, Suffolk County, and a portion of the Long Island Sound north and east of New York City. There is no potential adverse impact to jobs in any other areas of New York State.

4. Minimizing adverse impact:

Shellfish lands are designated as uncertified to protect public health as required by the Environmental Conservation Law. Some impact from rule makings to close areas that do not meet the criteria for certified shellfish lands is unavoidable.

To minimize the impact of closures of shellfish lands, the department evaluates areas to determine whether they can be opened seasonally during periods of improved water quality. The department also operates Conditional Harvesting Programs at the request of, and in cooperation with, local governments. Conditional Harvesting Programs allow harvest in uncertified areas under prescribed conditions, determined by studies, when bacteriological water quality is acceptable. Additionally, the department operates transplant harvesting programs which allow removal of shellfish from closed areas for cleansing in certified areas, thereby recovering a valuable resource. Conditional and transplant programs increase harvesting opportunities by making the resource in a closed area available under controlled conditions.

5. Self-employment opportunities:

A large majority of shellfish harvesters in New York State are self-

employed. Rule makings to change the classification of shellfish lands can have an impact on self-employment opportunities. The impact is dependent on the size and productivity of the affected area and the availability of adjacent lands for shellfish harvesting.

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Recreational and Commercial Harvest of River Herring (Anadromous Alewife and Blueback Herring) in New York

I.D. No. ENV-22-12-00004-P

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

Proposed Action: Amendment of Parts 10, 11, 18, 19, 35, 36 and 40 of Title 6 NYCRR.

Statutory authority: Environmental Conservation Law, sections 11-0303, 11-0305, 11-0315, 11-0317, 11-0319, 11-1301, 11-1303, 11-1305, 13-0105 and 13-0339

Subject: Recreational and commercial harvest of river herring (anadromous alewife and blueback herring) in New York.

Purpose: Reduce fishing mortality of river herring stocks in New York to achieve sustainable fisheries required by ASMFC Amendment 2.

Substance of proposed rule (Full text is posted at the following State website: www.dec.ny.gov): 1. DEC proposes to amend 6 NYCRR Part 10 "Sport fishing" as follows:

1.1 Adopt a new section 10.10 "Taking of anadromous river herring (alewife and blueback herring) in the Hudson River and its tributaries and embayments." Definitions of the Hudson River, tributaries and embayments are described.

1.2 Possession of river herring is not allowed in the Delaware River and its tributaries above Port Jervis New York.

1.3 The following restrictions apply to the Hudson River, its tributaries and embayments:

a. A season will be adopted from March 15 to June 15.

b. The daily possession limit will change from unlimited take to 10 fish per individual angler OR a maximum boat limit of 50 per day for a group of boat anglers, whichever is lower. Party or charter boat operators can qualify for possessing in excess of the individual recreational possession limit prior to their charter trips; see (e) below.

c. Manner of take will be adopted as follows: In the Hudson River, manner of take is by angling or by personal use nets; in a Hudson River tributary or embayment, manner of take is by angling only.

d. The size of personal use nets remains the same for dip nets (14 inches round or 13 inches by 13 inches square), cast net (10 feet in diameter), and seine nets (36 square feet or smaller). Scap/lift net size is reduced from 36 square feet to 16 square feet. Personal use nets must be stowed in a close container when entering a tributary or embayment.

e. To be eligible to possess more than an individual daily limit, operators of party or charter boats must register with the department and provide a copy of their U.S. Coast Guard license and period of expected operation to the NYSDEC, Hudson River Fisheries Unit, New Paltz, New York. Operators possessing a marine and coastal district party and charter boat license need to provide their permit number and the period of expected operation to the NYSDEC.

f. Registered party and charter boat operators shall display a valid Hudson River river herring decal provided by the department on their vessel, whenever the vessel is operating as a party or charter fishing boat.

2. DEC proposes to amend 6 NYCRR Part 11, "More than one species" as follows:

Possession and commercial take for sale of anadromous river herring is not allowed in the Delaware River and its tributaries above Port Jervis NY.

3. DEC proposes to amend 6 NYCRR Part 18, "Taking Bait" as follows:

Allows the taking of river herring as bait by use of nets in the Hudson River as defined in Part 10.

4. DEC proposes to amend 6 NYCRR Part 19, "Use of bait" as follows:

Identifies the water bodies where anadromous alewife and blueback herring may be used as bait: in the Hudson River, its tributaries and embayments, as defined in Part 10.

5. DEC proposes to amend 6 NYCRR Part 35, "Licenses" to:

Remove anadromous river herring from the commercial bait list. A note indicates that the taking of anadromous river herring for all purposes is regulated pursuant to Parts 10 and 36 of Title 6.

6. DEC proposes to amend 6 NYCRR Part 36, "Gear and Operation Of Gear" as follows:

6.1 Requires that licensed commercial net gear to be marked with the licensee's permit number in visible black numbers on an orange background. A net shall have attached a marked floating buoy; a scoop, scap or dip net shall be marked on the fixed handle to the net.

6.2 Adds the Hudson River tributaries and embayments to the restricted areas where nets are not allowed to be used.

6.3 Changes the area where only a drift gill net can be used or possessed from the area between the Bear Mountain Bridge and the Newburgh-Beacon Bridge to the area between the Bear Mountain Bridge and the Castleton-on-Hudson (Interstate 90 spur and railroad) bridges.

6.4 During the Escapement period, the exception of commercially licensed fyke, scap and minnow trap nets is removed. The Escapement period will apply to all commercially licensed nets.

7. DEC proposes to amend 6 NYCRR Part 40, "Marine Fish" as follows:

7.1 Adds the new species Anadromous river herring to 40.1(f) Table A Recreational Fishing. Possession of anadromous river herring is prohibited, except north of the George Washington Bridge at river mile 11 in the Hudson River. The general provisions in subdivision 40.1(b) apply; anadromous river herring may not be possessed in the waters anywhere inland from such shores (of the marine and coastal district of New York) in the counties of Suffolk, Nassau, Queens, Kings, Richmond, New York, Bronx, and those portions of Westchester County within the marine and coastal district bordering on Long Island Sound.

7.2 Adds the new species Anadromous river herring to 40.1(i) Table B Commercial Fishing. No open season is allowed. No possession of anadromous river herring is allowed except that vessels fishing exclusively in the federal ocean waters of the Exclusive Economic Zone, while operating under a valid federal permit for Atlantic mackerel and/or Atlantic herring, may possess river herring up to a maximum of five percent, by weight, of all species possessed. A person shall not barter, sell, offer for sale, or expose for sale, any river herring so possessed.

Text of proposed rule and any required statements and analyses may be obtained from: Kathryn A. Hattala, Department of Environmental Conservation, 21 S. Putt Corners Road, New Paltz, NY 12561, (845) 256-3071, email: kahattal@gw.dec.state.ny.us

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

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

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

Regulatory Impact Statement

1. Statutory authority:

Environmental Conservation Law (ECL) sections 3-0301, 11-0303, 11-0305, 11-0306, 11-0315, 11-0317, 11-0319, 11-1301, 11-1303, 11-1305, 11-1501, 11-1503, 11-1505 and 13-0105 authorize the Department of Environmental Conservation (DEC or the department) to establish, by regulation, the open season, size and catch limits, possession and sale restrictions and manner of taking for river herring (anadromous alewife and blueback herring).

2. Legislative objectives:

It is the objective of the above-cited legislation that DEC manages marine fisheries to optimize resource use for commercial and recreational harvesters, consistent with marine fisheries conservation and management policies and interstate Fishery Management Plans (FMPs).

3. Needs and benefits:

The department is adopting amendments to 6 NYCRR Parts 10, 11, 18, 19, 35, 36 and 40 which will implement a creel limit, gear and area restrictions for the recreational fishery and implement gear and fishing restrictions for the commercial fishery for river herring in the Hudson River and its tributaries. In addition, fishery closures will be implemented for all river herring runs in the Delaware River and its tributaries, Bronx, Kings, Manhattan, Nassau, Richmond, Suffolk, and Queens Counties and Westchester County streams that empty into the East River or Long Island Sound. These regulations are necessary to protect river herring and therefore are a part of DEC's stewardship responsibilities over the state's natural resources.

River herring of the Hudson River are anadromous. They spawn in the Hudson River its tributaries and most all streams in New York that empty into the Atlantic Ocean. Most of their life is spent in the near shore Atlantic Ocean from Virginia to Maine. They are caught by recreational and commercial fishermen while they are in New York State rivers and streams and by commercial fishing operations while they are in the ocean.

In May 2009, the Atlantic States Marine Fisheries Commission (ASMFC) adopted Amendment 2 to the Shad and River Herring Interstate Management Plan. This amendment requires that a state prove any river herring fishery is sustainable based on available data- e.g. the stock is increasing or stable and not declining. The alternative is to implement a moratorium. In response, DEC staff completed a stock status update for New York river herring.

Two species make up the generic “river herring” stock in New York. The two species are considered a single stock for management purposes because the two species, anadromous (sea-run) alewife and blueback herring are very similar in appearance and most fishers do not differentiate between the two species. DEC has a consistent ten year time series of data for the Hudson River stock of river herring beginning in 2000, along with sporadic data back to the 1936 Biological Survey. A few years of run size data are available for the Peconic River on Long Island. However this time series is not sufficient to allow determination of stock sustainability. No data are available for anadromous river herring in the remaining waters of New York State.

Data on Hudson River stock of river herring provide a mixed picture of status. Catch-per-unit-effort (number of fish per net hours fished) from the commercial gill net fishery has increased over the past ten years. However, fishery data on length indicate that mean size of spawning adults has been slowly declining over the same time period. Limited fishery independent data from the late 1980s and early 1990s confirms that fish are now smaller than they were in the past. Juvenile abundance has been variable for both species; increasing for alewife and slightly declining for blueback herring.

River herring are caught in both recreational and commercial fisheries for use as bait in the spring striped bass recreational fishery. This fishery allows unlimited take for both fishery components. Given that current stock status indicators are in disagreement, a full closure of the Hudson fisheries is not warranted. However, the current unlimited take is not sustainable and current data would not support continuation of the current fishery.

Under ECL 11-0303, it is DEC’s responsibility to act in behalf of the natural resources of the state. New York will implement measures which will achieve the sustainable definition required by the ASMFC Amendment 2. To allow for a sustainable fishery on the Hudson River stock, it is necessary to reduce the currently allowed unlimited harvest. In order to accomplish this reduction, the department will implement actions to: 1) create recreational fishing restrictions of a season, creel limits, closed and restricted areas and personal use gear sizes; 2) implement additional area closures and gear size and use restrictions for the commercial fishery; and 3) implement fishing moratoriums in areas of New York where lack of data do not allow for a sustainable fishery. Failure by New York to adopt these amendments would jeopardize any fishery for the Hudson River river herring stock.

Pursuant to section 13-0371 of the ECL, New York State is a party to the Atlantic States Marine Fisheries Compact which established the Atlantic States Marine Fisheries Commission (ASMFC). The Commission facilitates cooperative management of marine and anadromous fish species among the fifteen member states. ASMFC’s Interstate Fishery Management Plans (FMP) for individual species or groups of fish are the principal mechanism for implementation of cooperative management of migratory fish. The FMPs are designed to promote the long-term health of these species, preserve resources and protect the interests of both commercial and recreational fishers.

The department prepared a Sustainable Fishery Plan (SFP) for New York River Herring Stocks. This SFP was reviewed and approved by the Hudson River Estuary Management Advisory Committee, then reviewed and approved by the ASMFC Shad and River Herring Management Board. The deadline for Amendment 2 compliance was January 1, 2012. If New York is moving forward in the regulatory process ASMFC may consider this a good faith effort to comply with Amendment 2. The fishing mortality reductions in the SFP must be implemented prior to the 2012 fishing season.

4. Costs:

Cost to private regulated parties:

Certain regulated parties may experience some adverse economic effects due to the area and gear size and gear use restrictions. The targeted party is the commercial fishers who will not be allowed to fish in the Hudson River’s tributaries. There may be some economic loss to these businesses. Furthermore, river herring are now only in the river in harvestable numbers for up to eight weeks each spring. Therefore, commercial fishing constitutes by nature a short part-time job that provides supplemental income to fishermen and a few helpers.

Over the last 15 years, the demand for bait for the Hudson’s spring striped bass fishery has skyrocketed. River herring quickly became the primary target and fisheries quickly developed in the Hudson River’s tributaries where river herring concentrate to spawn. The proposed rule lessens the ability of licensed fishers to harvest river herring; however the price of commercially caught bait may rise.

Over the long term, however, the maintenance of sustainable river herring fisheries will have a positive effect on small businesses in the Hudson River fishery. Any short-term losses will be offset by an increase in yield from well-managed resources. These regulations are designed to allow fisheries to continue, and allow some rebuilding of the stock for future utilization.

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

The DEC will incur limited costs associated with both the implementation and administration of these rules, including the costs relating to notifying recreational and commercial harvesters and other support industries of the new rules.

Cost to state government as a whole:

Minor costs will be incurred by the regulating agency. See above.

Cost to local government:

There will be no costs to local governments.

5. Local government mandates:

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

6. Paperwork:

None.

7. Duplication:

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

8. Alternatives:

The following significant alternatives have been considered by the department and rejected for the reasons set forth below:

(1) Complete statewide closure of commercial and recreational fisheries for river herring.

Given the inconsistent measures of stock status described above, department staff does not feel that the data warrant a complete closure of the Hudson River fishery at this time. In the Sustainable Fishing Plan for New York River Herring Stocks, the department proposed a five year restricted fishery in the main-stem Hudson River, a partial closure of the fishery in tributaries, annual stock monitoring, and closures for all other waters areas where anadromous river herring could occur. Since the Plan was approved by ASMFC to allow continued fishing on the Hudson River stock, this alternative was rejected.

(2) No Action (no amendment to regulations).

The “no action” alternative would leave current regulations in place and jeopardize any fishery for river herring in New York State. Compliance to the ASMFC Amendment 2 is mandatory. If New York does not implement the Sustainable Fishing Plan as proposed, the State most likely will be found out of compliance with Amendment 2. The consequence of non-compliance is a state wide moratorium for river herring fishing. For this reason, this alternative was rejected.

9. Federal standards:

The amendments to Parts 10, 11, 18, 19, 35, 36 and 40 are in compliance with the ASMFC Fishery Management Plan for River Herring.

10. Compliance schedule:

The regulations will take effect when published by the Department of State. Regulated parties will be notified of the changes to the regulations by mail, through appropriate news releases and via the department’s website.

Regulatory Flexibility Analysis

1. Effect of rule:

These amendments to 6 NYCRR Parts 10, 11, 18, 19, 35, 36 and 40 will implement a creel limit, gear and area restrictions for the recreational fishery and implement gear and fishing restrictions for the commercial fishery for river herring in the Hudson River and its tributaries. In addition, fishery closures will be implemented for all anadromous river herring runs in all other waters of New York State. Because this rule making addresses recreational and commercial fishing, the businesses that will be directly affected are commercial fishers. These regulations do not apply directly to local governments, and will not have any direct effects on local governments.

The season of March 15th to June 15th spans 13 weeks, which spans the limited time river herring are present in harvestable quantities. This gives commercial fishers only a short time opportunity for operation. The Department of Environmental Conservation (DEC or the department) will implement measures which will create closed areas to fishing in Hudson River tributaries, and implement several gear size and use restrictions.

The river herring commercial fishery provides only part time employment for those individuals who actually run a commercial (harvest and sale) operation. Many participants in the “commercial” fishery are actually recreational anglers purchasing commercial gear licenses to catch bait for their own personal use beyond what is allowed for the recreational fishery.

In the long term, the maintenance of a sustainable river herring fishery will have a positive effect on small businesses in the fisheries in question. Any short term losses in participation and sales will be offset by the restoration of fishery stocks and an increase in yield from well managed resources. These regulations are designed to protect stocks while allowing appropriate harvest, to prevent over harvest, and to continue to rebuild them for future utilization.

2. Compliance requirements:

None.

3. Professional services:

None.

4. Compliance costs:

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

5. Economic and technological feasibility:

The proposed regulations do not require any expenditure on the part of affected businesses in order to comply with the changes. The restriction may reduce harvest and may reduce income from commercial fishing activities. However, river herring are in short supply coast wide and reduced harvest may lead to higher prices and some recoupment of income.

There is no additional technology required for small businesses, and this action does not apply to local governments.

6. Minimizing adverse impact:

The promulgation of this regulation is necessary in order for the department to be in compliance with the Amendment 2 of the Interstate Fishery Management Plan for Shad and River Herring. The regulations are intended to provide sustainability of the fishery and the resource and avoid the adverse impacts that would be associated with closure of the fishery, the alternative under Amendment 2. Ultimately, the maintenance of long term sustainable fisheries will have a positive effect on employment for the fisheries in question, as well as wholesale and retail outlets and other support industries. Failure to take action could result in the consequence of non-compliance to the ASMFC plan which is a Federal sanction of a total fishing moratorium in state waters. A moratorium would have a more severe adverse impact on the commercial and recreational fisheries, as well as the supporting industries for those fisheries. These regulations are being adopted in order to provide the appropriate level of protection and allow for harvest consistent with the capacity of the resource to sustain such effort.

7. Small business and local government participation:

The department consulted the Hudson River Estuary Management Advisory Committee regarding the proposed action. The Committee is comprised of representatives from recreational and commercial fishing interests, local government, educational and research institutions. The Committee approved the Sustainable Fishing Plan (SFP) for New York's River Herring Stocks. The department has maintained a regular dialogue with many fishers through public information meeting, telephone conversations and e mail regarding the implementation of the SFP. The department has and will provide a notice of the rulemaking to affected fishers through mailings, newspapers and other media outlets. Local governments were not contacted because the rule does not affect them.

8. Cure period or other opportunity for ameliorative action:

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

Rural Area Flexibility Analysis

1. Types and estimated numbers of rural areas:

Nine Hudson River watershed (includes the Hudson and Mohawk River valleys) counties fall into the rural area category: Columbia, Greene, Herkimer, Montgomery, Putnam, Rensselaer, Saratoga, Schenectady, and Ulster counties. Two Delaware River counties are also in the rural area category: Delaware and Sullivan counties. The proposed regulations will affect individuals who participate in the river herring fisheries. Some of these individuals are residents of other areas in New York, generally downstate.

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

All commercial licensed fishers, as part of their mandatory report to the department, are required to maintain daily fishing records of catch and effort expended.

3. Costs:

There will be no initial capital or annual costs to comply with the new regulations.

4. Minimizing adverse impact:

The promulgation of this regulation is necessary in order for the department to comply with the Atlantic States Marine Fisheries Commission Amendment 2 to the Shad and River Herring Interstate Fishery Management Plan. The regulations are intended to create a sustainable fishery in the Hudson River watershed and avoid the adverse economic and social impacts that would be associated with closure of the fishery in this area. Other downstate counties and the Delaware River and its tributaries in New York will be closed to fishing. Ultimately, the maintenance of long-term sustainable fisheries will have a positive effect for the fisheries in question, as well as wholesale and retail outlets and other support industries. These regulations are being adopted in order to provide the appropriate level of protection and allow for harvest consistent with the capacity of the resource to sustain such effort.

5. Rural area participation:

The department met with affected parties at two public meetings to inform them of the river herring stock status and initiate discussions of potential fishing restrictions necessary to meet the ASMFC Amendment 2 requirement of a sustainable fishery. The department has maintained a regular dialogue with fishermen by phone, mail and e-mail regarding changes needed. Moreover, the department has and will continue to provide notice to affected fishers through mailings, newspapers and other media outlets, including those in rural counties and towns.

Job Impact Statement

1. Nature of impact:

The river herring commercial fishery has only provided part-time employment for fishers since the late 1980s. Generally, these commercial fishing operations are very small businesses that operate for a short-time (eight to ten weeks) each year. Most fishers work alone with only a few hiring short-term assistants. The proposed rule may lessen the ability of licensed fishers to harvest river herring in certain areas and some individuals may stop fishing.

2. Categories and numbers affected:

Over the past five years, an average of 476 individuals, from Hudson Valley counties, purchased commercial fishing permits to target river herring for harvest. However, only 38%, or 162 individuals actually reported using the permit to harvest fish. Most of the fishers are recreational anglers seeking to use commercial fishing gear rather than the allowed recreational gear to harvest river herring.

3. Regions of adverse impact:

The fishery is unique to the state and only occurs in the Hudson River and its tributaries, including the Mohawk River.

4. Minimizing adverse impact:

The intent of the proposed rule is to provide for a continued sustainable fishery for future years following the guidelines of the Atlantic States Marine Fisheries Commission Amendment 2 to the Shad and River Herring Fishery Management Plan. In the long-term, the maintenance of a sustainable fishery will have a positive effect on employment for the continuation of the river herring fishery. Any short-term losses in participation will be offset by the restoration of fishery stocks and an increase in yield from well-managed resources.

5. Self-employment opportunities:

Nearly all of the permitted fishers are essentially self employed individuals, with the exception of a few individuals that may work with or for local bait supply shops or marinas.

Department of Financial Services

EMERGENCY RULE MAKING

Unclaimed Life Insurance Benefits and Policy Identification

I.D. No. DFS-22-12-00002-E

Filing No. 452

Filing Date: 2012-05-14

Effective Date: 2012-06-14

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

Action taken: Addition of Part 226 (Regulation 200) to Title 11 NYCRR.

Statutory authority: Financial Services Law, sections 202 and 302; and Insurance Law, sections 301, 316, 1102, 1104, 2601, 4521, 4525 and art. 24

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

Specific reasons underlying the finding of necessity: Many life insurance companies and fraternal benefit societies ("insurers") have not adopted or implemented reasonable procedures and standards for investigating claims and locating beneficiaries with respect to death benefits payable under life insurance policies, annuity contracts and accounts ("policies and accounts"). The Department conducted an investigation into how such insurers track life insurance policy holders. The Department's investigation found that many insurers regularly use lists of recent deaths from the U.S. Social Security Administration ("SSA") to promptly cease making annuity payments. However, most insurers had not been using that list to determine whether death benefits were payable to beneficiaries or amounts under accounts appropriately distributed. While insurers were extremely diligent about terminating benefits, they were much less so in seeing that

benefits were paid to beneficiaries and that monies held by them in accounts were properly distributed.

On July 5, 2011, the Department issued a letter to insurers, pursuant to New York Insurance Law section 308 ("308 Letter"), that required every insurer to submit a report that included a narrative summary of the SSA's Death Master File ("SSA Master File") cross-check procedures implemented by the insurer; the overall results of the SSA Master File cross-check; the current procedures utilized by the insurer to locate beneficiaries, and a seriatim listing of death benefits paid as a result of the SSA Master File cross-check. To date, over \$262 million has been paid to beneficiaries nationwide, including more than \$95 million paid to New York beneficiaries. The 308 Letter required a one-time cross-check of the SSA Master File. This rule requires insurers to continue to perform regular SSA Master File cross-checks and to request more detailed beneficiary information (e.g., social security number, address) when policies are issued to facilitate locating and making payments to beneficiaries.

The current system leads to many abuses, for example in situations where deaths occur but without claims being filed, with an insurer continuing to deduct premiums from the account value or cash value until policies lapse. In other instances, the policies or accounts may simply remain dormant after death. In these instances, a valid death benefit is either not paid or distributed or is delayed. Insurers must take reasonable steps to ensure that policyowners and policy beneficiaries are provided with all of the benefits for which they have paid and to which they are entitled.

To ensure that policyowners and policy beneficiaries are provided with all such benefits, this Part requires insurers to implement reasonable procedures to identify unclaimed death benefits, locate beneficiaries, and make prompt payments. In addition, to further ensure payment of unclaimed benefits, this Part requires insurers to respond to requests from the superintendent to search for policies insuring the life of, or owned by, decedents, and to initiate the claims process for any death benefits that are identified as a result of those requests. Any delay in implementing these requirements will result in beneficiaries not receiving benefits or having monies distributed to them to which they are entitled, and in insurers thereby undeservedly retaining such amounts.

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

Subject: Unclaimed Life Insurance Benefits and Policy Identification.

Purpose: To ensure payment of unclaimed benefits to policyowners and policy beneficiaries.

Text of emergency rule: UNCLAIMED LIFE INSURANCE BENEFITS AND POLICY IDENTIFICATION

Section 226.0 Purpose

(a) Many life insurance companies and fraternal benefit societies have not adopted or implemented reasonable procedures and standards to investigate claims and locate beneficiaries with respect to death benefits under life insurance policies, annuity contracts and accounts. The Department conducted an investigation into how such insurers track life insurance policy holders. The Department's investigation has found that many insurers have been regularly using lists of recent deaths from the Social Security Administration to promptly cease making annuity payments. However, most had not been using it to determine whether death benefits were payable to beneficiaries.

(b) The public needs to know that insurers are taking reasonable steps to ensure that policyowners and policy beneficiaries are provided with all of the life insurance benefits for which they have paid and to which they are entitled. In particular, there may be instances where a death has occurred and no claim has been filed, but premiums continue to be deducted from the account value or cash value until the policy lapses. In other instances, the policies or accounts may simply remain dormant after death. In these instances, a valid death benefit is either not paid or distributed or is delayed.

(c) To ensure that policyowners and policy beneficiaries are provided with all of the benefits for which they have paid and to which they are entitled, this Part requires insurers to implement reasonable procedures to identify unclaimed death benefits, locate beneficiaries, and make prompt payments. In addition, to further ensure payment of unclaimed benefits, this Part requires insurers to respond to requests from the superintendent to search for policies insuring the life of, or owned by, decedents and to initiate the claims process for any death benefits that are identified as a result of those requests.

Section 226.1 Definitions

(a) Account means:

(1) any mechanism, whether denoted as a retained asset account or otherwise, whereby the settlement of proceeds payable to a beneficiary under a policy is accomplished by the insurer or an entity acting on behalf of the insurer placing the proceeds into an account where those proceeds are retained by the insurer and the beneficiary has check or draft writing privileges; or

(2) any other settlement option relating to the manner of distribution of the proceeds payable under a policy.

(b) Death index means the death master file maintained by the United States social security administration or any other database or service acceptable to the superintendent.

(c) Insured includes an annuitant when the annuity contract provides for benefits to be paid or other monies to be distributed upon the death of the annuitant.

(d) Insurer means a life insurance company or fraternal benefit society.

(e) Lost policy finder means a service made available by the Department on its website or otherwise to assist consumers in locating unclaimed life insurance benefits.

(f) Policy means a life insurance policy, annuity contract, or a certificate under a life insurance policy or annuity contract, or a certificate issued by a fraternal benefit society, under which benefits are to be paid upon the death of the insured.

Section 226.2 Applicability

(a) This Part shall apply to:

(1) every policy issued by a domestic insurer and any account established under or as a result of such policy; and

(2) every policy delivered or issued for delivery in New York by an authorized foreign insurer and any account established under or as a result of such policy.

(b) Notwithstanding subdivision (a) of this section, with respect to a policy delivered or issued for delivery outside this State, an insurer may, in lieu of the requirements of this Part, implement procedures that meet the minimum requirements of the state in which the policy was delivered or issued, provided that the superintendent concludes that such other requirements are no less favorable to the policyowner and beneficiary than those required by this Part.

Section 226.3 Multiple Policy Search Procedures

(a) Upon receiving notification of the death of an insured or account holder or in the event of a match made by a death index cross-check pursuant to section 226.4 of this Part, an insurer shall search every policy or account subject to this Part to determine whether the insurer has any other policies or accounts for the insured or account holder.

(b) Every insurer that receives a notification of death of the insured or account holder, or identifies a death index match, shall notify each insurer in its holding company system of the notification or verified death index match.

Section 226.4 Standards for investigating claims and locating claimants under policies and accounts

(a) Prior to a policy's issuance or an account's establishment, and upon any change of insured, owner, or beneficiary, every insurer shall request information sufficient to ensure that all benefits or other monies are distributed to the appropriate persons upon the death of the insured or account holder, including, at a minimum, the name, address, social security number, and telephone number of every owner, insured and beneficiary of such policy or account, as applicable.

(b)(1) Every insurer shall use the latest available updated version of the death index to cross-check every policy and account subject to this Part, except as specified in subdivision (h) of this section. The cross-checks shall be performed no less frequently than quarterly. An insurer may submit a request to the superintendent for the insurer to perform the cross-checks less frequently than quarterly. The superintendent may grant such a request upon the insurer's demonstration of hardship.

(2) The cross-checks shall be performed using:

(i) the social security number of the insured or account holder; or

(ii) where the social security number is not known to the insurer, the name and date of birth of the insured or account holder.

(c) If an insurer uses a resource instead of or in addition to a death index in order to terminate benefits or close an account, the insurer shall also use that resource when cross-checking policies or accounts pursuant to subdivision (b) of this section.

(d) If an insurer uses a resource more frequently than quarterly in order to terminate benefits or close an account, the insurer shall use that resource with the same frequency when cross-checking policies or accounts pursuant to subdivision (b) of this section.

(e) If an insurer only has a partial name, social security number, date of birth, or a combination thereof, of the insured or account holder under a policy or account, the insurer shall use the available information to perform the cross-check pursuant to subdivision (b) of this section.

(f)(1) Every insurer shall implement reasonable procedures to account for common variations in data that would otherwise preclude an exact match with a death index, including:

(i) nicknames, initials used in lieu of a first or middle name, use of a middle name, compound first and middle names, and interchanged first and middle names;

(ii) compound last names, and blank spaces or apostrophes in last name;

(iii) incomplete date of birth data, and transposition of the "month" and "date" portions of the date of birth;

(iv) incomplete social security number; and

(v) common data entry errors in name, date of birth and social security data.

(2) An insurer that does not have in place on the effective date of this Part reasonable procedures to implement paragraph (1) of this subdivision shall do so as expeditiously as possible but no later than 150 days after such effective date.

(g) Every insurer shall establish reasonable procedures to locate beneficiaries and shall make prompt payments or distributions in accordance with Part 216 of this Title (Insurance Regulation 64).

(h) This section shall not apply to any policy or any account in the event of the death of an insured or account holder:

(1) where the insurer has fully satisfied all obligations under the policy or account prior to the date that the cross-check is performed;

(2) where the insurer has paid full death benefits on all insureds under the policy, or where the remaining obligations have been transferred to one or more new policies or accounts providing benefits of any kind in the event of the death of the insured or account holder;

(3) where the insurer has paid full surrender benefits on the policy, including a policy that is replaced after full surrender;

(4) where the policy has been rescinded and the insurer has returned all paid premiums;

(5) where the policy has been returned under a free-look provision and the insurer has returned all paid premiums;

(6) where the insurer has paid full maturity benefits under the policy;

(7) where the insurer has no record of certificate holders under a group policy administered by the group policyholder;

(8) where all monies due under the policy or account have escheated in accordance with state unclaimed property statutes;

(9) where the insurer has novated the policy;

(10) where the policy is a group annuity contract that funds employer-sponsored retirement plans and the insurer is not obligated by the terms of the contract to pay death benefits directly to the plan participant's beneficiary;

(11) where the insurer receives payroll deduction contributions for either a group annuity contract or premium payment for a group policy and a payment has been made 90 days prior to a cross-check;

(12) except as to retired employees, where premiums are wholly paid by an employer on an individual or group policy; or

(13) where a policy has lapsed or otherwise terminated and no death has been reported and the policy has been cross-checked with a death index for a period of at least two years since lapse or termination with no match.

Section 226.5 Lost policy finder application procedures

(a) Every insurer shall:

(1) upon receiving a request forwarded by the superintendent through a lost policy finder application, search for policies and any accounts subject to this Part that insure the life of, or are owned by, an individual named as the decedent in the request forwarded by the superintendent;

(2) report to the superintendent through a lost policy finder application:

(i) within 30 days of receiving the request, the findings of the search; and

(ii) where the search reveals that benefits may be due, within 30 days of the final disposition of the request, the benefit paid and any other information requested by the superintendent; and

(3) within 30 days of receiving the request, for each identified policy and account insuring the life of, or owned by, the named decedent, provide to:

(i) a requestor who is also the beneficiary of record on the identified policy or account all items, statements and forms that the insurer reasonably believes to be necessary in order to file a claim; or

(ii) a requestor who is not the beneficiary of record on the identified policy or account the requested information to the extent permissible to be disclosed in accordance with Part 420 (Insurance Regulation 169) of this Title and any other applicable privacy law, and to take such other steps necessary to facilitate the payment of any benefit that may be due under the identified policy or account.

(b)(1) Every insurer shall establish procedures to electronically receive the lost policy finder application request from, and make reports to, the superintendent as provided for in subdivision (a) of this section. When transmitted electronically, the date that the superintendent forwards the request shall be deemed to be the date of receipt by the insurer unless the day is a Saturday, Sunday or a public holiday, as defined in General Construction Law section 25 and, in such case, the date of receipt shall be as provided in General Construction Law section 25-A.

(2) An insurer required to electronically receive and submit pursuant to this Part may apply to the superintendent for an exemption from the

requirement that the submission be electronic by submitting a written request to the superintendent for approval.

(3) The insurer's request for an exemption shall specify whether it is making the request for an exemption based upon undue hardship, impracticability, or good cause, and set forth a detailed explanation as to the reason that the superintendent should approve the request.

(4) The insurer requesting an exemption shall submit, upon the superintendent's request, any additional information necessary for the superintendent to evaluate the insurer's request for an exemption.

(5) The insurer shall be exempt from the electronic submission requirement upon the superintendent's written determination so exempting the insurer. The superintendent's determination will specify the basis upon which the superintendent is granting the request and for how long the exemption applies.

(6) If the superintendent approves an insurer's request for an exemption from the electronic submission requirement, then the insurer shall make a physical submission in a form and manner acceptable to the superintendent.

Section 226.6 Report to the comptroller

By February first of each year, every insurer shall submit a report to the office of the comptroller of this State specifying the number of policies and accounts that the insurer has identified pursuant to section 226.4 of this Part for the prior calendar year under which any outstanding monies have not been paid or distributed by December thirty-first of such year.

This notice is intended to serve only as a notice of emergency adoption. This agency intends to adopt this emergency rule as a permanent rule and will publish a notice of proposed rule making in the *State Register* at some future date. The emergency rule will expire August 11, 2012.

Text of rule and any required statements and analyses may be obtained from: David Neustadt, New York State Department of Financial Services, One State Street, New York, NY 10004, (212) 709-1690, email: david.neustadt@dfs.ny.gov

Regulatory Impact Statement

1. Statutory authority: The Superintendent's authority for promulgation of this rule derives from sections 202 and 302 of the Financial Services Law ("FSL") and sections 301, 316, 1102, 1104, 2601, 4521 and 4525 and Article 24 of the Insurance Law.

FSL section 202 establishes the office of the Superintendent and designates the Superintendent to be the head of the Department of Financial Services.

FSL section 302 and Insurance Law section 301 authorize the Superintendent to effectuate any power accorded by the Insurance Law, the Banking Law, the Financial Services Law, or any other law of this state and to prescribe regulations interpreting, among others, the Insurance Law.

Insurance Law section 316 authorizes the Superintendent to promulgate regulations to require an insurer or other person or entity that makes a filing or submission with the Superintendent, pursuant to the Insurance Law, to do so by electronic means.

Insurance Law section 1102 authorizes the Superintendent to refuse to issue or renew an insurer's license if such refusal will best promote the interests of the people of this state.

Insurance Law section 1104 authorizes the Superintendent to revoke the license of a foreign insurer if such revocation is reasonably necessary to protect the interests of the people of this state.

Insurance Law Article 24 regulates trade practices in the insurance industry by prohibiting practices that constitute unfair methods of competition or unfair or deceptive acts or practices.

Insurance Law section 2601 prohibits insurers from engaging in unfair claim settlement practices, including the failure to adopt and implement reasonable standards for prompt investigation of claims.

Insurance Law section 4521 authorizes the Superintendent to revoke or suspend a fraternal benefit society's license if such society is not carrying out its contracts in good faith.

Insurance Law section 4525 applies Articles 3 and 24 of the Insurance Law to authorized fraternal benefit societies.

2. Legislative objectives: The Department has been investigating allegations of unfair claims and trade practices by authorized life insurers and fraternal benefit societies (collectively herein, "insurers"). The Department is concerned that many insurers have not adopted or implemented reasonable procedures and standards to investigate claims and locate beneficiaries with respect to death benefits due under policies and accounts. In particular, there may be instances in which a death has occurred and no claim has been filed, but premiums continue to be deducted from the account value or cash value until the policy lapses. In other instances, the policies or accounts may simply remain dormant after death. In these instances, a valid death benefit is either not paid or distributed or is delayed.

The Department met with several insurers that have substantial writings in New York to discuss past and current claim and death benefit payment

practices. Some insurers have used the U.S. Social Security Administration's Death Master File ("SSA Master File") to confirm the death of a contract holder so that it may cease making annuity payments, but have not used the SSA Master File to determine whether any death benefit payments are due under insurance policies or other accounts.

The Department sent a letter dated July 5, 2011, to every insurer requesting the submission of a special report, pursuant to Insurance Law section 308 (the "308 Letter"). The 308 Letter required the insurer to submit a report that included a narrative summary of the SSA Master File cross-check procedures implemented by the insurer; the overall results of the SSA Master File cross-check; the current procedures utilized by the insurer to locate beneficiaries, and a seriatim listing of death benefits paid as a result of the SSA Master File cross-check. After matches were identified, each insurer was directed to provide to the Superintendent a final report updating the actions it had taken to investigate the matches to determine whether a death benefit payment was due, and to describe the procedures it had implemented to locate the beneficiaries and make payments, where appropriate. To date, over \$262 million has been paid nationwide to beneficiaries, including more than \$95 million that was paid to New York beneficiaries.

The 308 Letter was a one-time comparison of the SSA Master File. This rule is necessary to require insurers to continue to make the cross-checks on an ongoing basis. This rule requires insurers to continue to perform regular cross-checks using the SSA Master File, or other database or service acceptable to the Superintendent, and to request more detailed beneficiary information (e.g., social security number, address) to facilitate locating and making payments to beneficiaries.

The regulation also addresses another matter of concern. The Department regularly receives requests from family members and other potential beneficiaries requesting assistance in locating lost policies. Although certain fee-based services have been available to provide some assistance, there has not been an efficient, no-fee mechanism by which the Department could assist the public.

The Department has now developed a Lost Policy Finder application that offers a free-of-charge service to assist in locating unclaimed benefits on policies insuring the life of, or owned by, the deceased and accounts that are established under or as a result of such policies.

This rule requires insurers to establish procedures to respond within 30 days of the Department's notification of a request to identify coverage, which the Department received through its new Lost Policy Finder application. The rule also requires the insurer to notify the beneficiary, within 30 days of the notification, of all items necessary to file a claim, if the insurer determines that there are benefits to be paid or other monies to be distributed.

3. Needs and benefits: Many insurers have still not adopted or implemented reasonable procedures and standards to investigate claims and locate beneficiaries with respect to death benefits under policies and accounts. The Department conducted an investigation into how insurers track life insurance policy holders. The Department found that many insurers have been regularly using lists of recent deaths from the Social Security Administration to promptly cease making annuity payments. However, most had not been using it to determine whether death benefits were payable to beneficiaries.

This leads to many abuses. For example, in some instances, a death may occur and no claim filed, but premiums continue to be deducted from the account value or cash value until the policy lapses. In other cases, the policies or accounts may simply remain dormant after death. In these instances, a valid death benefit is either not paid or distributed or is delayed.

While insurers were extremely diligent about terminating benefits, they were much less so in seeing that benefits were paid to beneficiaries and monies held by them in accounts were properly distributed. Insurers must take reasonable steps to ensure that policyowners and policy beneficiaries are provided with all of the benefits for which they have paid and to which they are entitled.

To ensure that policyowners and policy beneficiaries are provided with all of the benefits for which they have paid and to which they are entitled, this Part requires insurers to implement reasonable procedures to identify unclaimed death benefits, locate beneficiaries, and make prompt payments. In addition, this Part requires insurers to respond to requests from the Superintendent to search for policies insuring the life of, or owned by, decedents and to initiate the claims process for any death benefits that are identified as a result of those requests. It also establishes a filing requirement with the Office of the Comptroller regarding unpaid benefits.

4. Costs: Many insurers have already implemented procedures similar to those required by this rule to terminate annuity payments. In response to the 308 Letter sent by the Department to insurers in July 2011, a number of insurers confirmed that they have already established, or are in the process of establishing, the standards and procedures required by this rule. As a result, such insurers should incur minimal additional costs to comply with the requirements of this rule. The public benefit of ensuring that all

policyowners and policy beneficiaries are provided with all of the benefits for which they have paid and to which they are entitled outweighs the incidental costs of complying with this rule.

The cost to the Department, and the Office of the Comptroller, will be minimal because existing personnel are available to verify and ensure compliance of this rule. There are no costs to any other state government agency or local government.

5. Local government mandates: The rule imposes no new programs, services, duties or responsibilities on any county, city, town, village, school district, fire district or other special district.

6. Paperwork: Section 226.5 of this rule requires every insurer to report to the Superintendent, within 30 days of receiving the Superintendent's request to search for policies and accounts, the findings of that search. In addition, within 30 days of the final disposition of the request, every insurer is required to report the benefits or amounts paid, if any, as a result of the search, and any other information requested by the Superintendent. Section 226.6 of this rule requires every insurer to submit a report to the Office of the Comptroller specifying the number of policies and accounts that the insurer has identified through a death index match or notification of the death of an insured or account holder, for the prior calendar year, any outstanding monies that have not been paid or distributed by December thirty-first of such year.

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

8. Alternatives: There are no viable alternatives to this rule. As a result of the 308 Letter, to date, more than \$262 million has been paid to beneficiaries nationwide, including more than \$95 million paid to New York beneficiaries. The benefit to the public on an on-going basis is unquestionable. While some insurers may voluntarily implement these procedures, promulgation of this rule is necessary to require all insurers to do so. This rule addresses unfair claims and trade practices by insurers in a manner that protects the public while providing minimal burdens on insurers.

After considering comments received from insurers after the 308 Letter was issued, the Department issued guidance to supplement the 308 Letter. This rule incorporates those comments.

9. Federal standards: There are no minimum standards of the federal government for the same or similar subject areas.

10. Compliance schedule: Many insurers have already implemented procedures similar to those required by this rule to terminate annuity payments. In response to the 308 Letter, a number of insurers confirmed that they have already established, or are in the process of establishing, the standards and procedures required by this rule. Therefore, with the exception provided under section 226.4(f)(2), this rule will take effect 30 days upon filing with the Secretary of State.

Under section 226.4(f)(2), an insurer that does not have in place on the effective date of this Part reasonable procedures to implement section 226.4(f)(1) of this Part shall do so as expeditiously as possible but no later than 150 days after such effective date.

Regulatory Flexibility Analysis

1. Small businesses: The Department of Financial Services finds that this rule will not impose any adverse economic impact or any reporting, recordkeeping or other compliance requirements on small businesses. The basis for this finding is that this rule is directed at life insurers and fraternal benefit societies (collectively, "insurers") authorized to do business in New York State, none of which fall within the definition of "small business" as found in section 102(8) of the State Administrative Procedure Act. The Department of Financial Services has reviewed filed reports on examination and annual statements of these authorized insurers and believes that none of them fall within the definition of "small business," because there are none which are both independently owned and have less than one hundred employees.

2. Local governments: This rule does not impose any adverse economic impact on local governments, including reporting, recordkeeping, or other compliance requirements.

Rural Area Flexibility Analysis

1. Types and estimated numbers of rural areas: Insurers covered by this rule do business in every county in this state, including rural areas as defined under State Administrative Procedure Act Section 102(13).

2. Reporting, recordkeeping and other compliance requirements, and professional services: This rule requires authorized life insurers and fraternal benefit societies (collectively, "insurers") to establish standards for investigating claims and locating claimants under policies and accounts providing benefits in the event of the death of an insured or account holder. It also requires insurers to establish procedures to search for policies and accounts upon receipt of a death notice or the Superintendent's notification of a request to identify coverage, which was received through the Lost Policy Finder application. It requires insurers to perform, no less than quarterly, a cross-check of the death index (i.e., the U.S. Social Secu-

ity Administration's Death Master File ("SSA Master File") or any other database or service that is acceptable to the Superintendent). In addition, it requires insurers to establish procedures for lost policy searches, and establishes a filing requirement with the Office of the Comptroller regarding unpaid benefits.

Section 226.5 of this rule requires every insurer to report to the Superintendent, within 30 days of receiving the Superintendent's request to search for policies and accounts, the findings of that search. In addition, within 30 days of the final disposition of the request, every insurer is required to report the benefits or amounts paid, if any, as a result of the search, and any other information requested by the Superintendent. Additionally, section 226.6 of this rule requires every insurer to submit a report to the Office of the Comptroller specifying the number of policies and accounts that the insurer has identified through a death index match or notification of the death of an insured or account holder, for the prior calendar year, any outstanding monies that have not been paid or distributed by December thirty-first of such year.

3. Costs: Many insurers have already implemented procedures similar to those required by this rule to terminate annuity payments. In response to a letter sent by the Department to insurers in July 2011, pursuant to Insurance Law section 308, a number of insurers confirmed that they have already established, or are in the process of establishing, the standards and procedures required by this rule. As a result, such insurers should incur minimal additional costs to comply with the requirements of this rule. The public benefit of ensuring that all policyowners and policy beneficiaries are provided with all of the benefits for which they have paid and to which they are entitled outweighs the incidental costs of complying with this rule.

The cost to the Department, and the Office of the Comptroller, will be minimal because existing personnel are available to verify and ensure compliance with this rule. There are no costs to any other state government agency or local government.

4. Minimizing adverse impact: The public needs to know that insurers are taking reasonable steps to ensure that all policyowners and policy beneficiaries are provided with all of the benefits for which they have paid and to which they are entitled. In particular, there may be instances where a death has occurred and no claim has been filed, but premiums continue to be deducted from the account value or cash value until the policy lapses. In other instances, the policies or accounts may simply remain dormant after death. In these instances, a valid death benefit is either not paid or distributed or is delayed.

The Department sent a letter, dated July 5, 2011, to every insurer requesting the submission of a special report, pursuant to Insurance Law section 308 (the "308 Letter"). The 308 Letter required the insurer to submit a report that included a narrative summary of the SSA Master File cross-check procedures implemented by the insurer; the overall results of the SSA Master File cross-check; the current procedures utilized by the insurer to locate beneficiaries, and a seriatim listing of death benefits paid as a result of the SSA Master File cross-check. After matches were identified, each insurer was directed to provide to the Superintendent a final report updating the actions it had taken to investigate the matches to determine whether a death benefit payment was due, and to describe the procedures it had implemented to locate the beneficiaries and make payments, where appropriate. To date, over \$262 million has been paid nationwide to beneficiaries, including more than \$95 million that was paid to New York beneficiaries.

The 308 Letter was a one-time comparison of the SSA Master File. This rule is necessary to require insurers to continue to make the cross-checks on an ongoing basis. This rule requires insurers to continue to perform regular cross-checks using the SSA Master File, or other database or service acceptable to the Superintendent, and to request more detailed beneficiary information (e.g., social security number, address) to facilitate locating and making payments to beneficiaries.

The regulation also addresses another matter of concern. The Department regularly receives requests from family members and other potential beneficiaries requesting assistance in locating lost policies. Although certain fee-based services have been available to provide some assistance, there has not been an efficient, no-fee mechanism by which the Department could assist the public.

The Department has now developed a Lost Policy Finder application that offers a free-of-charge service to assist in locating unclaimed benefits on policies insuring the life of, or owned by, the deceased and accounts that are established under or as a result of such policies.

This rule requires insurers to establish procedures to respond within 30 days of the Department's notification of a request to identify coverage, which the Department received through its new Lost Policy Finder application. The rule also requires the insurer to notify the beneficiary, within 30 days of the notification, of all items necessary to file a claim, if the insurer determines that there are benefits to be paid or other monies to be distributed.

The rule thus ensures that insurers will continue to make death index cross-check efforts so that policyowners and policy beneficiaries will be provided with all of the benefits for which they have paid and to which they are entitled. This rule will result in the rightful payment of millions of dollars of additional benefits to beneficiaries. Therefore, it is necessary for all insurers to comply with the requirements of this rule.

5. Rural area participation: The Department received comments from insurers, including those doing business in rural areas of the State, regarding the 308 Letter. Those comments have been incorporated into this rule.

Job Impact Statement

The Department of Financial Services finds that this rule will have little or no impact on jobs and employment opportunities. This rule requires insurers to set forth standards for investigating claims and locating claimants under policies and accounts providing benefits in the event of an individual's death. It also requires insurers to set up procedures for lost policy searches, and establishes a filing requirement with the Office of the Comptroller regarding unpaid benefits.

The Department does not believe that this rule will have any adverse impact on jobs or employment opportunities, including self-employment opportunities.

EMERGENCY RULE MAKING

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

I.D. No. DFS-22-12-00007-E

Filing No. 456

Filing Date: 2012-05-15

Effective Date: 2012-05-17

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 August 12, 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 business practices by MLOs. Individuals engaging in abusive practices have avoided detection by moving from company to company and in some instances, from state to state. The licensing of MLOs will greatly assist the Department in its efforts to oversee the mortgage industry and protect consumers. The regulation will enable the Department to identify, track and hold accountable those individuals who engage in abusive practices, and ensure continuing education for all MLOs that are licensed by the Department.

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

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

4. Costs.

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

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

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

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

5. Local Government Mandates.

None.

6. Paperwork.

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

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

7. Duplication.

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

8. Alternatives.

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

9. Federal Standards.

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

10. Compliance Schedule.

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

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

Regulatory Flexibility Analysis

1. Effect of the Rule:

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

2. Compliance Requirements:

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

3. Professional Services:

None.

4. Compliance Costs:

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

5. Economic and Technological Feasibility:

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

6. Minimizing Adverse Impacts:

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

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

7. Small Business and Local Government Participation:

See response to Item 6 above.

Rural Area Flexibility Analysis

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

Compliance Requirements. Mortgage loan originators in rural areas must be licensed by the Superintendent of Financial Services (formerly the Superintendent of Banks) to engage in the business of mortgage loan origination. The application process established by the regulations requires an MLO to apply for a license electronically and to submit additional background information to the Mortgage Banking unit of the Department. This additional information consists of fingerprints, a recent credit report, supplementary background information and an attestation as to the truthfulness of the applicant's statements. Mortgage brokers and bankers are required to ensure that all MLOs employed by them have been duly licensed, report four

times a year on the MLOs newly employed by them or dismissed for cause, determine that each MLO employed by or affiliated with them has the character, fitness and education qualifications to warrant the belief he or she will engage in mortgage loan originating honestly, fairly and efficiently; and, finally, retain acceptable documentation as evidence of satisfactory completion of required education courses for each MLO for a period of six years. The Department believes that this rule will not impose a burdensome set of requirements on entities operating in rural areas.

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

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

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

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

Job Impact Statement

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

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

Department of Health

EMERGENCY RULE MAKING

Hospital Temporary Rate Adjustments

I.D. No. HLT-14-12-00006-E

Filing No. 450

Filing Date: 2012-05-11

Effective Date: 2012-05-11

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

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

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

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

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

Subject: Hospital Temporary Rate Adjustments.

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

Text of emergency rule: Subdivision (b) of section 86-1.31 of title 10 of NYCRR is hereby REPEALED and a new subdivision (b) is added, to read as follows:

(b) *Closures, mergers, acquisitions, consolidations and restructurings.*

(1) *The commissioner may grant approval of a temporary adjustment to the non-capital components of rates calculated pursuant to this subpart for eligible general hospitals.*

(2) *Eligible facilities shall include:*

(i) *facilities undergoing closure;*

(ii) *facilities impacted by the closure of other health care providers;*

(iii) *facilities subject to mergers, acquisitions, consolidations or restructuring; or*

(iv) *facilities impacted by the merger, acquisition, consolidation or restructuring of other health care providers.*

(3) *Facilities seeking rate adjustments under this section shall demonstrate through submission of a written proposal to the commissioner that the additional resources provided by a temporary rate adjustment will achieve one or more of the following:*

(i) *protect or enhance access to care;*

(ii) *protect or enhance quality of care;*

(iii) *improve the cost effectiveness of the delivery of health care services; or*

(iv) *otherwise protect or enhance the health care delivery system, as determined by the commissioner.*

(4) (i) *Such written proposal shall be submitted to the commissioner at least sixty days prior to the requested effective date of the temporary rate adjustment and shall include a proposed budget to achieve the goals of the proposal. Any temporary rate adjustment issued pursuant to this section shall be in effect for a specified period of time as determined by the commissioner, of up to three years. At the end of the specified timeframe, the facility shall be reimbursed in accordance with the otherwise applicable rate-setting methodology as set forth in applicable statutes and this Subpart. The commissioner may establish, as a condition of receiving such a temporary rate adjustment, benchmarks and goals to be achieved in conformity with the facility's written proposal as approved by the commissioner and may also require that the facility submit such periodic reports concerning the achievement of such benchmarks and goals as the commissioner deems necessary. Failure to achieve satisfactory progress, as determined by the commissioner, in accomplishing such benchmarks and goals shall be a basis for ending the facility's temporary rate adjustment prior to the end of the specified timeframe.*

(ii) *The commissioner may require that applications submitted pursuant to this section be submitted in response to and in accordance with a Request For Applications or a Request For Proposals issued by the commissioner.*

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-14-12-00006-P. Issue of April 4, 2012. The emergency rule will expire July 9, 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: regsqa@health.state.ny.us

Regulatory Impact Statement

Statutory Authority:

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

Legislative Objectives:

Subpart 86-1 of Title 10 (Health) of the Official Compilation of Codes, Rules and Regulation of the State of New York, paragraph (1) of subdivision (b) of section 1.31 will be amended to expand this temporary adjustment to eligible general hospitals that are subject to or impacted by the closure, merger, acquisition, consolidation, or restructuring of a health care provider in their service delivery area. In addition, the proposed regulation sets forth the conditions under which a provider will be considered eligible, the requirements for requesting a temporary rate adjustment, and the conditions that must be met in order to receive a temporary rate adjustment. The temporary rate adjustment shall be in effect for a specified period of time, as approved by the Commissioner, of up to three years. This regulation is necessary in order to maintain beneficiaries' access to services by providing needed relief to providers who meet the criteria.

Proposed section 86-1.31(b) requires providers seeking a temporary rate adjustment to submit a written proposal demonstrating that the additional resources provided by a temporary rate adjustment will achieve one or more of the following: (i) protect or enhance access to care; (ii) protect or enhance quality of care; (iii) improve the cost effectiveness of the delivery of health care services; or (iv) otherwise protect or enhance the health care delivery system, as determined by the Commissioner. The proposed amendment permits the Commissioner to establish benchmarks and goals, in conformity with a provider's written proposal as approved by the Commissioner, and to require the provider to submit periodic reports concerning the provider's progress toward achievement of such. Failure to achieve satisfactory progress in accomplishing such benchmarks and goals, as determined by the Commissioner, shall be a basis for ending the provider's temporary rate adjustment prior to the end of the specified timeframe.

Needs and Benefits:

In the center of a changing health care delivery system, the closure of a health care provider within a community often happens without adequate planning of resources for the remaining health care providers in the service delivery area. In addition, maintaining access to needed services while also maintaining or improving quality becomes challenging for the remaining providers. The additional reimbursement provided by this adjustment will support the remaining providers in achieving these goals, thus improving quality while reducing health care costs.

Costs:

Costs to Private Regulated Parties:

There will be no additional costs to private regulated parties. The only additional data requested from providers would be periodic reports demonstrating progress against benchmarks and goals.

Costs to State Government:

There is no additional aggregate increase in Medicaid expenditures anticipated as a result of these regulations, as the cost of the temporary rate adjustment will be offset by the overall reduction in Medicaid expenditures due to the closure, merger, acquisition, consolidation, or restructuring.

Costs to Local Government:

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

Costs to the Department of Health:

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

Local Government Mandates:

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

Paperwork:

An eligible provider must submit a written proposal, including a proposed budget. If a temporary rate adjustment is approved for a provider, the provider must submit periodic reports, as determined by the Commissioner, concerning the achievement of benchmarks and goals that are established by the Commissioner and are in conformity with the provider's approved written proposal.

Duplication:

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

Alternatives:

No significant alternatives are available. Any potential projects that would otherwise qualify for funding pursuant to the revised regulation would, in the absence of this amendment, either not proceed or would require the use of existing provider resources.

Federal Standards:

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

Compliance Schedule:

The proposed regulation provides the Commissioner of Health the authority to grant approval of temporary adjustments to rates calculated for general hospitals that are subject to or impacted by the closure, merger, acquisition, consolidation, or restructuring of a health care provider, for a specified period of time, as determined by the Commissioner, of up to three years.

Regulatory Flexibility Analysis

Effect of Rule:

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

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

This rule will have no direct effect on local governments.

Compliance Requirements:

Providers that are granted a temporary rate adjustment must submit periodic reports, as determined by the Commissioner, concerning the achievement of benchmarks and goals that are established by the Commissioner and are in conformity with the provider’s approved written proposal.

The rule will have no direct effect on local governments.

Professional Services:

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

Compliance Costs:

No initial capital costs will be imposed as a result of this rule, nor 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 because there are no technological requirements other than the use of existing technology, and the overall economic aspect of complying with the requirements is expected to be minimal.

Minimizing Adverse Impact:

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

Small Business and Local Government Participation:

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

Rural Area Flexibility Analysis

Effect on Rural Areas:

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

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

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

Albany	Erie	Oneida
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Broome	Monroe	Onondaga
Dutchess	Niagara	Orange

Compliance Requirements:

For hospitals that receive the temporary rate adjustment, periodic reports must be submitted concerning the achievement of benchmarks and goals as approved by the Commissioner.

Professional Services:

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

Compliance Costs:

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

Minimizing Adverse Impact:

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

Rural Area Participation:

A concept paper was shared with the hospital industry associations, which include members from rural areas. Comments were received and taken into consideration while drafting the regulations. In addition, a Federal Public Notice, published in the New York State Register invited comments and questions from the general public.

Job Impact Statement

A Job Impact Statement is not required pursuant to Section 201-a(2)(a) of the State Administrative Procedure Act. It is apparent, from the nature and purpose of the proposed rule, that it will not have a substantial adverse impact on jobs or employment opportunities. The proposed regulation expands the temporary rate adjustment to eligible hospitals that are subject to or impacted by the closure, merger, acquisition, consolidation, or restructuring of a health care provider in its service delivery area. In addition, the proposed regulation sets forth the conditions under which a provider will be considered eligible, the requirements for requesting a temporary rate adjustment, and the conditions that must be met in order to receive a temporary rate adjustment. The proposed regulation has no implications for job opportunities.

**EMERGENCY
RULE MAKING**

Temporary Rate Adjustment (TRA) - Residential Health Care Facilities (RHCF) (Nursing Homes)

I.D. No. HLT-14-12-00007-E

Filing No. 448

Filing Date: 2012-05-11

Effective Date: 2012-05-11

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

Action taken: Addition of section 86-2.39 to Title 10 NYCRR.

Statutory authority: Public Health Law, section 2808(2-c)(d)

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

Specific reasons underlying the finding of necessity: Public Health Law Section 2808(2-c)(d), as enacted by Section 95 of Part H of Chapter 59 of the Laws of 2011, specifically provides the Commissioner of Health with authority to issue emergency regulations in order to compute rates of payment for residential health care facilities. It is necessary to issue this regulation on an emergency basis in order to maintain Medicaid beneficiaries’ access to services by providing financial relief to eligible providers.

Subject: Temporary Rate Adjustment (TRA) - Residential Health Care Facilities (RHCF) (Nursing Homes).

Purpose: To provide a TRA to eligible RHCFs subject to or impacted by closure, merger, acquisition, consolidation, or restructuring.

Text of emergency rule: Subpart 86-2 of title 10 of NYCRR is amended by adding a new section 86-2.39, to read as follows:

86-2.39 Closures, mergers, acquisitions, consolidations and

restructurings. (a) The commissioner may grant approval of a temporary adjustment to the non-capital components of rates calculated pursuant to this subpart for eligible residential health care facilities.

(b) Eligible facilities shall include:

- (1) facilities undergoing closure;
- (2) facilities impacted by the closure of other health care facilities;
- (3) facilities subject to mergers, acquisitions, consolidations or restructuring; or
- (4) facilities impacted by the merger, acquisition, consolidation or restructuring of other health care facilities.

(c) Facilities seeking rate adjustments under this section shall demonstrate through submission of a written proposal to the commissioner that the additional resources provided by a temporary rate adjustment will achieve one or more of the following:

- (1) protect or enhance access to care;
- (2) protect or enhance quality of care;
- (3) improve the cost effectiveness of the delivery of health care services; or
- (4) otherwise protect or enhance the health care delivery system, as determined by the commissioner.

(d)(1) Such written proposal shall be submitted to the commissioner at least sixty days prior to the requested effective date of the temporary rate adjustment and shall include a proposed budget to achieve the goals of the proposal. Any temporary rate adjustment issued pursuant to this section shall be in effect for a specified period of time as determined by the commissioner, of up to three years. At the end of the specified timeframe, the facility shall be reimbursed in accordance with the otherwise applicable rate-setting methodology as set forth in applicable statutes and this Subpart. The commissioner may establish, as a condition of receiving such a temporary rate adjustment, benchmarks and goals to be achieved in conformity with the facility's written proposal as approved by the commissioner and may also require that the facility submit such periodic reports concerning the achievement of such benchmarks and goals as the commissioner deems necessary. Failure to achieve satisfactory progress, as determined by the commissioner, in accomplishing such benchmarks and goals shall be a basis for ending the facility's temporary rate adjustment prior to the end of the specified timeframe.

(2) The commissioner may require that applications submitted pursuant to this section be submitted in response to and in accordance with a Request For Applications or a Request For Proposals issued by the commissioner.

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-14-12-00007-P, Issue of April 4, 2012. The emergency rule will expire July 9, 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:

The statutory authority for this regulation is contained in Section 2808(2-c)(d) of the Public Health Law (PHL) as enacted by Section 95 of Part H of Chapter 59 of the Laws of 2011, which authorizes the Commissioner to promulgate regulations, including emergency regulations, with regard to Medicaid reimbursement rates for residential health care facilities. Such rate regulations are set forth in Subpart 86-2 of Title 10 (Health) of the Official Compilation of Codes, Rules, and Regulation of the State of New York.

Legislative Objectives:

Subpart 86-2 of Title 10 (Health) of the Official Compilation of Codes, Rules and Regulation of the State of New York, will be amended by adding a new section 2.39 to provide this temporary adjustment to eligible residential health care facilities subject to or impacted by the closure, merger, acquisition, consolidation, or restructuring of a health care provider in their service delivery area. In addition, the proposed regulation sets forth the conditions under which a provider will be considered eligible, the requirements for requesting a temporary rate adjustment, and the conditions that must be met in order to receive a temporary rate adjustment. The temporary rate adjustment shall be in effect for a specified period of time, as approved by the Commissioner, of up to three years. This regulation is necessary in order to maintain beneficiaries' access to services by providing needed relief to providers who meet the criteria.

Proposed section 86-2.39(c) requires providers seeking a temporary rate adjustment to submit a written proposal demonstrating that the additional resources provided by a temporary rate adjustment will achieve one or more of the following: (i) protect or enhance access to care; (ii) protect or enhance quality of care; (iii) improve the cost effectiveness of

the delivery of health care services; or (iv) otherwise protect or enhance the health care delivery system, as determined by the Commissioner. The proposed amendment permits the Commissioner to establish benchmarks and goals, in conformity with a provider's written proposal as approved by the Commissioner, and to require the provider to submit periodic reports concerning the provider's progress toward achievement of such. Failure to achieve satisfactory progress in accomplishing such benchmarks and goals, as determined by the Commissioner, shall be a basis for ending the provider's temporary rate adjustment prior to the end of the specified timeframe.

Needs and Benefits:

In the center of a changing health care delivery system, the closure of a health care provider within a community often happens without adequate planning of resources for the remaining health care providers in the service delivery area. In addition, maintaining access to needed services while also maintaining or improving quality becomes challenging for the remaining providers. The additional reimbursement provided by this adjustment will support the remaining providers in achieving these goals, thus improving quality while reducing health care costs.

Costs:

Costs to Private Regulated Parties:

There will be no additional costs to private regulated parties. The only additional data requested from providers would be periodic reports demonstrating progress against benchmarks and goals.

Costs to State Government:

There is no additional aggregate increase in Medicaid expenditures anticipated as a result of these regulations, as the cost of the temporary rate adjustment will be offset by the overall reduction in Medicaid expenditures due to the closure, merger, acquisition, consolidation, or restructuring.

Costs to Local Government:

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

Costs to the Department of Health:

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

Local Government Mandates:

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

Paperwork:

An eligible provider must submit a written proposal, including a proposed budget. If a temporary rate adjustment is approved for a provider, the provider must submit periodic reports, as determined by the Commissioner, concerning the achievement of benchmarks and goals that are established by the Commissioner and are in conformity with the provider's approved written proposal.

Duplication:

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

Alternatives:

No significant alternatives are available. Any potential projects that would otherwise qualify for funding pursuant to the revised regulation would, in the absence of this amendment, either not proceed or would require the use of existing provider resources.

Federal Standards:

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

Compliance Schedule:

The proposed regulation provides the Commissioner of Health the authority to grant approval of temporary adjustments to rates calculated for residential health care facilities that are subject to or affected by the closure, merger, acquisition, consolidation, or restructuring of a health care facility, for a specified period of time, as determined by the Commissioner, of up to three years.

Regulatory Flexibility Analysis

Effect of Rule:

For the purpose of this regulatory flexibility analysis, small businesses were considered to be residential health care facilities with 100 or fewer full-time equivalents. Based on recent financial and statistical data extracted from Residential Health Care Facility Cost Reports, approximately 40 residential health care facilities were identified as employing fewer than 100 employees.

No health care providers subject to this regulation will see a Medicaid rate decrease as a result of this regulation.

This rule will have no direct effect on local governments.

Compliance Requirements:

Providers that are granted a temporary rate adjustment must submit periodic reports, as determined by the Commissioner, concerning the

achievement of benchmarks and goals that are established by the Commissioner and are in conformity with the provider’s approved written proposal.

The rule will have no direct effect on local governments.

Professional Services:

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

Compliance Costs:

No initial capital costs will be imposed as a result of this rule, nor 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 because there are no technological requirements other than the use of existing technology, and the overall economic aspect of complying with the requirements is expected to be minimal.

Minimizing Adverse Impact:

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

Small Business and Local Government Participation:

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

Rural Area Flexibility Analysis

Effect on Rural Areas:

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

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

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

Albany	Erie	Oneida
Broome	Monroe	Onondaga
Dutchess	Niagara	Orange

Compliance Requirements:

For residential health care facilities that receive the temporary rate adjustment, periodic reports must be submitted concerning the achievement of benchmarks and goals as approved by the Commissioner.

Professional Services:

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

Compliance Costs:

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

Minimizing Adverse Impact:

This regulation provides needed relief to eligible providers, thus a posi-

tive impact for small businesses that are eligible and no impact for the remainder. In addition, local districts’ share of Medicaid costs is statutorily capped; therefore, there will be no adverse impact to local governments as a result of this proposal.

Rural Area Participation:

A concept paper was shared with the hospital and long-term care industry associations, both of which include members from rural areas. Comments were received and taken into consideration while drafting the regulations. In addition, a Federal Public Notice, published in the New York State Register invited comments and questions from the general public.

Job Impact Statement

A Job Impact Statement is not required pursuant to Section 201-a(2)(a) of the State Administrative Procedure Act. It is apparent, from the nature and purpose of the proposed rule, that it will not have a substantial adverse impact on jobs or employment opportunities. The proposed regulation provides a temporary rate adjustment to eligible residential health care facilities that are subject to or impacted by the closure, merger, acquisition, consolidation, or restructuring of a health care provider in its service delivery area. In addition, the proposed regulation sets forth the conditions under which a provider will be considered eligible, the requirements for requesting a temporary rate adjustment, and the conditions that must be met in order to receive a temporary rate adjustment. The proposed regulation has no implications for job opportunities.

**EMERGENCY
RULE MAKING**

Temporary Rate Adjustment (TRA) - Licensed Ambulatory Care Facilities (LACF)

I.D. No. HLT-14-12-00008-E

Filing No. 449

Filing Date: 2012-05-11

Effective Date: 2012-05-11

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

Action taken: Addition of section 86-8.15 to 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: Paragraph (e) of subdivision 2-a of Section 2807 of the Public Health Law (as added by Section 2 of Part C of Chapter 58 of the Laws of 2009) specifically provides the Commissioner of Health with authority to issue emergency regulations in order to compute rates of payment for Article 28 licensed ambulatory care providers as authorized in accordance with the provisions of such subdivision 2-a.

Subject: Temporary Rate Adjustment (TRA) - Licensed Ambulatory Care Facilities (LACF).

Purpose: Expand TRA to include Article 28 LACFs subject to or affected by closure, merger, acquisition, consolidation, or restructuring.

Text of emergency rule: Subpart 86-8 of title 10 of NYCRR is amended by adding a new section 86-8.15, to read as follows:

86-8.15 Closures, mergers, acquisitions, consolidations, restructurings and inpatient bed de-certifications. (a) The commissioner may grant approval of a temporary adjustment to the non-capital components of rates calculated pursuant to this subpart for eligible ambulatory care facilities licensed under article 28 of the Public Health Law ("PHL").

(b) Eligible facilities shall include:

(1) facilities undergoing closure;

(2) facilities impacted by the closure of other health care facilities;

(3) facilities subject to mergers, acquisitions, consolidations or restructuring;

(4) facilities impacted by the merger, acquisition, consolidation or restructuring of other health care facilities; or

(5) outpatient facilities of general hospitals which have entered into an agreement with the Department to permanently decertify a specified number of staffed hospital inpatient beds, as reported to the Department.

(c) Facilities seeking rate adjustments under this section shall demonstrate through submission of a written proposal to the commissioner that the additional resources provided by a temporary rate adjustment will achieve one or more of the following:

(1) protect or enhance access to care;

(2) protect or enhance quality of care;

(3) improve the cost effectiveness of the delivery of health care services; or
 (4) otherwise protect or enhance the health care delivery system, as determined by the commissioner.

(d)(1) Such written proposal shall be submitted to the commissioner at least sixty days prior to the requested effective date of the temporary rate adjustment and shall include a proposed budget to achieve the goals of the proposal. Any temporary rate adjustment issued pursuant to this section shall be in effect for a specified period of time as determined by the commissioner, of up to three years. At the end of the specified timeframe, the facility shall be reimbursed in accordance with the otherwise applicable rate-setting methodology as set forth in applicable statutes and this Subpart. The commissioner may establish, as a condition of receiving such a temporary rate adjustment, benchmarks and goals to be achieved in conformity with the facility's written proposal as approved by the commissioner and may also require that the facility submit such periodic reports concerning the achievement of such benchmarks and goals as the commissioner deems necessary. Failure to achieve satisfactory progress, as determined by the commissioner, in accomplishing such benchmarks and goals shall be a basis for ending the facility's temporary rate adjustment prior to the end of the specified timeframe.

(2) The commissioner may require that applications submitted pursuant to this section be submitted in response to and in accordance with a Request For Applications or a Request For Proposals issued by the commissioner.

(e) Federally qualified health centers with reimbursement rates issued pursuant to PHL § 2807(8) may apply for a temporary rate adjustment pursuant to this section as an alternative rate-setting methodology in accordance with the provisions of PHL § 2807(8)(f).

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-14-12-00008-P, Issue of April 4, 2012. The emergency rule will expire July 9, 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:

The statutory authority for this regulation is contained in Section 2807(2-a)(e) of the Public Health Law (PHL) which authorizes the Commissioner to promulgate regulations, including emergency regulations, with regard to Medicaid reimbursement rates for outpatient services. Such outpatient rate regulations are set forth in Subpart 86-8 of Title 10 (Health) of the Official Compilation of Codes, Rules, and Regulation of the State of New York.

Legislative Objectives:

Subpart 86-8 of Title 10 (Health) of the Official Compilation of Codes, Rules and Regulation of the State of New York, will be amended to add this Section 8.15, which provides the commissioner authority to grant temporary rate adjustments to eligible Article 28 licensed ambulatory care providers subject to or affected by the closure, merger, acquisition, consolidation, or restructuring of a health care provider in their service delivery area. In addition, the proposed regulation sets forth the conditions under which a provider will be considered eligible, the requirements for requesting a temporary rate adjustment, and the conditions that must be met in order to receive a temporary rate adjustment. The temporary rate adjustment shall be in effect for a specified period of time, as approved by the Commissioner, of up to three years. This regulation is necessary in order to maintain beneficiaries' access to services by providing needed relief to providers that meet the criteria.

Proposed section 86-8.15 requires providers seeking a temporary rate adjustment to submit a written proposal demonstrating that the additional resources provided by a temporary rate adjustment will achieve one or more of the following: (i) protect or enhance access to care; (ii) protect or enhance quality of care; (iii) improve the cost effectiveness of the delivery of health care services; or (iv) otherwise protect or enhance the health care delivery system, as determined by the Commissioner. The proposed amendment permits the Commissioner to establish benchmarks and goals, in conformity with a provider's written proposal as approved by the Commissioner, and to require the provider to submit periodic reports concerning its progress toward achievement of such. Failure to achieve satisfactory progress in accomplishing such benchmarks and goals, as determined by the Commissioner, shall be a basis for ending the provider's temporary rate adjustment prior to the end of the specified timeframe.

Needs and Benefits:

In the center of a changing health care delivery system, the closure, merger, acquisition, consolidation or restructuring of a health care provider

within a community often happens without adequate planning of resources for the impact on health care providers in the service delivery area. In addition, maintaining access to needed services while also maintaining or improving quality becomes challenging for the impacted providers. The additional reimbursement provided by this adjustment will support the impacted Article 28 licensed ambulatory care providers in achieving these goals, thus improving quality while reducing health care costs.

Costs:

Costs to Private Regulated Parties:

There will be no additional costs to private regulated parties. The only additional data requested from providers would be periodic reports demonstrating progress against benchmarks and goals.

Costs to State Government:

There is no additional aggregate increase in Medicaid expenditures anticipated as a result of these regulations, as the cost of the temporary rate adjustment will be offset by the overall reduction in Medicaid expenditures due to the closure, merger, acquisition, consolidation or restructuring occurring in a particular service delivery area.

Costs to Local Government:

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

Costs to the Department of Health:

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

Local Government Mandates:

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

Paperwork:

An eligible provider must submit a written proposal, including a proposed budget. If a temporary rate adjustment is approved for a provider, the provider must submit periodic reports, as determined by the Commissioner, concerning the achievement of benchmarks and goals that are established by the Commissioner and are in conformity with the provider's approved written proposal.

Duplication:

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

Alternatives:

No significant alternatives are available. Any potential ambulatory care provider project that would otherwise qualify for funding pursuant to the revised regulation would, in the absence of this amendment, either not proceed or would require the use of existing provider resources.

Federal Standards:

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

Compliance Schedule:

The proposed regulation provides the Commissioner of Health the authority to grant approval of temporary adjustments to rates calculated for Article 28 licensed ambulatory care providers that are subject to or affected by the closure, merger, acquisition, consolidation, or restructuring of a health care provider, for a specified period of time, as determined by the Commissioner, of up to three years.

Regulatory Flexibility Analysis

Effect of Rule:

For the purpose of this regulatory flexibility analysis, small businesses were considered to be Article 28 licensed ambulatory care providers with 100 or fewer full-time equivalents. Based on recent financial and statistical data extracted from the Institutional Cost Report, 384 Article 28 licensed ambulatory care providers were identified as employing fewer than 100 employees.

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

This rule will have no direct effect on local governments.

Compliance Requirements:

Article 28 licensed ambulatory care providers that receive the temporary rate adjustment under this regulation will be required to submit periodic reports demonstrating their progress toward benchmarks and goals established by the Commissioner.

The rule will have no direct effect on local governments.

Professional Services:

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

Compliance Costs:

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

Economic and Technological Feasibility:

Small businesses will be able to comply with the economic and technological aspects of this rule. The proposed amendments are techno-

logically feasible because it requires the use of existing technology. The overall economic impact to comply with the requirements of this regulation is expected to be minimal.

Minimizing Adverse Impact:

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

Small Business and Local Government Participation:

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

Rural Area Flexibility Analysis

Effect on Rural Areas:

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

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

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

Albany	Erie	Oneida
Broome	Monroe	Onondaga
Dutchess	Niagara	Orange

Compliance Requirements:

For Article 28 licensed ambulatory care providers that receive the temporary rate adjustment, periodic reports must be submitted which demonstrate the achievement of benchmarks and goals set by the Commissioner.

Professional Services:

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

Compliance Costs:

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

Minimizing Adverse Impact:

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

Rural Area Participation:

The proposal resulting in this regulation was endorsed by the Medicaid Redesign Team, which was established by the Governor. The Medicaid Redesign Team included members representing ambulatory care providers and rural areas and utilized a very public approach for soliciting both proposals and feedback from stakeholders and the public in general.

Job Impact Statement

A Job Impact Statement is not required pursuant to Section 201-a(2)(a) of the State Administrative Procedure Act. It is apparent, from the nature and

purpose of the proposed rule, that it will not have a substantial adverse impact on jobs or employment opportunities. The proposed regulation provides for a temporary rate adjustment to eligible Article 28 ambulatory care providers subject to or affected by the closure, merger, acquisition, consolidation, or restructuring of a health care provider in its service delivery area. The proposed regulation has no implications for job opportunities.

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

Limits on Executive Compensation and Administrative Expenses in Agency Procurements

I.D. No. HLT-22-12-00012-P

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

Proposed Action: Addition of Part 1002 to Title 10 NYCRR.

Statutory authority: Social Services Law, section 363-a(2); and Public Health Law, sections 201(1)(o), (p), 206(3) and (6)

Subject: Limits on Executive Compensation and Administrative Expenses in Agency Procurements.

Purpose: Ensure state funds and state authorized payments are expended in the most efficient manner and appropriate use of funds.

Substance of proposed rule (Full text is posted at the following State website: www.health.ny.gov): The Department proposes regulations to implement Governor Cuomo's Executive Order 38, which sets forth standards for executive compensation paid by, and administrative expenses paid to, covered providers receiving state funds or state authorized payments. The regulations define key terms including "administrative expenses," "program services expenses," and "covered provider," and provide standards to be used in determining whether a covered provider's executive compensation and administrative costs are within certain limits. The regulations further provide means for waivers with regard to the executive compensation and administrative cost limits under limited circumstances and subject to specific criteria. Finally, the regulations provide for review of decisions denying requests for waiver, penalties for failure to comply with applicable limitations, and covered entity reporting obligations.

Text of proposed 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

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

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

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

Regulatory Impact Statement

Statutory Authority:

The authority for the promulgation of these regulations is contained section 363-a(2) of the Social Services law and in sections 201(1)(o), 201(1)(p), 206(3) and 206(6) of the Public Health Law.

Legislative Objectives:

This rule furthers the proper use of funds in furtherance of the Department's oversight of the various programs and procurements for which it pays, or authorizes payment.

Needs and Benefits:

The New York State Department of Health is proposing to adopt the following regulation because the State of New York directly or indirectly funds with taxpayer dollars a large number of tax exempt organizations and for-profit entities that provide critical services to New Yorkers in need and the goal is to ensure that taxpayers' dollars are used properly, efficiently, and effectively to improve the lives of New Yorkers. In certain instances, providers of services that receive State funds or State-authorized payments have used such funds to pay for excessive administrative costs or inflated compensation for their senior executives, rather than devoting a greater proportion of such funds to providing direct care or services to their clients. Such abuses involving public funds harm both the people of New York who are paying for such services, and those persons who must depend upon such services to be available and well-funded. These regulations, which are required by Executive Order No. 38, will ensure that State funds or State-authorized payments paid by this agency to providers are not used to support excessive compensation or unnecessary administrative costs.

Costs:

The costs of implementing this rule to affected providers is anticipated to be minimal as most, if not all, of the information that must be reported by such providers is already gathered or reported for other purposes. The costs to the agency of such implementation is expected to be very limited as well, and efforts to ensure efficient centralization of certain aspects of such implementation are underway.

Paperwork/Reporting Requirements:

The proposed regulatory amendments will require limited additional information to be reported to the agency by providers receiving State funds or State-authorized payments. To the extent feasible, such reporting shall be made electronically to avoid unnecessary paperwork costs.

Local Government Mandates:

The proposed regulatory amendments do not anticipate any additional mandates.

Duplication:

This proposed rule does not duplicate, overlap, or conflict with any State or federal statute or rule. However, the proposed rule seeks to minimize the reporting requirements faced by providers by building upon those requirements in the federal internal revenue code that require certain tax-exempt organizations to report information concerning their executive compensation and administrative costs.

Alternatives:

Executive Order #38 requires the adoption of this proposed regulation.

Federal Standards:

These amendments do not conflict with federal standards.

Compliance Schedule:

This rule takes effect January 1, 2013.

Regulatory Flexibility Analysis

A Regulatory Flexibility Analysis for Small Businesses and Local Governments is not being submitted with this notice because the proposed rule will not impose any adverse economic impact on small businesses, nor will it impose new reporting, recordkeeping or other compliance requirements on small businesses or local governments.

Rural Area Flexibility Analysis

A Rural Area Flexibility Analysis is not being submitted with this notice because the proposed rule will not impose any adverse economic impact on rural areas.

Job Impact Statement

A Job Impact Statement is not being submitted with this notice because it is evident from the subject matter of the regulation that it will have no impact on jobs and employment opportunities.

Division of Housing and Community Renewal

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Limits on State-Funded Administrative Costs and Executive Compensation

I.D. No. HCR-22-12-00018-P

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

Proposed Action: Addition of Part 2658 to Title 9 NYCRR.

Statutory authority: Public Housing Law, section 19; and Executive Order No. 38

Subject: Limits on state-funded administrative costs and executive compensation.

Purpose: To ensure that State funds are not used to support excessive compensation or unnecessary administrative costs.

Substance of proposed rule (Full text is posted at the following State website: www.nyshcr.org): The proposed regulations add a new Part 2658 to 9 NYCRR, Limits on Administrative Costs and Executive Compensation.

Section 2658.4. Contains definitions for administrative costs, allowable operating expenses, covered executive, covered provider, executive compensation, program services, program services costs, related entity, reporting period, State-authorized payments, and State funds.

Section 2658.5. Limits on Administrative Costs. Effective January 1,

2013, no less than 75% of the State funds or State-authorized payments to a covered provider for allowable operating expenses shall be used for program services costs rather than for administrative costs. This percentage shall increase by 5% each year until it shall be at no less than 85% for the calendar year 2015 and for each calendar year thereafter.

The restriction applies to subcontractors of covered providers which provide program and/or management services which meet the specified criteria.

The restriction is applied to providers receiving State funds or State-authorized payments from county or local government.

The proposed regulation addresses how the restriction will apply in the event that a covered provider has multiple sources of State funds or State-authorized payments.

Section 2658.6. Limits on Executive Compensation. A limit on executive compensation of \$199,000 per annum is applied to covered executives of covered providers. Where a covered provider is reimbursed with State funds or State-authorized payments using a cost-based methodology or pursuant to a contract that specifies the extent of reimbursement for executive compensation, the limit applies to reimbursement with State funds or State-authorized payments for executive compensation. Otherwise the limit applies to executive compensation.

The limit does not apply to specific program services that also may be rendered by the covered executive outside of his or her managerial or policy-making activities.

A provision discusses the application of this limit if the covered provider has multiple sources of State funds or State-authorized payments.

Section 2658.7. Waivers. Processes are established for covered providers to seek waivers of the limit on administrative costs and the limit on executive compensation.

Section 2658.8. Reporting by Covered Providers. Covered providers are required to report information pertinent to administrative costs and executive compensation on an annual basis.

Section 2658.9. Penalties. A process is established for the imposition of penalties in the event of non-compliance with the limit on administrative costs, the limit on executive compensation, and/or the reporting requirement.

Text of proposed rule and any required statements and analyses may be obtained from: Brian P. McCartney, Division of Housing and Community Renewal, 38-40 State Street, Albany, NY 12207, (518) 473-1007, email: bmccartney@nyshcr.org

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

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

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

Regulatory Impact Statement

Statutory Authority: Executive Order No. 38, dated January 18, 2012, as continued by Executive Order No. 43, dated April 13, 2012; N.Y. Public Housing Law, section 19.

Legislative Objectives: To limit administrative expenses and executive compensation of providers of program services in order to meet the State's ongoing obligation to ensure the proper use of taxpayer dollars and the most effective provision of such services to the public.

Needs and Benefits: The Division of Housing and Community Renewal is proposing to adopt the following regulation because the State of New York directly or indirectly funds with taxpayer dollars a large number of tax exempt organizations and for-profit entities that provide critical services to New Yorkers in need, and the goal is to ensure that taxpayers' dollars are used properly, efficiently, and effectively to improve the lives of New Yorkers. In certain instances, providers of services that receive State funds or State-authorized payments have used such funds to pay for excessive administrative costs or inflated compensation for their senior executives, rather than devoting a greater proportion of such funds to providing direct care or services to their clients. Such abuses involving public funds harm both the people of New York who are paying for such services, and those persons who must depend upon such services to be available and well-funded. These regulations, which are required by Executive Orders No. 38 and 43, will ensure that State funds or State-authorized payments paid by this agency to providers are not used to support excessive compensation or unnecessary administrative costs.

Costs: The costs of implementing this rule to affected providers is anticipated to be minimal since most, if not all, of the information that must be reported by such providers is already gathered or reported for other purposes. The agency cost of such implementation is expected to be very limited as well, and efforts to ensure efficient centralization of certain aspects of such implementation are underway.

Local Government Mandates: The proposed regulation does not anticipate any additional mandates.

Paperwork/Reporting Requirements: The proposed regulation will

require limited additional information to be reported to the agency by providers receiving State funds or State-authorized payments. To the extent feasible, such reporting shall be made electronically in order to avoid unnecessary paperwork costs.

Duplication: This proposed rule does not duplicate, overlap, or conflict with any State or federal statute or rule. However, the proposed rule seeks to minimize the reporting requirements faced by providers by building upon those requirements in the federal internal revenue code that require certain tax-exempt organizations to report information concerning their executive compensation and administrative costs.

Alternatives: Executive Orders No. 38 and No. 43 require the adoption of this proposed regulation.

Federal Standards: This proposed regulation does not conflict with federal standards.

Compliance Schedule: This rule will take effect on January 1, 2013.

Regulatory Flexibility Analysis

A Regulatory Flexibility Analysis for Small Businesses and Local Governments is not being submitted with this notice because the proposed rule will not impose any adverse economic impact on small businesses, nor will it impose new reporting, record keeping or other compliance requirements on small businesses or local governments.

Rural Area Flexibility Analysis

A Rural Area Flexibility Analysis is not being submitted with this notice because the proposed rule will not impose any adverse economic impact on rural areas.

Job Impact Statement

A Job Impact Statement is not being submitted with this notice because it is evident from the subject matter of the regulation that it will have no impact on jobs and employment opportunities.

Office of Mental Health

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Limits on Administrative Expenses and Executive Compensation

I.D. No. OMH-22-12-00019-P

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

Proposed Action: Addition of Part 513 to Title 14 NYCRR.

Statutory authority: Mental Hygiene Law, sections 7.09, 7.15(a), (b), 31.04, 31.05(a), 41.03, 41.15, 41.18, 41.44, 43.02; and Executive Order No. 38

Subject: Limits on Administrative Expenses and Executive Compensation.

Purpose: To implement Executive Order No. 38 to limit administrative expenses and executive compensation of providers of services.

Substance of proposed rule (Full text is posted at the following State website: www.omh.ny.gov): The State of New York directly or indirectly funds with taxpayer dollars a large number of tax exempt organizations and for-profit entities that provide critical services to New Yorkers in need. The goal of this proposed rule is to ensure that taxpayers' dollars are used properly, efficiently, and effectively to improve the lives of New Yorkers. It is imperative that New York State and the New York State Office of Mental Health ensure that State funds and State-authorized funds are optimized for the purpose of providing services to those individuals who are in need of them. Utilizing State funds and State-authorized funds primarily for the provision of direct care and services helps to guarantee that such funds are providing the greatest benefit to persons in New York State who are in need of mental health services. These regulations, which are required by Executive Order No. 38, will ensure that State funds or State-authorized payments paid to providers of services by the New York State Office of Mental Health are used predominantly to provide direct care and services to persons in need of mental health services. In order to achieve these goals, the New York State Office of Mental Health is proposing a new 14 NYCRR Part 513 as follows:

Section 513.1 sets forth the background and intent of the proposed rule.

Section 513.2 establishes the legal base for the proposed rule.

Section 513.3 clarifies the entities that are covered by the proposed rule.

Section 513.4 sets forth the definitions that are applicable to the proposed rule.

Section 513.5 outlines the limits on administrative expenses. Specifically, this section details the percentage of State funds and State-authorized funds that must be used to fund program services as opposed to administrative expenses. This section also provides that the limit on administrative expenses applies to covered providers as well as to (i) subcontractors and agents of covered providers that are related entities that receive State funds or State-authorized payments from the covered provider, and (ii) covered providers whose contract or agreement is with, or which receives State funds or State-authorized payments directly from, a county or local unit of government rather than directly from a state agency. Further, section 513.5 states that the New York State Office of Mental Health or its designee, rather than the county or local governmental unit, is responsible for obtaining the necessary reporting from and compliance by covered providers with the proposed regulations.

Section 513.6 details the limits on executive compensation. Subdivisions (a) and (b) of section 513.6 outline how executive compensation will be limited and what methods will be used to determine that compensation limit. Subdivisions 513.6(c), (d), (e) and (f) further detail the factors that will be considered when determining the limits on executive compensation.

Section 513.7 sets forth the factors and procedures under which waiver of the executive compensation limits and waiver of the reimbursement for administrative expenses will be considered. Subdivision (c) of section 513.7 details the procedure to be followed in the event a request for a waiver of the executive compensation limits and/or reimbursement of administrative expenses is denied.

Section 513.8 specifies the reporting procedures that must be followed by the covered entities. This section also outlines the potential penalties for the failure to report.

Section 513.9 provides the procedure for penalizing and the potential penalties for non-compliant covered entities. This section details the steps that will be taken if non-compliance is suspected. These steps include a preliminary determination of non-compliance, a corrective action period, the filing, review and acceptance of a corrective action plan, the ramifications of a failure to cure the non-compliance issues and the appeal procedure.

The complete proposed regulatory text is found at: http://www.omh.ny.gov/omhweb/policy_and_regulations/

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

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

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

Regulatory Impact Statement

1. Statutory Authority: Sections 7.09 and 31.04 of the Mental Hygiene Law grant the Commissioner of the Office of Mental Health the power and responsibility to adopt regulations that are necessary and proper to implement matters under his or her jurisdiction, and to set standards of quality and adequacy of facilities, equipment, personnel, services, records and programs for the rendition of services for adults diagnosed with mental illness or children diagnosed with emotional disturbance, pursuant to an operating certificate.

Section 7.15(a) of the Mental Hygiene Law charges the Commissioner with the responsibility for promoting, establishing, developing, coordinating and conducting programs and services for the benefit of persons with mental illness within the funding available for such purposes.

Section 7.15(b) of the Mental Hygiene Law provides the Commissioner with the authority to cooperate and enter into agreements with other state, local and federal departments or agencies in fulfilling his or her responsibilities.

Section 31.05(a) of the Mental Hygiene Law establishes the criteria for the issuance of an operating certificate, including that the premises, equipment, personnel, records, and program are adequate and appropriate to provide services for persons with mental illness.

Section 41.03 of the Mental Hygiene Law provides that the meaning of operating costs shall be in accordance with and subject to the regulations of the Commissioner of Mental Health.

Sections 41.15 and 41.18 of the Mental Hygiene Law provide that the Commissioner of Mental Health has the authority to approve the net operating costs of programs incurred pursuant to an approved local services plan that are eligible for state aid.

Section 41.44 provides that the Commissioner may provide state aid to local governments and to voluntary agencies within amounts available therefor and subject to regulations established by him or her.

Section 43.02 of the Mental Hygiene Law provides that the Commissioner has the power to establish standards and methods for determining rates of payment made by government agencies pursuant to Title 11 of

Article 5 of the Social Services Law for services, other than inpatient services, provided by facilities, including hospitals, licensed by the Office of Mental Health.

Section 43.02(b) of the Mental Hygiene Law requires operators of facilities licensed by the Office of Mental Health to furnish such financial, statistical and program information as the Commissioner may determine to be necessary.

Executive Order No. 38 directs the Commissioner of each Executive State Agency that provides State financial assistance or State-authorized payments to providers of services, including the Office of Mental Health, to promulgate regulations and take any other actions within the agency's authority, including amending agreements with such providers, to address the extent and nature of a provider's administrative costs and executive compensation that shall be eligible to be reimbursed with State financial assistance or State-authorized payments for operating expenses. Executive Order No. 43 extends the time for agencies to comply with Executive Order No. 38.

2. Legislative Objectives: Article 7 of the Mental Hygiene Law provides that the Office of Mental Health and its Commissioner shall plan and work with local governments, voluntary agencies and all providers and consumers of mental health services in order to develop an effective, integrated, comprehensive system for the delivery of all services to persons with mental illness and to create financing procedures and mechanisms to support such a system of services to ensure that persons with mental illness in need of services received appropriate care and treatment.

This regulation serves to comply with Executive Order No. 38 and furthers the legislative policy of providing high quality mental health services to individuals with mental illness in a cost-effective manner.

3. Needs and Benefits: The Office of Mental Health is proposing to adopt the following regulation because the State of New York directly or indirectly funds with taxpayer dollars a large number of tax exempt organizations and for-profit entities that provide critical services to New Yorkers in need. The goal of this regulation is to ensure that taxpayers' dollars are used properly, efficiently, and effectively to improve the lives of New Yorkers. In certain instances, providers of services that receive State funds or State-authorized payments have used such funds to pay for excessive administrative costs or inflated compensation for their senior executives, rather than devoting a greater proportion of such funds to providing direct care or services to their clients. Such abuses involving public funds harm both the people of New York who are paying for such services, and those persons who must depend upon such services to be available and well-funded. These regulations, which are required by Executive Order No. 38, will ensure that State funds or State-authorized payments paid by this agency to providers are not used to support excessive compensation or unnecessary administrative costs.

4. Costs:

(a) cost to State government: The costs to State government are expected to be very limited, and efforts to ensure efficient centralization of certain aspects of such implementation are underway.

(b) cost to local government: There are no costs anticipated to local government.

(c) cost to regulated parties: The costs to regulated parties are anticipated to be minimal as most, if not all, of the information that must be reported by such providers is already gathered or reported for other purposes.

5. Local Government Mandates: These regulatory amendments will not result in any additional imposition of duties or responsibilities upon county, city, town, village, school or fire districts.

6. Paperwork: The proposed regulatory amendments will require limited additional information to be reported to the agency by providers receiving State funds or State-authorized payments. To the extent feasible, such reporting shall be made electronically to avoid unnecessary paperwork costs.

7. Duplication: The proposed rule does not duplicate, overlap or conflict with any State or Federal statute or rule. However, the proposed rule seeks to minimize the reporting requirements faced by providers by building upon those requirements in the Federal Internal Revenue Code that require certain tax-exempt organizations to report information concerning their executive compensation and administrative costs.

8. Alternatives: No alternatives were considered. Executive Order No. 38 requires the adoption of this proposed regulation.

9. Federal Standards: The regulatory amendments do not conflict with Federal standards.

10. Compliance Schedule: This rule takes effect January 1, 2013.

Regulatory Flexibility Analysis

A Regulatory Flexibility Analysis for Small Businesses and Local Governments is not being submitted with this notice because the proposed rule will not impose any adverse economic impact on small businesses, nor will it impose new reporting, recordkeeping or other compliance requirements on small businesses or local governments.

Rural Area Flexibility Analysis

A Rural Area Flexibility Analysis is not being submitted with this notice because the proposed rule will not impose any adverse economic impact on rural areas.

Job Impact Statement

A Job Impact Statement is not being submitted with this notice because it is evident from the subject matter of the regulation that it will have no impact on jobs and employment opportunities.

Department of Motor Vehicles

NOTICE OF ADOPTION

Light Vehicle Diesel Inspections

I.D. No. MTV-13-12-00004-A

Filing No. 455

Filing Date: 2012-05-15

Effective Date: 2012-07-01

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

Action taken: Amendment of Part 79 of Title 15 NYCRR.

Statutory authority: Vehicle and Traffic Law, sections 215(a), 301(a), (f), 302(a), (e), 304(b) and 304-a

Subject: Light vehicle diesel inspections.

Purpose: Require ODB II inspections on 1997 model year or newer light duty diesel passenger cars and trucks or light duty diesel vehicles.

Text or summary was published in the March 28, 2012 issue of the Register, I.D. No. MTV-13-12-00004-P.

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

Text of rule and any required statements and analyses may be obtained from: Heidi Bazicki, Department of Motor Vehicles, 6 Empire State Plaza, Rm. 526, Albany, NY 12228, (518) 471-0871, email: heidi.bazicki@dmv.ny.gov

Assessment of Public Comment

The agency received no public comment.

Office for People with Developmental Disabilities

PROPOSED RULE MAKING HEARING(S) SCHEDULED

Limits on Administrative Expenses and Executive Compensation

I.D. No. PDD-22-12-00020-P

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

Proposed Action: Addition of Part 645 to Title 14 NYCRR.

Statutory authority: Mental Hygiene Law, sections 13.09(b) and 43.02

Subject: Limits on administrative expenses and executive compensation.

Purpose: To curb abuses in executive compensation and administrative expenses and ensure that taxpayer dollars are used to help persons in need.

Public hearing(s) will be held at: 11:00 a.m., July 16, 2012 at Office of People with Developmental Disabilities, 75 Morton St., New York, NY; 1:00 p.m., July 18, 2012 at Capital District DDSO, Bldg. 3, Rm. 2, 500 Balltown Rd., Schenectady, NY.

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

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

Substance of proposed rule (Full text is posted at the following State website: www.opwdd.ny.gov): The proposed regulations add a new Part 645 to 14 NYCRR, Limits on Administrative Expenses and Executive Compensation.

Section 645.1. Applicability. This Part shall be applicable to covered providers which receive, pursuant to contract or other agreement with OPWDD or with another governmental agency, State funds from OPWDD or payments of funds that are not State funds but which are distributed or disbursed upon approval of OPWDD or by another governmental entity upon such approval or by virtue of the provider having an operating certificate from OPWDD.

Section 645.2. Definitions. The following terms are defined: administrative expenses, covered executive, covered operating expenses, covered provider, executive compensation, program services, program services expenses, related entity, reporting period, State-authorized payments, and State funds.

Section 645.3. Limits on Administrative Expenses. For the period commencing January 1, 2013, no less than 75% of the covered operating expenses paid for with State funds or State-authorized payments to a covered provider shall be used for program services expenses rather than for administrative expenses. This percentage shall increase by 5% each year until it shall be at no less than 85% for the calendar year 2015 and for each calendar year thereafter.

The restriction applies to subcontractors of covered providers which provide program and/or management services which meet the specified criteria.

The restriction is applied to providers receiving State funds or State-authorized payments from a county or local government.

The proposed regulation addresses how the restriction will apply in the event that a covered provider has multiple sources of State funds or State-authorized payments.

If the contract, grant, or other agreement is subject to more stringent limits on administrative expenses, whether through law or contract, such limits shall control and shall not be affected by the less stringent limits imposed by these regulations.

Section 645.4. Limits on Executive Compensation. For the period commencing January 1, 2013 (unless a waiver is granted), a limit on executive compensation of \$199,000 per annum is applied to covered executives of covered providers and related entities. OPWDD shall have the discretion to adjust this figure annually based on appropriate factors and subject to the approval of the Director of the Division of the Budget.

If a covered provider's or related entity's executive compensation given to a covered executive meets one of four specific criteria, the provider or related entity's executive compensation may exceed \$199,000 per annum.

The limit does not apply to specific program services that also may be rendered by the covered executive outside of his or her managerial or policy-making activities.

A provision discusses the application of this limit if the covered provider has multiple sources of State funds or State-authorized payments.

The limits on executive compensation also apply to subcontractors and agents of covered providers that are related entities as specified.

Other more stringent limits on executive compensation may be imposed by a contract, grant, or other agreement.

Section 645.5. Waivers.

Processes are established for covered providers to seek waivers of the limit on administrative expenses and the limit on executive compensation.

Section 645.6. Reporting.

Covered providers are required to report information pertinent to administrative expenses and executive compensation on an annual basis. Penalties are established for failure to report.

Section 645.7. Penalties.

A process is established for the imposition of penalties in the event of non-compliance with the requirements of sections 645.3 or 645.4.

Text of proposed rule and any required statements and analyses may be obtained from: Barbara Brundage, Director, Regulatory Affairs Unit, Office for People With Developmental Disabilities, 44 Holland Ave.,

Albany, NY 12229, (518) 474-1830, email: Barbara.Brundage@opwdd.ny.gov

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

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

Additional matter required by statute: Pursuant to the requirements of the State Environmental Quality Review Act, OPWDD, as lead agency, has determined that the action described herein will have no effect on the environment, and an E.I.S. is not needed.

Regulatory Impact Statement

1. Statutory Authority:

a. OPWDD has the statutory authority to adopt rules and regulations necessary and proper to implement any matter under its jurisdiction as stated in the New York State Mental Hygiene Law Section 13.09(b).

b. OPWDD has the statutory authority to adopt rules and regulations relating to reports concerning costs of providing services, as stated in section 43.02(c) of the Mental Hygiene Law.

2. Legislative Objectives: These proposed amendments further the legislative objectives embodied in sections 13.09(b) and 43.02 of the Mental Hygiene Law. The proposed amendments establish limits on administrative expenses and executive compensation.

3. Needs and Benefits: In January of this year, Governor Cuomo issued Executive Order 38, which directed each Executive State agency that provides State financial assistance or State-authorized payments to providers of services to promulgate regulations to address the extent and nature of a provider's administrative expenses and executive compensation that are eligible to be reimbursed with State financial assistance or State-authorized payments for operating expenses.

State Government in New York directly or indirectly funds, or authorizes reimbursements with other taxpayer dollars to, a large number of tax exempt organizations and for-profit entities that provide critical services to New Yorkers in need. State Government in New York also has an ongoing obligation to ensure that taxpayers' dollars are used properly, efficiently and effectively to improve the lives of New Yorkers and our communities.

In certain instances providers of services that receive State funds or State-authorized payments have used such funds to pay for excessive administrative expenses and outsized compensation for their senior executives, rather than devoting a greater proportion of such funds to providing direct care or services to individuals. Such abuses involving public funds harm both the people of New York who are paying for such services, and those persons who must depend upon such services to be available and well-funded.

These regulations are being proposed to curb such abuses in executive compensation and administrative costs and ensure that taxpayer dollars are used first and foremost to help New Yorkers in need.

4. Costs:

a. Costs to the agency and to the State and its local governments: The amendments do not make any changes in the overall amount of State funds and State-authorized payments which are provided to private agencies. Therefore, no changes are expected in costs to OPWDD, New York State or local governments.

b. Costs to private regulated parties: There will be no overall changes in the level of State funds or State-authorized payments received by agencies. In certain instances providers of services that receive State funds or State-authorized payments which currently use such funds to pay for excessive administrative expenses and outsized compensation for their senior executives will be required to redirect the expenditure of funds to the programs that serve individuals with developmental disabilities.

5. Local Government Mandates: There are no new requirements imposed by the rule on any county, city, town, village; or school, fire, or other special district.

6. Paperwork: The proposed amendments require covered providers to submit a new form to OPWDD on an annual basis in order to submit data necessary for OPWDD to monitor compliance with the requirements and for New York State to assess the impact of the requirements on the use of public funds to support excessive executive

compensation and administrative costs among providers. In the event that providers seek to qualify for an exception to the limit on executive compensation, the provider will need to document that it met specific criteria set forth in regulation. Paperwork will also be needed in the event that the provider seeks a waiver for the limit on executive compensation or the limit on administrative costs from OPWDD.

7. Duplication: The proposed amendments do not duplicate any existing State or Federal requirements that are applicable to services for persons with developmental disabilities.

8. Alternatives: OPWDD was required to propose these regulations pursuant to Executive Order 38 and did not consider any alternatives.

9. Federal Standards: The proposed amendments do not exceed any minimum standards of the federal government for the same or similar subject areas.

10. Compliance Schedule: OPWDD expects to finalize the proposed amendments as soon as possible consistent with the timeframes established by the State Administrative Procedure Act. Providers have been aware of the intention to impose limits on administrative costs and executive compensation since the issuance of Executive Order 38 in January, 2012. In addition, OPWDD will notify providers of the proposed rulemaking and its intent to finalize the proposed regulations. Therefore, well in advance of the promulgation of the regulations, providers will have had the opportunity to make any necessary changes and perform any actions needed to qualify for the exception to the limit on executive compensation. Furthermore, providers will have adequate time to develop and submit requests for waivers of the limits in advance of the promulgation of the regulations.

Regulatory Flexibility Analysis

A Regulatory Flexibility Analysis for Small Businesses and Local Governments is not being submitted with this notice because the proposed rule will not impose any adverse economic impact on small businesses, nor will it impose new reporting, record keeping or other compliance requirements on small businesses or local governments.

Rural Area Flexibility Analysis

A Rural Area Flexibility Analysis is not being submitted with this notice because the proposed rule will not impose any adverse economic impact on rural areas.

Job Impact Statement

A Job Impact Statement is not being submitted with this notice because it is evident from the subject matter of the regulation that it will have no impact on jobs and employment opportunities.

Public Service Commission

NOTICE OF WITHDRAWAL

Water Rates and Charges

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

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

Action taken: Notice of proposed rule making, I.D. No. PSC-49-11-00006-P, has been withdrawn from consideration. The notice of proposed rule making was published in the *State Register* on December 7, 2011.

Subject: Water rates and charges.

Reason(s) for withdrawal of the proposed rule: Withdrawn by staff for correction to the company submitting the petition.

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Waiver of the Odorization Requirement Specified in 16 NYCRR Section 255.625 for a 2.3 Mile Gas Transmission Line

I.D. No. PSC-22-12-00005-P

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

Proposed Action: The PSC is considering the petition of Norse Energy Corp. USA for a waiver of the odorization requirement specified in 16 NYCRR section 255.625 for a 2.3 mile gas transmission line in the town of Eaton, Madison County.

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

Subject: Waiver of the odorization requirement specified in 16 NYCRR section 255.625 for a 2.3 mile gas transmission line.

Purpose: To waive the odorization requirement specified in 16 NYCRR section 255.625 for a 2.3 mile gas transmission line.

Substance of proposed rule: The Commission is considering whether to approve, modify or reject, in whole or in part, the petition filed April 23, 2012 by Norse Energy Corp. USA (Norse) seeking a waiver of the odorization requirement specified in 16 NYCRR § 255.625 for a 2.3 mile gas transmission line in the town of Eaton, Madison County. Norse claims that the line was constructed to deliver gas to the pipeline of Dominion Transmission Inc., which will require that gas delivered into its pipeline be deodorized. Norse also argues that no useful purpose will be served by requiring the gas to be deodorized.

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

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

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

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

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

(12-G-0193SP1)

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Gas Balancing Service

I.D. No. PSC-22-12-00006-P

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

Proposed Action: The Commission is considering a proposed tariff filing by Rochester Gas & Electric Corporation (RG&E) to make revisions to its tariff schedule, P.S.C. No. 16—Gas.

Statutory authority: Public Service Law, sections 65 and 66

Subject: Gas Balancing Service.

Purpose: Provide RG&E flexibility to address changing market conditions and be able to cash out imbalances established in GTOP Manual.

Substance of proposed rule: The Commission is considering whether to approve, modify or reject, in whole or in part, a tariff filing by Rochester Gas and Electric Corporation (RG&E) to modify its tariff, whereby the methodology determining the applicable index prices for its cash out calculations will be established in the Gas Transportation and Operational Procedures (GTOP) manual. The proposed filing has an effective date of September 1, 2012. The Commission may resolve related matters.

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

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

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

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

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

(12-G-0216SP1)

Department of State

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Administrative Expenses and Executive Compensation of Providers of Services to New Yorkers

I.D. No. DOS-22-12-00017-P

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

Proposed Action: Addition of Part 144 to Title 19 NYCRR.

Statutory authority: Executive Law, section 91

Subject: Administrative expenses and executive compensation of providers of services to New Yorkers.

Purpose: To address limits on the use of State funds/State-authorized payments for administrative expenses and executive compensation.

Substance of proposed rule (Full text is posted at the following State website: www.dos.ny.gov): 144.1 Background and intent.

The purpose of this Part is to implement Executive Order No. 38, issued by Governor Andrew Cuomo on January 18, 2012. E.O. 38 provides for a limit on administrative expenses and executive compensation of providers of program services in order to meet the State's ongoing obligation to ensure the proper use of taxpayer dollars and the most effective provision of such services to the public.

144.2 Legal basis.

Section 91 of the Executive Law authorizes the Secretary of State to promulgate this Part subject to and in conformity with the provisions of the constitution and laws of the state.

144.3 Applicability.

This Part shall be applicable to covered providers as defined in section 144.4 of this Part which receive, pursuant to contract or other agreement with the Department or with another governmental agency, State funds from the Department or payments of funds that are not State funds but which are distributed or disbursed upon approval of the Department or by another governmental entity upon such approval or by virtue of the provider having an operating certificate from the Department.

144.4 Definitions.

For purposes of this Part:

(a) Administrative expenses are those expenses incurred in connection with the covered provider's overall management and necessary overhead that cannot be attributed directly to the provision of program services.

(b) Covered operating expenses shall mean program services expenses and administrative expenses authorized pursuant to applicable agency program regulations, contracts or other rules that govern reimbursement with State funds or State-authorized payments.

(c) Covered executive is a director, trustee, managing partner, officer, or employee whose salary and/or benefits, in whole or in part, are administrative expenses, and any employee whose salary and/or benefits, in whole or in part, are administrative expenses and whose executive compensation during the reporting period equaled or exceeded \$199,000.

(d) Covered provider.

(i) Covered provider is an entity or individual that:

(i) has received pursuant to contract or other agreement with the Department or with another governmental entity, State funds or State-authorized payments to render program services for at least two years prior to and during the covered reporting period and in an average annual amount greater than \$500,000 during those three years; and

(ii) at least thirty (30) percent of whose total annual in-state revenues for the most recent reporting period were derived from State funds or State-authorized payments. Where the covered provider is organized as a part of a corporate structure that includes a parent and a subsidiary corporation, the total annual in-state revenues shall be measured as consolidated at the parent level.

(e) Department shall mean Department of State.

(f) Executive compensation shall include all forms of reportable cash and noncash payments or benefits given directly or indirectly to a covered executive, including but not limited to salary and wages, bonuses, dividends and other financial arrangements or transactions such as personal vehicles, meals, housing, personal and family educational benefits, below-market loans, payment of personal or family travel, entertainment, and personal use of the organization's property, except that mandated benefits (e.g., Social Security, worker's compensation, unemployment insurance and disability insurance), and health insurance

premiums and pension contributions consistent with those provided to a covered provider's non-covered executive employees shall not be included in the calculation of executive compensation.

(g) Program services are those services rendered by a covered provider or its agent directly to and for the benefit of members of the public (and not for the benefit or on behalf of the State or the awarding agency) that are paid for in whole or in part by State funds or State-authorized funds.

(h) Program services expenses are those expenses incurred by a covered provider or its agent in direct connection with the provision of program services.

(i) Related entity shall mean any entity that meets one of the several tests included in the regulation.

(j) Reporting period shall mean the calendar year or, where applicable, the fiscal year used by a provider.

(k) State-authorized payments refer to those payments of funds that are not State funds but which are distributed or disbursed upon a New York state agency's approval or by another governmental unit within New York State upon such approval or to a provider by virtue of the provider having a State license in New York State to operate the program for which such payments are being made.

(l) State funds are those funds appropriated by law in the annual state budget pursuant to Article VII, Section 7 of the New York State Constitution.

144.5 Limits on Administrative Expenses.

(a) Limits on Allowable Administrative Expenses. For the period commencing January 1, 2013, no less than seventy-five percent of the covered operating expenses paid for with State funds or State-authorized payments shall be program services expenses rather than administrative expenses. This percentage shall increase by five percent each year until it shall be no less than eighty-five percent for the calendar year 2015 and for each calendar year thereafter.

(b) Subcontractors and Agents of Covered Providers. The restriction on allowable administrative expenses in subdivision (a) shall apply to subcontractors and agents of covered providers that are related entities if and to the extent that such a subcontractor or agent has received State funds or State-authorized payments from the covered provider during the reporting period.

(c) Covered Providers Receiving State Funds or State-Authorized Payments From County or Local Government. The restriction on allowable administrative expenses pursuant to this section shall apply to covered providers whose contract or agreement is with, or which receives State funds or State-authorized payments directly from, a county or local unit of government rather than directly from a state agency.

(d) Covered Providers with Multiple Sources of State Funds or State-Authorized Payments. If a covered provider receives State funds or State-authorized payments from multiple sources, the provider's compliance with the restriction on allowable administrative expenses in subsection A shall be determined based upon the total amount program services expenses and administrative expenses paid for by such funding received from all of such sources.

(e) Other Limits on Administrative Expenses. If the contract, grant, or other agreement is subject to more stringent limits on administrative expenses, whether through law or contract, such limits shall control and shall not be affected by the less stringent limits imposed by this regulation.

144.6 Limits on Executive Compensation.

(a) For the period commencing January 1, 2013, except if a covered provider has obtained a waiver pursuant to section 144.7 of this Part, neither a covered provider nor a related entity shall use State funds or State-authorized payments for executive compensation given directly or indirectly to a covered executive in an amount greater than \$199,000 per annum, provided, however, that the Department shall have discretion to adjust this figure annually based on appropriate factors and subject to the approval of the Director of the Division of the Budget.

(b) For the period commencing January 1, 2013, except if a covered provider has obtained a waiver pursuant to section 144.7 of this Part, where a covered provider's or a related entity's executive compensation given to a covered executive is greater than \$199,000 per annum (including not only State funds and State-authorized payments but also any other sources of funding) and

(1) greater than the 75th percentile of that compensation provided to comparable executives in other providers of the same size and within the same program service sector and the same or comparable geographic area as established by a compensation survey identified or recognized by the Department and the Director of the Division of the Budget; or

(2) was not reviewed and approved by the covered provider's board of directors or equivalent governing body including at least two independent directors or voting members, or such review did not include an assessment of appropriate comparability data; and

(3) the covered provider or related entity is unable, upon request by the Department or its designee, to substantiate the requirements found in (1)

and (2) above with contemporaneous documentation in a form and level of detail sufficient to allow a determination whether such requirements have been satisfied.

then such covered provider or related entity shall be subject to the penalties set forth in section 144.9 of this Part.

(c) Program Services Rendered by Covered Executives. The limit on executive compensation pursuant to this section shall not be applied to limit reimbursement with State funds or State-authorized payments for reasonable compensation paid to a covered executive for specific program services rendered by the executive outside of his or her managerial or policy-making duties.

(d) Covered Providers with Multiple Sources of State Funds or State-Authorized Payments. If a covered provider or related entity receives State funds or State-authorized payments from multiple sources, the provider's compliance with the limits on executive compensation in subdivision (a) shall be determined based upon the total amount of such funding received and the reimbursements received from all sources of State funds or State-authorized payments. As set forth in section 144.8 of this Part, the covered provider shall report all of such State funds and State-authorized payments in the form specified by the Department or its designee.

(e) Subcontractors and Agents of Covered Providers. The limits on executive compensation in subdivision (a) and (b) shall apply to subcontractors and agents of covered providers that are related entities if and to the extent that such a subcontractor or agent has received State funds or State-authorized payments from the covered provider during the reporting period.

(f) Other Limits on Executive Compensation. If the contract, grant, or other agreement is subject to more stringent limits on executive compensation, whether through law or contract, such limits shall control and shall not be affected by the less stringent limits imposed by these regulations.

144.7 Waivers.

(a) Waivers for Limit on Executive Compensation. The Department or its designee and the Director of the Division of the Budget may grant a waiver to the limits on executive compensation in section 144.6 of this Part for executive compensation for one or more covered executives during the reporting period upon a showing of good cause.

(b) Waivers for Limit on Reimbursement for Administrative Expenses. The Department or its designee and the Director of the Division of the Budget may grant a waiver to obtain reimbursement for administrative expenses incurred during the reporting period in excess of the limit set forth in section 144.5 upon a showing of good cause.

(c) Denial of Waiver Request.

(1) If the Department or its designee and the Director of the Division of the Budget propose to deny a request for waiver made pursuant to section 144.7 of this Part, the applicant shall be given written notice of the proposed denial, stating the reason or reasons for such proposed denial. Such notice shall be sent by certified mail and shall be a final determination to be effective thirty (30) days from the date of the notice, unless reconsideration is requested.

144.8 Reporting.

(a) Reporting by Covered Providers. Beginning after the effective date of this regulation, covered providers shall submit a completed EO #38 Disclosure Form for each reporting period. Such form shall be submitted in the manner and form specified by the Department or its designee.

(b) Covered providers receiving State funds or State-authorized payments from county or local government must report directly to the Department as required by this section.

(c) Failure to Report. A covered provider's failure to submit a completed EO #38 Covered Provider Form, or to provide additional or clarifying information at the request of the Department or its designee, may result in the termination or non-renewal of a contract or agreement for State funds or State-authorized payments.

144.9 Penalties.

(a) Notice of Preliminary Determination of Non-Compliance.

(b) Corrective Action Period.

(c) Corrective Action Plan.

(d) Failure to Cure.

(e) Opportunity for Appeal.

Text of proposed rule and any required statements and analyses may be obtained from: LuAnn Hart, Department of State, One Commerce Plaza, Albany, NY 12231, (518) 474-2754, email: LuAnn.Hart@dos.ny.gov

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

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

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

Regulatory Impact Statement

Statutory Authority: Executive Law, § 91; Executive Order No. 38; Executive Order No. 43.

Legislative Objectives: Executive Law, § 91 authorizes the Secretary of State to promulgate rules to regulate and control the exercise of the powers of the Department of State and the performance of the duties of officers, agents and other employees thereof.

Needs and Benefits: The Secretary of State is proposing to adopt the following regulation because the State of New York directly or indirectly funds with taxpayer dollars a large number of tax exempt organizations and for-profit entities that provide critical services to New Yorkers in need, and the goal is to ensure that taxpayers' dollars are used properly, efficiently, and effectively to improve the lives of New Yorkers. In certain instances, providers of services that receive State funds or State-authorized payments have used such funds to pay for excessive administrative expenses or inflated compensation for their senior executives, rather than devoting a greater proportion of such funds to providing direct care or services to their clients. Such abuses involving public funds harm both the people of New York who are paying for such services, and those persons who must depend upon such services to be available and well-funded. This regulation, which is required by Executive Orders No. 38, will ensure that State funds or State-authorized payments paid by this agency to providers are not used to support excessive compensation or unnecessary administrative expenses.

Costs: The costs of implementing this rule to affected providers is anticipated to be minimal since most, if not all, of the information that must be reported by such providers is already gathered or reported for other purposes. The agency cost of such implementation is expected to be very limited as well, and efforts to ensure efficient centralization of certain aspects of such implementation are underway.

Local Government Mandates: The proposed regulation does not anticipate any additional mandates.

Paperwork/Reporting Requirements: The proposed regulation will require limited additional information to be reported to the agency by providers receiving State funds or State-authorized payments. To the extent feasible, such reporting shall be made electronically in order to avoid unnecessary paperwork costs.

Duplication: This proposed rule does not duplicate, overlap, or conflict with any State or federal statute or rule. The proposed rule seeks to minimize the reporting requirements faced by providers by building upon those requirements in the federal internal revenue code that require certain tax-exempt organizations to report information concerning their executive compensation and administrative expenses.

Alternatives: The alternative of not proposing this regulation was considered, but Executive Order No. 38 requires it promulgation.

Federal Standards: This proposed regulation does not conflict with federal standards.

Compliance Schedule: This rule will take effect on January 1, 2013.

Regulatory Flexibility Analysis

A Regulatory Flexibility Analysis for Small Businesses and Local Governments is not being submitted with this notice because the proposed rule will neither impose any adverse economic impact on small businesses nor impose new reporting, record keeping or other compliance requirements on small businesses or local governments. The proposed regulation is designed to address executive compensation and administrative expenses of program-service providers that receive State funds or State-authorized payments paid by the Department of State.

Rural Area Flexibility Analysis

A Rural Area Flexibility Analysis is not being submitted with this notice because the proposed rule will neither impose any adverse economic impact on rural areas nor impose new reporting, record keeping or other compliance requirements on public or private entities in rural areas. The proposed regulation is designed to address executive compensation and administrative expenses of program-service providers that receive State funds or State-authorized payments paid by the Department of State.

Job Impact Statement

A Job Impact Statement is not being submitted with this notice because it is evident from the subject matter of the regulation that it will have no impact on jobs and employment opportunities.

Office of Temporary and Disability Assistance

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Limits on Administrative Expenses and Executive Compensation

I.D. No. TDA-22-12-00021-P

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

Proposed Action: Addition of Part 315 to Title 18 NYCRR.

Statutory authority: Social Services Law, section 20(3)(d)

Subject: Limits on administrative expenses and executive compensation.

Purpose: Establishes limits on the use of State funds or State-authorized payments for administrative costs and executive compensation by covered providers.

Substance of proposed rule (Full text is posted at the following State website:<http://otda.ny.gov>): The proposed rule would add a new Part 315 to 18 NYCRR titled Limits on Administrative Expenses and Executive Compensation.

Section 315.1 Provides the background and intent of the proposed rule, which is to implement Executive Order No. 38, issued by Governor Andrew Cuomo on January 18, 2012.

Section 315.2 Sets forth the statutory authority for the promulgation of the rule by the Office of Temporary and Disability Assistance (hereinafter the "Office").

Section 315.3 Provides that this rule is applicable to covered providers as set forth in this Part.

Section 315.4 Contains definitions for purposes of this Part, including definitions for administrative expenses, covered operating expenses, covered executive, covered provider, executive compensation, Office, program services, program services expenses, related entity, reporting period, State-authorized payments, and State funds.

Section 315.5 Limits on Administrative Expenses. For the period commencing January 1, 2013, no less than 75% of the covered operating expenses paid for with State funds or State-authorized payments to a covered provider shall be used for program services expenses rather than administrative expenses. This percentage shall increase by 5% each year until it shall be no less than 85% for the calendar year 2015 and for each calendar year thereafter.

The restriction will apply to subcontractors and agents of covered providers which meet the specified criteria.

The restriction will apply to covered providers receiving State funds or State-authorized payments from county or local governments pursuant to specified criteria.

The proposed regulation addresses how the restriction will apply in the event that a covered provider has multiple sources of State funds or State-authorized payments.

Section 315.6 Limits on Executive Compensation. For the period commencing January 1, 2013, neither a covered provider nor a related entity shall use State funds or State-authorized payments for executive compensation given directly or indirectly to a covered executive in an amount greater than \$199,000 per annum, unless specific conditions are met.

The proposed rule addresses the application of this limit if the covered provider has multiple sources of State funds or State-authorized payments.

Section 315.7 Waivers. Processes are established for covered providers to seek waivers of the limit on administrative expenses and the limit on executive compensation.

Section 315.8 Reporting by Covered Providers. Covered providers are required to report information related to administrative costs and executive compensation on an annual basis.

Section 315.9 Penalties. A process is established for the imposition of penalties in the event of non-compliance with the limit on administrative expenses and the limit on executive compensation.

A copy of the full text of the regulatory proposal is available on the Office of Temporary and Disability's website at <http://otda.ny.gov>

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

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

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

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

Regulatory Impact Statement

1. Statutory authority:

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

2. Legislative objectives:

It was the intent of the Legislature in enacting SSL § 20(3)(d) that the agency establish rules, regulations and policies to carry out its powers and duties, and it was the intent of Governor Andrew Cuomo in signing Executive Orders No. 38 and No. 43 that this agency promulgate regulations to establish limits on the use of State funds or State-authorized payments for administrative costs and executive compensation by covered providers.

3. Needs and benefits:

This agency is proposing to adopt the following regulation because the State of New York directly or indirectly funds with taxpayer dollars a large number of tax exempt organizations and for-profit entities that provide critical services to New Yorkers in need and the goal is to ensure that taxpayers' dollars are used properly, efficiently, and effectively to improve the lives of New Yorkers. In certain instances, providers of services that receive State funds or State-authorized payments have used such funds to pay for excessive administrative costs or inflated compensation for their senior executives, rather than devoting a greater proportion of such funds to providing direct care or services to their clients. Such abuses involving public funds harm both the people of New York who are paying for such services, and those persons who must depend upon such services to be available and well-funded. These regulations, which are required by Executive Order No. 38, are intended to prevent providers from using State funds or State-authorized payments paid by this agency to support excessive compensation or unnecessary administrative costs.

4. Costs:

The costs of implementing this rule to affected providers are anticipated to be minimal as most, if not all, of the information that must be reported by such providers is already gathered or reported for other purposes. The costs to this agency of such implementation are expected to be mitigated by efforts that are underway to ensure efficient centralization of certain aspects of such implementation.

5. Local government mandates:

The local governments will provide the agency contact information for their contractors, and then the agency, rather than the county or local unit of government, shall be responsible for obtaining the necessary reporting from and compliance by covered providers.

6. Paperwork:

The proposed regulatory amendments will require limited additional information to be reported to the agency by covered providers receiving State funds or State-authorized payments. To the extent feasible, such reporting shall be made electronically to avoid unnecessary paperwork costs.

7. Duplication:

This proposed rule does not duplicate, overlap, or conflict with any State or federal statute or rule. However, the proposed rule seeks to minimize the reporting requirements faced by covered providers by building upon those requirements in the federal internal revenue code that require certain tax-exempt organizations to report information concerning their executive compensation and administrative costs.

8. Alternatives:

Executive Orders No. 38 and No. 43 require the adoption of this proposed rule.

9. Federal standards:

This proposed rule does not conflict with federal standards.

10. Compliance schedule:

The proposed rule will be effective on January 1, 2013.

Regulatory Flexibility Analysis

A Regulatory Flexibility Analysis for Small Businesses and Local Governments is not being submitted with this notice because the proposed rule will not impose any adverse economic impact on small businesses, nor will it impose new reporting, recordkeeping or other compliance requirements on small businesses or local governments.

Rural Area Flexibility Analysis

A Rural Area Flexibility Analysis is not being submitted with this notice because the proposed rule will not impose any adverse economic impact on rural areas.

Job Impact Statement

A Job Impact Statement is not being submitted with this notice because it is evident from the subject matter of the regulation that it will have no impact on jobs and employment opportunities.

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

Food Stamp Program

I.D. No. TDA-22-12-00022-P

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

Proposed Action: Amendment of sections 351.2, 384.3, 387.9; and repeal of section 388.8 of Title 18 NYCRR.

Statutory authority: Social Services Law, sections 20(3)(d), 95 and 131(1); and 7 United States Code, section 2020(a)

Subject: Food Stamp Program.

Purpose: Eliminate finger imaging for purposes of the Food Stamp Program, as OTDA has implemented a new Statewide clearance system designed to prevent the receipt of duplicate food stamp benefits, in order to reduce food insecurity and improve nutrition.

Text of proposed rule: Subdivision (a) of section 351.2 of Title 18 NYCRR is amended to read as follows:

(a) Identity. The applicant or recipient must furnish verification of his or her identity, as a condition of eligibility, at the time of application or recertification for public assistance or care. Any member of a household 18 years of age or older and the head of a household who is receiving or applying for safety net assistance, emergency safety net assistance, public institutional care for adults, family assistance or emergency assistance to needy families with children, is, when requested to do so by the social services district, required to establish his or her identity by means of finger images to be used in the automated finger imaging system authorized in Part 384 of this Title. No household can receive safety net assistance, emergency safety net assistance, public institutional care for adults, family assistance or emergency assistance to needy families with children if any member of the household, 18 years of age or older, or the head of the household, refuses to allow his or her finger images to be obtained for use in the automated finger imaging system. Any such household's application must be denied or, if the household is participating in the program, benefits must be discontinued. [Persons applying for or receiving benefits under the food stamp program or food assistance program must also allow their finger images to be obtained in accordance with sections 387.9 and 388.8 of this Title.]

Subparagraph (i) of paragraph (3) of subdivision (a) of section 384.3 of Title 18 NYCRR is amended to read as follows:

(i) provide notice of the provisions of [sections] *section* 351.2(a) [and 360-3.2(m)] of this Title and the provisions of this subdivision to applicants for or recipients of safety net assistance, emergency safety net assistance, public institutional care for adults, family assistance, *and* emergency assistance to needy families with children[, benefits under the food stamp program, benefits under the food assistance program and medical assistance];

Subdivision (c) of section 387.9 of Title 18 NYCRR is hereby repealed, and a new subdivision (c) is added to read as follows:

(c) *Prohibition against automated finger imaging for the Food Stamp Program.*

(i) *The use of an automated finger imaging system is prohibited for any purpose under this Part.*

(ii) *No social services district may require any applicant or recipient household member to be finger imaged for purposes of the food stamp program.*

Section 388.8 of Title 18 NYCRR is repealed.

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

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

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

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

Regulatory Impact Statement

1. Statutory authority:

Social Services Law (SSL) § 20 (3) (d) authorizes the Office of

Temporary and Disability Assistance (OTDA) to promulgate regulations to carry out its powers and duties.

SSL § 131 (1) requires social services districts, insofar as funds are available, to provide adequately for those unable to maintain themselves, in accordance with the provisions of the SSL.

Title 7 of the United States Code (7 U.S.C.) § 2020 (a) provides that the State agency of each State participating in the federal Supplemental Nutrition Assistance Program (SNAP) (referred to as the Food Stamp Program in New York State) shall assume responsibility for the certification of applicant households and for the issuance of food stamp benefits and the control and accountability thereof.

SSL § 95 requires OTDA to promulgate regulations to carry out the provisions of the SSL concerning the Food Stamp Program.

2. Legislative objectives:

It was the intent of the Legislature in enacting the above statutes that OTDA establish rules, regulations and policies so that food stamp benefits are provided to all eligible households.

3. Needs and benefits:

New York State has had an ongoing requirement, not dictated by federal or State law, that applicants for food stamp benefits be finger imaged. Section 387.9(c) of 18 NYCRR sets forth, in pertinent part, that social services districts must, in accordance with operational plans approved by OTDA, conduct finger imaging of all members of a household 18 years of age or older and the head of a household applying for or receiving food stamp benefits, for the purpose of preventing the receipt of duplicate food stamp benefits.

Since New York State initiated finger imaging for the food stamp program, most other states have ended the practice and turned to other means of preventing duplicate participation. In fact, currently only New York State and Arizona finger image food stamp applicants. On April 16, 2012, OTDA fully implemented a new statewide clearance system for food stamp applicants and recipients designed to prevent the receipt of duplicate food stamp benefits. Cases are matched based on Social Security Number, date of birth, name, and gender. Identifying applicants who are already active or applying in another social services district allows eligibility and case workers to resolve discrepancies and prevent duplicate participation at the time of eligibility determination. The new statewide clearance function enables both local social services district eligibility and case workers in all 58 districts to be able to check for duplicate participation in real time. This new system complies with the federal requirement to prevent duplication of food stamp benefits.

With clients increasingly relying on electronic applications and other non-traditional means of application, finger imaging can present a barrier to participation. Thirty percent of New York State residents who are eligible for food stamp benefits do not receive them, leaving over \$1 billion in federal food stamps funds unclaimed every year. In New York State, 1 in 6 children live in homes without enough food on the table. In order to combat hunger and promote participation in the Food Stamp Program, the barriers to this program must be reduced, including the elimination of finger imaging for all persons under Part 387 of Title 18 NYCRR. Removing the finger imaging requirement would simplify the Food Stamp application process, improve access to federally funded food assistance and help alleviate hunger for children and families, as well as elderly, disabled and other New Yorkers who are experiencing food insecurity.

In order to accomplish the above stated goals, the proposed regulatory amendment would repeal the existing provisions of 18 NYCRR § 387.9(c) and replace them with a new subdivision that would prohibit finger imaging in connection with the Food Stamp Program. The proposed regulatory amendment also would make technical amendments to 18 NYCRR §§ 351.2 and 384.3 and repeal 18 NYCRR § 388.8 to reflect the elimination of finger imaging under the Food Stamp Program and to reflect the expiration of authority to finger image under the Medical Assistance Program.

4. Costs:

It is anticipated that the proposed amendments would have a minimal impact on administrative costs on both the State and the local levels. OTDA's ongoing efforts to prevent food stamp duplication, via

the computer matching of identifying information, would be part of its planned operating costs and would not result in additional expenditures. The social services districts may have some small administrative savings associated with no longer needing to conduct finger imaging under the Food Stamp Program.

5. Local government mandates:

The proposed amendment would not impose new mandates on the social services districts. Instead the proposed amendment would eliminate an existing requirement, the finger imaging requirement for the Food Stamp Program. The employees of the social services districts who currently perform such finger imaging would be able to devote their time to other local processes.

6. Paperwork:

No new forms or other paperwork is required as a result of the proposed amendment.

7. Duplication:

The proposed amendment would not duplicate, overlap or conflict with State or federal requirements.

8. Alternatives:

An alternative would be to retain the existing regulation at 18 NYCRR § 387.9, which requires the finger imaging of all members of a household 18 years of age or older and the head of household applying for or receiving food stamp benefits. However, this alternative was rejected by OTDA because the current regulation does not reflect the existing policies of the United States Department of Agriculture or the goals of New York State to reduce the barriers to participation in the Food Stamp Program by eligible households.

9. Federal standards:

The United States Department of Agriculture, which provides federal oversight of the Supplemental Nutritional Assistance Program, known as the Food Stamp Program in New York State, has encouraged states to eliminate finger imaging requirements.

10. Compliance schedule:

Social services districts would be able to implement the proposed amendment when it becomes effective. OTDA would issue a policy directive to the social services districts explaining the regulatory amendment, emphasizing the various means available to prevent food stamp duplication, and advising them of the effective date of the regulatory amendment.

Regulatory Flexibility Analysis

1. Effect of rule:

The proposed amendment would not affect small businesses, but it would have an impact on the social services districts in the State.

2. Compliance requirements:

The proposed amendment would not impose new mandates on the social services districts. Instead the amendment would eliminate an existing requirement, the finger imaging requirement for the Food Stamp Program. The employees of the social services districts who currently perform such finger imaging would be able to devote their time to other local processes.

3. Professional services:

The social services districts would not need any new kinds of professional services to comply with the proposed amendment. No new forms or other paperwork is required as a result of the proposed amendment.

4. Compliance costs:

It is anticipated that the proposed amendment would have a minimal impact on administrative costs on the local level. The social services districts may have some small administrative savings associated with no longer needing to conduct finger imaging under the Food Stamp Program.

5. Economic and technological feasibility:

The social services districts have the economic and technological means to comply with the proposed amendment.

6. Minimizing adverse impact:

The proposed amendment would not have an adverse economic

impact on social services districts. The social services districts would be able to comply with the proposed amendment when it becomes effective.

7. Small business and local government participation:

Each social services district currently submits a Food Stamp Automated Finger Imaging System (AFIS) Plan of Operation for compliance with the AFIS program to the OTDA Bureau of Audit and Quality Improvement. Social services districts include in their plans waivers for categories of persons they wish to exempt from the finger imaging requirements. Most local jurisdictions have sought waivers to exempt a wide variety of recipients - including seniors and the disabled - from finger imaging. This regulatory amendment would eliminate the need for social services districts to request waivers. Several counties have indicated that they would welcome the statewide elimination of the finger imaging requirement, which would bring greater consistency in policy and an end to the waiver process. Also the proposed amendment would help provide uniformity among the social services districts and nutritional assistance to persons throughout New York State.

The issue of finger imaging in the Food Stamp program has been discussed by OTDA and the advocate community in various forms. The advocate community has urged OTDA to eliminate finger imaging. There is concern that finger imaging is a deterrent to participation in the Food Stamp Program by eligible households because of the negative connotations, including the perceived presumption of criminality, associated with finger imaging. In addition, finger imaging may be an impediment to employment goals because people may have to take time off from work and obtain additional child care coverage in order to travel to the offices of the social services districts to complete the finger imaging requirement.

Further it should be noted that OTDA has implemented a new Statewide clearance system for food stamp applicants and recipients designed to prevent the receipt of duplicate food stamp benefits. Cases are matched based on Social Security Number, date of birth, name, and gender. Identifying applicants who are already active or applying in another social services district allows eligibility and case workers to resolve discrepancies and prevent duplicate participation at the time of eligibility determination. The new statewide clearance function enables both local social services district eligibility and case workers in all 58 districts to be able to check for duplicate participation in real time. This new system complies with the federal requirement to prevent duplication of food stamp benefits.

Rural Area Flexibility Analysis

1. Types and estimated numbers of rural areas:

The proposed amendment would impact the social services districts in rural areas of the State.

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

The proposed amendment would not impose new mandates on social services districts in rural areas. Instead the amendment would eliminate an existing requirement, the finger imaging requirement for the Food Stamp Program. The employees of the social services districts in rural areas who currently perform such finger imaging would be able to devote their time to other local processes.

No new forms or other paperwork is required as a result of the proposed amendment. In addition, the social services districts in rural areas would not need any new kinds of professional services to comply with the proposed amendment.

3. Costs:

It is anticipated that the proposed amendment would have a minimal impact on administrative costs on the local level. The social services districts in rural areas may have some small administrative savings associated with no longer needing to conduct finger imaging under the Food Stamp Program.

4. Minimizing adverse impact:

The proposed amendment would not have an adverse economic impact on social services districts in rural areas. These social services districts would be able to comply with the proposed amendment when it becomes effective.

5. Rural area participation:

Each social services district, including those in rural areas, currently submits a Food Stamp Automated Finger Imaging System (AFIS) Plan of Operation to the OTDA Bureau of Audit and Quality Improvement. Social services districts indicate in their plans waivers for certain categories of persons they wish to exempt from the finger imaging requirements. Most local jurisdictions have sought waivers to exempt a wide variety of recipients - including seniors and the disabled - from finger imaging. This regulatory amendment would eliminate the need for social services districts in rural areas to request waivers. Several counties have indicated that they would welcome the statewide elimination of the finger imaging requirement, which would bring greater consistency in policy and an end to the waiver process. The proposed amendment would help provide uniformity among all the social services districts and nutritional assistance to persons throughout New York State.

The issue of finger imaging in the Food Stamp program has been discussed by OTDA and the advocate community in various forms. The advocate community has urged OTDA to eliminate finger imaging. There is concern that finger imaging is a deterrent to participation in the Food Stamp Program by eligible households because of the negative connotations, including the perceived presumption of criminality, associated with finger imaging. In addition, finger imaging may be an impediment to employment goals because people may have to take time off from work and obtain additional child care coverage in order to travel to the offices of the social services districts to complete the finger imaging requirement. In rural social services districts, such travel may be quite time consuming and burdensome.

Further it should be noted that OTDA has implemented a new Statewide clearance system for food stamp applicants and recipients designed to prevent the receipt of duplicate food stamp benefits. Cases are matched based on Social Security Number, date of birth, name, and gender. Identifying applicants who are already active or applying in another social services district allows eligibility and case workers to resolve discrepancies and prevent duplicate participation at the time of eligibility determination. The new statewide clearance function enables both local social services district eligibility and case workers in all 58 districts to be able to check for duplicate participation in real time. This new system complies with the federal requirement to prevent duplication of food stamp benefits.

Job Impact Statement

A Job Impact Statement is not required for the proposed amendment. It is apparent from the nature and the purpose of the proposed amendment that it would not have a substantial adverse impact on jobs and employment opportunities in New York State. The proposed amendment would not affect private businesses. The proposed amendment would not affect in any significant way the jobs of the workers in the social services districts or at the Office of Temporary and Disability Assistance. Thus the changes would not have any adverse impact on jobs and employment opportunities in New York State.

Department of Transportation

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

Suspension and Revocation of Operating Authority Held by Motor Carriers of Passengers

I.D. No. TRN-22-12-00003-EP

Filing No. 453

Filing Date: 2012-05-14

Effective Date: 2012-05-14

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

Proposed Action: Addition of section 720.32 to Title 17 NYCRR.

Statutory authority: Transportation Law, section 156(2)

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

Specific reasons underlying the finding of necessity: This emergency rule is being promulgated on May 14, 2012 to provide standards for the suspension or revocation of operating authority of motor carriers of passengers by motor vehicles (carriers). This rule will become effective on the same date.

Bus companies may operate within the state of New York only upon operating authority in permits and certificates issued by the United States Department of Transportation or issued by the Commissioner of Transportation pursuant to Article 7 of the Transportation Law. Passenger carriers must comply with safety regulations found at 17 NYCRR Part 720. A series of tragic accidents in 2011 that resulted in deaths and personal injuries involving motor carriers has revealed that it is possible for a carrier to have multiple safety violations, or even have federal operating authority suspended or revoked, and yet continue to operate under authority issued by the Commissioner of Transportation within the state of New York.

The emergency rule provides that the state operating authority may be suspended in the event that a carrier has had a suspension or revocation of concurrent federal operating authority or because of safety violations that would suggest that the continued operation of such carrier poses a threat to public safety. In addition to requiring continued federal operating authority (where applicable), the new rule provides the basis for the suspension or revocation of state operating authority and prescribes procedures whereby such suspension and/or revocation of state operating authority and prescribes procedures whereby such suspension and/or revocation will be effected.

Subject: Suspension and revocation of operating authority held by motor carriers of passengers.

Purpose: The protection of public safety by suspending operating authority of unsafe motor carriers.

Text of emergency/proposed rule: § 720.32 Suspension and revocation of operating authority.

(a) Notwithstanding any regulation of the department to the contrary, pursuant to section 145 and section 156(2) of the Transportation Law, the commissioner may suspend or revoke the operating authority of any motor carrier of passengers by certificate or permit for the following safety reasons:

(1) The nature and frequency of out-of-service violations found in the course of roadside safety inspections leads the commissioner to conclude that the continued operation of the motor carrier of passengers poses a threat to public safety. The incidence of out-of-service violations that may result in action to suspend and/or revoke operating authority shall be as follows:

(i) At least ten (10) driver roadside safety inspections within the preceding six-month period that resulted in a driver out-of-service rate of 20% or more; or

(ii) At least ten (10) vehicle roadside safety inspections within the preceding six-month period that resulted in a vehicle out-of-service rate of 40% or more.

(2) For any motor carrier of passengers that has been the subject of at least ten department vehicle inspections conducted in the preceding state fiscal year pursuant to section 140 (3) of the Transportation Law, a vehicle out-of service rate of 25% or more.

(3) An employee or agent operates a bus controlled by the motor carrier while intoxicated in violation of the vehicle and traffic law;

(4) An employee or agent operates a bus controlled by the motor carrier while using or in possession of drugs in violation of the vehicle and traffic law;

(5) The motor carrier directs or allows an employee or agent to operate a bus after such operator has been placed out of service in violation of the transportation law, vehicle and traffic law or regulations adopted thereunder;

(6) The motor carrier directs or allows an employee or agent to operate a bus that has been placed out of service in violation of the transportation law, vehicle and traffic law or regulations adopted thereunder; or

(7) The motor carrier directs or allows an employee or agent to

operate a bus without a required license in violation of the vehicle and traffic law.

(b) Notwithstanding any regulation of the department to the contrary, the commissioner may immediately suspend or revoke the authority of any motor carrier of passengers operating pursuant to a certificate or permit issued by the commissioner pursuant to Article 6 or Article 7 of the Transportation Law if such motor carrier of passengers operates concurrently under any authority issued by the United States Department of Transportation, Federal Motor Carrier Safety Administration, and such federal operating authority has been revoked or a federal out-of-service order is in effect, or if such motor carrier of passengers operates concurrently in interstate commerce without the requisite operating authority.

(c) The suspension of operating authority as provided in subsections (a) or (b) shall be effective ten business days after the date of issuance of the notice of suspension. Pending the effective date of such suspension, any motor carrier of passengers subject to this section may be heard to present proof as to why such suspension should not occur or be continued. The commissioner shall make a determination based upon a hearing of the proof whether such suspension shall become effective or continue and a hearing regarding permanent revocation shall be scheduled. For the purpose of making a determination as to whether the operating authority of a motor carrier should be suspended or revoked, or that some other action should be taken, any out-of-service violation occurring within the relevant period described in subsection (a) shall be considered, provided that the motor carrier did not obtain a favorable determination for such violation. For the purposes of this section, a favorable determination means that the out-of-service violation was contested by such motor carrier and an administrative law judge of the department determined that the motor carrier was not guilty of the violation charged. In addition to or in lieu of any suspension or revocation, the commissioner may, after a hearing, impose a civil penalty upon such motor carrier of passengers and notify the Commissioner of Motor Vehicles to suspend the vehicle registrations in accordance with the provisions of Article 6 of the Transportation Law.

(d) Whenever the commissioner determines that the operations of a motor carrier of passengers pose a danger to public safety or the welfare of the people of the state of New York, the commissioner may serve such motor carrier with a notice or order requiring certain action or the cessation of certain activities immediately or within a specified period, and the commissioner shall provide such motor carrier with an opportunity to be heard within a period specified in such notice or order.

(e) Service may be made personally or by certified mail, return receipt requested, and a hearing shall be conducted pursuant to the provisions of section 503.2 of this title, except that notice shall be provided in accordance with the provisions of this section.

This notice is intended: to serve as both a notice of emergency adoption and a notice of proposed rule making. The emergency rule will expire August 11, 2012.

Text of rule and any required statements and analyses may be obtained from: David E. Winans, Associate Counsel, New York State Department of Transportation, Div. of Legal Affairs, 50 Wolf Rd., Albany, NY 12232, (518) 457-5793, email: dwinans@dot.state.ny.us

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

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

Regulatory Impact Statement

1. Statutory authority:

Transportation Law section 138(2), Transportation Law Section 140, Transportation Law Section 145 (1).

The commissioner of transportation is empowered to prescribe rules and regulations concerning the issuance of certificates and permits to motor carriers.

2. Legislative objectives:

To promote public safety by assuring that motor carriers engaging in intrastate transportation as common carriers of passengers by motor vehicle comply with the laws and regulations relating to vehicle and driver safety as required by transportation Law Section 140 as a condi-

tion of continued use of the permit or certificate required by Transportation Law Section 152.

3. Needs and benefits:

The emergency rule provides a mechanism for the suspension and revocation of intrastate operating authority for motor carriers of passengers with poor safety records. Bus companies may operate within the state of New York only upon operating authority issued by the United States Department of Transportation (for interstate transportation) or issued by the commissioner of transportation (for intrastate transportation). Operating authority from the commissioner of transportation is conditioned upon compliance with safety laws and regulations, including the regulations of the Federal Motor Carrier Safety Administration that are incorporated into the commissioner's safety regulations by 17 NYCRR Section 720 (a).

A series of recent accidents involving bus companies has exposed the potential for a bus company to have multiple safety violations, or even have federal operating authority suspended or revoked, and yet continue to operate under authority issued by the commissioner of transportation within the state of New York. The commissioner has concluded that the continued operation of any such bus company that fails to meet the applicable laws and regulations relating to vehicle safety and/or driver credentialing and/or hours-of-service requirements poses a threat to public safety.

The commissioner has determined that the continued access to state operating authority is contrary to the interests of public safety (1) where a motor carrier has a high incidence of being taken out-of-service as the result of roadside inspections, (2) where a motor carrier has a high rate of out-of-service violations found during the course of semi-annual vehicle inspections, (3) where a roadside inspection or other investigation reveals certain egregious violations of law, or (4) where a motor carrier's federal operating authority has been suspended or revoked.

The purpose of the emergency rule is to provide criterion and a framework for the suspension of state operating authority in the event that a bus company fails to meet objective requirements relating to safety. In the addition to requiring continued federal operating authority (where applicable), the rule articulates the basis for action and provides a framework for the suspension and revocation of operating authority.

4. Costs:

Regulated parties have an obligation under the existing laws and regulations to conform to safety requirements. The new rule imposes no additional safety requirements. There are no added costs associated with compliance. Noncompliance with laws and regulations related to safety presently carry costs in the form of civil penalties that may be imposed. The new rule expands the number of situations where civil penalties may be imposed under Transportation Law Section 145.

5. Local government mandates:

The rule imposes no government mandates.

6. Paperwork:

The rule includes no reporting requirements.

7. Duplication:

There are no rules that relate to the suspension or revocation of intrastate operating authority.

8. Alternatives:

Transportation Law Section 145 provides that the commissioner of transportation may suspend or revoke any permit or certificate after a hearing. However, there is no law or regulation prescribing the reasons that such action may be taken in the form of any objective criterion. It has been concluded that the adoption of a rule setting forth objective criterion that warrants suspension and revocation affords motor carriers with appropriate warning that action will be taken and affords equal application of criterion and due process to motor carriers.

9. Federal standards:

There are no federal standards relating to state operating authority.

10. Compliance schedule:

Compliance with existing laws and regulations has been and remains a requirement for all motor carriers. Compliance with the ap-

plicable laws and regulations obviates the necessity of any action under the new rule.

Regulatory Flexibility Analysis

1. Effect of rule:

The rule applies exclusively to motor carriers of passengers by motor vehicles that possess a permit or certificate from the commissioner of transportation pursuant to articles 6 or 7 of the Transportation Law. There are approximately 2,600 such motor carriers that possess such operating authority. These motor carriers are primarily limousine and charter bus operators engaged in at least some intrastate transportation of passengers for hire.

2. Compliance requirements:

The requirements applicable to motor carriers are set forth in existing laws and regulations. The new rule imposes no additional record-keeping or reporting requirements. The new rule provides only the criterion warranting the sanction of suspension or revocation of operating authority for a motor carrier's non-compliance with rules and a framework for the application of such sanctions.

3. Professional services:

Motor carriers are already required to comply with safety requirements. The new rule will mean action against non-compliant motor carriers. Motor carriers that trigger action under the new rule may seek professional services in an effort to retain operating authority.

4. Compliance costs:

No additional compliance costs are anticipated.

5. Economic and technological feasibility:

No additional requirements are imposed by the new rule. The rule simply sets forth the objective criterion of action to suspend or revoke operating authority and provides the framework by which action will be taken that affords motor carriers with due process.

6. Minimizing adverse impact:

The new rule is designed to help small business by establishing the objective criteria that will trigger action by the commissioner. The actions that would be taken by the commissioner under the new rule are based upon existing laws and regulations.

7. Small business and local government participation:

The laws and rules that are applicable to motor carriers are not changed by the rule. Non-compliance with the laws and regulations will trigger action to suspend or revoke operating authority. Small businesses seeking to avoid action to suspend or revoke their operating authority must comply with the existing laws and regulations.

8. For rules that either establish or modify a violation or penalties associated with a violation:

There is the potential for the imposition of penalties on small business, but not localities. The agency has considered affording an opportunity to cure provision, but because the basis for action under the emergency rule is a threat to public safety, and because the importance of protecting public safety can only be reinforced by real consequences, the imposition of penalties, including suspension or revocation, is deemed to be the most appropriate action.

Rural Area Flexibility Analysis

1. Types and estimated numbers of rural areas:

The rule applies across the state.

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

The rule includes no reporting requirements. Motor carriers are already required to comply with safety requirements. The new rule will mean action against non-compliant motor carriers. Motor carriers that trigger action under the new rule may seek professional services in an effort to retain operating authority.

3. Costs:

There are no new regulatory requirements that would entail additional costs for compliance.

4. Minimizing adverse impact:

The rule has no impact upon motor carriers that comply with existing laws and regulations.

5. Rural area participation:

The laws and rules that are applicable to motor carriers are not changed by the rule. Non-compliance with the laws and regulations will trigger action to suspend or revoke operating authority. Small businesses seeking to avoid action to suspend or revoke their operating authority must comply with the existing laws and regulations.

Job Impact Statement

1. Nature of impact:

The rule will have no impact on jobs or employment opportunities in relation to motor carriers who comply with existing laws and regulations relating to motor carrier safety. It is possible that non-compliant motor carriers who are in violation of safety laws and regulations may experience a suspension or revocation of state operating authority as a result of their failure under the new rule and that this could result in a loss of employment opportunities for persons employed by or seeking employment with non-compliant motor carriers. It is equally possible that, being compelled to comply with the existing laws and regulations, motor carriers may be compelled to create new job opportunities for mechanics, drivers and compliance specialists.

2. Categories and numbers affected:

Motor carriers with state operating authority employ bus operators, clerical staff, and various maintenance employees including cleaners and mechanics. The number of employees required by a motor carrier is that number that is necessary to comply with the existing laws and regulations.

3. Regions of adverse impact:

No adverse impact on jobs in any region is anticipated. The impact on employment stems, not from the new rule, but from the existing laws and regulations.

4. Minimizing adverse impact:

The purpose of the rule is to compel compliance with existing laws and regulations that are designed to preserve public safety. The absence of such a mechanism for removing operating authority from unsafe motor carrier jeopardizes public safety. Compliant motor carriers will experience no impact on jobs or employment.

Office of Victim Services

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Limits on Administrative Expenses and Executive Compensation

I.D. No. OVS-22-12-00009-P

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

Proposed Action: Amendment of section 525.22; and addition of section 525.24 to Title 9 NYCRR.

Statutory authority: Executive Law, section 623(3); and Executive Order No. 38

Subject: Limits on administrative expenses and executive compensation.

Purpose: To establish limitations on administrative expenses and executive compensation for those programs funded by the Office.

Substance of proposed rule (Full text is posted at the following State website: ovs.ny.gov): The proposed regulations amend section 525.22 of Title 9 NYCRR and adds a new section 525.24 to Title 9 NYCRR, related to Victim Assistance Programs and Limits on Administrative Costs and Executive Compensation, respectively.

Section 525.22 is amended to state that Victim Assistance Programs receiving state funds or state-authorized payments from the Office of Victim Services (OVS or Office) pursuant to the terms of a contract or memorandum of understanding shall comply with all applicable federal and state laws and regulations and any applicable contractual or memorandum of understanding language entered into with the office. Applicable state regulations shall include, but not be limited to this section and the newly added section 525.24 of this part.

Section 525.24, subdivisions (a) and (b) provide for the background and intent and applicability of this new section.

Subdivision (c) contains definitions for administrative expenses, covered operating expenses, covered executive, covered provider, executive compensation, office, program services, program services expenses, related entity, reporting period, State-authorized payments and State funds.

Subdivision (d) relates to limits on administrative expenses. Effective January 1, 2013, no less than 75% of the State funds or State-authorized payments to a covered provider for allowable operating expenses shall be used for program services costs rather than for administrative costs. This percentage shall increase by 5% each year until it shall be at no less than 85% for the calendar year 2015 and for each calendar year thereafter. The restriction applies to subcontractors of covered providers which provide program and/or management services which meet the specified criteria. The restriction is applied to providers receiving State funds or State-authorized payments from county or local government. The subdivision addresses how the restriction will apply in the event that a covered provider has multiple sources of State funds or State-authorized payments. The subdivision also states that applicable law or contract may provide for more stringent limitations, which shall control.

Subdivision (e) relates to limits on executive compensation. A limit on executive compensation of \$199,000 per annum is applied to covered executives of covered providers. Where a covered provider is reimbursed with State funds or State-authorized payments using a cost-based methodology or pursuant to a contract that specifies the extent of reimbursement for executive compensation, the limit applies to reimbursement with State funds or State-authorized payments for executive compensation. Otherwise the limit applies to executive compensation. The limit does not apply to specific program services that also may be rendered by the covered executive outside of his or her managerial or policy-making activities. A provision discusses the application of this limit if the covered provider has multiple sources of State funds or State-authorized payments. The subdivision also states that applicable law or contract may provide for more stringent limitations, which shall control.

Subdivision (f) relates to waivers for the limit on executive compensation and the processes are established for covered providers to seek such waivers.

Subdivision (g) relates to waivers for the limit on reimbursement for administrative expenses and the processes are established for covered providers to seek such waivers.

Subdivision (h) relates to denials of waiver requests, notice to the impacted parties and the Office's reconsideration of the waiver requests.

Subdivision (i) relates to the reporting by covered providers. Covered providers are required to report information pertinent to administrative costs and executive compensation on an annual basis.

Subdivision (j) relates to penalties in the event of non-compliance with the limit on administrative costs, the limit on executive compensation, and/or the reporting requirement.

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

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

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

Regulatory Impact Statement

1. Statutory authority: Subdivision 3 of section 623 of the Executive Law provides that the Office of Victim Services (OVS or Office) shall have the power and duty to adopt, promulgate, amend and rescind suitable rules and regulations to carry out the provisions and purposes of Article 22 of the Executive Law. Other authorities for enacting these rules include Executive Order No. 38, enacted January 18, 2012.

2. Legislative objectives: Pursuant to Executive Order No. 38, enacted January 18, 2012, the OVS recognizes its fiduciary duties related to any State funds or State-authorized payments made by the Office via competitive grants for the provision of services to victims of crimes and others impacted by such victimization. This section is meant to establish the minimum expectations and requirements pursuant to Executive Order #38.

3. Needs and benefits: The OVS is proposing to adopt the following regulation because the State of New York directly or indirectly funds with State and federal monies a large number of tax exempt organizations and for-profit entities that provide critical services to New Yorkers in need and the goal is to ensure that such funds are used properly, efficiently, and effectively to improve the lives of New Yorkers. In certain instances, providers of services that receive State funds or State-authorized payments have used such funds to pay for excessive administrative costs or inflated compensation for their senior executives, rather than devoting a greater proportion of such funds to providing direct care or services to their clients. Such abuses involving public funds harm both the people of New York who are paying for such services, and those persons who must depend upon such services to be available and well-funded. These regulations,

which are required by Executive Order No. 38, will ensure that State funds or State-authorized payments paid by the Office to providers are not used to support excessive compensation or unnecessary administrative costs.

4. Costs: a. Costs to regulated parties. The costs of implementing this rule to affected providers is anticipated to be minimal as most, if not all, of the information that must be reported by such providers is already gathered or reported for other purposes. The costs to the OVS of such implementation are expected to be very limited as well, and efforts to ensure efficient centralization of certain aspects of such implementation are underway.

b. Costs to local governments. These proposed regulations do not apply to local governments and would not impose any additional costs on local governments.

c. Costs to private regulated parties. The proposed regulations would impose minimal any additional costs on private regulated parties.

5. Local government mandates: These proposed regulations do not impose any program, service duty or responsibility upon any local government.

6. Paperwork: The proposed regulatory amendments will require limited additional information to be reported to the OVS by providers receiving State funds or State-authorized payments. To the extent feasible, such reporting shall be made electronically to avoid unnecessary paperwork costs.

7. Duplication: This proposed rule does not duplicate, overlap, or conflict with any State or federal statute or rule. However, the proposed rule seeks to minimize the reporting requirements faced by providers by building upon those requirements in the federal internal revenue code that require certain tax-exempt organizations to report information concerning their executive compensation and administrative costs.

8. Alternatives: Executive Order #38 requires the adoption of this proposed regulation.

9. Federal standards: These amendments do not conflict with federal standards.

10. Compliance schedule: This rule takes effect January 1, 2013.

Regulatory Flexibility Analysis

The Office of Victim Services projects there will be no adverse economic impact or reporting, recordkeeping or other compliance requirements on small businesses or local governments in the State of New York as a result of this proposed rule change. This proposed rule change is simply designed to address executive compensation and administrative costs of those providers of program services that receive State funds or State-authorized payments paid by the Office. Since nothing in this proposed rule change will create any adverse impacts on any small businesses or local governments in the state, no further steps were needed to ascertain these facts and none were taken. As apparent from the nature and purpose of this proposed rule change, a full Regulatory Flexibility Analysis is not required and therefore one has not been prepared.

Rural Area Flexibility Analysis

The Office of Victim Services projects there will be no adverse impact on rural areas or reporting, recordkeeping or other compliance requirements on public or private entities in rural areas in the State of New York as a result of this proposed rule change. This proposed rule change is simply designed to address executive compensation and administrative costs of those providers of program services that receive State funds or State-authorized payments paid by the Office. Since nothing in this proposed rule change will create any adverse impacts on any public or private entities in rural areas in the state, no further steps were needed to ascertain these facts and none were taken. As apparent from the nature and purpose of this proposed rule change, a full Rural Area Flexibility Analysis is not required and therefore one has not been prepared.

Job Impact Statement

The Office of Victim Services projects there will be no adverse impact on jobs or employment opportunities in the State of New York as a result of this proposed rule change. This proposed rule change is simply designed to address executive compensation and administrative costs of those providers of program services that receive State funds or State-authorized payments paid by the Office. Since nothing in this proposed rule change will create any adverse impacts on jobs or employment opportunities in the state, no further steps were needed to ascertain these facts and none were taken. As apparent from the nature and purpose of this proposed rule change, a full Job Impact Statement is not required and therefore one has not been prepared.