

# 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.

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## Department of Agriculture and Markets

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### PROPOSED RULE MAKING HEARING(S) SCHEDULED

#### Standard of Identity and Grades of Maple Syrup

I.D. No. AAM-16-13-00003-P

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

**Proposed Action:** Repeal of Part 175 and addition of Part 270 to Title 1 NYCRR. This rule was previously proposed as a consensus rule making under I.D. No. AAM-52-12-00008-P.

**Statutory authority:** Agriculture and Markets Law, sections 16, 18, 160-u, 203 and 214-b

**Subject:** Standard of identity and grades of maple syrup.

**Purpose:** To ensure that grades of maple syrup meet appropriate compositional requirements to promote public confidence and fair dealing.

**Public hearing(s) will be held at:** 11:00 a.m., June 19, 2013 at Department of Agriculture and Markets, 10B Airline Dr., Albany, NY.

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

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

**Text of proposed rule:** Part 175 of 1 NYCRR is repealed.

1 NYCRR is amended by adding thereto a new Part 270, to read as follows:

*Part 270. Maple Syrup*

*Section 270.1 Maple Syrup: identities; label statements*

*(a) Definitions: For the purpose of this section, the following terms shall have the following meanings, unless the context clearly indicates otherwise:*

*1. Light transmittance means the fraction of incident light at a specified wavelength that passes through a representative sample of a particular sub-grade of Grade A maple syrup.*

*2. Soluble solids, expressed as a percentage, means the proportion of maple sap solids in the applicable solvent.*

*3. Tc means the percentage of light transmission through maple syrup, measurable by a spectrophotometer, using matched square optical cells having a 10-millimeter light path at a wavelength of 560 nanometers, the color values being expressed in percent of light transmission as compared to A.R. Glycerol fixed at 100% transmission.*

*(b) Standards of identity.*

*1. Maple syrup is the liquid made by the evaporation of pure sap or sweet water obtained by tapping a maple tree. Maple syrup contains minimum soluble solids of 66.0% and maximum soluble solids of 68.9%. Maple syrup includes, and is either, Grade A Maple Syrup or Processing Grade Maple Syrup, as defined in paragraphs (2) and (3) of this subdivision.*

*2. Grade A maple syrup means maple syrup that is not fermented, is not turbid, and contains or has no objectionable odors, off-flavors or sediment. Grade A maple syrup must fall within one of the color and taste sub-grades of Grade A maple syrup set forth in subparagraphs (a), (b), (c), or (d) of this paragraph.*

*a. Grade A golden color and delicate taste maple syrup has a uniform light golden color, a delicate to mild taste, and a light transmittance of 75% Tc or more.*

*b. Grade A amber color and rich taste maple syrup has a uniform amber color, a rich or full-bodied taste, and a light transmittance of 50% - 74.9% Tc.*

*c. Grade A dark color and robust taste maple syrup has a uniform dark color, a robust or strong taste, and a light transmittance of 25% - 49.9% Tc.*

*d. Grade A very dark and strong taste maple syrup has a uniform very dark color, a very strong taste, and a light transmittance of less than 25% Tc.*

*3. Processing Grade Maple Syrup means maple syrup that does not meet the requirements for Grade A maple syrup set forth in paragraph (2) of this subdivision. Processing Grade Maple Syrup may not be sold, offered for sale or distributed in retail food stores or directly to consumers for household use.*

*(c) Nomenclature label statement.*

*1. The name of the food defined in paragraph 2 of subdivision (b) of this section is "Grade A Maple Syrup". The name "Grade A Maple Syrup" must conspicuously appear on the principal display panel of the food's label, and the words "golden color and delicate taste", "amber color and rich taste", "dark color and robust taste", or "very dark color and strong taste", as appropriate, must also conspicuously appear on the food's principal display panel in close proximity to the food's name and in a size reasonably related to the size of the name of the food.*

*2. The name of the food defined in paragraph (3) of subdivision (b) of this section is "Processing Grade Maple Syrup". The name "Processing Grade Maple Syrup" must conspicuously appear on the principal display panel of the food's label, and the words "For Food Processing Only" and "Not for Retail Sale" must also conspicuously appear on the food's principal display panel in close proximity to the food's name and in a size reasonably related to the size of the name of the food.*

**Text of proposed rule and any required statements and analyses may be obtained from:** Mr. Stephen Stich, NYS Department of Agriculture and Markets, 10B Airline Drive, Albany, NY 12235, (518) 457-4492, email: stephen.stich@agriculture.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.

**This rule was not under consideration at the time this agency submitted its Regulatory Agenda for publication in the Register.**

#### **Consensus Withdrawal Objection**

The proposed rule was originally proposed as a consensus rule but was withdrawn due to the submission of an objection received immediately prior to the end of the comment period. The person who commented stated that he believed that the proposed rule, which provides for new maple syrup grades, would cause consumer confusion. He also stated that he believed that the proposed rule would allow processing grade maple syrup, which is maple syrup that is of a lesser quality than "Grade A" maple syrup, to be sold to retailers or directly to consumers.

#### **Regulatory Impact Statement**

##### 1. Statutory authority:

Agriculture and Markets Law sections 16, 18, 160-u, 203, and 214-b.

##### 2. Legislative objectives:

As set forth in Agriculture and Markets Law section 160-u, the Legislature provided that the Commissioner of Agriculture and Markets must promulgate rules and regulations to carry out the requirement that each package of maple syrup offered for sale to consumers, must be plainly marked as to grade. The proposed rule advances that objective by providing that each variety of maple syrup must be labeled with an appropriate designated grade.

##### 3. Needs and benefits:

The proposed rule is needed to facilitate trade in maple syrup, to the benefit of the State's maple syrup industry. Currently, there are approximately 500 manufacturers of maple syrup in New York who, in 2011, produced maple syrup valued in excess of \$22,000,000.00. The State's maple syrup manufacturers sell their syrup not only in New York but throughout the United States and Canada. The proposed rule, if adopted, would require the State's maple syrup manufacturers to label their maple syrup with the same grades as required in the other states and Canadian provinces in which it is sold, thereby allowing such maple syrup to be readily sold in such jurisdictions, to the benefit of the State's manufacturers.

The proposed rule is also needed to provide necessary information to consumers of maple syrup. Currently, 1 NYCRR Part 175 sets forth maple syrup grades that are determined, primarily, upon whether the syrup is of "good" color, a standard that is somewhat subjective and vague. The proposed rule, if adopted, will provide for four different varieties of "Grade A" maple syrup, as well as for a "processing" grade of maple syrup, and the standards for determining a particular maple syrup's grade will be based upon the syrup's color, taste, and percentage of light transmission, a standard far less subjective than it is at present. As such, consumers will be better assured that the grade of maple syrup that they purchase will meet their needs and expectations.

##### 4. Costs:

###### a) Costs to regulated parties:

The proposed rule, if adopted, will require the State's maple syrup manufacturers to label packages of maple syrup for sale to consumers with the appropriate grade. Such maple syrup manufacturers will, therefore, have to have on hand a sufficient quantity of labels that set forth the grade of the maple syrup that is offered for sale. Because, however, the Department will not make the proposed rule effective until the end of the next maple syrup manufacturing season subsequent to the rule's promulgation, and because maple syrup manufacturers are already required to place labels upon their packages of maple syrup, the proposed rule will not impose any additional costs upon such manufacturers with regard to the labeling requirement set forth therein.

As set forth above, the proposed rule will provide for new maple syrup grades. In order to determine a particular maple syrup's grade, a manufacturer will need to obtain a grading classification kit which presently costs between \$50.00 - \$400.00.

b) Costs to the agency and to state and local government for implementation and continuation of the rule:

None.

###### 5. Local government mandates:

None.

###### 6. Paperwork:

None.

###### 7. Duplication:

Federal regulations provide for a standard of identity for maple syrup (see Title 21 of the Code of Federal Regulations ["CFR"] section 168.140) which, however, is not pre-emptive upon the states (see Title 21 of the United States Code section 342-1[a][1]); as such, New York is free to promulgate its own standard of identity for such food. The standard of identity for maple syrup set forth in the proposed rule is marginally more restrictive than the federal standard of identity so, in the event that the

proposed rule is adopted, New York's maple syrup manufacturers who are in compliance therewith will also be in compliance with the federal standard of identity and will be able to sell their maple syrup in other states. New York has a compelling interest in ensuring that maple syrup manufactured within its borders is natural and of the highest quality, and the proposed rule, although it does overlap federal regulations, is designed to and will help achieve that purpose.

##### 8. Alternatives:

An alternative would have been to keep 1 NYCRR Part 175 in full force and effect. This alternative was rejected because the standard for determining grades of maple syrup, set forth therein, allows for subjective judgment. Furthermore, the grades of maple syrup provided in 1 NYCRR Part 175 are inconsistent with the maple syrup grades required in the states and Canadian provinces in which New York-manufactured maple syrup is sold. As such, the Department decided that maintaining 1 NYCRR Part 175 was not a viable alternative.

##### 9. Federal standards:

The standard of identity for maple syrup set forth in the proposed rule is marginally more stringent than the federal standard of identity, set forth in 21 CFR section 168.140. The Department feels that the federal standard of identity is too lenient and allows substances to be labeled as "maple syrup" that are not of the same quality as "real" maple syrup and that do not meet consumer expectations for such food.

##### 10. Compliance schedule:

The Department anticipates that the proposed rule, if adopted, will be made effective at some point after the 2014 maple syrup manufacturing season. Once the proposed rule is adopted, it is estimated that maple syrup manufacturers will be able to obtain appropriate labels within one - two months thereafter.

#### **Regulatory Flexibility Analysis**

##### 1. Effect of rule:

There are approximately 500 manufacturers of maple syrup in New York who will be affected by the proposed rule.

##### 2. Compliance requirements:

Each maple syrup manufacturer will have to label each package of maple syrup with the words "maple syrup" and with the applicable grade of maple syrup, as set forth in the proposed rule.

##### 3. Professional services:

None.

##### 4. Compliance costs:

Each maple syrup manufacturer will need to obtain a grading classification kit in order to properly determine the grade of maple syrup manufactured; a kit costs between \$50.00 - \$400.00, depending upon its quality and reliability. Each maple syrup manufacturer will also need to have labels that accurately set forth the grade of maple syrup manufactured. Because manufacturers presently need to have labels that set forth certain required information and because the proposed rule will not be effective until the beginning of the 2014 maple syrup manufacturing season, the proposed rule should have no adverse financial impact upon manufacturers because they should be able to use all of their "old" labels before they have to obtain new ones.

##### 5. Economic and technological feasibility:

The proposed rule requires minimal expenditures, and no technological expertise is required, to comply.

##### 6. Minimizing adverse impact:

The proposed rule should have no net adverse economic impact on small businesses. All of the maple syrup manufacturers located in New York meet the definition of "small business", as set forth in State Administrative Procedure Act section 102(8), and many of them are members of the New York State Maple Syrup Association ("NYSMSA"). Prior to the proposed rule being finalized, it was furnished to the NYSMSA for its consideration; NYSMSA subsequently informed the Department that it was in agreement with its provisions. As such, the State's maple syrup manufacturers are apparently of the opinion that whatever minimal costs are associated with adoption of the proposed rule are outweighed by the economic benefits that promulgation of the proposed rule will confer.

The approaches for minimizing adverse impact, as set forth in SAPA section 202-b(1), were considered and the Department has decided, consistent with paragraph (a) thereof, to make the proposed rule effective no earlier than the beginning of the 2014 maple syrup manufacturing season.

##### 7. Small business and local government participation:

Prior to finalizing the proposed rule, the Department contacted officers and members of NYSMSA, as well as the director of the Cornell University Maple Uihlein Forest Maple Laboratory, and considered their comments in formulating the proposed rule.

#### **Rural Area Flexibility Analysis**

##### 1. Types and estimated numbers of rural areas:

There are approximately 500 manufacturers of maple syrup in New York; all are located in rural areas. Because most manufacturers reside in

counties of less than two hundred thousand but because many manufacturers reside in the same counties, it is estimated that the proposed rule will apply to 50 number of rural areas.

2. Reporting, recordkeeping and other compliance requirements:

Each maple syrup manufacturer will have to label each package of maple syrup with the words "maple syrup" and with the applicable grade of maple syrup, as set forth in the proposed rule.

3. Costs:

The proposed rule, if adopted, will require the State's maple syrup manufacturers to label packages of maple syrup for sale to consumers with the appropriate grade. Such maple syrup manufacturers will, therefore, have to have on hand a sufficient quantity of labels that set forth the grade of the maple syrup that is offered for sale. Because, however, the Department will not make the proposed rule effective until the end of the next maple syrup manufacturing season subsequent to the rule's promulgation, and because maple syrup manufacturers are already required to place labels upon their packages of maple syrup, the proposed rule will not impose any additional costs upon such manufacturers with regard to the labeling requirement set forth therein.

As set forth above, the proposed rule will provide for new maple syrup grades. In order to determine a particular maple syrup's grade, a manufacturer will need to obtain a grading classification kit which presently costs between \$50.00 - \$400.00.

4. Minimizing adverse impact:

The proposed rule should have no net adverse economic impact on small businesses. All of the maple syrup manufacturers located in New York meet the definition of "small business", as set forth in State Administrative Procedure Act section 102(8), and many of them are members of the New York State Maple Syrup Association ("NYSMSA"). Prior to the proposed rule being finalized, it was furnished to the NYSMSA for its consideration; NYSMSA subsequently informed the Department that it was in agreement with its provisions. As such, the State's maple syrup manufacturers are apparently of the opinion that whatever minimal costs are associated with adoption of the proposed rule are outweighed by the economic benefits that promulgation of the proposed rule will confer.

The approaches for minimizing adverse impact, as set forth in SAPA section 202-b(1), were considered and the Department has decided, consistent with paragraph (a) thereof, to make the proposed rule effective no earlier than the beginning of the 2014 maple syrup manufacturing season.

5. Rural area participation:

Prior to finalizing the proposed rule, the Department contacted officers and members of NYSMSA, as well as the director of the Cornell University Maple Uihlein Forest Maple Laboratory, and considered their comments in formulating the proposed rule.

**Job Impact Statement**

The proposed rule sets forth a standard of identity for maple syrup that is consistent with the definition set forth in statute and also provides for new grades of maple syrup that reflect the maple syrup's color, taste, and appearance. The grades set forth in the proposed rule are consistent with the grades required in other states and in Canadian provinces in which maple syrup manufactured in New York is sold; as such, trade in such maple syrup could increase and thereby cause employment opportunities to increase. Furthermore, such grades will also allow consumers to better identify the type of maple syrup they wish to purchase which could, again, increase trade in such food and thereby result in an increase in job opportunities.

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

**Cull Onions and Potatoes**

**I.D. No.** AAM-16-13-00007-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 192 to Title 1 NYCRR.

**Statutory authority:** Agriculture and Markets Law, section 160-v

**Subject:** Cull onions and potatoes.

**Purpose:** To establish proper disposal methods for culls and waste piles of onions and potatoes not produced in New York State.

**Text of proposed rule:** PART 192

**PROPER DISPOSAL OF CERTAIN AGRICULTURAL PRODUCTS**

**Section 192.1 Definitions**

*As used in this Part:*

(a) *Commissioner* means the Commissioner of Agriculture and Markets of the State of New York and any officer or employee of the New York

State Department of Agriculture and Markets duly delegated pursuant to section 17 of the Agriculture and Markets Law.

(b) *Compliance agreement* means an agreement approved by the Commissioner and executed by any establishment as defined in this part that sells, offers for sale or distributes any food product in the State, covering handling and disposal of culls or waste piles of onions or potatoes not produced in New York State.

(c) *Cull* means onions or potatoes not produced in New York State which fall below the official standard or grade of quality for such product.

(d) *Department* means the New York State Department of Agriculture and Markets.

(e) *Establishment* means farms, wholesale packers, re-packers, processors and grower-shippers utilizing raw onions or potatoes not produced in New York State.

(f) *Inspector* means an inspector of the New York State Department of Agriculture and Markets.

(g) *Proper disposal* means the method or methods by which culls or waste piles are eliminated in accordance with this Part.

(h) *State* means the State of New York.

(i) *Waste pile* means any non-containerized solid, non-flowing waste, consisting entirely or in part of onions or potatoes not produced in New York State that are gathered for proper disposal.

**Section 192.2 Proper disposal methods.**

The following are proper disposal methods for the elimination of culls or waste piles consisting entirely or in part of onions or potatoes not produced in New York State.

(a) **Composting**

(1) *Composting of culls and waste piles may be done at any time.*

(2) *Compost piles shall be turned, mixed and otherwise maintained and managed in accordance with prevailing best management practices as established by Cornell University Waste Management Institute or its successors.*

(b) **Deep burial**

(1) *The burial of culls and waste piles may be done at any time.*

(2) *Culls and waste piles shall be buried at a depth of 18 inches below existing grade and shall be covered with a minimum of 18 inches of soil that is free from onions or potatoes to prevent sprouts from emerging. If sprouts begin to emerge additional soil shall be added to stop sprouting.*

(3) *Culls and waste piles that will not be buried within eight hours of collection for burial shall be covered with canvas, plastic or closely woven cloth to prevent the potential spread of contaminants.*

(c) **Field spreading**

(1) *The field spreading of culls and waste piles shall be limited to the period October 1 through March 1.*

(2) *Culls and waste piles may be spread at a rate of 660 cwt. (66,000 lbs.) per acre on well-drained soil, and 495 cwt. (49,500 lbs.) per acre on moderately-drained soil for the period set forth in paragraph (1) of this subdivision.*

(3) *The depth of spread material shall not exceed six inches.*

(4) *Culls and waste piles shall not be spread on fields intended for production of that crop within a period of three years following such spreading.*

(5) *Fields on which culls and waste piles have been spread shall not be cultivated until after the spread material has completely frozen.*

(d) **Feeding to livestock**

(1) *The feeding of culls and waste piles to livestock may be done at any time.*

(2) *Culls and waste piles that will not be fed to livestock within eight hours of collection shall be covered with canvas, plastic or closely woven cloth to prevent the potential spread of contaminants.*

(e) **Incineration**

(1) *The burning of culls and waste piles may done at any time provided it is done in accordance with applicable state and local laws and regulations.*

(2) *Culls and waste piles may be incinerated in a facility that is permitted for solid waste disposal pursuant to 6 NYCRR Part 360.*

(3) *Culls and waste piles that will not be burned within eight hours of collection for burning shall be covered with canvas, plastic or closely woven cloth to prevent the potential spread of contaminants.*

(f) **Return to point of origin**

(1) *Culls may be returned to the point of origin, provided they are shipped within 30 days of their arrival.*

(g) **Anaerobic digestion**

(1) *Culls and waste piles may be used as feedstock for anaerobic digesters providing it is done in accordance with best management practices and all applicable regulations.*

*(h) Landfill disposal*

*(1) Culls and waste piles may be disposed of at permitted landfills provided it is done in accordance with all applicable regulations.*

*Section 192.3 Conditions governing the proper disposal of culls or waste piles*

*(a) Any establishment, as defined in this part, that disposes of culls or waste piles in accordance with these regulations may, at the discretion of the Department, be subject to inspection of such disposal.*

*(b) The disposal of culls or waste piles shall be done in accordance with this Part or pursuant to a compliance agreement.*

*(c) The Department shall not be responsible for any cost incident to inspection and disposal of any culls or waste piles pursuant to this Part, other than the services of the inspector.*

*Section 192.4 Records*

*Any establishment, as defined in this part, that sells, offers for sale or distributes any onions or potatoes not produced in New York State shall compile, maintain and make available for inspection, for a period of two years, records of the disposal of culls or waste piles on a form or forms prescribed by the Commissioner.*

**Text of proposed rule and any required statements and analyses may be obtained from:** Kevin S. King, Director, Division of Plant Industry, New York State Department of Agriculture and Markets, 10B Airline Drive, Albany, New York 12235, (518) 457-2087

**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 160-v of the Agriculture and Markets Law (Law), as added by chapter 668 of the Laws of 2007 and amended by chapter 527 of the Laws of 2010, provides that after consultation with the New York State College of Agriculture and Life Sciences at Cornell University, the Commissioner shall identify establishments and practices most susceptible to threats from out of state agricultural products, and promulgate rules and regulations for the proper disposal of any cull or waste pile of those products.

## 2. Legislative objectives:

Section 160-v of the Law provides that no person or entity which sells, offers for sale or distributes any food product shall dump, or otherwise discard in a manner reasonably and causally connected to the contamination of food, any cull or waste pile consisting of any agricultural product not produced in New York State. The proposed rule accords with the public policy objectives the Legislature sought to advance by enacting the statutory authority in that it will establish proper disposal methods for culls or waste piles.

## 3. Needs and benefits:

The proposed rule implements the legislative directive that the Commissioner shall identify establishments and practices most susceptible to threats from out of state agricultural products, and promulgate rules and regulations for the proper disposal of any cull or waste pile of those products.

The statutory authority and this proposed rule are prompted by several disease outbreaks attributed to cull piles, with one recent outbreak in New York State. Onions and potatoes pose the greatest threat.

Onions that fall short of acceptable standards for use are "culled out" at grading and packing facilities. These facilities are often in close proximity to production fields. Exposed cull piles become sources of disease production and propagation of fungi, bacteria, viruses and nematodes. At times, these packaging facilities also accept onions from other states and thus, the movement of material that is subsequently included in the cull pile can lead to the introduction of pathogens previously not known to exist in New York State. In 2006, an outbreak of iris yellow spot virus in onions in New York was attributed to poor disposal of onions. This invasive disease was first discovered in Idaho in 1989. Iris yellow spot virus usually doesn't kill the plants but rather, reduces plant vigor and bulb size, diminishing the marketability of the afflicted onions. There is no cure for this disease and the plants must be destroyed.

There are approximately 93 onion growers throughout the State. Onions are one of the most important vegetable crops in New York State with annual sales of approximately 54-million dollars. New York produces 97 percent of the onions in the northeastern United States and ranks fifth nationwide in onion production. Approximately 12,000 acres of yellow pungent cooking onions are grown from direct seed, predominantly in organically rich muck soils found in Orange, Oswego, Orleans, Genesee, Madison, Wayne, Yates and Steuben Counties.

In the case of potatoes, there are several potato diseases which are associated with poor disposal of potato culls. Bacterial wilt or brown rot (*Ralstonia solanacearum*) is a quarantined pest in North America. At present, the disease isn't present in New York State. Bacterial ring rot

(*Clavibacter michiganensis*) does not occur in New York State and the State has zero tolerance for this destructive pathogen. Late blight (*Phytophthora infestans*) has resulted in widespread infection of potatoes in 2004 and 2009, stemming from poor disposal of potato culls.

Potatoes are of great economic importance to New York State. There are approximately 150 potato growers throughout the State. Potatoes rank number one in economic value among vegetables produced in the State, and are ranked number 12 in the nation with 27,000 acres planted and approximately \$60-million in annual sales. Potatoes are grown in most of the vegetable production regions of the State. Areas of significant production include Suffolk County on Long Island; Franklin County in northern New York; Oswego, Steuben, Wayne, Ontario, Oneida and Livingston Counties in central New York; and Erie, Genesee, Monroe, Orleans and Wyoming counties in western New York.

The proposed rule is necessary to avoid further outbreaks of these and other diseases due to poor disposal of cull onions and potatoes. The proposed rule benefits growers and consumers alike. For growers, the proposal would help ensure the health and welfare of their potato and onion crop, thereby helping them to realize the greatest possible return on their crops. For consumers, the proposal would help ensure that consumers are receiving the most wholesome and healthy onions and potatoes possible.

## 4. Costs:

a. Costs to regulated parties for the implementation of and continuing compliance with the rule:

Regulated parties would have to undertake the costs of disposing of culls. The expense in doing so varies in accordance with the disposal method used and the amount of culls disposed.

b. Costs to the agency, the state and local governments for the implementation and continuation of the rule:

The Department would have to inspect records compiled and maintained by regulated parties regarding the disposal of culls and waste piles. It is anticipated that this task will be able to be undertaken by existing staff, resulting in no additional costs to the Department, State and local governments.

c. The information, including the source(s) of such information and the methodology upon which the cost analysis is based:

Observations of industry.

## 5. Local government mandates:

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

## 6. Paperwork:

Regulated parties that sell, offer for sale or distributes any onions and potatoes shall compile, maintain and make available for inspection for a period of two years, records of the disposal of culls or waste piles on a form or forms prescribed by the Commissioner.

## 7. Duplication:

The proposed regulations do not duplicate any State or federal requirements.

## 8. Alternatives:

Two alternatives were considered. The first was to refrain from proposing this rule. This approach was rejected, insofar as promulgation of the rule is pursuant to a legislative mandate. The second was to include all fruits and vegetables in addition to onions and potatoes. This approach was rejected, following consultation with officials of the New York State College of Agriculture and Life Sciences at Cornell University, who indicated that the most pressing problem is failure to properly dispose of onion and potato culls.

## 9. Federal standards:

The proposed regulations do not exceed any minimum standards of the federal government.

## 10. Compliance schedule:

The rule will be effective upon publication of the Notice of Adoption in the State Register.

**Regulatory Flexibility Analysis**

## 1. Effect of rule:

The proposed rule sets forth requirements for the proper disposal of onion and potato culls. The approved methods are composting, burial, field spreading, feeding to livestock, incineration, anaerobic digestion, landfill disposal and return to the point of origin.

Approximately 150 potato growers and 93 onion growers throughout New York State will be subject to the proposed rule. A small number of these growers deal with out of state onions and potatoes. Most of these growers are small businesses.

It is anticipated that the proposal will not affect local governments.

## 2. Compliance requirements:

Under the proposal, regulated parties would be required to dispose of onion and potato culls using one or more of the methods set forth above. Regulated parties would also be required to compile, maintain and make available for inspection, for a period of two years, records of the disposal of culls or waste piles on a form or forms prescribed by the Commissioner.

It is anticipated that the proposal will not affect local governments.

3. Professional services:

Regulated parties may employ outside services to dispose of culls and/or compile and maintain the paperwork, but are not required to do so.

It is anticipated that the proposal will not affect local governments.

4. Compliance costs:

Regulated parties would have to undertake the costs of disposing of culls. The expense in doing so varies in accordance with the disposal method used and the amount of culls disposed. Regulated parties are not required to hire an outside consultant to satisfy the recordkeeping requirement, but may do so at additional cost.

It is anticipated that the proposal will not affect local governments.

5. Economic and technological feasibility:

The economic and technological feasibility of compliance with the proposed rule by small businesses and local governments has been addressed and such compliance has been determined to be feasible. The basis for this determination is that proper disposal of culls by growers may be achieved by a number of methods, rendering this requirement feasible. The recordkeeping requirement is merely compiling and maintaining a report for two years on the disposal of culls and waste piles. This can be achieved either through the grower or an outside consultant and as such, is feasible.

It is anticipated that the proposal will not affect local governments.

6. Minimizing adverse impact:

The proposed rule minimizes adverse impact by limiting the regulation to onion and potato culls, rather than culls of all fruits and vegetables. Since the proposal is aimed at the vegetables whose culls pose the greatest health threat to healthy vegetables, the proposed rule limits regulation of only growers of those commodities, thereby eliminating regulatory burden on growers who do not grow those commodities.

It is anticipated that the proposal will not affect local governments.

7. Small business and local government participation:

On May 19, 2008, the Department met with scientists and officials from Cornell University for consultation on the proposed regulations, as required by section 160-v of the Agriculture and Markets Law. On July 2, 2008, scientists and officials provided their recommendations on proposed disposal methods for culls. They also recommended that the regulations be limited to potatoes and onions.

In August and September 2012, the Department conferred with the New York Farm Bureau, which shared the proposed regulations with its members. Neither the Bureau nor its members had any negative feedback.

On November 9, 2012, the Department met with the Empire Potato Growers Association in Syracuse to discuss the proposed regulations. The potato growers supported the proposed regulations.

In November and December 2012, the Department conferred with potato processors Terrell Potato Chip Company in Syracuse and Frito-Lay in Binghamton. Terrell Potato Chip Company indicated that its culls are used as feed for livestock, a permissible use under the proposal, and had no objection to the regulations as written. Frito-Lay likewise had no objection to the regulations as written.

**Rural Area Flexibility Analysis**

1. Type and estimated numbers of rural areas:

The proposed rule sets forth requirements for the proper disposal of onion and potato culls. The approved methods are composting, burial, field spreading, feeding to livestock, incineration, anaerobic digestion, landfill disposal and return to the point of origin.

There are approximately 150 potato growers and 93 onion growers throughout rural areas in New York State which will be subject to the proposed rule. A small number of these growers deal with out of state onions and potatoes.

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

Regulated parties would be required to compile, maintain and make available for inspection, for a period of two years, records of the disposal of culls or waste piles on a form or forms prescribed by the Commissioner.

Regulated parties may employ outside services to dispose of culls and/or compile and maintain the paperwork, but are not required to do so.

3. Costs:

Regulated parties would have to undertake the costs of disposing of culls. The expense in doing so varies in accordance with the disposal method used and the amount of culls disposed. Regulated parties are not required to hire an outside consultant to satisfy the recordkeeping requirement, but may do so at additional cost.

4. Minimizing adverse impact:

The proposed rule minimizes adverse impact by limiting the regulation to onion and potato culls, rather than culls of all fruits and vegetables. Since the proposal is aimed at the vegetables whose culls pose the greatest health threat to healthy vegetables, the proposed rule limits regulation of only growers of those commodities, thereby eliminating regulatory burden on growers who do not grow those commodities. Accordingly, the ap-

proaches for minimizing adverse economic impact required by section 202-a(1) of the State Administrative Procedure Act and suggested by section 202-b(1) of the State Administrative Procedure Act were met.

5. Rural area participation:

On May 19, 2008, the Department met with scientists and officials from Cornell University for consultation on the proposed regulations, as required by section 160-v of the Agriculture and Markets Law. On July 2, 2008, scientists and officials provided their recommendations on proposed disposal methods for culls. They also recommended that the regulations be limited to potatoes and onions.

In August and September 2012, the Department conferred with the New York Farm Bureau, which shared the proposed regulations with its members. Neither the Bureau nor its members had any negative feedback.

On November 9, 2012, the Department met with the Empire Potato Growers Association in Syracuse to discuss the proposed regulations. The potato growers supported the proposed regulations.

In November and December 2012, the Department conferred with potato processors Terrell Potato Chip Company in Syracuse and Frito-Lay in Binghamton. Terrell Potato Chip Company indicated that its culls are used as feed for livestock, a permissible use under the proposal, and had no objection to the regulations as written. Frito-Lay likewise had no objection to the regulations as written.

**Job Impact Statement**

It is anticipated that the proposed rule will not have a substantial adverse impact on jobs and employment opportunities.

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## Department of Civil Service

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### NOTICE OF ADOPTION

**Jurisdictional Classification**

**I.D. No.** CVS-20-12-00010-A

**Filing No.** 358

**Filing Date:** 2013-03-28

**Effective Date:** 2013-04-17

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

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

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

**Subject:** Jurisdictional Classification.

**Purpose:** To classify a position in the exempt class.

**Text or summary was published** in the May 16, 2012 issue of the Register, I.D. No. CVS-20-12-00010-P.

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

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

**Assessment of Public Comment**

The agency received no public comment.

### NOTICE OF ADOPTION

**Jurisdictional Classification**

**I.D. No.** CVS-20-12-00011-A

**Filing No.** 353

**Filing Date:** 2013-03-28

**Effective Date:** 2013-04-17

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

**Action taken:** Amendment of the Rules for the Classified Service in Appendix 2 of Title 4 NYCRR.

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

**Subject:** Jurisdictional Classification.

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

**Text or summary was published** in the May 16, 2012 issue of the Register, I.D. No. CVS-20-12-00011-P.

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

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

**Assessment of Public Comment**

The agency received no public comment.

**NOTICE OF ADOPTION**

**Jurisdictional Classification**

**I.D. No.** CVS-20-12-00012-A

**Filing No.** 361

**Filing Date:** 2013-03-28

**Effective Date:** 2013-04-17

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

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

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

**Subject:** Jurisdictional Classification.

**Purpose:** To classify a position in the exempt class.

**Text or summary was published** in the May 16, 2012 issue of the Register, I.D. No. CVS-20-12-00012-P.

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

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

**Assessment of Public Comment**

The agency received no public comment.

**NOTICE OF ADOPTION**

**Jurisdictional Classification**

**I.D. No.** CVS-26-12-00002-A

**Filing No.** 356

**Filing Date:** 2013-03-28

**Effective Date:** 2013-04-17

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

**Action taken:** Amendment of the Rules for the Classified Service in Appendix 1 of Title 4 NYCRR.

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

**Subject:** Jurisdictional Classification.

**Purpose:** To classify a position in the exempt class.

**Text or summary was published** in the June 27, 2012 issue of the Register, I.D. No. CVS-26-12-00002-P.

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

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

**Assessment of Public Comment**

The agency received no public comment.

**NOTICE OF ADOPTION**

**Jurisdictional Classification**

**I.D. No.** CVS-26-12-00003-A

**Filing No.** 357

**Filing Date:** 2013-03-28

**Effective Date:** 2013-04-17

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

**Action taken:** Amendment of the Rules for the Classified Service in Appendix 1 of Title 4 NYCRR.

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

**Subject:** Jurisdictional Classification.

**Purpose:** To classify a position in the exempt class.

**Text or summary was published** in the June 27, 2012 issue of the Register, I.D. No. CVS-26-12-00003-P.

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

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

**Assessment of Public Comment**

The agency received no public comment.

**NOTICE OF ADOPTION**

**Jurisdictional Classification**

**I.D. No.** CVS-26-12-00004-A

**Filing No.** 354

**Filing Date:** 2013-03-28

**Effective Date:** 2013-04-17

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

**Action taken:** Amendment of the Rules for the Classified Service in Appendix 1 of Title 4 NYCRR.

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

**Subject:** Jurisdictional Classification.

**Purpose:** To classify a position in the exempt class.

**Text or summary was published** in the June 27, 2012 issue of the Register, I.D. No. CVS-26-12-00004-P.

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

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

**Assessment of Public Comment**

The agency received no public comment.

**NOTICE OF ADOPTION**

**Jurisdictional Classification**

**I.D. No.** CVS-26-12-00005-A

**Filing No.** 355

**Filing Date:** 2013-03-28

**Effective Date:** 2013-04-17

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

**Action taken:** Amendment of the Rules for the Classified Service in Appendix 1 of Title 4 NYCRR.

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

**Subject:** Jurisdictional Classification.

**Purpose:** To delete a position from and classify a position in the exempt class.

**Text or summary was published** in the June 27, 2012 issue of the Register, I.D. No. CVS-26-12-00005-P.

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

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

**Assessment of Public Comment**

The agency received no public comment.

**NOTICE OF ADOPTION**

**Jurisdictional Classification**

**I.D. No.** CVS-26-12-00006-A

**Filing No.** 360

**Filing Date:** 2013-03-28

**Effective Date:** 2013-04-17

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

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

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

**Subject:** Jurisdictional Classification.

**Purpose:** To delete a position from and classify a position in the non-competitive class.

**Text or summary was published** in the June 27, 2012 issue of the Register, I.D. No. CVS-26-12-00006-P.

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

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

**Assessment of Public Comment**

The agency received no public comment.

**NOTICE OF ADOPTION**

**Jurisdictional Classification**

**I.D. No.** CVS-26-12-00007-A

**Filing No.** 359

**Filing Date:** 2013-03-28

**Effective Date:** 2013-04-17

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

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

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

**Subject:** Jurisdictional Classification.

**Purpose:** To classify positions in the exempt class.

**Text of final rule:** Amend Appendix 1 of the Rules for the Classified Service, listing positions in the exempt class, in the Department of Labor under the subheading "Administration – General," by increasing the number of positions of Special Assistant from 8 to 13.

**Final rule as compared with last published rule:** Nonsubstantive changes were made in Appendix 1.

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

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

Changes made to the last published rule do not necessitate revision to the previously published Regulatory Impact Statement, Regulatory Flexibility Analysis, Rural Area Flexibility Analysis and Job Impact Statement.

**Assessment of Public Comment**

The agency received no public comment.

**NOTICE OF ADOPTION**

**Jurisdictional Classification**

**I.D. No.** CVS-32-12-00002-A

**Filing No.** 362

**Filing Date:** 2013-03-28

**Effective Date:** 2013-04-17

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

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

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

**Subject:** Jurisdictional Classification.

**Purpose:** To classify a position in the exempt class.

**Text or summary was published** in the August 8, 2012 issue of the Register, I.D. No. CVS-32-12-00002-P.

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

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

**Assessment of Public Comment**

The agency received no public comment.

**NOTICE OF ADOPTION**

**Jurisdictional Classification**

**I.D. No.** CVS-32-12-00003-A

**Filing No.** 363

**Filing Date:** 2013-03-28

**Effective Date:** 2013-04-17

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

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

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

**Subject:** Jurisdictional Classification.

**Purpose:** To classify a position in the exempt class.

**Text or summary was published** in the August 8, 2012 issue of the Register, I.D. No. CVS-32-12-00003-P.

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

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

**Assessment of Public Comment**

The agency received no public comment.

**NOTICE OF ADOPTION**

**Jurisdictional Classification**

**I.D. No.** CVS-32-12-00005-A

**Filing No.** 364

**Filing Date:** 2013-03-28

**Effective Date:** 2013-04-17

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

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

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

**Subject:** Jurisdictional Classification.

**Purpose:** To classify a position in the exempt class.

**Text or summary was published** in the August 8, 2012 issue of the Register, I.D. No. CVS-32-12-00005-P.

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

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

**Assessment of Public Comment**

The agency received no public comment.

**NOTICE OF ADOPTION**

**Jurisdictional Classification**

**I.D. No.** CVS-32-12-00006-A

**Filing No.** 367

**Filing Date:** 2013-03-28

**Effective Date:** 2013-04-17

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

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

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

**Subject:** Jurisdictional Classification.

**Purpose:** To delete a position from and classify a position in the exempt class.

**Text or summary was published** in the August 8, 2012 issue of the Register, I.D. No. CVS-32-12-00006-P.

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

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

**Assessment of Public Comment**

The agency received no public comment.

## NOTICE OF ADOPTION

**Jurisdictional Classification**

**I.D. No.** CVS-32-12-00007-A  
**Filing No.** 365  
**Filing Date:** 2013-03-28  
**Effective Date:** 2013-04-17

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

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

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

**Subject:** Jurisdictional Classification.

**Purpose:** To classify positions in the exempt class.

**Text or summary was published** in the August 8, 2012 issue of the Register, I.D. No. CVS-32-12-00007-P.

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

**Text of rule and any required statements and analyses may be obtained**

**from:** Shirley LaPlante, NYS Department of Civil Service, AESSOB, Albany, NY 12239, (518) 473-6598, email: shirley.laplante@cs.state.ny.us

**Assessment of Public Comment**

The agency received no public comment.

## NOTICE OF ADOPTION

**Jurisdictional Classification**

**I.D. No.** CVS-32-12-00008-A  
**Filing No.** 366  
**Filing Date:** 2013-03-28  
**Effective Date:** 2013-04-17

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

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

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

**Subject:** Jurisdictional Classification.

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

**Text or summary was published** in the August 8, 2012 issue of the Register, I.D. No. CVS-32-12-00008-P.

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

**Text of rule and any required statements and analyses may be obtained**

**from:** Shirley LaPlante, NYS Department of Civil Service, AESSOB, Albany, NY 12239, (518) 473-6598, email: shirley.laplante@cs.state.ny.us

**Assessment of Public Comment**

The agency received no public comment.

## NOTICE OF ADOPTION

**Jurisdictional Classification**

**I.D. No.** CVS-32-12-00009-A  
**Filing No.** 369  
**Filing Date:** 2013-03-28  
**Effective Date:** 2013-04-17

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

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

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

**Subject:** Jurisdictional Classification.

**Purpose:** To delete positions from and classify positions in the non-competitive class.

**Text or summary was published** in the August 8, 2012 issue of the Register, I.D. No. CVS-32-12-00009-P.

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

**Text of rule and any required statements and analyses may be obtained**

**from:** Shirley LaPlante, NYS Department of Civil Service, AESSOB, Albany, NY 12239, (518) 473-6598, email: shirley.laplante@cs.state.ny.us

**Assessment of Public Comment**

The agency received no public comment.

## NOTICE OF ADOPTION

**Jurisdictional Classification**

**I.D. No.** CVS-32-12-00010-A  
**Filing No.** 368  
**Filing Date:** 2013-03-28  
**Effective Date:** 2013-04-17

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

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

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

**Subject:** Jurisdictional Classification.

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

**Text or summary was published** in the August 8, 2012 issue of the Register, I.D. No. CVS-32-12-00010-P.

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

**Text of rule and any required statements and analyses may be obtained**

**from:** Shirley LaPlante, NYS Department of Civil Service, AESSOB, Albany, NY 12239, (518) 473-6598, email: shirley.laplante@cs.state.ny.us

**Assessment of Public Comment**

The agency received no public comment.

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

**I.D. No.** CVS-16-13-00009-P

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

**Proposed Action:** Amendment of Appendix 1 of Title 4 NYCRR.

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

**Subject:** Jurisdictional Classification.

**Purpose:** To classify a position in the exempt class.

**Text of proposed rule:** Amend Appendix 1 of the Rules for the Classified Service, listing positions in the exempt class, in the Executive Department under the subheading "Division of Homeland Security and Emergency Services," by adding thereto the position of Executive Deputy Commissioner.

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

**Data, views or arguments may be submitted to:** Ilene Lees, Counsel, NYS Department of Civil Service, AESSOB, Albany, NY 12239, (518) 473-2624, email: ilene.lees@cs.state.ny.us

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

**Regulatory Impact Statement**

A regulatory impact statement is not submitted with this notice because this rule is subject to a consolidated regulatory impact statement that was previously printed under a notice of proposed rule making, I.D. No. CVS-02-13-00002-P, Issue of January 9, 2013.

**Regulatory Flexibility Analysis**

A regulatory flexibility analysis is not submitted with this notice because this rule is subject to a consolidated regulatory flexibility analysis that was previously printed under a notice of proposed rule making, I.D. No. CVS-02-13-00002-P, Issue of January 9, 2013.

**Rural Area Flexibility Analysis**

A rural area flexibility analysis is not submitted with this notice because this rule is subject to a consolidated rural area flexibility analysis that was previously printed under a notice of proposed rule making, I.D. No. CVS-02-13-00002-P, Issue of January 9, 2013.

**Job Impact Statement**

A job impact statement is not submitted with this notice because this rule is subject to a consolidated job impact statement that was previously printed under a notice of proposed rule making, I.D. No. CVS-02-13-00002-P, Issue of January 9, 2013.

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

**Jurisdictional Classification**

I.D. No. CVS-16-13-00010-P

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

**Proposed Action:** Amendment of Appendix 1 of Title 4 NYCRR.

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

**Subject:** Jurisdictional Classification.

**Purpose:** To classify a position in the exempt class.

**Text of proposed rule:** Amend Appendix 1 of the Rules for the Classified Service, listing positions in the exempt class, in the Department of Labor under the subheading "Administration - General," by adding thereto the position of Confidential Aide.

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

**Data, views or arguments may be submitted to:** Ilene Lees, Counsel, NYS Department of Civil Service, AESSOB, Albany, NY 12239, (518) 473-2624, email: ilene.lees@cs.state.ny.us

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

**Regulatory Impact Statement**

A regulatory impact statement is not submitted with this notice because this rule is subject to a consolidated regulatory impact statement that was previously printed under a notice of proposed rule making, I.D. No. CVS-02-13-00002-P, Issue of January 9, 2013.

**Regulatory Flexibility Analysis**

A regulatory flexibility analysis is not submitted with this notice because this rule is subject to a consolidated regulatory flexibility analysis that was previously printed under a notice of proposed rule making, I.D. No. CVS-02-13-00002-P, Issue of January 9, 2013.

**Rural Area Flexibility Analysis**

A rural area flexibility analysis is not submitted with this notice because this rule is subject to a consolidated rural area flexibility analysis that was previously printed under a notice of proposed rule making, I.D. No. CVS-02-13-00002-P, Issue of January 9, 2013.

**Job Impact Statement**

A job impact statement is not submitted with this notice because this rule is subject to a consolidated job impact statement that was previously printed under a notice of proposed rule making, I.D. No. CVS-02-13-00002-P, Issue of January 9, 2013.

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

**Jurisdictional Classification**

I.D. No. CVS-16-13-00011-P

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

**Proposed Action:** Amendment of Appendix 1 of Title 4 NYCRR.

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

**Subject:** Jurisdictional Classification.

**Purpose:** To classify a position in the exempt class.

**Text of proposed rule:** Amend Appendix 1 of the Rules for the Classified Service, listing positions in the exempt class, in the Department of Health, by increasing the number of positions of Investigator from 1 to 2.

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

**Data, views or arguments may be submitted to:** Ilene Lees, Counsel, NYS Department of Civil Service, AESSOB, Albany, NY 12239, (518) 473-2624, email: ilene.lees@cs.state.ny.us

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

**Regulatory Impact Statement**

A regulatory impact statement is not submitted with this notice because this rule is subject to a consolidated regulatory impact statement that was previously printed under a notice of proposed rule making, I.D. No. CVS-02-13-00002-P, Issue of January 9, 2013.

**Regulatory Flexibility Analysis**

A regulatory flexibility analysis is not submitted with this notice because this rule is subject to a consolidated regulatory flexibility analysis that was previously printed under a notice of proposed rule making, I.D. No. CVS-02-13-00002-P, Issue of January 9, 2013.

**Rural Area Flexibility Analysis**

A rural area flexibility analysis is not submitted with this notice because this rule is subject to a consolidated rural area flexibility analysis that was previously printed under a notice of proposed rule making, I.D. No. CVS-02-13-00002-P, Issue of January 9, 2013.

**Job Impact Statement**

A job impact statement is not submitted with this notice because this rule is subject to a consolidated job impact statement that was previously printed under a notice of proposed rule making, I.D. No. CVS-02-13-00002-P, Issue of January 9, 2013.

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## Education Department

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

**Institutional Accreditation for Title IV Purposes**

I.D. No. EDU-07-13-00011-RP

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

**Proposed Action:** Amendment of section 3.12 and Subpart 4-1 of Title 8 NYCRR.

**Statutory authority:** Education Law, sections 207 (not subdivided), 210 (not subdivided), 214 (not subdivided), 215 (not subdivided), 305(1) and (2)

**Subject:** Institutional accreditation for Title IV purposes.

**Purpose:** To conform Regents rules to federal regulations relating to voluntary institutional accreditation for Title IV purposes.

**Substance of revised rule:** Paragraph (2) of subdivision (d) of section 3.12 of the Rules of the Board of Regents is amended to require that the Regents Advisory Council be comprised of at least 9 members, at least 2 of which shall be senior administrators; at least two shall have experience as full-time faculty members in degree-granting institutions and at least one shall be a full-time faculty member at the time of appointment. At least two other voting members or one-seventh of the total voting members of the council, whichever is greater, shall be representatives of the public as defined in the proposed amendment.

Subdivision (e) shall be added to section 3.12 to create an institutional accreditation appeals board to review and decide appeals from an institution(s) of an adverse accreditation action(s) or probationary accreditation decision(s) of the Board of Regents pursuant the procedures outlined in section 4-1.5 of this Title. The proposed amendment defines the composition of the board.

Subdivision (d) of section 4-1.3 of the Rules of the Board of Regents is amended to clarify that the corrective action period may be extended for a maximum period of 12 months.

Subdivision (f) of section 4-1.3 of the Rules of the Board of Regents is amended to require an institution to obtain approval from the Commissioner and the Board of Regents before the department will include the substantive change in the scope of accreditation it previously granted to the institution.

Paragraph (3) of subdivision (f) of section 4-1.3 of the Rules of the Board of Regents is repealed.

Subdivision (g) of section 4-1.3 of the Rules of the Board of Regents is repealed and a new subdivision (g) is added to prohibit the Commissioner and the Board of Regents from granting initial or a renewal of accreditation to an institution, or a program offered by an institution, if the Commissioner and the Board of Regents knows, or has reasonable cause to know, that the institution is the subject of:

(1) a pending or final action against the institution or a program at such

institution by a State agency to suspend, revoke, withdraw, or terminate the institution's legal authority to provide postsecondary education in the State;

(2) a decision by a nationally recognized accrediting agency to deny accreditation or preaccreditation;

(3) a pending or final action brought by a nationally recognized accrediting agency to suspend, revoke, withdraw, or terminate the institution's accreditation or preaccreditation; or

(4) probation or an equivalent status imposed by a recognized agency.

A new subdivision (h) shall be added to section 4-1.3 of the Rules of the Board of Regents to provide that if the Commissioner and the Board of Regents learn that an accredited institution, or an institution that offers a program it accredits, is the subject of an adverse action by another recognized accrediting agency or has been placed on probation or an equivalent status by another recognized agency, the Commissioner and the Board of Regents shall promptly review its accreditation through the compliance review procedure in section 4-1.5 of this Subpart to determine if it should also take adverse action or place the institution on probation. The Commissioner and the Board of Regents shall only grant accreditation or a renewal of accreditation to an institution described in subdivision (g) of this section if the institution satisfactorily meets the standards of the compliance review procedure described in section 4-1.5 of this Subpart. If the Commissioner and the Board of Regents grant accreditation or a renewal of accreditation after a compliance review, the Commissioner and the Board of Regents shall provide to the U.S. Secretary of Education, within 30 days of its action, a thorough and reasonable explanation, consistent with its standards, why the action of the other body does not preclude the grant of accreditation or renewal of accreditation.

Subdivision (g) of section 4-1.4 of the Rules of the Board of Regents is amended to require that the process and criteria for accepting transfer of credit be publicly disclosed and include a statement of the criteria established by the institution regarding the transfer of credit earned at another institution of higher education and a list of the institutions with which the institution has established articulation agreements.

Paragraph (2) of subdivision (l) of section 4-1.4 of the Rules of the Board of Regents shall be renumbered to paragraph (3) of subdivision (l) of section 4-1.4 of the Rules of the Board of Regents and a new paragraph (2) shall be added to subdivision (l) of section 4-1.4 to require an institution's teach-out plan to ensure that it provides for the equitable treatment of students pursuant to criteria established by the Commissioner and the Board of Regents and that the plan specifies additional charges, if any, and provides for notification to the students of any additional charges.

Subdivision (a) of section 4-1.5 of the Rules of the Board of Regents is amended to allow an institution to seek the review of new financial information only once and to clarify that any determination on the new financial information does not provide a basis for appeal.

Subdivision (a) of section 4-1.5 of the Rules of the Board of Regents is amended to specifically provide that the Regents shall review any papers, written responses filed, the record before the advisory council, the record of its deliberations, and its findings and recommendations and any other information considered by the commissioner. In addition, if the Board of Regents decision includes an adverse accreditation action or probationary accreditation, the Board of Regents shall notify the institution of its right to a hearing before the institutional accreditation appeals board.

This subdivision is also amended to set forth the process for an appeal and/or a hearing of a determination of adverse accreditation action or probationary accreditation before the institutional accreditation appeals board.

Section 4-1.5 of the Rules of the Board of Regents shall be amended to require the Board of Regents to review any papers, written responses filed, the record before the advisory council, the record of its deliberations, and its findings and recommendations and any other information considered by the commissioner.

Paragraphs (9) and (10) of subdivision (c) of section 4-1.5 to require the Board of Regents to review any papers, written responses filed, the record before the advisory council, the record of its deliberations, and its findings and recommendations and any other information considered by the commissioner before issuing its decision.

It also describes the process for an institution to appeal a Regents determination of adverse accreditation action or granting probationary accreditation to the institutional accreditation appeals board.

Subdivision (d) of section 4-1.5 of the Rules of the Board of Regents shall be amended to change the procedures for a change in scope of accreditation when there is a substantive change to conform with the federal requirements.

**Revised rule compared with proposed rule:** Substantial revisions were made in section 4-1.5(d)(8).

**Text of revised proposed rule and any required statements and analyses may be obtained from** Mary Gammon, State Education Department, Office of Counsel, 89 Washington Avenue, Room 148, Albany, New York 12234, (518) 474-6400, email: legal@mail.nysed.gov

**Data, views or arguments may be submitted to:** Peg Rivers, State Education Department, Office of Higher Education, 89 Washington Avenue, Room 977EBA, Albany, New York 12234, (518) 478-1189, email: privers@mail.nysed.gov

**Public comment will be received until:** 30 days after publication of this notice.

#### **Revised Regulatory Impact Statement**

Section 4-1.5(d)(8) was amended to clarify the procedures for a denial of a change in scope of accreditation to reflect that the Board of Regents makes the final determination on a change in scope of accreditation and that appeals go to the institutional accreditation appeals board rather than the commissioner, to ensure that there is an independent review.

This amendment does not require changes to the previously published Regulatory Impact Statement.

#### **Revised Regulatory Flexibility Analysis**

The revision does not require any changes to the previously published Regulatory Flexibility Analysis for Small Businesses and Local Governments.

#### **Revised Rural Area Flexibility Analysis**

The revision does not require any changes to the previously published Rural Area Flexibility Analysis.

#### **Revised Job Impact Statement**

The proposed amendment clarifies existing standards and procedures that must be met by institutions of higher education seeking voluntary accreditation by the Board of Regents and the Commissioner of Education. The State Education Department expects that the proposed amendment will not have a negative impact on the number of jobs or employment opportunities at higher education institutions or in any other field, and that higher education institutions will use existing staff to satisfy accreditation requirements as part of their on-going responsibilities. Therefore, the amendment will have no impact on jobs or employment opportunities at these institutions. Because it is evident from the nature of the proposed amendment that it will have no impact on jobs and employment opportunities, no further steps were needed to ascertain these facts and none were taken. Accordingly, a job impact statement was not required and one was not prepared.

#### **Assessment of Public Comment**

The agency received no public comment.

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## Department of Environmental Conservation

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### PROPOSED RULE MAKING HEARING(S) SCHEDULED

#### **Transportation Conformity**

**I.D. No.** ENV-16-13-00001-P

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

**Proposed Action:** Repeal of Part 240; addition of Part 240; and amendment of Part 200 of Title 6 NYCRR.

**Statutory authority:** Environmental Conservation Law, sections 1-0101, 1-0303, 3-0301, 19-0103, 19-0105, 19-0301, 19-0303 and 19-0305

**Subject:** Transportation Conformity.

**Purpose:** Streamline the rule and conform to Federal requirements.

**Public hearing(s) will be held at:** 2:00 p.m., June 4, 2013 at Department of Environmental Conservation, 625 Broadway, Public Assembly Rm. 129A, Albany, NY; 2:00 p.m., June 5, 2013 at Department of Environmental Conservation, Region 2 Office, One Hunters Point Plaza, 47-40 21st St., Rm. 834, Long Island City, NY; and 2:00 p.m., June 6, 2013 at Department of Environmental Conservation, Region 8 Office Conference Rm., 6274 E. Avon-Lima Rd. (Rtes. 5 and 20), Avon, 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.dec.ny.gov](http://www.dec.ny.gov)):** Part 240 establishes the New York State Transportation Conformity requirements. The Department's Transportation Conformity regulations comply with the streamlined conformity SIP requirements contained in EPA's final regulation as well as meet the requirement to update its regulations to comport with the federal regulations within one year of promulgation.

Part 240 establishes the consultation process for involved agencies to address the federal requirements for transportation conformity codified in 40 CFR Part 93. In general, Part 240 provides involved agencies (the Department, New York State Department of Transportation (NYSDOT), Environmental Protection Agency (EPA), Federal Highway Administration (FHWA), Federal Transit Administration (FTA) and affected Municipal Planning Organizations (MPOs)) with reasonable opportunity for consultation throughout the process of determining conformity for MPO long range transportation plans and transportation improvement programs (TIPs).

The communication provisions of Part 240 include communications requirements necessary to fully engage involved agencies in the development of the applicable transportation plans, TIPs, program of transportation projects and state implementation plan (SIP) revisions. This includes the minimum timeframe to convene meetings between technical representatives of at least every 180 days for MPO transportation plan, MPO TIP conformity determinations and proposed SIP revisions. For policy level representatives the minimum timeframe requires that meetings should occur at least once annually.

Part 240 includes requirements for transmittal of lists to involved agencies, of all expected SIP revisions and actions requiring a conformity determination for that calendar year. It also includes the requirement that all involved agencies provide the names and addresses of agency offices and officers to which all correspondence in furtherance of Part 240 is to be directed.

The draft document provisions require that the lead conformity agency and the department shall provide the other involved agencies with relevant draft documents such as transportation plans, TIPs, SIP revisions, regional emissions analyses, and other drafts to be utilized for conformity determinations. These provisions require the lead conformity agency or the department to share the draft documents 30 days prior to the beginning of the public comment period, where possible and allow for no less than 30 days, or an adequate amount of time as determined in consultation to submit written comments.

The regulation outlines the consultation obligations and procedures for the department, NYSDOT and affected MPOs. The following general duties apply:

The department shall cooperatively develop, with NYSDOT and the affected MPOs, a list of Transportation Control Measures (TCMs) for potential inclusion in the applicable SIP revision; consult on the air quality parameters used to make conformity determinations to ensure that such parameters are consistent with air quality modeling performed for applicable SIP revision purposes; consult with NYSDOT and affected MPOs with respect to the traffic data and parameters used for emissions forecasting and determining conformity of transportation plans and TIPs; provide guidance, expertise, and assistance to other involved agencies on the applicable SIP revision; and convene, as necessary, meetings among technical staff of participating agencies.

NYSDOT shall coordinate the review of MPO draft transportation plans and MPO draft TIP conformity determinations and administer the formal submittal of the MPO transportation plan and MPO TIP; coordinate the review of the program of transportation projects in nonattainment or maintenance areas outside MPO boundaries and administer the formal submittal; review, in consultation with the department, emission estimation procedures and traffic data and parameters employed by affected MPOs in making conformity determinations for consistency with the applicable SIP revision; cooperatively develop, with the department and affected MPOs, a list of TCMs for potential inclusion in the applicable SIP revision; develop a public involvement process which provides opportunity for public review and comment on conformity determinations for transportation programs; provide guidance, expertise, and assistance to affected MPOs and local transportation agencies; in cooperation with affected MPOs, provide transportation data and transportation related parameters to the department for calculation of mobile source emissions; maintain the list of all conformity contacts; and convene, as necessary, meetings among appropriate staff to facilitate review.

The affected MPOs shall develop metropolitan area transportation plan and TIP conformity determinations; develop a public involvement process which provides opportunity for public review and comment on conformity determinations; cooperatively develop, with NYSDOT and the department, a list of TCMs for potential inclusion in the applicable SIP revision; document consideration of all significant comments received from involved agencies with respect to conformity determinations; in consulta-

tion with NYSDOT and the department, involve local transportation planning and local air agencies as required; in consultation with NYSDOT, the department, EPA, FHWA and FTA, provide the proposed list of exempt and non-exempt projects, proposed list of regionally significant projects and pertinent supporting documentation as required in an agreed upon format.

In order to meet the consultation obligations involved agencies shall establish a meeting schedule at the beginning of each calendar year.

Part 240 contains provisions for development and application of Transportation Control Measures (TCMs) and emissions budgets in the applicable SIP revision. NYSDOT and the affected MPOs, in consultation with the department, shall develop a list of TCMs for potential inclusion in the applicable SIP revision. The TCMs designated shall be specifically identified in the applicable SIP revision. The department shall develop any proposed motor vehicle emissions budget in consultation with involved agencies and provide such proposed budget to NYSDOT and the affected MPOs for review and comment at least 30 days, or an adequate amount of time as determined through consultation with involved agencies, prior to the submittal of the motor vehicle emissions budget to EPA for inclusion in the applicable SIP revision. If there is not agreement on which TCMs or on the proposed motor vehicle emissions budget to include in the state air quality implementation plan, the matter shall be resolved in accordance with the conflict resolution procedures in the regulations.

The model evaluation and selection procedures in Part 240 require NYSDOT to consult with involved agencies to select the air quality model inputs and to consult with the department, FHWA/FTA, and EPA to select the air quality models and parameters to use; require the affected MPOs and NYSDOT to develop procedures for transportation models and transportation inputs and parameters in consultation with the department, affected local air and transportation agencies, FHWA/FTA, and EPA; and provide for the department to select air quality models and develop non-transportation related inputs and parameters used to develop the emissions budget in the applicable SIP revision during the SIP revision process in consultation with involved agencies.

Part 240 contains provisions for determining regional significance and significant project changes. The affected MPOs and NYSDOT shall, in consultation with the department, determine which transportation projects, other than exempt projects, constitute regionally significant projects. Where the regional significance of a project is in question, the regulation contains criteria that shall be considered by the involved agencies to evaluate whether the project is regionally significant. There are also procedures for the evaluation of certain exempt projects that require the affected MPOs and NYSDOT, in consultation with the department, to determine which exempt projects should be treated as non-exempt due to significant emissions impacts.

The provisions in Part 240 for timely TCM implementation require that NYSDOT, the department, and the affected MPOs shall cooperatively determine whether TCMs are being implemented as scheduled; whether State and local agencies with the appropriate authority are giving maximum priority to approving or funding of TCMs; and whether delays in implementing TCMs specifically identified in the applicable SIP necessitate revision of the SIP. The procedures for projects in PM<sub>10</sub> and/or PM<sub>2.5</sub> nonattainment area require that the lead conformity agency determine if projects located in PM<sub>10</sub> and/or PM<sub>2.5</sub> nonattainment areas require a quantitative PM<sub>10</sub> and/or PM<sub>2.5</sub> hot-spot analysis in accordance with 40 CFR 93.123(b)(1).

The procedures for notification of MPO transportation plan or MPO TIP amendments in Part 240 require each affected MPO to determine, in consultation with NYSDOT, whether MPO TIP or MPO transportation plan amendments solely concern the addition or deletion of exempt projects. NYSDOT shall make the determination for projects outside MPO boundaries in nonattainment or maintenance areas. The department, NYSDOT, USDOT, EPA and, as appropriate, affected local air and transportation agencies shall be notified in writing of any determinations within 30 days of such determination.

Part 240 includes procedures for events triggering new conformity determinations that require NYSDOT, in consultation with the department and affected MPOs, to identify instances when new conformity determinations are required. When transportation activities cross MPO or nonattainment areas boundaries, NYSDOT, in consultation with the department and affected MPOs, shall coordinate emissions analyses. For nonattainment or maintenance areas not entirely included in a single MPO boundary, NYSDOT shall coordinate the preparation of conformity determinations and air quality analyses and it shall make air quality analyses in nonattainment or maintenance areas that do not include any MPO boundaries. The results of any regional emissions analysis outside the MPO boundary shall be coupled with the MPO analysis for the remainder of the nonattainment or maintenance area, as appropriate, to allow a conformity determination based on the entire nonattainment or maintenance area. If more than one

MPO is within the same nonattainment or maintenance area, NYSDOT shall coordinate the preparation of the conformity determinations. In isolated rural nonattainment and maintenance areas, NYSDOT shall coordinate the preparation of conformity determinations and air quality analyses as determined through consultation with all involved agencies.

For regionally significant projects that are not FHWA/FTA projects, Part 240 requires the affected MPOs and NYSDOT to work with the department to identify the projects so that proper project information is included in the regional emissions analysis. If during the public participation process, or interagency consultation process, other regionally significant projects are identified, or there are changes in the design concept and scope of a regionally significant project that would affect the air quality analysis, the NYSDOT or affected MPO shall appropriately refine the conformity analysis in accordance with the provisions of this section.

The criteria and procedures for localized CO, PM<sub>10</sub>, and PM<sub>2.5</sub> violations (hot-spots) applies at all times. The FHWA/FTA or regionally significant project must not cause or contribute to any new localized CO, PM<sub>10</sub>, and/or PM<sub>2.5</sub> violations, increase the frequency or severity of any existing CO, PM<sub>10</sub>, and/or PM<sub>2.5</sub> violations, or delay timely attainment of any NAAQS or any required interim emission reductions or other milestones in CO, PM<sub>10</sub>, and PM<sub>2.5</sub> nonattainment and maintenance areas. This criterion is satisfied without a hot-spot analysis in PM<sub>10</sub>, and PM<sub>2.5</sub> nonattainment and maintenance areas for FHWA/FTA or regionally significant projects that are not identified in 40 CFR 93.123(b)(1). This criterion is satisfied for all other FHWA/FTA or regionally significant projects in CO, PM<sub>10</sub>, and PM<sub>2.5</sub> nonattainment and maintenance areas if it is demonstrated that during the time frame of the transportation plan no new local violations will be created and the severity or number of existing violations will not be increased as a result of the project and the project has been included in a regional emissions analysis. For CO nonattainment each FHWA/FTA or regionally significant project must eliminate or reduce the severity and number of localized CO violations in the area substantially affected by the project (in CO nonattainment areas). This criterion is satisfied with respect to existing localized CO violations if it is demonstrated that during the time frame of the transportation plan (or regional emissions analysis) existing localized CO violations will be eliminated or reduced in severity and number as a result of the project.

In order to comply with the criteria and procedures for PM<sub>10</sub> and PM<sub>2.5</sub> control measures in Part 240, the regionally significant project must comply with any PM<sub>10</sub> and PM<sub>2.5</sub> control measures in the applicable implementation plan. The project-level conformity determination must contain a written commitment from the project sponsor to include those control measures that are contained in the applicable implementation plan.

Under Part 240, the affected MPOs shall consult with NYSDOT, the department, and affected local air and transportation agencies before formally adopting initiatives related to research and data collection efforts in support of regional transportation model development. They must also provide a final copy of the MPO transportation plans, MPO TIPs and associated MPO transportation plan and MPO TIP conformity determinations with pertinent supporting materials to involved agencies. NYSDOT shall provide a final copy of program of transportation projects conformity determinations with pertinent supporting materials for nonattainment or maintenance areas outside MPO boundaries to the involved agencies and the department shall provide a final copy of all applicable SIP revisions and pertinent supporting materials to involved agencies.

In the event that the involved agencies are unable to reach agreement on any matter set forth in Part 240, the unresolved issue or issues shall be referred to the commissioners of the department and NYSDOT for resolution. For conformity determinations for MPO transportation plans, MPO TIPs, and programs of transportation projects in areas outside any MPO each lead conformity agency making conformity determinations for a MPO transportation plan, MPO TIP, or program of transportation projects in a nonattainment or maintenance area outside any MPO shall provide the department and any affected local air agency with the proposed conformity determination accompanied by pertinent supporting documentation. Upon closing of the consultation period provided for the department shall have fourteen calendar days from receipt of such transmittal to appeal to the Governor as provided for in this section. For TCMs and motor vehicle emissions budgets in the State Implementation Plan the department shall provide NYSDOT with any proposed revision to the SIP which contains any TCMs or motor vehicle emissions budgets. In the event that NYSDOT and the Department are unable to concur on the appropriate TCMs or motor vehicle emissions budgets for inclusion in the applicable SIP revision, NYSDOT shall have 14 calendar days from the receipt of notification from the department that concurrence has not been reached to appeal to the Governor.

The department or NYSDOT may invoke the conflict resolution procedure by delivering to the Governor or Governor's designee, the Commissioner of NYSDOT or the department, and the conformity contacts, a letter requesting that the Governor exercise his or her discretion under Part

240. In event that the department or NYSDOT invokes the conflict resolution procedure, the final conformity determination must have the concurrence of the Governor or Governor's designee. If the department or NYSDOT do not appeal to the Governor within the specified 14 days, the affected MPO or NYSDOT may proceed with the final conformity determination or the department may proceed with its SIP revision.

Part 240 contains public participation procedures that conformity determinations for MPO transportation plans and MPO TIPs follow the specific public involvement process which provides opportunity for public review and comment prior to formal action on a conformity determination for all MPO transportation plans and MPO TIPs. Reasonable public access to technical and policy information considered by the affected agencies making the conformity determination must be provided at the beginning of the public review period. Conformity determinations must specifically address, in writing, all significant public comments claiming that known plans for a regionally significant project, which is not receiving FHWA or FTA funding or approval, have not been properly reflected in the emissions analysis supporting a proposed conformity finding for a MPO transportation plan or MPO TIP. Conformity determinations in isolated rural nonattainment and maintenance areas and rural portions of nonattainment and maintenance areas outside MPO boundaries shall follow the specific public involvement process established by NYSDOT which provides opportunity for public review and comment prior to formal action to update the statewide transportation improvement program (STIP) and the statewide transportation plan. Public involvement in conformity determinations for transportation projects shall also be provided where otherwise required by law and copy fees shall be assessed in accordance with the access to records policy, rule or regulation of the involved agency responsible for the creation of the applicable record.

For regionally significant projects not from a conforming plan or TIP, Part 240 requires that the conformity determination applicable to such project shall be made in accordance with Table 1 of 40 CFR 93.109(b). In the event that the conformity determination or regional emissions analysis for a regionally significant project not from a conforming MPO transportation plan or MPO TIP is made using inputs or assumptions different from those identified in paragraphs 240-2.8(a)(2), (3) and (4) of Part 240, subdivision 240-11(c) shall apply. As required, NYSDOT and other involved agencies making conformity determinations or regional emissions analyses shall provide the department, prior to the issuance of a draft environmental document, an opportunity to review and comment on the air quality model inputs and parameters used in the regional emissions analysis, transportation model inputs, and parameters associated with the project, and non-transportation inputs and parameters necessary to evaluate the air quality impacts and analysis of a regionally significant project not from a conforming MPO transportation plan or MPO TIP. The opportunity to review and comment provided for in this subdivision shall not extend beyond the issuance of a final environmental document issued pursuant to the SEQR or NEPA, whichever may be applicable.

Part 240 also requires that written commitments to control measures that are not included in the transportation plan and TIP must be obtained prior to a conformity determination and must demonstrate assurance that they will be fulfilled. Written commitments to mitigation measures must also be obtained prior to a positive conformity determination, and the project sponsors must comply with such commitments.

Part 200 cites the portions of Federal statute and regulations that are incorporated by reference into Part 240.

**Text of proposed rule and any required statements and analyses may be obtained from:** Michael Sheehan, P.E., NYSDEC, Division of Air Resources, 625 Broadway, Albany, NY 12233-3251, (518) 402-8396, email: 240conform@gw.dec.state.ny.us

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

**Public comment will be received until:** June 13, 2013.

**Additional matter required by statute:** Pursuant to Article 8 of the State Environmental Quality Review Act, a Short Environmental Assessment Form, a Negative Declaration and a Coastal Assessment Form have been prepared and are on file.

#### **Regulatory Impact Statement**

##### **STATUTORY AUTHORITY**

New York State (NYS) and local agencies are continuously looking for strategies to relieve traffic congestion, improve air quality, and provide communities with a safe and efficient transportation system. Transportation Conformity, a Clean Air Act (CAA) requirement, helps ensure that federally supported highway and transit project activities are consistent with (conform to) air quality State Implementation Plans (SIPs). The United States Environmental Protection Agency (EPA) recently amended the federal transportation conformity rule. Therefore, the Department of Environmental Conservation (Department) must update its regulations to comport with the federal regulation. In order to carry out this commitment, the Department proposes repealing the existing Part 240 and replac-

ing it with new transportation conformity regulations as required by the amended federal regulations, and revising 6 NYCRR Part 200, General Provisions.

Transportation conformity applies to metropolitan transportation plans, metropolitan transportation improvement programs (TIPs), and projects, in nonattainment or maintenance areas, that are funded or approved by the Federal Highway Administration (FHWA) or Federal Transit Administration (FTA). This rule lays out the framework for interagency review of these plans, programs and projects for compliance with National Ambient Air Quality Standards (NAAQS) and the SIP. The rule identifies agencies involved in the review, includes document submission requirements, establishes time frames for review, and lays out the procedures for consultation between involved agencies. The rule defines involved agencies as the Department, the NYS Department of Transportation (DOT), EPA, FHWA, FTA and Municipal Planning Organizations (MPOs) and outlines each agency’s respective role. The regulation also includes procedures for determining regional transportation-related emissions.

The statutory authority to promulgate Part 240 in NYS derives primarily from the Department’s obligation to prevent and control air pollution, as set out in the Environmental Conservation Law (ECL) at Sections 1-0101, 1-0303, 3-0301, 19-0103, 19-0105, 19-0301, 19-0303, and 19-0305. Following are brief synopses and legislative objectives for these sections.

ECL Section 1-0101. This section declares NYS’s policy to: conserve, improve and protect its natural resources and environment and to prevent, abate and control air pollution in order to enhance the health, safety and welfare of the people of NYS and their overall economic and social well being; coordinate the State’s environmental plans, functions, powers and programs with those of the federal government and other regions and manage air resources so that the State may fulfill its responsibility as trustee of the environment for present and future generations; and foster, promote, create and maintain conditions by which man and nature can thrive in harmony by preserving special resources such as the Adirondack and Catskill forest preserves and taking care of air resources that are shared with other states in the manner of a good neighbor.

ECL Section 1-0303. This section defines the term “pollution” as “the presence in the environment of conditions and/or contaminants in quantities of characteristics which are or may be injurious to human, plant or animal life or to property or which unreasonably interfere with the comfortable enjoyment of life and property throughout such areas of the state as shall be affected thereby.”

ECL Section 3-0301. This section empowers the Department to coordinate and develop programs to carry out the environmental policy of NYS set forth in section 1-0101. Section 3-0301 specifically empowers the Department to: provide for the prevention and abatement of air pollution; cooperate with officials and representatives of the federal government, other States and interstate agencies regarding problems affecting the environment of NYS; encourage and undertake scientific investigation and research on the ecological process, pollution prevention and abatement, and other areas essential to understanding and achievement of the environmental policy set forth in section 1-0101; monitor the environment to afford more effective and efficient control practices; identify changes in ecological systems and to warn of emergency conditions; enter into contracts with any person to do all things necessary or convenient to carry out the functions, powers and duties of the Department; and adopt such regulations as may be necessary, convenient or desirable to effectuate the environmental policy of the State.

ECL Section 19-0103. This section declares the policy of NYS to maintain a reasonable degree of purity of air resources. The Department is required to balance public health and welfare, the industrial development of the State, propagation and protection of flora and fauna, and the protection of personal property and other resources. To that end, the Department must use all practical and reasonable methods to prevent and control air pollution in the State.

ECL Section 19-0105. This section declares that it is the purpose of Article 19 of the ECL to safeguard the air resources of NYS under a program which is consistent with the policy expressed in section 19-0103 and in accordance with other provisions of Article 19.

ECL Section 19-0301. This section declares that the Department has the power to promulgate regulations for preventing, controlling or prohibiting air pollution, and shall include in such regulations provisions prescribing the degree of air pollution that may be permitted and the extent to which air contaminants may be emitted to the air by any source in any area of the State.

ECL Section 19-0303. This section provides that the terms of any air pollution control regulation promulgated by the Department may differentiate between particular types and conditions of air pollution and air contamination sources. Section 19-0303 also provides that the Department, in adopting any regulation which contains a requirement that is more stringent than the CAA or its implementing regulations, must include

in the Regulatory Impact Statement an evaluation of the cost-effectiveness of the proposed regulation in comparison to the cost-effectiveness of reasonably available alternatives and a review of the reasonably available alternative measures along with an explanation of the reasons for rejecting such alternatives.

ECL Section 19-0305. This section authorizes the Department to enforce the codes, rules and regulations established in accordance with Article 19. Section 19-0905 also empowers the Department to conduct or cause to be conducted studies and research with respect to air pollution control, abatement or prevention.

LEGISLATIVE OBJECTIVES

Section 176(c) of the CAA states that “No department, agency, or instrumentality of the Federal Government shall engage in, support in any way or provide financial assistance for, license or permit, or approve, any activity which does not conform to an implementation plan approved or promulgated under section 7410 of this title ...”. In accordance with this requirement, on January 24, 2008, EPA issued final regulations that amended the transportation conformity rule to implement the provisions contained in the 2005 Safe, Accountable, Flexible, Efficient Transportation Equity Act: A legacy for Users (SAFETEA-LU). The amendments are codified in 40 CFR Part 93. These amendments require the state to submit a transportation conformity SIP that addresses the sections of the federal rule that must be tailored to a state’s individual circumstances.

The Department must revise Part 240 to comply with the streamlined conformity SIP requirements contained in EPA’s final regulation as well as meet the requirement to update its regulations to comport with the federal regulations within one year of promulgation.

NEEDS AND BENEFITS

The air quality provisions of the CAA require a planning process that integrates air quality and transportation planning such that transportation investments support clean air goals. This process is known as transportation conformity. Transportation conformity was introduced in the CAA of 1977 which included a provision to ensure that transportation investments conform to a state’s air quality plan for meeting the Federal air quality standards. Conformity requirements were made substantially more rigorous in the CAA Amendments of 1990. The transportation conformity regulations were first issued in November 1993, and have been revised numerous times since. The regulations detail the process for transportation agencies to demonstrate conformity.

Conformity applies to metropolitan transportation plans, metropolitan TIPs, and projects that are funded or approved by the FHWA or FTA, in nonattainment areas - those that do not meet the NAAQS, and maintenance areas - those that previously exceeded but now comply with the NAAQS. Conformity relates to four separate categories of NAAQS pollutants including:

- ground level ozone formed by volatile organic compounds (VOCs) and oxides of nitrogen (NOx), the primary ingredients of smog;
- carbon monoxide (CO);
- particulate matter (less than 10 microns (PM<sub>10</sub>) and less than 2.5 microns (PM<sub>2.5</sub>); and
- nitrogen dioxide.

EPA has established standards for these four transportation-related pollutants. The standards are based upon EPA’s assessment of the health risks associated with each of the pollutants on at-risk populations. These assessments are based upon short and long-term scientific studies by noted health professionals and medical research institutions. At-risk groups include children, the elderly, people with respiratory illnesses, and even healthy people who exercise outdoors. The PM<sub>2.5</sub> standard was established in 1997 while the 1997 8-hour ozone standard was revoked and replaced by the 2008 8-hour ozone standard based upon an assessment of the health-risks associated with exposure to these pollutants. The following table shows the classifications and attainment dates for the 8-hour ozone nonattainment areas.

Classifications and Attainment Dates 8-Hour Ozone Nonattainment Areas

Classification	Years to Attain	Attainment Date
Marginal	3 years	December 31, 2015
Moderate	6 years	December 31, 2018
Serious	9 years	December 31, 2021
Severe	15 years	December 31, 2027
Extreme	20 years	December 31, 2032

Prior to EPA’s revised rule, states were required to address all of the federal conformity rule provisions in their conformity SIPs. This required states to copy verbatim most of the sections of the federal rule into the state’s conformity SIP, 40 CFR 51.390(d). EPA’s amendments now require states to submit conformity SIPs that address only the following

sections of the federal rule that are tailored to a state's individual circumstances: 40 CFR 93.105 (consultation procedures); 40 CFR 93.122(a)(4)(ii), (requires written commitments for control measures prior to a conformity determination if control measures are not included in an MPO's transportation plan and TIP, and compliance with commitments); and 40 CFR 93.125(c), (requires written commitments for mitigation measures prior to a project-level conformity determination, and compliance with commitments).

Consistent with EPA's revised rule, this proposal would change the regulations to provide more time for state and local governments to meet conformity requirements, provide a one-year grace period before the consequences of not meeting certain conformity requirements apply, allow shorter timeframe for conformity determinations, and streamline other provisions.

Transportation conformity encourages cooperation among various governmental entities and can lead to new and innovative transportation projects and air pollution control measures. Effective consultation on transportation conformity brings together professionals and officials from the transportation and air quality sectors to work together and achieve consistent goals. The interagency consultation procedure is a major part of this rulemaking and it requires ongoing dialogue between the Department, the NYS Department of Transportation (DOT), EPA, FHWA, FTA and Municipal Planning Organizations (MPOs).

#### COSTS

The only costs associated with this rulemaking will be the Department's costs for newspaper publication and the preparation of transcripts.

#### LOCAL GOVERNMENT MANDATES

There are no local government mandates associated with these proposed revisions.

#### PAPERWORK

No additional recordkeeping, reporting, or other requirements will be imposed under this rulemaking.

#### DUPLICATION

These revisions coincide with the federally required sections of the transportation conformity rule as codified in 40 CFR Part 93. The provisions in Part 240 do not duplicate any of the provisions of the federal regulations.

#### ALTERNATIVES

The Department evaluated "no action," "verbatim," and "streamlined" alternatives.

The "no action" alternative was rejected because federal regulation requires the state to update its regulations to comport with the federal regulations.

The "verbatim" alternative would require the Department to adopt the entire federal regulation "verbatim" and include it in the SIP. This alternative was not selected because once EPA approves the "verbatim" conformity SIP, the Department would not be able to apply any subsequent changes to the federal rule without first revising the State conformity SIP and obtaining EPA's approval.

The "streamlined" alternative requires that the Department only adopt certain sections of the EPA regulation. This alternative was selected as it will result in a more efficient regulation and SIP process, and negate the need for redundant federal review.

#### FEDERAL STANDARDS

There are no minimum federal standards exceeded by the revisions to Parts 200 and 240.

#### COMPLIANCE SCHEDULE

There is no compliance schedule required by the implementation of Part 240.

#### Regulatory Flexibility Analysis

New York State (NYS) and local agencies are continuously looking for strategies to relieve traffic congestion, improve air quality, and provide communities with a safe and efficient transportation system. Transportation Conformity, a Clean Air Act (CAA) requirement, helps ensure that federally supported highway and transit project activities are consistent with (conform to) air quality State Implementation Plans (SIPs). The United States Environmental Protection Agency (EPA) recently amended the federal transportation conformity rule. Therefore, the Department must update its regulations to comport with the federal regulation. In order to carry out this commitment, the NYS Department of Environmental Conservation (Department) is proposing to repeal existing Part 240 and establish new transportation conformity regulations by promulgating 6 NYCRR Part 240, Transportation Conformity, and revising 6 NYCRR Part 200, General Provisions.

1. Effects on Small Businesses and Local Governments. No small businesses will be directly affected by the adoption of Part 240 and the amendments to Part 200.

2. Compliance Requirements. There are no compliance requirements for the implementation of Part 240 for small business or local governments.

3. Professional Services. There are no professional services requirements that will be imposed under this rulemaking.

4. Compliance Costs. There are no compliance costs as a result of this rulemaking. The only costs associated will be those associated with the rulemaking process including newspaper publication and the preparation of transcripts.

5. Minimizing Adverse Impact. The promulgation of the Program and the amendments to Part 200 do not directly affect small businesses.

6. Small Business and Local Government Participation. Small businesses and local government will have the opportunity to participate in the development of Part 240 during the public comment period which will commence when the regulation is formally proposed.

7. Economic and Technological Feasibility. After promulgation of Part 240, economics and technological feasibility will only be a factor if an area is proposing a transportation related project that requires a transportation conformity determination. Each individual project will be reviewed by all affected.

8. Cure Period. Pursuant to NYS State Administrative Procedures Act (SAPA) Section 202-b, this rulemaking does not include a cure period in the express language of the rule because the substantive requirements are federally mandated and compliance with those federal mandates is already required.

#### Rural Area Flexibility Analysis

New York State and other local agencies are continuously looking for strategies to relieve traffic congestion, improve air quality, and provide communities with a safe and efficient transportation system. Transportation Conformity, a Clean Air Act (CAA) requirement, helps ensure that federally supported highway and transit project activities are consistent with (conform to) air quality State Implementation Plans (SIPs). The United States Environmental Protection Agency (EPA) recently amended the federal transportation conformity rule. Therefore, the Department must update its regulations to comport with the federal regulation. In order to carry out this commitment, the NYS Department of Environmental Conservation (Department) is proposing to repeal existing Part 240 and establish new transportation conformity regulations by promulgating 6 NYCRR Part 240, Transportation Conformity, and revising 6 NYCRR Part 200, General Provisions.

#### TYPES AND ESTIMATED NUMBER OF RURAL AREAS AFFECTED

The promulgation of the Program and the amendments to Part 200, apply to affected areas statewide including those located in rural areas if such areas are within a nonattainment or maintenance area. All public and private businesses subject to the regulations regardless of location, including those in rural areas, will be affected.

#### REPORTING, RECORDKEEPING AND OTHER COMPLIANCE REQUIREMENTS

No additional recordkeeping, reporting, or other requirements will be imposed under this rulemaking.

#### COSTS

There are no costs to affected parties as a result of this rulemaking. The only costs associated will be those associated with the rulemaking process including newspaper publication and the preparation of transcripts.

#### MINIMIZING ADVERSE IMPACT

The promulgation of the Program and the amendments to Part 200 apply to affected areas statewide, including those located in rural areas if such areas are within a nonattainment or maintenance area. Since the regulations apply equally to affected areas statewide, rural areas are not impacted differently than other areas in the State. The Department has minimized the adverse economic impacts of the Program statewide.

#### RURAL AREA PARTICIPATION

All areas of the state including rural areas will have the opportunity to participate in the development of Part 240 during the public comment period which will commence when the regulation is formally proposed.

#### Job Impact Statement

1. Nature of Impact: New York State (NYS) and local agencies are continuously looking for strategies to relieve traffic congestion, improve air quality, and provide communities with a safe and efficient transportation system. Transportation Conformity, a Clean Air Act (CAA) requirement, helps ensure that federally supported highway and transit project activities are consistent with (conform to) air quality State Implementation Plans (SIPs). The United States Environmental Protection Agency (EPA) recently amended the federal transportation conformity rule. Therefore, the Department must update its regulations to comport with the federal regulation. In order to carry out this commitment, the NYS Department of Environmental Conservation (Department) is proposing to repeal existing Part 240 and establish new transportation conformity regulations by promulgating 6 NYCRR Part 240, Transportation Conformity, and revising 6 NYCRR Part 200, General Provisions.

2. Categories and Numbers Affected: Conformity applies to metropolitan transportation plans, metropolitan transportation improvement programs (TIPs), and projects that are funded or approved by the Federal

Highway Administration (FHWA) or Federal Transit Administration (FTA). Conformity requirements apply to areas that do not meet or previously have not met the air quality standards for ozone, CO, PM<sub>10</sub>, PM<sub>2.5</sub>, or nitrogen dioxide. These areas are known as nonattainment or maintenance areas, respectively. The numbers affected vary relative to the total population in the specific nonattainment or maintenance area.

3. Regions of Adverse Impact: The promulgation of the Part 240 and the amendments to Part 200 apply to affected areas statewide. All areas subject to the regulations will be affected, regardless of location.

4. Minimizing Adverse Impact: The promulgation of Part 240 and the amendments to Part 200 are applicable statewide. The Department has minimized the adverse impacts of the regulations statewide.

5. Self-Employment Opportunities: Not applicable.

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## Department of Financial Services

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### EMERGENCY RULE MAKING

#### Business Conduct of Mortgage Loan Servicers

**I.D. No.** DFS-16-13-00002-E

**Filing No.** 352

**Filing Date:** 2013-03-28

**Effective Date:** 2013-04-01

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

**Action taken:** Addition of Part 419 to Title 3 NYCRR.

**Statutory authority:** Banking Law, art. 12-D

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

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

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

**Subject:** Business conduct of mortgage loan servicers.

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

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

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

Section 419.3 requires compliance with other State and Federal laws re-

lating to mortgage loan servicing, including Banking Law Article 12-D, RESPA, and the Truth-in-Lending Act.

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

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

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

Section 419.7 describes the requirements of an annual account statement which must be provided to borrowers in plain language showing the unpaid principal balance at the end of the preceding 12-month period, the interest paid during that period and the amounts deposited into and disbursed from escrow. The section also describes the Servicer's obligations with respect to providing a payment history when requested by the borrower or borrower's representative.

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

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

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

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

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

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

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

**This notice is intended** to serve only as a notice of emergency adoption. This agency intends to adopt this emergency rule as a permanent rule and will publish a notice of proposed rule making in the *State Register* at some future date. The emergency rule will expire June 25, 2013.

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

#### Regulatory Impact Statement

##### 1. Statutory Authority.

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

Subsection (1) of Section 590 of the Banking Law was amended by the Mortgage Lending Reform Law to add the definitions of "mortgage loan servicer" and "servicing mortgage loans". (Section 590(1)(h) and Section 590(1)(i).)

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

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

Subsection (3) of Section 590 was amended by the Subprime Law to

clarify the power of the banking board to promulgate rules and regulations and to extend the rulemaking authority regarding regulations for the protection of consumers and regulations to define improper or fraudulent business practices to cover mortgage loan servicers, as well as mortgage bankers, mortgage brokers and exempt organizations. The functions and powers of the banking board have since been transferred to the Superintendent of Financial Services, pursuant to Part A of Chapter 62 of the Laws of 2011, Section 89.

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

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

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

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

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

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

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

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

## 2. Legislative Objectives.

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

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

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

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

Part 419 addresses the business practices of mortgage loan servicers in connection with their servicing of residential mortgage loans. This part addresses the obligations of mortgage loan servicers in their communications, transactions and general dealings with borrowers, including the handling of consumer complaints and inquiries, handling of escrow pay-

ments, crediting of payments, charging of fees, loss mitigation procedures and provision of payment histories and payoff statements. This part also imposes certain recordkeeping and reporting requirements in order to enable the Superintendent to monitor servicers' conduct and prohibits certain practices such as engaging in deceptive business practices.

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

## 3. Needs and Benefits.

The Mortgage Lending Reform Law adopted a multifaceted approach to the lack of supervision of the mortgage loan industry, particularly with respect to servicing and foreclosure. It addressed a variety of areas in the residential mortgage loan industry, including: i. loan originations; ii. loan foreclosures; and iii. the conduct of business by residential mortgage loans servicers.

Until July 1, 2009, when the mortgage loan servicer registration provisions first became effective, the Department regulated the brokering and making of mortgage loans, but not the servicing of these mortgage loans. Servicing is vital part of the residential mortgage loan industry; it involves the collection of mortgage payments from borrowers and remittance of the same to owners of mortgage loans; to governmental agencies for taxes; and to insurance companies for insurance premiums. Mortgage servicers also act as agents for owners of mortgages in negotiations relating to loss mitigation when a mortgage becomes delinquent. As "middlemen," moreover, servicers also play an important role when a property is foreclosed upon. For example, the servicer may typically act on behalf of the owner of the loan in the foreclosure proceeding.

Further, unlike in the case of a mortgage broker or a mortgage lender, borrowers cannot "shop around" for loan servicers, and generally have no input in deciding what company services their loans. The absence of the ability to select a servicer obviously raises concerns over the character and viability of these entities given the central part of they play in the mortgage industry. There also is evidence that some servicers may have provided poor customer service. Specific examples of these activities include: pyramiding late fees; misapplying escrow payments; imposing illegal prepayment penalties; not providing timely and clear information to borrowers; erroneously force-placing insurance when borrowers already have insurance; and failing to engage in prompt and appropriate loss mitigation efforts.

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

As noted above, Part 418, initially adopted on an emergency basis on July 1 2009, relates to the first component of the mortgage servicing statute – the registration of mortgage loan servicers. It was intended to ensure that only those persons and entities with adequate financial support and sound character and general fitness will be permitted to register as mortgage loan servicers. It also provided for the suspension, revocation and termination of licensees involved in wrongdoing and establishes minimum financial standards for mortgage loan servicers.

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

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

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

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

#### 4. Costs.

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

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

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

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

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

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

#### 5. Local Government Mandates.

None.

#### 6. Paperwork.

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

#### 7. Duplication.

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

#### 8. Alternatives.

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

#### 9. Federal Standards.

Currently, mortgage loan servicers are not required to be registered by any federal agencies, and there are no comprehensive federal rules governing mortgage loan servicing. Federal laws such as the Real Estate Settle-

ment Procedures Act of 1974, 12 U.S.C. § 2601 et seq. and regulations adopted thereunder, 24 C.F.R. Part 3500, and the Truth-in-Lending Act, 15 U.S.C. section 1600 et seq. and Regulation Z adopted thereunder, 12 C.F.R. section 226 et seq., govern some aspects of mortgage loan servicing, and there have been some recent amendments to those laws and regulations regarding mortgage loan servicing. For example, Regulation Z, 12 C.F.R. section 226.36(c), was recently amended to address the crediting of payments, imposition of late charges and the provision of payoff statements. In addition, the recently enacted Dodd-Frank Wall Street Reform and Protection Act of 2010 (Dodd-Frank Act) establishes requirements for the handling of escrow accounts, obtaining force-placed insurance, responding to borrower requests and providing information related to the owner of the loan. Additionally, the newly created Bureau of Consumer Financial Protection established by the Dodd-Frank Act may soon propose additional regulations for mortgage loan servicers.

#### 10. Compliance Schedule.

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

### *Regulatory Flexibility Analysis*

#### 1. Effect of the Rule:

The rule will not have any impact on local governments. The Mortgage Lending Reform Law of 2008 (Ch. 472, Laws of 2008, hereinafter, the "Mortgage Lending Reform Law") requires all mortgage loan servicers, whether registered or exempt from registration under the law, to service mortgage loans in accordance with the rules and regulations promulgated by the Banking Board or Superintendent. The functions and powers of the Banking Board have since been transferred to the Superintendent of Financial Services, pursuant to Part A of Chapter 62 of the Laws of 2011, Section 89. Of the 67 entities which have been approved for registration or have pending applications and the nearly 400 entities which have indicated that they are exempt from the registration requirements, it is estimated that very few are small businesses.

#### 2. Compliance Requirements:

The provisions of the Mortgage Lending Reform Law relating to mortgage loan servicers has two main components: it requires the registration by the Department of servicers who are not a bank, mortgage banker, mortgage broker or other exempt organizations (the "MLS Registration Regulations"), and it authorizes the Department to promulgate rules and regulations that are necessary and appropriate for the protection of consumers, to define improper or fraudulent business practices, or otherwise appropriate for the effective administration of the provisions of the Mortgage Lending Reform Law relating to mortgage loan servicers (the "Mortgage Loan Servicer Business Conduct Regulations").

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

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

#### 3. Professional Services:

None.

#### 4. Compliance Costs:

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

For example, Fannie Mae and Freddie Mac, which own or insure approximately 90% of the nation's securitized mortgage loans, have similar guidelines governing various aspects of mortgage servicing, including handling of loan delinquencies. In addition, over 100 mortgage loan servicers participate in the federal Making Home Affordable (MHA)

program which requires adherence to standards for handling of loan delinquencies and loss mitigation similar to those contained in these regulations. Those servicers not participating in MHA have, for the most part, adopted programs which parallel many components of MHA.

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

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

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

#### 5. Economic and Technological Feasibility:

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

#### 6. Minimizing Adverse Impacts:

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

Moreover, the ability by the Department to regulate mortgage loan servicers is expected to reduce costs associated with responding to consumers' complaints, decrease unnecessary expenses borne by mortgagors, help borrowers at risk of foreclosure and decrease the number of foreclosures in this state.

#### 7. Small Business and Local Government Participation:

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

#### *Rural Area Flexibility Analysis*

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

**Compliance Requirements.** The provisions of the Mortgage Lending Reform Law relating to mortgage loan servicers has two main components: it requires the registration by the Department of servicers that are not a bank, mortgage banker, mortgage broker or other exempt organization (the "MLS Registration Regulations"), and it authorizes the Department to promulgate rules and regulations that are necessary and appropriate for the protection of consumers, to define improper or fraudulent business practices, or otherwise appropriate for the effective administration of the provisions of the Mortgage Lending Reform Law relating to mortgage loan servicers (the "MLS Business Conduct Regulations").

The provisions of the Mortgage Lending Reform Law of 2008 requiring registration of mortgage loan servicers which are not mortgage bankers, mortgage brokers or exempt organizations became effective on July 1, 2009. Part 418 of the Superintendent's Regulations, initially adopted on an emergency basis on July 1, 2010, sets forth the standards and procedures for applications for registration as a mortgage loan servicer, for approving and denying applications to be registered as a mortgage loan servicer, for approving changes of control, for suspending, terminating or revoking the registration of a mortgage loan servicer as well as the financial responsibility standards for mortgage loan servicers.

Part 419 implements the provisions of the Mortgage Lending Reform

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

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

**Minimizing Adverse Impacts.** As noted in the "Costs" section above, while mortgage loan servicers may incur some higher costs as a result of complying with the rules, the Department does not believe that the rule will impose any meaningful adverse economic impact upon private or public entities in rural areas. In addition, it should be noted that Part 418, which establishes the application and financial requirements for mortgage loan servicers, authorizes the Superintendent to reduce or waive the otherwise applicable financial responsibility requirements in the case of mortgage loans servicers that service not more than 12 mortgage loans or more than \$5,000,000 in aggregate mortgage loans in New York and which do not collect tax or insurance payments. The Superintendent is also authorized to reduce or waive the financial responsibility requirements in other cases for good cause. The Department believes that this will ameliorate any burden on mortgage loan servicers operating in rural areas.

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

#### **Job Impact Statement**

Article 12-D of the Banking Law, as amended by the Mortgage Lending Reform Law (Ch. 472, Laws of 2008), requires persons and entities which engage in the business of servicing mortgage loans after July 1, 2009 to be registered with the Superintendent. Part 418 of the Superintendent's Regulations, initially adopted on an emergency basis on July 1, 2009, sets forth the application, exemption and approval procedures for registration as a mortgage loan servicer, as well as financial responsibility requirements for applicants, registrants and exempted persons.

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

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

**EMERGENCY  
RULE MAKING**

**Confidentiality Protocols for Victims of Domestic Violence and Endangered Individuals**

**I.D. No.** DFS-16-13-00004-E

**Filing No.** 370

**Filing Date:** 2013-03-29

**Effective Date:** 2013-03-29

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

**Action taken:** Addition of Part 244 (Regulation 168) to Title 11 NYCRR.

**Statutory authority:** Financial Services Law, sections 202 and 302; and Insurance Law, sections 301 and 2612

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

**Specific reasons underlying the finding of necessity:** This regulation governs confidentiality protocols for domestic violence victims and endangered individuals. Insurance Law § 2612 states that if any person covered by an insurance policy issued to another person who is the policyholder or if any person covered under a group policy delivers to the insurer that issued the policy, a valid order of protection against the policyholder or other person, then the insurer is prohibited for the duration of the order from disclosing to the policyholder or other person the address and telephone number of the insured, or of any person or entity providing covered services to the insured.

In addition, on October 25, 2012, Governor Andrew M. Cuomo signed into law Chapter 491 of the Laws of 2012, effective January 1, 2013, Part E of which amends Insurance Law § 2612 to require a health insurer to accommodate a reasonable request made by a person covered by an insurance policy or contract issued by the health insurer to receive communications of claim related information from the health insurer by alternative means or at alternative locations if the person clearly states that disclosure of all or part of the information could endanger the person. Except with the express consent of the person making the request, the amendment prohibits a health insurer from disclosing to the policyholder: (1) the address, telephone number, or any other personally identifying information of the person who made the request or child for whose benefit a request was made; (2) the nature of the health care services provided; or (3) the name or address of the provider of the covered services.

Insurance Law § 2612 requires the Superintendent, in consultation with the Commissioner of Health, Office of Children and Family Services, and Office for the Prevention of Domestic Violence, to promulgate rules to guide and enable insurers to guard against the disclosure of the confidential information protected by § 2612. Section 2612 provides important protections to persons who may be subject to domestic violence.

For the reasons stated above, emergency action is necessary for the general welfare.

**Subject:** Confidentiality Protocols for Victims of Domestic Violence and Endangered Individuals.

**Purpose:** Establish requirements for insurers to effectively respond to certain requests to keep records and information confidential.

**Text of emergency rule:** Section 244.0 Preamble.

*Individuals experiencing actual or threatened violence frequently establish new addresses and telephone numbers to protect their health and safety. Insurance Law section 2612 requires the Superintendent of Financial Services, in consultation with the Commissioner of Health, Office of Children and Family Services, and Office for the Prevention of Domestic Violence, to promulgate rules to guide and enable insurers to guard against the disclosure of information protected by Insurance Law section 2612. This Part establishes requirements with which insurers shall comply to enable them to effectively respond to requests to keep records and information confidential in conformance with Insurance Law section 2612.*

**Section 244.1 Applicability.**

(a) This Part shall apply to a policy issued pursuant to the Insurance Law.

(b) With respect to an insurer authorized to write kinds of insurance in addition to accident and health insurance or salary protection insurance, any section of this Part that establishes rules with regard to a requestor or covered individual shall apply only with respect to a policy of accident and health insurance or a policy of salary protection insurance.

**Section 244.2 Definitions.**

*As used in this Part:*

(a) *Accident and health insurance shall have the meaning set forth in Insurance Law section 1113(a)(3) and with regard to a fraternal benefit society, also shall have the meaning set forth in Insurance Law section 4501(i)-(k), (m), (o), and (p).*

(b) *Address means a street address, mailing address, or e-mail address.*

(c) *Claim related information shall have the meaning set forth in Insurance Law section 2612(h)(1)(A).*

(d) *Covered individual means an individual covered under a policy issued by a health insurer who could be endangered by the disclosure of all or part of claim related information by the health insurer.*

(e) *Fraternal benefit society shall have the meaning set forth in Insurance Law section 4501(a).*

(f) *Health insurer shall have the meaning set forth in Insurance Law section 2612(h)(1)(B).*

(g) *Insured means an individual who is covered under an individual or a group policy.*

(h) *Insurer shall have the meaning set forth in Insurance Law section 2612(c)(2) and shall include a fraternal benefit society.*

(i) *Person means an individual or legal entity, including a partnership, limited liability company, association, trust, or corporation.*

(j) *Policy means a policy, contract, or certificate of insurance, an annuity contract, a child health insurance plan issued pursuant to Title 1-A of Public Health Law Article 25, medical assistance or health care services provided pursuant to Title 11 or 11-D of Social Services Law Article 5, or any certificate issued under any of the foregoing.*

(k) *Policyholder means a person to whom a policy has been issued.*

(l) *Reasonable request means a request that contains a statement that disclosure of all or part of the claim related information to which the request pertains could endanger an individual, and the specification of an alternative address, telephone number, or other method of contact.*

(m) *Requestor means a covered individual, or the individual's legal representative, or with regard to a covered individual who is a child, the child's parent or guardian, who makes a reasonable request to the health insurer.*

(n) *Salary protection insurance shall have the meaning set forth in Insurance Law section 1113(a)(31).*

(o) *Victim of domestic violence or victim shall have the meaning set forth in Social Services Law section 459-a(1).*

**Section 244.3 Confidentiality protocol.**

(a) *An insurer shall develop and implement a confidentiality protocol whereby, except with the express consent of the individual who delivers to the insurer a valid order of protection, the insurer shall keep confidential and shall not disclose the address and telephone number of the victim of domestic violence, or any child residing with the victim, and the name, address, and telephone number of a person providing covered services to the victim, to a policyholder or another insured covered under the policy against whom the victim has a valid order of protection, if the victim, the victim's legal representative, or if the victim is a child, the child's parent or guardian, delivers to the insurer at its home office a valid order of protection pursuant to Insurance Law section 2612(f) and (g).*

(b) *A health insurer shall develop and implement a confidentiality protocol whereby the health insurer shall accommodate a reasonable request made by a requestor for a covered individual to receive communications of claim related information from the health insurer by alternative means or at alternative locations. Except with the express consent of the requestor, a health insurer shall not disclose to the policyholder or another insured covered under the policy:*

(1) *the address, telephone number, or any other personally identifying information of the covered individual or any child residing with the covered individual;*

(2) *the nature of the health care services provided to the covered individual;*

(3) *the name, address, and telephone number of the provider of the covered health care services; or*

(4) *any other information from which there is a reasonable basis to believe the foregoing information could be obtained.*

(c) *The insurer's confidentiality protocol shall include written procedures that its employees, agents, representatives, or any other persons with whom the insurer contracts or who has gained access to the information from the insurer, with regard to the solicitation, negotiation, or sale of insurance or the adjustment or administration of insurance claims, shall follow. The written procedures shall include:*

(1) *the procedure by which a requestor may make a reasonable request, provided that the procedure shall not require a justification as part of the reasonable request;*

(2) *the procedure by which a victim of domestic violence or a covered individual may provide an alternative address, telephone number, or other method of contact;*

(3) procedures for limiting access to personally identifying information, such as the name, address, telephone number, and social security number of a victim or covered individual and any other information from which there is a reasonable basis to believe the foregoing information could be obtained;

(4) procedures for limiting or removing personal identifiers before information is used or disclosed, where possible;

(5) a system of internal control procedures, which the insurer shall review at least annually, to ensure the confidentiality of:

(i) addresses, telephone numbers, or other methods of contact;

(ii) the fact that a requestor made a reasonable request or that an order of protection was delivered to the insurer, and any information contained therein; and

(iii) any other information from which there is a reasonable basis to believe the foregoing information could be obtained; and

(6) with regard to a health insurer, the procedure by which a requestor may revoke a reasonable request, provided, however, that the health insurer may require the requestor to submit a sworn statement revoking the request.

(d)(1) An insurer shall notify its employees, agents, representatives, or any other persons with whom the insurer contracts or who has gained access to the information from the insurer, with regard to the solicitation, negotiation, or sale of insurance or the adjustment or administration of insurance claims, that the insurer's protocol is to be followed for the specified victim of domestic violence or covered individual, within three business days of:

(i) receipt of a valid order of protection and an alternative address, telephone number, or other method of contact; or

(ii) receipt of a reasonable request, with regard to a health insurer.

(2) Upon receipt of a valid order of protection or a reasonable request, an insurer shall inform the individual who delivered the order of protection or the requestor that the insurer has up to three business days to implement paragraph (1) of this subdivision.

(e) A health insurer may require a requestor to make a reasonable request in writing pursuant to Insurance Law section 2612(h)(3). However, a health insurer shall not require a requestor to provide a justification for the reasonable request.

(f)(1) Prior to releasing any information pursuant to a warrant, subpoena, or court order, an insurer shall notify the individual who delivered the order of protection or the requestor, as soon as reasonably practicable, that it intends to release information and specify what type of information it intends to release, unless prohibited by the warrant, subpoena, or court order.

(2) Upon release of information pursuant to a warrant, subpoena, or court order, an insurer shall advise the person to whom the insurer is releasing the information that the information is confidential and that the person should continue to maintain the confidentiality of the information to the extent possible.

(g) An insurer shall comply with Parts 420 and 421 of this Title (Insurance Regulations 169 and 173) and where applicable, the Federal Health Insurance Portability and Accountability Act of 1996, as amended, with respect to any information submitted pursuant to Insurance Law section 2612 or this Part.

(h) An insurer or any person subject to the Insurance Law shall not engage in any practice that would prevent or hamper the orderly working of this Part in accomplishing its intended purpose of protecting victims of domestic violence and covered individuals.

(i) An agent, representative, or designee of an insurer, a corporation organized pursuant to Insurance Law Article 43, a health maintenance organization certified pursuant to Public Health Law Article 44, or a provider issued a special certificate of authority pursuant to Public Health Law section 4403-a, who is regulated pursuant to the Insurance Law, need not develop its own confidentiality protocol pursuant to this section if the agent, representative, or designee follows the protocol of the insurer, corporation, health maintenance organization, or provider.

#### Section 244.4 Notice.

(a) By July 1, 2013, an insurer shall post conspicuously on its website, and with regard to a health insurer, also annually provide all its participating health service providers with:

(1) a description of Insurance Law section 2612;

(2) the information required by section 244.3(c)(1), (2), and (6); and

(3) the phone number for the New York State Domestic and Sexual Violence Hotline.

(b) An insurer shall post conspicuously on its website the information set forth in paragraphs (1) and (3) of subdivision (a) of this section in a format suitable for printing and posting. A health insurer shall recommend to its participating health service providers that the providers print and post the information in their offices.

(c) This section shall not apply to an agent, representative, or designee of an insurer, a corporation organized pursuant to Insurance Law Article

43, a health maintenance organization certified pursuant to Public Health Law Article 44, or a provider issued a special certificate of authority pursuant to Public Health Law section 4403-a, who is regulated pursuant to the Insurance Law, if the agent, representative, or designee follows the protocol of the insurer, corporation, health maintenance organization, or provider.

**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 June 26, 2013.

**Text of rule and any required statements and analyses may be obtained from:** Joana Lucashuk, New York State Department of Financial Services, 25 Beaver Street, New York, NY 10004, (212) 480-2125, email: joana.lucashuk@dfs.ny.gov

#### Regulatory Impact Statement

1. Statutory authority: Financial Services Law §§ 202 and 302 and Insurance Law §§ 301 and 2612. Insurance Law § 301 and Financial Services Law §§ 202 and 302 authorize the Superintendent of Financial Services (the "Superintendent") to prescribe regulations interpreting the provisions of the Insurance Law and to effectuate any power granted to the Superintendent under the Insurance Law. Insurance Law § 2612 requires the Superintendent to promulgate rules to guide and enable insurers (as § 2612 defines that term, which includes health maintenance organizations as well as agents, representatives, and designees of the insurers that are regulated under the Insurance Law) to guard against the disclosure of the confidential information protected by Insurance Law § 2612.

2. Legislative objectives: Insurance Law § 2612, with respect to every insurer regulated under the Insurance Law, provides in relevant part that if any person covered by an insurance policy delivers to the insurer a valid order of protection against the policyholder or other covered person, then the insurer cannot, for the duration of the order, disclose to the policyholder or other person the address and telephone number of the insured, or of any person or entity providing covered services to the insured. Section 2612 also requires a health insurer, as defined in that section, to accommodate a reasonable request made by a person covered by an insurance policy or contract to receive communications of claim-related information by alternative means or at alternative locations if the person clearly states that disclosure of the information could endanger the person. This section further prohibits a health insurer from disclosing certain information to the policyholder.

The Legislature enacted Insurance Law § 2612, and amendments thereto, to protect domestic violence victims and to ensure that an abuser has one less record that the abuser may use to track down the victim. This rule is consistent with the public policy objectives the Legislature sought to advance by enacting § 2612, because the rule helps to protect domestic violence victims by guiding and enabling insurers to guard against the disclosure of the confidential information protected by § 2612.

3. Needs and benefits: Insurance Law § 2612 requires the Superintendent, in consultation with the Commissioner of Health, Office of Children and Family Services, and Office for the Prevention of Domestic Violence, to promulgate rules to guide and enable insurers to guard against the disclosure of the confidential information protected by Insurance Law § 2612. Therefore, after consultation with the Commissioner of Health, the Office of Children and Family Services, and the Office for the Prevention of Domestic Violence, the Superintendent drafted this rule to guide and enable insurers to guard against disclosure.

4. Costs: The rule may impose compliance costs on insurers because it requires insurers to develop confidentiality protocols and provide certain notices. However, such costs are difficult to estimate and will vary depending upon a number of factors, including the size of the insurer. In fact, insurers already should be complying with the existing requirements of the statute. Moreover, the rule is designed to provide flexibility to insurers and does not prescribe the way in which an insurer must provide the notices, but rather leaves the method up to each insurer. In addition, an agent, representative, or designee of an insurer that is regulated pursuant to the Insurance Law need not establish its own protocol or give certain notices, provided that it follows the protocol of the insurer. In any event, the requirement that insurers may not disclose the information protected by Insurance Law § 2612 is mandated by the statute itself, not the rule.

The Department does not anticipate significant additional costs to the Department to implement the rule. The Department will monitor compliance with the rule as part of its market conduct examinations of insurers and consumer complaint handling procedures.

The regulation does not impose compliance costs on state or local governments because it is not applicable to them.

5. Local government mandates: This rule does not impose any program, service, duty, or responsibility upon any county, city, town, village, school district, fire district, or other special district.

6. Paperwork: The rule requires an insurer to notify its employees, agents, representatives, or other persons with whom the insurer contracts or who have gained access to the information from the insurer, with regard to the solicitation, negotiation, or sale of insurance or the adjustment or administration of insurance claims, that the insurer's confidentiality protocol is to be followed for the specified victim of domestic violence or covered individual, within three business days of receipt of a valid order of protection and an alternative address, telephone number, or other method of contact, or receipt of a reasonable request with regard to a health insurer.

The rule also requires a health insurer to annually provide all its participating health service providers with a description of Insurance Law § 2612, certain information contained within the insurer's confidentiality protocol, and the phone number of the New York State Domestic and Sexual Violence Hotline.

7. Duplication: The rule does not duplicate, overlap, or conflict with any state rules or other legal requirements. The rule may overlap with the federal Health Insurance Portability and Accountability Act of 1996 ("HIPAA"), as amended, and may impose additional requirements that are not set forth in HIPAA. However, the rule does not conflict with HIPAA.

8. Alternatives: There were no significant alternatives to consider.

9. Federal standards: HIPAA sets forth rules for restricting the use and disclosure of certain health information and permits an individual to make a request to a health plan to receive communications of protected health information from the health plan by alternative means or at alternative locations if the individual clearly states that the disclosure of all or part of the information could endanger the individual. Insurance Law § 2612, as amended by Chapter 491, and this rule, are consistent with HIPAA. However, § 2612 and the rule may impose additional requirements that are not set forth in HIPAA. For example, the rule sets forth required elements of a confidentiality protocol and requires insurers to provide notice of their confidentiality protocols and of Insurance Law § 2612 by posting certain information on their websites.

10. Compliance schedule: The existing statute already requires an insurer to protect certain information when a person provides the insurer with an order of protection. The new requirements of Insurance Law § 2612 took effect on January 1, 2013. Accordingly, this emergency rule takes effect upon filing with the Secretary of State. By July 1, 2013, an insurer must post certain information on its website.

#### **Regulatory Flexibility Analysis**

1. Effect of rule: The rule will not affect any local governments. It will affect regulated insurers, most of which do not come within the definition of "small business" as set forth in State Administrative Procedure Act § 102(8), because they are not independently owned and operated and employ less than one hundred individuals. The rule also would affect insurance producers and independent insurance adjusters, the vast majority of which are small businesses, because they are independently owned and operated and employ one hundred or less individuals. There are over 200,000 licensed resident and non-resident insurance producers and over 15,000 licensed resident and non-resident independent insurance adjusters in New York that the rule will affect. The Department does not have a record of the exact number of small businesses included in that group. The Department has designed the regulation to place the least burden possible on insurance producers and independent insurance adjusters, as discussed below.

2. Compliance requirements: Insurance Law § 2612(c)(2) and (h)(1)(A) define "insurer" and "health insurer," respectively, to include an agent, representative, or designee of an insurer, a corporation organized pursuant to Insurance Law Article 43, a health maintenance organization ("HMO"), a municipal cooperative health benefit plan, or a provider issued a special certificate of authority pursuant to Public Health Law § 4403-a, who is regulated pursuant to the Insurance Law. The rule requires insurers (including health insurers) to develop and implement confidentiality protocols that include written procedures that their employees, agents, representatives, or any other persons with whom the insurers contract or who have gained access to the information from the insurers, with regard to the solicitation, negotiation, or sale of insurance or the adjustment or administration of insurance claims, must follow. The rule also requires insurers to post certain information on their websites. Since, an agent, representative, or designee who is regulated pursuant to the Insurance Law is included in the definitions of "insurer" and "health insurer," these requirements apply to insurance agents and independent insurance adjusters. In certain cases, insurance brokers may act on behalf of insurers, such as when they administer insurance programs for the insurers, and thus the rule would apply to brokers as well. Furthermore, the rule prohibits any person subject to the Insurance Law from engaging in any practice that would prevent or hamper the orderly working of the rule in accomplishing its intended purpose of protecting victims of domestic violence and covered individuals.

However, the Department has attempted to minimize the impact of the

rule on insurance producers and independent insurance adjusters by including language that states that an agent, representative, or designee of an insurer, a corporation, an HMO, or a provider, who is regulated pursuant to the Insurance Law, need not develop its own confidentiality protocol if the agent, representative, or designee follows the protocol of the insurer, corporation, HMO, or provider. Nor does a producer or an adjuster who follows the protocol of the insurer, corporation, HMO, or provider need to post certain information on its website.

3. Professional services: The rule would not require an insurance producer or independent insurance adjuster to use professional services.

4. Compliance costs: The rule will not impose any compliance costs on local governments. Insurance producers and independent insurance adjusters, many of whom are small businesses, may incur additional costs of compliance, but they should be minimal. The cost to a producer or an adjuster will be associated primarily with developing and implementing a confidentiality protocol, unless the producer or adjuster chooses to follow the protocol of the insurer, corporation, HMO, or provider.

5. Economic and technological feasibility: Local governments will not incur an economic or technological impact as a result of this rule. Insurance producers and independent insurance adjusters, many of whom are small businesses, will not have to purchase any new technology to comply with the rule.

6. Minimizing adverse impact: The rule applies to the insurance market throughout New York State. In accordance with Insurance Law § 2612, the same requirements will apply to all insurance producers and independent insurance adjusters, so the rule does not impose any adverse or disparate impact on small businesses. Further, the Department has designed the regulation to place the least burden possible on an insurance producer or insurance adjuster by allowing the producer or adjuster to follow the protocol of the insurer, corporation, HMO, or provider, rather than develop its own protocol.

7. Small business and local government participation: Small businesses and local governments will have an opportunity to participate in the rule making process when the rule is published in the State Register.

#### **Rural Area Flexibility Analysis**

1. Types and estimated numbers of rural areas: Insurers, insurance producers, and independent insurance adjusters affected by this rule operate in every county in this state, including rural areas as defined under State Administrative Procedure Act ("SAPA") § 102(10).

2. Reporting, recordkeeping and other compliance requirements; and professional services: The rule requires insurers located in rural areas (as Insurance Law § 2612 defines that term, which includes health maintenance organizations as well as agents, representatives, and designees of the insurers who are regulated under the Insurance Law) to develop and implement confidentiality protocols that include written procedures that their employees, agents, representatives, or any other persons with whom the insurers contract or who have gained access to the information from the insurers, with regard to the solicitation, negotiation, or sale of insurance or the adjustment or administration of insurance claims, must follow. The rule also requires insurers to post certain information on their websites.

However, the Department has attempted to minimize the impact of the rule on insurance producers and independent insurance adjusters located in rural areas by including language that states that an agent, representative, or designee of an insurer, a corporation, an HMO, or a provider, who is regulated pursuant to the Insurance Law, need not develop its own confidentiality protocol if the agent, representative, or designee follows the protocol of the insurer, corporation, HMO, or provider. Nor does a producer or an adjuster who follows the protocol of the insurer, corporation, HMO, or provider need to post certain information on its website.

The rule would not require an insurer, insurance producer, or independent insurance adjuster located in a rural area to use professional services.

3. Costs: Insurers, insurance producers, and independent insurance adjusters located in rural areas may incur additional costs of compliance, but they should be minimal. The cost to an insurer, producer, or adjuster located in rural areas will be associated primarily with developing and implementing a confidentiality protocol. However, a producer or adjuster may choose to follow the protocol of the insurer, corporation, HMO, or provider.

4. Minimizing adverse impact: The rule applies to the insurance market throughout New York State. In accordance with Insurance Law § 2612, the same requirements will apply to all insurers, insurance producers, and independent insurance adjusters, so the rule does not impose any adverse or disparate impact on insurers, insurance producers, or independent insurance adjusters in rural areas.

5. Rural area participation: Insurers, insurance producers, and independent insurance adjusters located in rural areas will have an opportunity to participate in the rule making process when the rule is published in the State Register.

#### **Job Impact Statement**

The Department of Financial Services finds that this rule should have no impact on jobs and employment opportunities. As required by Insurance

Law § 2612, the rule establishes certain limited requirements to guide and enable insurers to guard against the disclosure of the confidential information protected by § 2612.

## Department of Law

### REVISED RULE MAKING NO HEARING(S) SCHEDULED

#### Contents of Annual Financial Reports Filed with the Attorney General by Certain Nonprofits

I.D. No. LAW-52-12-00013-RP

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

**Proposed Action:** Addition of sections 91.6, 91.5(c)(2)(iii) and 91.7(b)(2)(iv); amendment of section 91.3; and renumbering of sections 91.6-91.12 to sections 91.7-91.13 of Title 13 NYCRR.

**Statutory authority:** Executive Law, section 177(1); Estates, Powers and Trusts Law, section 8-1.4(h)

**Subject:** Contents of annual financial reports filed with the Attorney General by certain nonprofits.

**Purpose:** To require certain nonprofits to disclose information regarding election advocacy to the Attorney General and the public.

**Text of revised rule:** 13 NYCRR Sections 91.6-91.12 are renumbered to sections 91.7-91.13.

A new section 91.6 is added to title 13 to read as follows:

91.6 Annual Disclosure of Electioneering Activities by Non-501(c)(3) Registrants

(a) Definitions. For purposes of this section:

(1) "Annual Financial Report" means any report filed pursuant to section 91.5 or 91.7 of this part.

(2) "Covered organization" means any organization that is: (i) registered or required to be registered with the Attorney General pursuant to Article 7-A of the Executive Law and/or Article 8 of the Estates, Powers and Trusts Law; and (ii) not prohibited by Internal Revenue Code section 501(c) from participating in, or intervening in, any political campaign on behalf of, or in opposition to, any candidate for public office.

(3) "Election" means any general, special, or primary election for federal, state or local office, or at which any proposition, referendum or other question is submitted to the voters in any state or any locality in the United States.

(4) "New York Election" means only those general, special, or primary elections conducted by a New York state or local government entity for New York state or local office, or any election at which any New York state or local constitutional amendment, proposition, referendum or other question is submitted to the voters.

(5) "Election related expenditure" means (i) any expenditure made, liability incurred, or contribution provided for express election advocacy or election targeted issue advocacy; or (ii) any other transfer of funds, assets, services or any other thing of value to any individual, group, association, corporation whether organized for profit or not-for-profit, labor union, political committee, political action committee, or any other entity for the purpose of supporting or engaging in express election advocacy or election targeted issue advocacy by the recipient or a third party.

(6) "Express election advocacy" means any communication made at any time that:

(i) contains words such as "vote," "oppose," "support," "elect," "defeat," or "reject," which call for the nomination, election or defeat of one or more clearly identified candidates, the election or defeat of one or more political parties, or the passage or defeat of one or more constitutional amendments, propositions, referenda or other questions submitted to voters at any election; or

(ii) refers to or depicts one or more clearly identified candidates, political parties, constitutional amendments, propositions, referenda or other questions submitted to the voters in a manner that is susceptible of no reasonable interpretation other than as a call for the nomination, election or defeat of such candidates in an election, the election or defeat of such political parties, or the passage or defeat of such constitutional amendments, propositions, referenda or other questions submitted to the voters in any election.

(7) "Election targeted issue advocacy"

(i) means any communication other than express election advocacy

made within forty-five days before any primary election or ninety days before any general election that: (A) refers to one or more clearly identified candidates in that election; (B) depicts the name, image, likeness or voice of one or more clearly identified candidates in that election; or (C) refers to any clearly identified political party, constitutional amendment, proposition, referendum or other question submitted to the voters in that election;

(ii) does not mean a communication that is: (A) directed, sent or distributed by the covered organization to individuals who affirmatively consent to be members of the covered organization, contribute funds to the covered organization, or, pursuant to the covered organization's articles or bylaws, have the right to vote directly or indirectly for the election of directors or officers, or on changes to bylaws, disposition of all or substantially all of the covered organization's assets or the merger or dissolution of the covered organization; or (B) for the purpose of promoting or staging any candidate debate, town hall or similar forum to which at least two candidates seeking the same office, or two proponents of differing positions on a referendum or question submitted to voters, are invited as participants, and which does not promote or advance one candidate or position over another.

(8) "Communication" means: (i) paid advertisements broadcast over radio, television, cable, or satellite; (ii) paid placement of content on the Internet or other electronic communication networks; (iii) paid advertisements published in a periodical or on a billboard; (iv) paid telephone communications to one thousand or more households; (v) mailings sent or distributed through the United States Postal Service or similar private mail carriers to five thousand or more recipients; or (vi) printed materials exceeding five thousand copies.

(9) "Covered donation" means any contribution, gift, loan, advance, or deposit of money or any thing of value made to a covered organization unless such donation is deposited into an account the funds of which are not used for making New York election related expenditures.

(b) Disclosure of Election Related Expenditures.

(1) The annual financial report filed by any covered organization shall include the amount and the percentage of total expenses during the reporting period that are election related expenditures.

(2) The annual financial report filed by any covered organization that has made New York election related expenditures in an aggregate amount or fair market value exceeding ten thousand dollars during the reporting period shall include an itemized schedule disclosing information related to each New York election related expenditure exceeding fifty dollars in value, unless the information is exempt from disclosure pursuant to paragraph d of this section. Such information shall include for each New York election related expenditure: (i) the amount or fair market value of any funds, services or assets provided, and any liabilities incurred; (ii) the date that such funds, services or assets were provided, and that any liabilities were incurred; (iii) the name and address of the recipients of the expenditure; and (iv) a clear description of the expenditure and its purpose, including but not limited to support for or opposition to a candidate, political party, referendum or other question put before the voters in an election.

(c) Disclosures of Donations Related to New York Elections.

(1) The annual financial report filed by a covered organization that has made New York election related expenditures in an aggregate amount or fair market value exceeding ten thousand dollars during the reporting period shall include an itemized schedule disclosing information related to each covered donation it has received during the reporting period, unless the information is exempt from disclosure pursuant to paragraph d of this section. Such information shall include: (i) the name and address of each donor who made covered donations in an aggregate amount of one thousand dollars or more during the reporting period; (ii) the employer of each such individual donor, if known to the covered organization; and (iii) the date and amount of each such covered donation.

(2) If a covered organization keeps one or more segregated bank accounts containing funds used solely for New York election related expenditures, and makes all of its New York election related expenditures from such accounts, then the annual financial report need only include information specified in the preceding subparagraph concerning donations deposited into such accounts.

(d) Exceptions for Disclosures to Multiple Agencies. The annual financial report filed by a covered organization is not required to include the information specified by subparagraph two of paragraph b of this section, or paragraph c of this section, if: (i) any law or rule requires that such information be disclosed to any other government agency that makes such information available to the public, and (ii) the covered organization is in compliance with the requirements of such law or rule at the time it files the annual financial report.

(e) Schedule to be Provided by the Attorney General. Upon adoption of this regulation, the Attorney General shall make available a schedule ("Electioneering Disclosure Schedule") to the Annual Filing for Char-

table Organizations and if necessary amend existing forms to allow covered organizations to make the disclosures required by this section.

(f) *Guidance to be Provided by the Attorney General.* Upon adoption of this regulation, the Attorney General shall make available to the public guidance concerning compliance with this rule.

(g) *Public Disclosure.* The Attorney General shall make information contained in the completed Electioneering Disclosure Schedule available to the public on the Attorney General's website, except for:

(1) information related to any covered donation received prior to the effective date of this rule; and

(2) information the Attorney General deems exempt from disclosure pursuant to paragraph (h) of this section.

(h) *Exemption from Public Disclosure.*

(1) Notwithstanding paragraph (g) of this section, the Attorney General may, upon application by a donor or covered organization to be made in a form and manner prescribed by the Attorney General, grant an exemption and refrain from disclosing any information to the public related to any covered donation if the applicant shows that the covered organization's primary activities involve areas of public concern that create a substantial likelihood that disclosure will cause undue harm, threats, harassment or reprisals to any person or organization.

(2) An application for such exemption shall be submitted no later than forty-five days prior to the due date for the applicable annual filing. The Attorney General will inform the applicant and may inform other persons or organizations to which the exemption would apply, in writing, whether the application for exemption has been granted or denied. Any denial issued by the Attorney General shall include a statement of findings and conclusions, and the reasons or basis for the denial.

(3) The submission of an application does not relieve the covered organization of its obligation to timely file annual financial reports, including an Electioneering Disclosure Schedule disclosing all donors for which the covered organization has not sought exemption.

(4) To the extent permitted by federal and state law, the Attorney General will exempt from public disclosure all materials submitted in support of an application for an exemption; provided that the Attorney General may disclose such materials to a court in response to any judicial subpoena or court order. The Attorney General may publicly disclose that a covered organization has submitted one or more applications for an exemption, or that one or more of a covered organization's requests for an exemption has been granted or denied.

(i) *Filing Deadlines and Extensions.* Covered organizations shall annually file the Electioneering Disclosure Schedule by the fifteenth day of the fifth month after the organization's accounting period ends. No covered organization may obtain any extension to file an Electioneering Disclosure Schedule, including any extension otherwise available under section 91.5(f)(3) of this chapter.

(j) *Severability.* If any provision in this section or the application of such provision to any persons or circumstances shall be held invalid, the validity of the remainder of the provisions and/or the applicability of such provisions to other persons or circumstances shall not be affected thereby.

Section 91.5(c)(2)(iii) is added to title 13 to read as follows:

*Schedule EDS (Electioneering Disclosure Schedule) or a successor form is required for covered organizations that must file such form pursuant to section 91.6 of this part.*

Section 91.7(b)(2)(iv) is added to title 13 to read as follows:

*Schedule EDS (Electioneering Disclosure Schedule) or a successor form is required for covered organizations that must file such form pursuant to section 91.6 of this part.*

The introductory paragraph to section 91.3 of title 13 is amended to read as follows:

*Certain organizations are exempt from registration with the Attorney General. Unregistered organizations that are exempt from registration are not required to submit an exemption request to the Attorney General, except that an organization that receives a failure to register notice from the Attorney General but believes it is exempt from registration must claim an exemption from registration. Organizations that wish to request exemption from registration under Article 7-A or the EPTL or both, shall claim such exemption by completing the appropriate registration, amended registration or reregistration statement form, defined in sections 91.4, 91.[7]8 and 91.[8]9, respectively, of this Chapter, or a successor form, including the exemption request section of such form, and attaching Schedule E (Request for Exemption for Charitable Organizations) or a successor form along with all required attachments listed in both the registration and exemption request forms.*

**Revised rule compared with proposed rule:** Substantial revisions were made in section 91.6(a)(7), (8), (9), (b)(2), (c)(1), (g), (h)(1) and (i).

**Text of revised proposed rule and any required statements and analyses may be obtained from** Gregory M. Krakower, Counselor to the Attorney General, Department of Law, 120 Broadway NY, NY 10271, (212) 416-8030, email: gregory.krakower@ag.ny.gov

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

**Public comment will be received until:** 30 days after publication of this notice.

#### **Revised Regulatory Impact Statement**

1. **Statutory Authority.** Article 7-A of the Executive Law (hereinafter "Article 7-A") and Article 8 of the Estates, Powers & Trusts Law (hereinafter "EPTL") require certain organizations and trusts to file annual financial reports and other disclosures with the Attorney General, and require the Attorney General to establish and maintain a register of such disclosures. Section 177(1) of the Executive Law and section 8-1.4(h) of the EPTL empower the Attorney General to make rules and regulations necessary for the administration of these provisions.

2. **Legislative Objectives.** The rule requires certain organizations that are registered with the Attorney General and that may participate or intervene in political campaigns (hereinafter "covered organizations") to disclose information concerning expenditures and donations related to such election related activity in annual financial reports that are submitted to the Attorney General. The rule does not apply to organizations exempt from taxation under section 501(c)(3) of the U.S. Internal Revenue Code. The rule aims to, among other things: enhance detection and deterrence of illegal conduct by covered organizations and related individuals; inform and protect prospective donors to such organizations; protect the integrity and reputation of nonprofit organizations that do not intervene in political campaigns; maintain the anonymity of donors to covered organizations if their donations are restricted to purposes unrelated to influencing New York elections; protect the public interest in transparent financing of state and local elections; shield donors to covered organizations that intervene in political campaigns from public disclosure if there is a substantial risk of undue harm, threats, harassment or reprisal; and ensure that there is clear guidance to covered organizations and related individuals concerning compliance.

3. **Needs and Benefits.** New York donors should know how nonprofit organizations that solicit donations from them are likely to use those funds. However, covered organizations, many of which enjoy tax-exempt status on the basis that they act to promote social welfare, may utilize funds solicited from the public to engage in direct and indirect election related activities. Donors to nonprofit organizations may be unaware that their donations to a charitable, social welfare or similar organization can be used to influence elections. Furthermore, such organizations can solicit funds without disclosing critical information about the political nature of their expenditures or sources of funding. There is substantial evidence in the public record that some nonprofit organizations are increasingly raising and spending funds to influence elections. The lack of transparency in this area creates the potential for covered organizations and related individuals to: mislead donors about the uses of their donations; violate tax and other laws without detection by regulators or law enforcement; and evade state and local campaign finance laws in a manner contrary to the public interest. The rule will, among other things:

(A) Better enable regulators to enforce tax and other laws and rules that restrict election related activities and other political activities by covered organizations, and deter illegal conduct;

(B) Protect donors from fraudulent, false or misleading solicitations by covered organizations;

(C) Protect the integrity and reputation of charities and other nonprofits that refrain from impermissible or excessive election related activity;

(D) Assist regulators in ensuring that charities, including organizations exempt from taxation pursuant to section 501(c)(3) of the U.S. Internal Revenue Code, do not illegally transfer assets to covered organizations to be used for election related activity, and deter such illegal conduct;

(E) Inform potential donors that contributions to covered organizations may be used to advance particular outcomes in elections, and provide relevant information to allow donors to take into account the political goals, interests, and activities of the organization and related individuals when contributing or responding to a solicitation;

(F) Protect the public interest in transparency in the electoral process by disclosing contributions that covered organizations transfer directly to candidates for elective office in New York, or are otherwise used to influence New York state and local elections;

(G) Maintain the anonymity of donors to covered organizations if their donations are restricted to purposes unrelated to influencing New York state and local elections;

(H) Protect donors to covered organizations from disclosure if there is a substantial risk that donors will be unduly harmed by such disclosure; and

(I) Provide clear guidance to covered organizations and related individuals concerning compliance.

4. **Costs.** Covered organizations that do not engage in election related activity will face de minimis costs associated with the rule. Covered organizations that choose to devote over \$10,000 of their expenditures in any fiscal year to influencing New York state and local elections by engag-

ing in either express election advocacy or election targeted issue advocacy, and that are not otherwise required to disclose those activities to other state or local agencies, might bear small costs associated with the tracking and accounting of funds raised and spent for purposes related to such advocacy. Some covered organizations that engage in election advocacy may choose to deposit donations available for election related activities into a segregated bank account or establish a separate political action committee to avoid disclosure of donors whose funds are not used for New York election related purposes. Such measures are not required by the rule but could entail small costs if taken by covered organizations that engage in election related activity. The Department of Law will also incur de minimis costs associated with processing filings of the new disclosure schedule by covered organizations, and with reviewing and making determinations concerning any applications for exemption from disclosure, as provided in the rule.

5. Paperwork. As part of their existing annual filing obligations, covered organizations will have to indicate what portion of expenditures were spent on election related activities, and covered organizations that spend at least \$10,000 in a fiscal year to influence state or local elections in New York will be required to disclose itemized information concerning such election related expenditures and donations, unless they have disclosed this information to another government agency that makes the information publicly available.

6. Local Government Mandates. None.

7. Duplications. The rule has been drafted to coordinate with existing state and federal laws concerning disclosure of expenditures and contributions related to election related activities. Accordingly, the rule does not require a covered organization to disclose itemized information related to donations and expenditures that is disclosed to other government agencies and made publicly available.

8. Alternatives. (A) \$10,000 Expenditure Threshold. The Department of Law considered thresholds both lower and higher than \$10,000 in a year on election related expenditures to trigger additional disclosure under the rule. While establishing a threshold lower than \$10,000 would provide benefits with respect to protecting donors from fraudulent solicitations, law enforcement functions, and transparency in New York state and local elections, the Department of Law determined that the added costs to organizations that engage in this level of election related activity outweighed these benefits. The Department of Law rejected establishing a threshold higher than \$10,000, because this could reduce benefits the rule is designed to promote with respect to, among other things, law enforcement, fraud reduction, integrity of nonprofits, and transparency. (B) \$1,000 Contribution Threshold. The Department of Law considered and rejected alternatives to the \$1,000 contribution threshold at or above which a covered organization might have to disclose information concerning a specific donor. The Department of Law, in response to public comments, rejected a \$100 threshold in the revised rule as unduly burdensome relative to the benefits to be achieved by this rule. A \$1,000 threshold is less burdensome on covered organizations and donors while still advancing the goals of the rule. Additionally, the \$1,000 amount is consistent with the contribution disclosure threshold required by the New York City Campaign Finance Board's Independent Expenditure Regulations, and with certain pre-election reports required to be filed with the Federal Election Commission in connection with federal elections. (C) Application to federal elections. The Department of Law considered applying the rule's itemized disclosure requirements to expenditures and donations in connection with federal campaigns but chose not to address this issue. (D) Disclosure of election targeted issue advocacy by a covered organizations to its members. The prior proposed rule did not exclude communications by a covered organization to its members from the definition of "election targeted issue advocacy." The Department of Law determined in response to comments that this would have imposed burdens on covered organizations unnecessary to achieve the goals of the rule. (E) Granting extensions to file the Electioneering Disclosure Schedule. The granting of extensions otherwise available in connection with the filing of other portions of annual reports would reduce the benefits sought to be achieved by the rule.

9. Federal Standards. Federal tax law requires tax-exempt nonprofit organizations to report certain information concerning expenses, donations and donors to the Internal Revenue Service, and federal campaign law requires disclosures of certain federal election related expenditures and donors to the Federal Election Commission. EPTL article 8, Executive Law article 7-A, and existing regulations require nonprofit organizations, regardless of tax exempt status, that solicit \$25,000 or use a professional fundraiser in New York to register with the Attorney General and file annual financial reports. For such organizations that are allowed under federal and state tax law to influence elections, the proposed rule requires their annual reports to indicate the amount and percentage of the organization's revenue spent on influencing elections. For such organizations that spend \$10,000 or more in a fiscal year to influence New York state and local elections, the proposed rule requires their annual financial reports to

include information concerning certain expenditures and donations relating to these elections. However, in order to avoid burdensome and unnecessary duplication and multiple filings, the rule does not require the annual financial reports to include specific information related to New York state or local elections that is disclosed to any other agency and made available to the public. The rule requires these additional disclosures, because, while federal law requires such organizations to publicly disclose certain types of expenditures and donations relating to federal elections, it does not require a statement of the percentage of expenses used to influence elections, or any disclosures relating to New York state or local elections. And to the extent federal law requires tax-exempt organizations to disclose the total amount of certain election related expenditures, it defines election related expenditures in a manner that leaves donors and regulators in the dark about nonprofit activity that could run afoul of New York state tax or charities law, or federal tax law, or that could otherwise constitute deceptive solicitations or practices. The rule accordingly requires these additional disclosures in order to, among other things: help regulators identify when a covered organization might be primarily engaged in influencing elections and thus in violation of federal tax law, state tax law, and other New York state laws; inform donors about election related activities of covered organizations; deter and detect fraudulent solicitations of funds by covered organizations; and support the public's interest in transparency in regard to nonprofits and elections.

10. Compliance Schedule. Prior to filing annual financial reports with the Attorney General pursuant to Article 7-A and/or the EPTL for the fiscal year beginning on or after the effective date of the rule, covered organizations that made election related expenditures in excess of \$10,000 during that year must compile the information necessary to make the required disclosures. Covered organizations shall annually file the Electioneering Disclosure Schedule by the fifteenth day of the fifth month after the organization's accounting period ends. No covered organization may obtain any extension to file an Electioneering Disclosure Schedule, including any extension otherwise available under section 91.5(f)(3) of this chapter. Covered organizations wishing to identify and deposit covered donations into a segregated bank account to prevent disclosure of donors who prohibit their donations from being used for election related expenditures will need to open and begin utilizing such segregated accounts if they do not use them already.

#### ***Revised Regulatory Flexibility Analysis and Rural Area Flexibility Analysis***

Changes made to the last published rule do not necessitate revision to the previously published Regulatory Flexibility Analysis and Rural Area Flexibility Analysis.

#### ***Assessment of Public Comment***

A Notice of Proposed Rule Making was published in the State Register on December 26, 2012. The Department of Law convened four hearings on the regulations throughout the state, heard oral testimony from over 20 witnesses, and received thousands of written comments. The Department of Law reviewed and evaluated all comments that it received. The vast majority of written comments received by the Department of Law expressed support for the regulations as proposed with no changes. Some witnesses also expressed support for the regulations as written, including members of the State Assembly and State Senate, as well as local elected officials. Some witnesses suggested changes to the regulations.

While the Department of Law addressed many of the stated concerns in the proposed revisions, some comments were determined to be contrary to the goals of the proposed rulemaking. Among these were comments objecting to the underlying concept of the regulations, or portions thereof, stating that the proposed regulations or portions thereof were unconstitutional. The Department of Law rejected these comments because the regulations, as both originally proposed and as herein revised, fully comport with federal and state law.

Relatedly, some comments urged the removal from the rule of "election targeted issue advocacy" in its entirety. They argued that only communications "susceptible of no reasonable interpretation other than as a call for the nomination, election or defeat" should trigger the rule's disclosure requirements. In addition, comments suggested that disclosure of coordinated election related expenditures by the rule would more narrowly tailor the rule and still achieve its purposes. These comments were rejected as neither constitutionally required nor sufficient to advance the legitimate goals of the rule.

Most comments were generally supportive of the regulations while suggesting that the Department of Law narrow their scope to reduce administrative or disclosure burdens on covered organizations and donors. For instance, organizations expressed concern that the scope of "election targeted issue advocacy" was too broad and would capture communications that did not advance the regulations' goals. In particular, they argued that: (a) the 180-day window was too long, (b) any communications between a covered organization and its members should be exempt, (c) com-

munications from bona fide media outlets should be exempt, and (d) communications regarding candidate fora, debates and town hall meetings should be exempt. In response, the Department of Law accepted these suggestions where doing so did not compromise the goals of the regulations. Accordingly, the Department of Law has: shortened the election targeted issue advocacy window to 90 days before a general election and 45 days before a primary election; exempted communications (other than express advocacy) directed by an organization to its members; and exempted some communications (other than express advocacy) promoting candidate fora, debates, and town hall meetings. However, the Department of Law rejected the comments seeking a “media exception” as it appeared prone to potential abuse and as neither any witness nor the Department of Law could identify a covered organization that would qualify as bona fide media outlet.

Another set of comments sought to change the various dollar amounts that relate to the rule’s requirements for covered organizations to disclose or itemize certain information. These included: (a) increasing the \$10,000 election related expenditure threshold in section 91.6(b)(2); (b) creating in section 91.6(b)(2) a separate dollar threshold for a covered organization’s federal, state, and local expenditures, such that each expenditure category would have its own dollar threshold triggering itemized disclosure requirements; (c) exempting from itemization under section 91.6(b)(2) de minimis election related expenditures; (d) raising the annual threshold of \$100 in covered donations to trigger itemized donor disclosure under section 91.6(c)(1); (e) linking the annual threshold for covered donations to a percentage of overall expenditures of the covered organization. The Department of Law accepted those comments that would reduce burdens on covered organizations without compromising the regulations’ legitimate goals or creating unnecessary complexity in the regulatory regime. For these reasons, the proposed revisions the Department of Law: did not increase the threshold for requiring itemized disclosure of election related expenditures; did not create separate thresholds for federal, state and local election related expenditures; exempted election related expenditures below \$50 from having to be itemized; raised the annual threshold to \$1000 in covered donations, but did not link this amount to the expenditures of the covered organization.

Some comments sought clarifications of certain provisions of the regulations. For instance, comments sought to clarify the requirement that donor employer information be disclosed when “reasonably available” to the organization. In response, the Department of Law has revised paragraph (c)(1) to require the disclosure of individual employer information only if such information is known to the covered organization. Comments also sought clarification regarding the meaning and purpose of section (g)(1), exempting from public disclosure information “exempt from disclosure pursuant to any state or federal law.” The revised rule no longer contains that provision. Comments also sought to clarify that mailings under section 91.6(a)(8)(v) include only those communications “sent through the United States Postal Service or similar private mail carriers.” The Department of Law adopted this suggestion.

Several comments expressed concerns over the standard of proof applied to applicants seeking a waiver from disclosure of donor information where disclosure would cause harm, harassment, or reprisal. These comments stated that the original “clear and convincing” evidence standard was too severe to allow adequate protection of such applicants. The Department of Law accepts this comment and has revised the proposed standard in paragraph (h)(1) of the rule so that a donor or a covered organization only has to demonstrate that its primary activities involve areas of public concern that create a “substantial likelihood” that disclosure will cause undue harm, threats, harassment or reprisals to any person or organization.

Some comments suggested expansion of the proposed regulations’ scope, specifically that the Department of Law apply the rule’s requirement to disclose and itemize election related expenditures and donation information based on a covered organizations’ election advocacy in state or local elections in other states. The Department of Law rejected revising the rule in this manner, because it would produce a rule too expansive in scope and too burdensome on covered organizations in relation to the benefits sought by the rule.

Other comments suggested revising the rule to require covered organizations to produce election related disclosures based on the dates of elections rather than on annual reporting cycles. These comments were rejected as conflicting with state law.

Finally, some comments requested extending the effective date of the regulations to allow organizations time to implement compliance measures. Because of the extensive comment period for the proposed rule and the additional time for comment for the proposed revisions, no extended effective date is required. In addition, the Department of Law added a new paragraph (i) to the rule, which precludes the granting of extensions to file the Election Disclosure Schedule. Allowing extensions would reduce the benefits of the rule by making information on covered

organizations’ election related activities available up to ten and a half months after the close of the fiscal year.

The full Assessment of Comments is available on the Attorney General’s website at [www.ag.ny.gov](http://www.ag.ny.gov).

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## Public Service Commission

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

#### Customer-Sited Tier of the RPS Program

I.D. No. PSC-16-13-00008-P

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

**Proposed Action:** The Commission is considering a petition by the New York State Energy Research and Development Authority requesting the reallocation of photovoltaic program funds in the Customer-Sited Tier of the Renewable Portfolio Standard among New York load zones.

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

**Subject:** Customer-Sited Tier of the RPS Program.

**Purpose:** To reallocate solar photovoltaic funding in the Customer-Sited Tier among New York Independent System Operator load zones.

**Substance of proposed rule:** The Commission is considering whether to adopt, modify, or reject, in whole or in part, the request of the New York State Energy Research and Development Authority (NYSERDA) to change the Renewable Portfolio Standard (RPS) as it relates to the NY-Sun and Geographic Balance portion of the Customer-Sited Tier. In particular, the Commission is considering NYSEERDA’s “Petition Regarding NY-Sun PV Funding” dated April 5, 2013, which proposes to reallocate funds designated for use in New York Independent System Operator (NYISO) load zones I-J to be utilized in NYISO load zones A-F and/ or G/H, in addition to any related issues.

**Text of proposed rule and any required statements and analyses may be obtained by filing a Document Request Form (F-96) located on our website <http://www.dps.ny.gov/f96dir.htm>. For questions, contact:** Deborah Swatling, Public Service Commission, 3 Empire State Plaza, Albany, New York 12223-1350, (518) 486-2659, email: [Deborah.Swatling@dps.ny.gov](mailto:Deborah.Swatling@dps.ny.gov)

**Data, views or arguments may be submitted to:** Jeffrey Cohen, Acting Secretary, Public Service Commission, 3 Empire State Plaza, Albany, New York 12223-1350, (518) 474-6530, email: [Secretary@dps.ny.gov](mailto: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.

(03-E-0188SP39)

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## Department of State

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

#### Appraisal Trainee/Supervision Standards and Reciprocity

I.D. No. DOS-16-13-00005-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 1101.4, 1103.4 and 1104.1 of Title 19 NYCRR.

**Statutory authority:** Executive Law, section 160-d

**Subject:** Appraisal trainee/supervision standards and reciprocity.

**Purpose:** To conform existing regulations to new Federal requirements.

**Text of proposed rule:** § 1101.4 Scope of practice for a licensed real estate appraiser assistant

(a) The scope of practice for a licensed real estate appraiser assistant is the appraisal of those real properties that the supervising appraiser is permitted to appraise.

(b) A licensed real estate appraiser assistant shall be directly supervised by a supervising real estate appraiser who shall be a State [licensed or] certified real estate appraiser and who shall be registered with the department in accordance with 19 NYCRR 1103.4. The supervising real estate appraiser shall be responsible for the training and direct supervision of the appraiser assistant by:

(1) accepting responsibility for the appraisal report by signing and certifying the report;

(2) reviewing the appraiser assistant's work and reports; and

(3) personally inspecting each appraised property with the appraiser assistant until the supervising appraiser determines that the appraiser assistant is competent to conduct inspection on his or her own, *in accordance with the competency rule of USPAP for the property type.*

(c) An appraiser assistant may have more than one supervising appraiser, but an appraiser assistant must have at least one supervising appraiser for each appraisal assignment.

(d) An appraiser assistant and his or her supervising appraiser shall jointly maintain an appraisal log, which shall include, at a minimum, the following for each appraisal:

(1) the type of property;

(2) the client name and address;

(3) the address of the appraised property;

(4) a description of the work performed by the appraiser assistant and the scope of review and supervision of the supervising appraiser;

(5) the number of work hours; [and]

(6) the signature and the State [license/]certification number of the supervising appraiser[.]; and

(7) the date of the report.

(e) An appraiser assistant shall maintain a separate appraisal log with each supervising appraiser.

(f) An appraiser assistant shall be entitled to obtain copies of the appraisal reports he or she prepared. The supervising appraiser shall keep copies of those appraisal reports, *in written or electronic form*, for a period of five years or at least two years after final disposition of any judicial proceedings in which the supervising appraiser provided testimony related to the assignment, whichever period expires last.

#### § 1103.4 Instructors and Supervising Appraisers

(a) Instructor qualifications. Each approved appraisal school may have its own instructor qualification requirements. In addition, prospective instructors must apply to the Department for approval and must present evidence of the following Appraisal Qualifications Board (AQB) approved qualifications:

(1) Licensed residential course instructor. Persons wishing to become an approved instructor of a licensed appraisal course must provide evidence of having obtained a general or residential appraiser certification or State licensed appraiser classification in New York or any other state, or must pass the NYS licensed, residential or general appraiser examination.

(2) Certified residential course instructor. Persons wishing to become an approved instructor of a certified residential appraisal course must provide evidence of having obtained a general or residential appraiser certification in New York or any other state or must pass the NYS certified residential or general appraiser examination.

(3) Certified general course instructor. Persons wishing to become an approved instructor of a certified general appraisal course must provide evidence of having obtained a general appraiser certification in New York or any other state or must pass the NYS certified general appraiser examination.

(4) USPAP. Persons wishing to become an approved instructor of the National USPAP appraisal course must be certified by the Appraisal Qualifications Board as a certified USPAP instructor and must be either a certified residential appraiser or a certified general appraiser. For the purpose of this subdivision, the instructor may be a certified appraiser in NYS or any other state.

[(5) Any individual who has had a real estate broker or salesperson license, or an appraiser certification or license revoked or suspended is ineligible to receive approval as an instructor.]

(b) *Supervising appraiser qualifications. Persons wishing to become a supervisor of one or more appraiser assistants must provide evidence of having a general or residential appraiser certification in New York State and must have been state certified for a minimum of three years.*

[(b)] (c) Ineligibility. An individual who has had a real estate broker, salesperson or an appraisal license or certification revoked or suspended within the last three years is ineligible to receive instructor approval from the Department and is ineligible to supervise appraiser assistants.

[(c)] (d) Instructor fees. All instructors must pay the Department a one-

time instructor application fee of \$50.00. Those instructors who must also pass an appraiser examination to qualify to be a NYS approved instructor shall also pay an examination application fee of \$25.00. The successful completion of said examination may be applied toward the examination requirement for certification/licensure. Fees shall be payable on submission of the application or applications and are non-refundable.

Section 1104.1 of Title 19 NYCRR is amended to read as follows:

#### § 1104.1 Certification and licensing by reciprocity

An applicant may be certified or licensed in the State of New York without examination and without further qualification if the applicant provides proof, satisfactory to the Department of State:

(a) that the applicant is certified or licensed in another state or territory; and

(b) that the certification and licensing requirements of that state or territory meet the following criteria:

(1) the state or territory's certification and licensing program has not been disapproved by the appraisal subcommittee of the Federal Financial Institutions Examination Council pursuant to title XI of the Financial Institutions Reform, Recovery and Enforcement Act of 1989;

(2) the state or territory's examination has been approved by the Appraiser Qualification Board of the Appraisal Foundation; and

(3) the state or territory has licensing and certification qualification requirements that meet or exceed those of New York State.[entered into a reciprocal agreement with the State of New York to ensure that both states will recognize the other's certification and licensing programs].

**Text of proposed rule and any required statements and analyses may be obtained from:** Whitney Clark, NYS Department of State, Office of Counsel, 1 Commerce Plaza, 99 Washington Avenue, Albany NY 12231, (518) 473-2728, email: whitney.clark@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.

#### Regulatory Impact Statement

##### 1. Statutory authority:

Article 6-E of the Executive Law (Section 160-d) authorizes the New York State Board of Real Estate Appraisal to adopt regulations in aid or furtherance of the statute. One of the purposes of Article 6-E is to ensure that licensed and certified real estate appraisers follow certain procedures and standards in appraising real property. To achieve this purpose, the Department of State, in conjunction with the New York State Board of Real Estate Appraisal, has issued rules and regulations which are found at Parts 1103, 1105 and 1107 of Title 19 of the NYCRR and is proposing this rule making.

##### 2. Legislative objectives:

Pursuant to Executive Law, Article 6-E, the Department of State ("the Department") in conjunction with the New York State Board of Real Estate Appraisal licenses and regulates real estate appraisers. To provide protections against improperly prepared appraisal reports, the statute requires licensees and certificate holders to adhere to proper appraisal practices. The proposed rule advances this legislative objective by implementing standards for appraisal trainees and supervisors that will ensure the proper supervision and guidance of appraisal trainees by their supervisors. The rule also advances the legislative intent by ensuring that out-of-state appraisers seeking to do business in New York through reciprocity have the necessary qualifications.

##### 3. Needs and benefits:

New York State is required to comply with certain federal standards related to real estate appraisal. The Federal Appraisal Subcommittee (ASC), in accordance with the authority granted to it pursuant to Title XI of the Financial Institutions Reform, Recovery and Enforcement Act of 1989 (Title XI), establishes the minimum standards to be followed by real property appraisers. States must implement appraiser standards no less stringent than those issued by the ASC.

The Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 (Dodd-Frank Act), amended several sections of Title XI, including provisions related to appraisal reciprocity and minimum requirements for trainee and supervisory appraisers. These new standards must be implemented by state appraisal programs by July 1, 2013. Currently, the Department's regulations do not comply with the new reciprocity and supervisor/trainee requirements.

A failure to bring the Department's regulations into compliance with the new Federal requirements could result in New York losing federal recognition of its state appraisal program. Were New York to lose federal recognition, federal financial institutions and many State financial institutions would be prohibited from accepting appraisals from New York real estate appraisers. This would affect virtually all mortgage and refinance transactions. Appraisers licensed or certified by the State of New York would be prohibited from preparing an appraisal for any such transaction, and New York consumers would be forced to go out of state to obtain an

appraisal. The hardship and disruption for the State's financial community and buyers and sellers of real estate within the State would be significant.

To ensure that the new federal requirements are met, this rule making is necessary.

4. Costs:

a. Costs to regulated parties:

Certified appraisers wishing to supervise appraisal assistants will need to register with the Department of State as an instructor and pay a one-time application fee of \$50.00. This fee will only apply to those certified appraisers not currently registered with the Department of State as instructors.

Those seeking an appraisal certification or license in New York through reciprocity are, pursuant to statute, required to pay a \$300 application fee. The proposed rulemaking would not change this fee.

b. Costs to the Department of State:

The Department of State does not anticipate any additional costs to implement the rule. Existing staff will handle the processing of instructor and reciprocal applications and will monitor and enforce compliance with the proposed rule.

5. Local government mandates:

The rule does not impose any program, service, duty or responsibility upon any county, city, town, village, school district or other special district.

6. Paperwork:

The proposed rule will require certified appraisers wishing to supervise appraisal assistants to file a one-time application with the Department of State to register as an instructor. Appraiser assistants and their supervising appraisers will also be required to jointly maintain an appraisal log containing information about each appraisal done together. Supervising appraisers will be required to maintain copies of appraisal reports for a period of five years, or at least two years after final disposition of any judicial proceedings in which the supervising appraiser provided testimony related to the appraisal, whichever period expires last.

Those seeking a license in New York through reciprocity are currently required to submit an application and pay a \$300 application fee for a two-year license. These requirements are statutory and are not being changed by the proposed rule making.

7. Duplication:

This rule does not duplicate, overlap or conflict with any other state or federal requirement.

8. Alternatives:

The Department of State considered making these regulations effective earlier than July 1, 2013. It was determined, however, that an effective date of July 1, 2013, would provide adequate time to notify and educate licensees about the new requirements. It will also afford the Department sufficient time to modify its processing procedures to implement the rule.

9. Federal standards:

The Federal Appraisal Subcommittee (ASC), in granted authority by Title XI of the Financial Institutions Reform, Recovery and Enforcement Act of 1989 (Title XI), to establish the minimum standards applicable to real property appraisers. States are required to implement appraiser standards that are no less stringent than those issued by the ASC.

The Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 (Dodd-Frank Act), amended several sections of Title XI including provisions related to appraisal reciprocity and minimum requirements for trainee and supervisory appraisers. The ASC has notified states that these new standards must be implemented by state appraisal programs by July 1, 2013.

10. Compliance schedule:

The rule will be effective on July 1, 2013, the date the ASC will begin enforcing the new federal trainee and supervisor requirements.

**Regulatory Flexibility Analysis**

1. Effect of rule:

The rule will apply to certified appraisers who elect to supervise licensed appraiser assistants ("trainees"). The Department of State (the "Department") currently certifies 3,938 appraisers and licenses 608 trainees. The rule will also apply to appraisers seeking licensure in New York through reciprocity. Currently, 216 appraisers are licensed through reciprocity in New York. It is believed that many appraisers work for small businesses.

The rule does not apply to local governments.

2. Compliance requirements:

The proposed rule will require certified appraisers wishing to supervise appraisal assistants to file a one-time application with the Department of State to register as an instructor. Appraiser assistants and supervising appraisers will also be required to jointly maintain an appraisal log containing information about each appraisal conducted together. Finally, supervising appraisers will be required to maintain copies of appraisal reports for a period of five years, or at least two years after final disposition of any judicial proceedings in which the supervising appraiser provided testimony related to the assignment, whichever period expires last.

Appraisers from out of state wishing to become licensed in New York through reciprocity currently are required to file an application with the Department of State and pay a \$300 application fee. The rule will not alter this procedure.

3. Professional services:

Appraisers will not need to rely on professional services to comply with the requirements of the proposed rule. The applications required for a license by reciprocity and for approval to supervise trainees are simple and can be completed without professional assistance. Similarly, the required appraisal log is a short, straight-forward document that can easily be completed by licensed appraisal assistants and certified appraisers.

4. Compliance costs:

Certified appraisers wishing to supervise appraisal assistants will need to register with the Department of State as an instructor and pay a one-time application fee of \$50.00. This fee will apply only to those certified appraisers not currently registered with the Department of State as instructors. The application fee required for out-of-state appraisers seeking licensure in New York through reciprocity is, and will remain, \$300 for a two-year license.

5. Economic and technological feasibility:

The Department has determined that it will be economically and technologically feasible for small businesses to comply with the proposed rule. The limitations and requirements imposed by the proposed rule making will not significantly increase the costs of doing business.

It will also be technologically feasible for small businesses to comply with the proposed rule. The proposed rule offers simple and easy-to-follow guidance on how to apply for approval to supervise appraisal trainees. Real estate appraisers, including those working for small businesses, will not have to rely on special technology to conform their business practices with the requirements of the proposed rule making.

6. Minimizing adverse economic impact:

The Department of State has not identified any adverse economic impact of this rule. The proposed rule will require certified appraisers wishing to supervise appraiser assistants to file a one-time application with the Department of State to register as an instructor. The one-time fee associated with registering as an instructor is a minimal \$50.00. Appraiser assistants and supervising appraisers will also be required to jointly maintain an appraisal log containing information about each appraisal. The Department of State provides licensees with this form, which is simple and requires no professional expertise to complete. As such, there should be no cost associated with preparing the required form. The proposed rule also requires supervising appraisers to maintain copies of appraisal reports for a period of five years, or at least two years after final disposition of any judicial proceedings in which the supervising appraiser provided testimony related to the assignment, whichever period expires last. Appraisal reports may be retained electronically. As such, the storage costs associated with the record retention requirement should be minimal.

The application fee for out-of-state appraisers seeking licensure in New York through reciprocity is not being changed by the rule and, pursuant to statute, will remain \$300 for a two-year license.

7. Small business participation:

Prior to proposing the rule, the Department of State published a copy of the proposed text on its website. No comments were received. The Department of State will continue its outreach after the rule is formally proposed as a Notice of Proposed Rule Making in the State Register. The publication of the rule in the State Register will provide additional notice to small businesses. Additional comments will be received and entertained by the Department during the formal public comment period indicated in this Notice of Proposed Rule Making.

8. Compliance:

The rule will be effective on July 1, 2013, the date by which the Federal Appraisal Subcommittee is requiring states to implement these new standards.

9. Cure period:

The Department of State is not providing for a cure period prior to enforcement of these regulations. The proposed rule making will be effective on July 1, 2013 the date on which the federal Appraisal Subcommittee will be requiring states to conform state regulations with new federal requirements for reciprocity, appraisal trainees and supervisors. Prior to proposing this rule, the Department notified regulated parties about the new requirements. As such, licensees have had adequate notice of the proposed regulation.

**Rural Area Flexibility Analysis**

1. Effect of the rule:

The rule will impact two categories of appraiser licensees: (1) certified appraisers who elect to supervise licensed appraiser assistants ("trainees") and the trainees they supervise, and (2) certified and licensed appraisers from other states who wish to do work in New York State by reciprocity. Some of these appraisers work and/or reside in rural areas.

2. Compliance requirements:

The proposed rule imposes basic registration, reporting and record-keeping requirements. The rule will require certified appraisers wishing to supervise appraiser assistants to file a one-time application with the Department of State to register as an instructor. Appraiser assistants and supervising appraisers will also be required to jointly maintain an appraisal log containing information about each appraisal completed together. The proposed rule also requires supervising appraisers to maintain copies of appraisal reports for a period of five years, or at least two years after final disposition of any judicial proceedings in which the supervising appraiser provided testimony related to the assignment, whichever period expires last.

In compliance with requirements of the Federal Appraisal Subcommittee, the rule will also repeal a regulation which requires a written reciprocal agreement between New York and other states before appraisers from those states may perform appraisals in New York. This will not change the application procedure appraisers from out of state need to follow in order to become licensed or certified in New York.

### 3. Professional services:

Appraisers will not need to rely on professional services to comply with the requirements of the proposed rule. The applications required for out-of-state appraisers seeking licensure through reciprocity and for certified appraisers wishing to supervise trainees are simple and can be completed without professional assistance. Similarly, the appraisal log required for appraiser trainees is a short, straight-forward document that can easily be completed by licensed appraisal assistants and certified appraisers.

### 4. Compliance costs:

Certified appraisers wishing to supervise appraisal assistants will need to register with the Department of State as an instructor and pay a one-time application fee of \$50.00. This fee will only apply to those certified appraisers not currently registered with the Department of State as instructors. The application fee required for out-of-state appraisers seeking licensure in New York through reciprocity is, and will remain, \$300 for a two-year license.

### 5. Minimizing adverse economic impacts:

The Department of State has not identified any adverse economic impact of this rule. The proposed rule will require certified appraisers wishing to supervise appraiser assistants to file a one-time application with the Department of State to register as an instructor. The one-time fee associated with registering as an instructor is a minimal \$50.00. Appraiser assistants and supervising appraisers will also be required to jointly maintain an appraisal log containing information about each appraisal completed together. The Department of State provides licensees with a form for the log that is simple and requires no professional expertise to complete. As such, there should be no cost associated with preparing the required form. The proposed rule also requires supervising appraisers to maintain copies of appraisal reports for a period of five years, or at least two years after final disposition of any judicial proceedings in which the supervising appraiser provided testimony related to the assignment, whichever period expires last. Appraisal reports may be retained electronically. As such, the storage costs associated with the record retention requirement should be minimal.

The application fee for out-of-state appraisers seeking licensure in New York through reciprocity is not being changed by the rule and, pursuant to statute, will remain \$300 for a two-year license.

### 6. Rural area participation:

Prior to proposing the rule, the Department of State published a copy of the proposed text on its website. No comments were received. In addition, the Regulatory Agenda published in the January 2, 2013, edition of the State Register indicated that the rule was under consideration for proposal. The Department of State will continue its outreach after the rule is formally proposed through a Notice of Proposed Rule Making in the State Register. The publication of the rule in the State Register will provide additional notice to appraisers located in rural areas. Additional comments will be received and entertained by the Department.

### Job Impact Statement

#### 1. Impact of the rule

The rule will impact two categories of appraiser licensees: (1) certified appraisers who elect to supervise licensed appraiser assistants ("trainees") and the trainees they supervise, and (2) certified and licensed appraisers from other states who wish to do work in New York State by reciprocity.

The Department of State has not identified any adverse impact of this rule on jobs and employment opportunities. The proposed rule imposes basic registration, reporting and record-keeping requirements that should not have a detrimental impact on existing jobs or impede the creation of new positions for certified appraisers and trainees. The rule will require certified appraisers wishing to supervise appraiser assistants to file a one-time application with the Department of State to register as an instructor. Appraiser assistants and their supervising appraisers will also be required to jointly maintain an appraisal log containing information about each appraisal completed together. The proposed rule also requires supervising

appraisers to maintain copies of appraisal reports completed with the trainees they supervise for a period of five years, or at least two years after final disposition of any judicial proceedings in which the supervising appraiser provided testimony related to the assignment, whichever period expires last.

The rule will also repeal a regulation which requires a written reciprocal agreement between New York and other states before appraisers from those states may perform appraisals in New York. The Federal Appraisal Subcommittee ("ASC"), the federal regulatory agency tasked with overseeing state appraisal programs pursuant to Title XI of the Financial Institutions Reform, Recovery and Enforcement Act of 1989 ("FIRREA"), has advised that reciprocal agreements are no longer necessary and that New York will be required to grant reciprocity to appraisers from other states provided that the state in question is in good standing with the ASC and has standards and qualifications at least as stringent as New York's. (FIRREA section 1116(e), 12 USC 3345). The Department of State applies this analysis currently in determining whether to enter into a reciprocal agreement with another state. As such, although the regulation is being changed, the requirements for granting reciprocity will remain the same and should not impact job creation or existing job opportunities in New York.

### 2. Categories and numbers affected

As noted above, the rule will apply to two categories of appraisal licensees. The Department of State (the "Department") currently certifies 3,938 appraisers and licenses 608 trainees. The Department currently certifies and licenses 216 appraisers by reciprocity.

### 3. Regions of adverse impact

The Department of State has not identified any region of the state where the rule would have a disproportionate adverse impact on jobs or employment opportunities. Appraisers work in all areas of the state. However, the compliance requirements imposed by the rule are minor and should not result in job loss or inhibit job creation.

### 4. Minimizing adverse impact

The Department of State has not identified any adverse impacts of this rule on employment or employment opportunities. The proposed rule will require certified appraisers wishing to supervise appraiser assistants to file a one-time application with the Department of State to register as an instructor. Appraiser assistants and supervising appraisers will also be required to jointly maintain an appraisal log containing information about each appraisal. The proposed rule also requires supervising appraisers to maintain copies of appraisal reports for a period of five years, or at least two years after final disposition of any judicial proceedings in which the supervising appraiser provided testimony related to the assignment, whichever period expires last. Appraisal reports may be retained electronically.

The rule will also repeal a regulation which requires a written reciprocal agreement between New York and other states before appraisers from those states may perform appraisals in New York. Although the regulation is being repealed, the requirements for granting reciprocity will remain the same and should not impact job creation or existing job opportunities in New York.

So as to provide adequate time for licensees to bring themselves into compliance with the rule requirements, the Department of State will not make it effective until July 1, 2013, the date on which the Federal Appraisal Subcommittee is requiring states to implement these new standards.

## PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

### Distinguishability of Corporation and Other Business Entity Names

I.D. No. DOS-16-13-00006-P

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

**Proposed Action:** Repeal of section 156.2 and addition of new section 156.2 to Title 19 NYCRR.

**Statutory authority:** Executive Law, section 91

**Subject:** Distinguishability of corporation and other business entity names.

**Purpose:** The proposed regulations will implement the entity name distinguishability requirements.

**Text of proposed rule:** Section 156.2 is repealed and a new Section 156.2 is added to read as follows:

*Part 156: Names*

*156.2 Standards*

*This section furnishes general guidelines used to determine whether a proposed name is acceptable as the name of an entity in the records of the Secretary of State.*



## 3. Needs and benefits:

The proposed regulations will implement the entity name distinguishability requirements of the Business Corporation Law § 301, Not-for-Profit Corporation Law § 301, Limited Liability Company Law § 204 and Partnership Law §§ 121-102.

## 4. Costs:

A. The proposed regulations do not impose any additional costs on the regulated entities: business corporations, not-for-profit corporations, limited liability companies or limited partnerships.

B. The proposed regulations do not impose any additional costs on the Department of State, the State or local governments.

## 5. Local government mandates:

The proposed regulations do not impose any mandates on local governments.

## 6. Paperwork:

These proposed regulations do not impose any reporting requirements.

## 7. Duplication:

These proposed regulations do not duplicate any existing requirements of the state or federal governments.

## 8. Alternatives:

Regulations in use by other states regarding entity name distinguishability were reviewed and considered by the Department of State. These proposed regulations are consistent with the regulations utilized by many comparable states.

## 9. Federal standards:

The federal government does not have any minimum standards for this subject area.

## 10. Compliance schedule:

Regulated entities will be able to comply with the proposed regulations upon adoption.

**Regulatory Flexibility Analysis**

The Department of State has concluded after reviewing the nature and purpose of the proposed rule that its adoption will not impose any adverse economic impact or reporting, record keeping or other compliance requirements on small businesses or local governments. The proposed rule making would set forth the standards which will be used by the Department of State Division of Corporations in determining whether the names of business corporations, not-for-profit corporations, limited liability companies and limited partnerships, that seek to file a formation document or an application for authority with the Department of State, are distinguishable from the names of existing entities for whom a record is maintained on the Department's index. The new regulation text would provide guidance regarding acceptability of a name to parties who propose to form one of the aforementioned types of entities or who seek to obtain authority to do business in New York for one of these types of entities already formed in another jurisdiction. Some but not all of the entities subject to the regulation will be small businesses. However, the impact of the regulation upon small businesses is unlikely to be adverse nor would it differ in any manner from the impact upon other entities subject to the regulation but not to be characterized as small businesses. Rather than impose an adverse economic impact on small businesses or any category of entity affected by the rule, the proposed regulation will provide clear guidance so as to enable each entity to more easily and efficiently choose an entity name that will be acceptable for filing.

Local governments will not be subject to the provisions of the proposed regulation and will not be impacted by its adoption.

**Rural Area Flexibility Analysis**

The Department of State has concluded after reviewing the nature and purpose of the proposed rule that its adoption will not impose any adverse economic impact on rural areas, nor any reporting, record keeping or other compliance requirements on public or private entities in rural areas. The proposed rule making would set forth the standards which will be used by the Department of State Division of Corporations in determining whether the names of business corporations, not-for-profit corporations, limited liability companies and limited partnerships, that seek to file a formation document or an application for authority with the Department of State, are distinguishable from the names of existing entities for whom a record is maintained on the Department's index. The new regulatory text would provide guidance regarding acceptability of a name to parties who propose to form one of the aforementioned types of entities or who seek to obtain authority to do business in New York for one of these types of entities already formed in another jurisdiction. The regulation would not have any individualized impact in rural areas nor upon entities located in rural areas. Any potential impact of the rule will be imposed in rural areas in no greater amount than is imposed in non-rural areas.

**Job Impact Statement**

A Job Impact Statement is not required because it is evident from the subject matter of the rule that it will have no impact on jobs and employment opportunities.