

RULE MAKING ACTIVITIES

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

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

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

Department of Financial Services

EMERGENCY RULE MAKING

Supplementary Uninsured/Underinsured Motorist Insurance

I.D. No. DFS-17-13-00001-E

Filing No. 379

Filing Date: 2013-04-04

Effective Date: 2013-04-16

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

Action taken: Amendment of Subpart 60-2 (Regulation 35-D) of Title 11 NYCRR.

Statutory authority: Financial Services Law, sections 202 and 302; and Insurance Law, sections 301 and 3420; and L. 2012, ch. 496; and L. 2013, ch. 11

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

Specific reasons underlying the finding of necessity: Insurance Law Section 3420 sets forth standard provisions that must be included in all liability policies issued in this state. Insurance Law Section 3420(f)(2) requires motor vehicle liability insurers to provide, at the option of the insured, supplementary uninsured/underinsured motorists (“SUM”) insurance coverage to all policyholders in New York State. This regulation implements Insurance Law Section 3420(f)(2) by establishing a standard policy form for SUM coverage.

On December 17, 2012, Governor Andrew Cuomo signed into law Chapter 496 of the Laws of 2012, to take effect on April 16, 2013, amending Insurance Law Section 3420(f) pertaining to SUM coverage for ambulance services, volunteer fire departments and voluntary ambulance

services. Subsequently, on March 15, 2013, Governor Cuomo signed into law Chapter 11 of the Laws of 2013, also to take effect on April 16, 2013, amending Chapter 496. The law now requires that all policies providing SUM coverage that are issued or renewed on or after April 16, 2013 include such coverage for members and employees of fire departments, fire companies, ambulance services or voluntary ambulance services when the policy insures the fire department, fire company, ambulance service or voluntary ambulance service.

Insurers must amend their policy forms in accordance with the regulations with respect to new and renewal policies. Accordingly, Insurance Regulation 35-D must be amended on an emergency basis so that insurers can issue policy forms in accordance with the regulation.

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

Subject: Supplementary Uninsured/Underinsured Motorist Insurance.

Purpose: To implement chapter 11 of the Laws of 2013 requiring SUM coverage for employees of fire departments and ambulance services.

Text of emergency rule: Section 60-2.3(f), INSURING AGREEMENTS I. Definitions: definition (a) is hereby amended to read as follows:

(f) Prescribed SUM endorsement:

SUPPLEMENTARY UNINSURED/UNDERINSURED MOTORISTS
ENDORSEMENT--NEW YORK

We, the company, agree with you, as the named insured, in return for payment of the premium for this coverage, to provide Supplementary Uninsured/Underinsured Motorists (SUM) coverage, subject to the following terms and conditions:

INSURING AGREEMENTS

I. Definitions:

For purposes of this SUM endorsement, the following terms have the following meanings.

(a) Insured. The unqualified term “insured” means:

(1) you, as the named insured and, while residents of the same household, your spouse and the relatives of either you or your spouse;

(2) any person while acting in the scope of that person’s duties for you, except with respect to the use and operation by such person of a motor vehicle not covered under this policy, where such person is:¹

(i) your employee and you are a fire department;

(ii) your member and you are a fire company, as defined in General Municipal Law section 100;

(iii) your employee and you are an ambulance service, as defined in Public Health Law section 3001; or

(iv) your member and you are a voluntary ambulance service, as defined in Public Health Law section 3001;

(3) any other person while occupying:

(i) a motor vehicle insured for SUM under this policy; or

(ii) any other motor vehicle while being operated by you or your spouse; and

[(3)] (4) any person, with respect to damages such person is entitled to recover, because of bodily injury to which this coverage applies sustained by an insured under paragraph (1)[or], (2) or (3) above.

Subdivision 60-2.3(f), CONDITIONS, conditions (1) and (6) are hereby amended to read as follows:

CONDITIONS

1. Policy Provisions. None of the Insuring Agreements, Exclusions or Conditions of the policy shall apply to the SUM coverage except: “Duties After an Accident or Loss”; “Fraud”; and “Termination” if applicable.[*]²

6. Maximum SUM Payments: Regardless of the number of insureds, our maximum payment under this SUM endorsement shall be the difference between:

(a) the SUM limits; and

(b) the motor vehicle bodily injury liability insurance or bond payments received by the insured or the insured's legal representative, from or on behalf of all persons that may be legally liable for the bodily injury sustained by the insured.

The SUM limit shown on the Declarations is the amount of coverage for all damages due to bodily injury in any one accident.^[1]³ (The SUM limit shown on the Declarations for "Each Person" is the amount of coverage for all damages due to bodily injury to one person. The SUM limit shown under "Each Accident" is, subject to the limit for each person, the total amount of coverage for all damages due to bodily injury to two or more persons in the same accident.)^[2]⁴

¹Language in paragraph (2) may be deleted for covered policies as defined in Section 3425(a)(1) of the New York Insurance Law.

²Appropriate terms may be substituted to conform with terms used in the policy.

³Language in this sentence should be used for SUM endorsements issued with a combined single limit, in which case Condition 5 should speak throughout in terms of a singular limit, rather than plural limits.

⁴Language in parentheses should be used for SUM endorsements issued with split limits.

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 July 2, 2013.

Text of rule and any required statements and analyses may be obtained from: Hoda Nairooz, New York State Department of Financial Services, 25 Beaver Street, New York, NY 10004, (212) 480-5595, email: hoda.nairooz@dfs.ny.gov

Regulatory Impact Statement

1. Statutory authority: Sections 202 and 302 of the Financial Services Law and Sections 301 and 3420 of the Insurance Law, Chapter 496 of the Laws 2012 and Chapter 11 of the Laws of 2013. Financial Services Law Sections 202 and 302 and Insurance Law Section 301 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 Section 3420 sets forth standard provisions that must be included in all liability policies issued in this state. Insurance Law Section 3420(f)(2) requires motor vehicle liability insurers to provide, at the option of the insured, supplementary uninsured/underinsured motorists ("SUM") insurance coverage to all policyholders in New York State.

Chapter 496 of the Laws of 2012 and Chapter 11 of the Laws of 2013 amended Insurance Law Section 3420 in relation to SUM coverage for fire companies, ambulance services, volunteer fire departments and voluntary ambulance services.

2. Legislative objectives: Insurance Law Section 3420 sets forth the minimum provisions that must be included in all liability policies issued in this state to protect the rights of injured persons. On December 17, 2012, Governor Andrew Cuomo signed Chapter 496 of the Laws of 2012, to take effect on April 16, 2013. This bill amended Insurance Law Section 3420(f) pertaining to SUM coverage for fire companies, ambulance services, and voluntary ambulance services. Subsequently, Chapter 11 of the Laws of 2013 was enacted on March 15, 2013, also to take effect on April 16, 2013. It amended Chapter 496 to further clarify the SUM coverage for employees and members of a fire department, fire company, ambulance service or voluntary ambulance service. The law now requires that policies providing SUM coverage that are issued or renewed on or after April 16, 2013 include such coverage for members and employees of fire departments, fire companies, ambulance services or voluntary ambulance services when the policy insures the fire department, fire company, ambulance service or voluntary ambulance service.

3. Needs and benefits: Insurance Regulation 35-D implements Insurance Law section 3420(f), which requires motor vehicle liability insurers to provide, at the option of the insured, SUM coverage to all policyholders in New York State. This amendment implements the provisions and purposes of Chapter 496 of the Laws of 2012 and Chapter 11 of the Laws of 2013 by amending the definition of "insured" in the prescribed SUM endorsement contained in Insurance Law Section 60-2.3(f) to include members and employees of a fire department, fire company, ambulance service or voluntary ambulance service when the policy insures the fire department, fire company, ambulance service or voluntary ambulance service.

4. Costs: Motor vehicle insurers will incur some costs because they will have to revise policy forms and send them to their insureds. However, this is mandated by Chapter 496 of the Laws of 2012 and Chapter 11 of the Laws of 2013.

This rule does not impose compliance costs on state or local governments. The Department of Financial Services does not anticipate that it will incur additional costs, although there will be an increased number of filings. However, insurers must use the language prescribed in the regulation and may not deviate from it.

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

6. Paperwork: Insurance companies will have to submit appropriate filings.

7. Duplication: This rule will not duplicate any existing state or federal rule, but rather implement and conform to the federal requirements.

8. Alternatives: There are no alternatives to this amendment. The changes to the rule are mandated by Chapter 496 of the Laws of 2012 and Chapter 11 of the Laws of 2013.

9. Federal standards: There are no federal standards.

10. Compliance schedule: Pursuant to Chapter 496 of the Laws of 2012 and Chapter 11 of the Laws of 2013, all policies issued or renewed on or after April 16, 2013 covering fire departments, fire companies, ambulance services or voluntary ambulance services providing SUM coverage must include the coverage for such employees and members.

Regulatory Flexibility Analysis

1. Small businesses: The Department of Financial Services ("Department") finds that this rule will not impose any adverse economic impact on small businesses and will not impose any reporting, recordkeeping or other compliance requirements on small businesses. The basis for this finding is that this rule is directed at property/casualty insurance companies licensed to do business in New York State, none of which falls within the definition of "small business" as found in State Administrative Procedure Act Section 102(8). The Department has monitored annual statements and reports on examination of authorized property/casualty insurers subject to this rule, and believes that none of the insurers falls within the definition of "small business", because there are none that are both independently owned and have fewer than one hundred employees.

2. Local governments: The rule does not impose any impacts, including any adverse impacts, or reporting, recordkeeping, or other compliance requirements on any local governments. The basis for this finding is that this rule is directed at property/casualty insurance companies, none of which are local governments.

Rural Area Flexibility Analysis

The Department of Financial Services ("Department") finds that this rule does not impose any additional burden on persons located in rural areas, and the Department finds that it will not have an adverse impact on rural areas. This rule applies uniformly to regulated parties that do business in both rural and non-rural areas of New York State.

Job Impact Statement

The Department of Financial Services finds that this rule should have no impact on jobs and employment opportunities. The rule implements the provisions and purposes of Chapter 496 of the Laws of 2012 and Chapter 11 of the Laws of 2013 amending the definition of "insured" to provide coverage for members and employees of a fire department, fire company, ambulance service or voluntary ambulance service when the named insured is the fire department, fire company, ambulance service or voluntary ambulance service.

EMERGENCY RULE MAKING

Excess Line Placements Governing Standard

I.D. No. DFS-17-13-00003-E

Filing No. 380

Filing Date: 2013-04-05

Effective Date: 2013-04-05

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

Action taken: Amendment of Part 27 (Regulation 41) of Title 11 NYCRR.

Statutory authority: Insurance Law, arts. 21 and 59, sections 301, 316, 1213, 2101, 2104, 2105, 2110, 2116, 2117, 2118, 2121, 2122, 2130, 3103, 5907, 5909, 5911 and 9102; and Financial Services Law, sections 202 and 302; L. 1997, ch. 225; L. 2002, ch. 587; and L. 2011, ch. 61

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

Specific reasons underlying the finding of necessity: This regulation governs the placement of excess line insurance. Article 21 of the Insurance Law and Regulation 41 enable consumers who are unable to obtain

insurance from authorized insurers to obtain coverage from unauthorized insurers (known as “excess line insurers”) if the unauthorized insurers are “eligible,” and an excess line broker places the insurance.

On July 21, 2010, President Obama signed into law the Nonadmitted and Reinsurance Reform Act of 2010 (“NRRRA”), which prohibits any state, other than the insured’s home state, from requiring a premium tax payment for nonadmitted insurance. The NRRRA also subjects the placement of nonadmitted insurance solely to the statutory and regulatory requirements of the insured’s home state, and provides that only an insured’s home state may require an excess line broker to be licensed to sell, solicit, or negotiate nonadmitted insurance with respect to such insured. On March 31, 2011, Governor Andrew M. Cuomo signed into law Chapter 61 of the Laws of 2011, Part I of which amended the Insurance Law to implement the provisions of the NRRRA.

The sections of Part I of Chapter 61 that amend the Insurance Law to bring New York into conformance with the NRRRA took effect on July 21, 2011, which is when the NRRRA took effect. The regulation was previously promulgated on an emergency basis on July 22, 2011, October 19, 2011, January 16, 2012, April 16, 2012, July 13, 2012, October 10, 2012, and January 7, 2013.

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

Subject: Excess Line Placements Governing Standards.

Purpose: To implement chapter 61 of the Laws of 2011, conforming to the federal Nonadmitted and Reinsurance Reform Act of 2010.

Substance of emergency rule: On July 21, 2010, President Obama signed into law the federal Dodd-Frank Wall Street Reform and Consumer Protection Act (“Dodd-Frank”), which contains the Nonadmitted and Reinsurance Reform Act of 2010 (“NRRRA”). The NRRRA prohibits any state, other than the home state of an insured, from requiring a premium tax payment for excess (or “surplus”) line insurance. The NRRRA also subjects the placement of excess line insurance solely to the statutory and regulatory requirements of the insured’s home state, and declares that only an insured’s home state may require an excess line broker to be licensed to sell, solicit, or negotiate excess line insurance with respect to such insured.

In addition, the NRRRA provides that an excess line broker seeking to procure or place excess line insurance for an exempt commercial purchaser (“ECP”) need not satisfy any state requirement to make a due diligence search to determine whether the full amount or type of insurance sought by the ECP may be obtained from admitted insurers if: (1) the broker procuring or placing the excess line insurance has disclosed to the ECP that the insurance may be available from the admitted market, which may provide greater protection with more regulatory oversight; and (2) the ECP has subsequently requested in writing that the broker procure the insurance from or place the insurance with an excess line insurer.

On March 31, 2011, Governor Andrew M. Cuomo signed into law Chapter 61 of the Laws of 2011, Part I of which amends the Insurance Law to conform to the NRRRA.

Insurance Regulation 41 (11 NYCRR Part 27) consists of 24 sections and one appendix addressing the regulation of excess line insurance placements.

The Department of Financial Services (“Department”) amended Section 27.0 to discuss the NRRRA and Chapter 61 of the Laws of 2011.

The Department amended Section 27.1 to delete language in the definition of “eligible” and to add three new defined terms: “exempt commercial purchaser,” “insured’s home state,” and “United States.”

Section 27.2 is not amended.

The Department amended Section 27.3 to provide an exception for an ECP consistent with Insurance Law Section 2118(b)(3)(F) and to clarify that the requirements set forth in this section apply when the insured’s home state is New York.

The Department amended Section 27.4 to clarify that the requirements set forth in this section apply when the insured’s home state is New York.

The Department amended Section 27.5 to: (1) clarify that the requirements set forth in this section apply when the insured’s home state is New York; (2) with regard to an ECP, require an excess line broker or the producing broker to affirm in part A or part C of the affidavit that the ECP was specifically advised in writing, prior to placement, that the insurance may or may not be available from the authorized market that may provide greater protection with more regulatory oversight; (3) require an excess line broker to identify the insured’s home state in part A of the affidavit; and (4) clarify that the premium tax is to be allocated in accordance with Section 27.9 of Insurance Regulation 41 for insurance contracts that have an effective date prior to July 21, 2011.

The Department amended Section 27.6 to clarify that the requirements set forth in this section apply when the insured’s home state is New York.

The Department amended Section 27.7(b) to revise the address to which reports required by Section 27.7 should be submitted.

The Department amended Section 27.8 to: (1) require a licensed excess line broker to electronically file an annual premium tax statement, unless the Superintendent of Financial Services (the “Superintendent”) grants the broker an exemption pursuant to Section 27.23 of Insurance Regulation 41; (2) acknowledge that payment of the premium tax may be made electronically; and (3) change a reference to “Superintendent of Insurance” to “Superintendent of Financial Services.”

The Department amended Section 27.9 to clarify how an excess line broker must calculate the taxable portion of the premium for: (1) insurance contracts that have an effective date prior to July 21, 2011; and (2) insurance contracts that have an effective date on or after July 21, 2011 and that cover property or risks located both inside and outside the United States.

The Department amended Sections 27.10, 27.11, and 27.12 to clarify that the requirements set forth in this section apply when the insured’s home state is New York.

The Department amended Section 27.13 to clarify that the requirements set forth in this section apply when the insured’s home state is New York and to require an excess line broker to obtain, review, and retain certain trust fund information if the excess line insurer seeks an exemption from Insurance Law Section 1213. The Department also amended Section 27.13 to require an excess line insurer to file electronically with the Superintendent a current listing that sets forth certain individual policy details.

The Department amended Section 27.14 to state that in order to be exempt from Insurance Law Section 1213 pursuant to Section 27.16 of Insurance Regulation 41, an excess line insurer must establish and maintain a trust fund, and to permit an actuary who is a fellow of the Casualty Actuarial Society (FCAS) or a fellow in the Society of Actuaries (FSA) to make certain audits and certifications (in addition to a certified public accountant), with regard to the trust fund.

Section 27.15 is not amended.

The Department amended Section 27.16 to state that an excess line insurer will be subject to Insurance Law Section 1213 unless the contract of insurance is effectuated in accordance with Insurance Law Section 2105 and Insurance Regulation 41 and the insurer maintains a trust fund in accordance with Sections 27.14 and 27.15 of Insurance Regulation 41, in addition to other current requirements.

The Department amended Sections 27.17, 27.18, 27.19, 27.20, and 27.21 to clarify that the requirements set forth in this section apply when the insured’s home state is New York.

Section 27.22 is not amended.

The Department repealed current Section 27.23 and added a new Section 27.23 titled, “Exemptions from electronic filing and submission requirements.”

Section 27.24 is not amended.

The Department amended the excess line premium tax allocation schedule set forth in appendix four to apply to insurance contracts that have an effective date prior to July 21, 2011.

The Department added a new appendix five, which sets forth an excess line premium tax allocation schedule to apply to insurance contracts that have an effective date on or after July 21, 2011 and that cover property and risks located both inside and outside the United States.

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 July 3, 2013.

Text of rule and any required statements and analyses may be obtained from: Sally Geisel, New York State Department of Financial Services, One State Street, New York, NY 10004, (212) 480-5287, email: sally.geisel@dfs.ny.gov

Regulatory Impact Statement

1. Statutory authority: The Superintendent’s authority for the promulgation of the Fourteenth Amendment to Insurance Regulation 41 (11 NYCRR Part 27) derives from Sections 301, 316, 1213, 2101, 2104, 2105, 2110, 2116, 2117, 2118, 2121, 2122, 2130, 9102, and Article 21 of the Insurance Law, Sections 202 and 302 of the Financial Services Law, Chapter 225 of the Laws of 1997, Chapter 587 of the Laws of 2002, and Chapter 61 of the Laws of 2011.

The federal Nonadmitted and Reinsurance Reform Act of 2010 (the “NRRRA”) significantly changes the paradigm for excess line insurance placements in the United States. Chapter 61 of the Laws of 2011 amends the Insurance Law and the Tax Law to conform to the NRRRA. The NRRRA and Chapter 61 have been impacting excess line placements since their effective date of July 21, 2011.

Section 301 of the Insurance Law and Sections 202 and 302 of the Financial Services Law authorize the Superintendent of Financial Services (the “Superintendent”) to prescribe regulations interpreting the provisions

of the Insurance Law, and effectuate any power granted to the Superintendent under the Insurance Law. Section 316 authorizes the Superintendent to promulgate regulations to require an insurer or other person or entity making a filing or submission with the Superintendent to submit the filing or submission to the Superintendent by electronic means, provided that the insurer or other person or entity affected thereby may submit a request to the Superintendent for an exemption from the electronic filing requirement upon a demonstration of undue hardship, impracticability, or good cause, subject to the approval of the Superintendent.

Section 1213 provides the manner by which substituted service on an unauthorized insurer may be made in any proceeding against it on an insurance contract issued in New York. Substituted service may be made on the Superintendent in the manner prescribed in Section 1213.

Article 21 sets forth the duties and obligations of insurance brokers and excess line brokers. Section 2101 sets forth relevant definitions. Section 2104 governs the licensing of insurance brokers. Section 2105 sets forth licensing requirements for excess line brokers. Section 2110 provides grounds for the Superintendent to discipline licensees by revoking or suspending licenses or, pursuant to Section 2127, imposing a monetary penalty in lieu of revocation or suspension. Section 2116 permits payment of commissions to brokers and prohibits compensation to unlicensed persons. Section 2117 prohibits the aiding of an unauthorized insurer, with exceptions. Section 2118 sets forth the duties of excess line brokers, with regard to the placement of insurance with eligible foreign and alien excess line insurers, including the responsibility to ascertain and verify the financial condition of an unauthorized insurer before placing business with that insurer. Section 2121 provides that brokers have an agency relationship with insurers for the collection of premiums. Section 2122 imposes limitations on advertising by producers. Section 2130 establishes the Excess Line Association of New York ("ELANY").

Section 9102 establishes rules regarding the allocation of direct premiums taxable in New York, where insurance covers risks located both in and out of New York.

2. Legislative objectives: Generally, unauthorized insurers may not do an insurance business in New York. In permitting a limited exception for licensed excess line brokers to procure insurance policies in New York from excess line insurers, the Legislature established statutory requirements to protect persons seeking insurance in New York. The NRRRA significantly changes the paradigm for excess (or "surplus") line insurance placements in the United States. The NRRRA prohibits any state, other than the home state of an insured, from requiring a premium tax payment for excess line insurance. Further, the NRRRA subjects the placement of excess line insurance solely to the statutory and regulatory requirements of the insured's home state and declares that only an insured's home state may require an excess line broker to be licensed to sell, solicit, or negotiate excess line insurance with respect to such insured. In addition, the NRRRA establishes uniform eligibility standards for excess line insurers. A state may not impose additional eligibility conditions.

Under the new NRRRA paradigm, an excess line broker now must ascertain an insured's home state before placing any property/casualty excess line business. Thus, if the insured's home state is not New York, even though the insured goes to the broker's office in New York, the excess line broker must be licensed in the insured's home state in order for the broker to procure the excess line coverage for that insured. Conversely, a person who is approached by an insured outside of New York must be licensed as an excess line broker in New York in order to procure excess line coverage for an insured whose home state is New York.

On March 31, 2011, Governor Andrew M. Cuomo signed into law Chapter 61 of the Laws of 2011, Part I of which amends the Insurance Law to conform to the NRRRA. The NRRRA and Chapter 61 took effect on July 21, 2011 and have been impacting excess line placements since that date.

3. Needs and benefits: Insurance Regulation 41 governs the placement of excess line insurance. The purpose of the excess line law is to enable consumers who are unable to obtain insurance from authorized insurers to obtain coverage from eligible excess line insurers. This regulation implements the provisions and purposes of Chapter 61 of the Laws of 2011, which amended the Insurance Law to conform to the NRRRA. The NRRRA and Chapter 61 took effect on July 21, 2011 and have been impacting excess line placements since that date.

Section 27.14 of Insurance Regulation 41 currently prohibits an excess line broker from placing coverage with an excess line insurer unless the insurer has established and maintained a trust fund. However, the new NRRRA eligibility requirements do not include a trust fund with respect to foreign insurers (alien insurers, however, do have to maintain a trust fund that satisfies the International Insurers Department ("IID") of the National Association of Insurance Commissioners ("NAIC")). As such, New York is no longer requiring a trust fund of foreign insurers for eligibility.

Currently, Insurance Law Section 1213(e) exempts excess line insurers writing excess line insurance in New York from the requirements of Sec-

tion 1213, such as the requirement that an insurer deposit with the clerk of the court cash or securities or a bond with good and sufficient sureties, in an amount to be fixed by the court sufficient to secure payments of any final judgment that may be rendered by the court, with the clerk of the court before filing any pleading in any proceeding against it, so long as the excess line insurance contract designates the Superintendent for service of process and, in material part, the policy is effectuated in accordance with Section 2105, the section that applies to excess line brokers. In a memorandum to the governor, dated March 30, 1949, recommending favorable executive action on the bill, the Superintendent of Insurance wrote that it was "our understanding that this subsection was inserted as the result of representations made by the representatives of Lloyds of London because the contracts of insurance customarily [written] by the underwriters and placed through licensees of this Department, contain a provision whereby the underwriters consent to be sued in the courts of this state and they maintain a trust fund in New York of a very sizable amount, which is available for the payment of any judgment which may be secured in an action involving one of their contracts of insurance."

When the Superintendent of Insurance first promulgated Insurance Regulation 41, effective October 1, 1962, pursuant to his broad power to make regulations, he codified in the regulation the longstanding practice regarding the trust fund, and established minimum provisions and requirements, thus providing a reasonable alternative for unauthorized insurers that regularly engage in the sale of insurance through the excess line market. While the specific provisions have been amended a number of times over the years, every iteration of Insurance Regulation 41 has called for a trust fund as a means of providing alternative security that the insurer would have resources to pay judgments against the insurer.

Although the NRRRA apparently precludes New York from requiring a foreign insurer to maintain a trust fund to be eligible in New York, or a trust fund for an alien insurer that deviates from the IID requirements, New York policyholders need to be protected when claims arise. As a result, the Department is amending Section 27.16 of Insurance Regulation 41 to provide that an excess line insurer will be subject to Insurance Law Section 1213's requirements unless the contract of insurance is effectuated in accordance with Insurance Law Section 2105, the Superintendent is designated as agent for service of process, and the insurer maintains a trust fund in accordance with Sections 27.14 and 27.15 of Insurance Regulation 41 (in addition to other requirements currently set forth in Section 27.16). Further, the Department is amending Section 27.14 of Insurance Regulation 41 to state that in order to be exempt from Insurance Law Section 1213 pursuant to Section 27.16 of Insurance Regulation 41, an excess line insurer must establish and maintain a trust fund. Insurance Law Section 316 authorizes the Superintendent to promulgate regulations to require an insurer or other person or entity making a filing or submission with the Superintendent to submit the filing or submission to the Superintendent by electronic means, provided that the insurer or other person or entity affected thereby may submit a request to the Superintendent for an exemption from the electronic filing requirement upon a demonstration of undue hardship, impracticability, or good cause, subject to the approval of the Superintendent.

The Department amended Section 27.8(a) of Insurance Regulation 41 to require excess line brokers to file annual premium tax statements electronically, and amended Section 27.13 to require excess line brokers to file electronically a listing that sets forth certain individual policy details. In addition, the Department added a new Section 27.13 to Insurance Regulation 41 to allow excess line brokers to apply for a "hardship" exception to the electronic filing or submission requirement.

4. Costs: The rule is not expected to impose costs on excess line brokers, and it merely conforms the requirements regarding placement of coverage with excess line insurers to the requirements in Chapter 61 of the Laws of 2011, which amended the Insurance Law to conform to the NRRRA. Although the amended regulation will require excess line brokers to file annual premium tax statements and a listing that sets forth certain individual policy details electronically, most brokers already do business electronically. In fact ELANY already requires documents to be filed electronically. Moreover, the regulation also provides a method whereby excess line brokers may apply for an exemption from the electronic filing or submission requirement.

With regard to the trust fund amendment, on the one hand, excess line insurers may incur costs if they choose to establish and maintain a trust fund in order to be exempt from Insurance Law Section 1213. On the other hand, it should be significantly less expensive to establish and maintain a trust fund rather than comply with Insurance Law Section 1213. This is a business decision that each insurer will need to make. The trust fund, if established and maintained, will be for the purpose of protecting all United States policyholders.

Costs to the Department of Financial Services also should be minimal, as existing personnel are available to review any modified filings necessitated by the regulations. In fact, filing forms electronically may produce

a cost savings for the Department of Financial Services. These rules impose no compliance costs on any state or local governments.

5. Local government mandates: These rules do not impose any program, service, duty or responsibility upon a city, town, village, school district or fire district.

6. Paperwork: The regulation imposes no new reporting requirements on regulated parties.

7. Duplication: The regulation will not duplicate any existing state or federal rule, but rather implement and conform to the federal requirements.

8. Alternatives: The Department discussed the changes related to trust funds and Insurance Law Section 1213 with counsel at the NAIC and with ELANY.

9. Federal standards: This regulation will implement the provisions and purposes of Chapter 61 of the Laws of 2011, which amends the Insurance Law to conform to the NRRRA.

10. Compliance schedule: Pursuant to Chapter 61 of the Laws of 2011, this regulation will impact excess line insurance placements effective on and after July 21, 2011.

Regulatory Flexibility Analysis

This rule is directed at excess line brokers and excess line insurers.

Excess line brokers are considered to be small businesses as defined in section 102(8) of the State Administrative Procedure Act. The rule is not expected to have an adverse impact on these small businesses because it merely conforms the requirements regarding placement of coverage with excess line insurers to Chapter 61 of the Laws of 2011, which amended the Insurance Law to conform to the federal Nonadmitted and Reinsurance Reform Act of 2010.

The rule will require excess line brokers to file annual premium tax statements electronically, and to file electronically a listing that sets forth certain individual policy details. However, the excess line broker may submit a request to the Superintendent for an exemption from the electronic filing requirement upon a demonstration of undue hardship, impracticability, or good cause, subject to the approval of the Superintendent.

Further, the Department of Financial Services has monitored Annual Statements of excess line insurers subject to this rule, and believes that none of them fall within the definition of "small business," because there are none that are both independently owned and have fewer than one hundred employees.

The Department of Financial Services finds that this rule will not impose any adverse economic impact on small businesses and will not impose any reporting, recordkeeping or other compliance requirements on small businesses.

The rule does not impose any impacts, including any adverse impacts, or reporting, recordkeeping, or other compliance requirements on any local governments.

Rural Area Flexibility Analysis

The Department of Financial Services ("Department") finds that this rule does not impose any additional burden on persons located in rural areas, and the Department finds that it will not have an adverse impact on rural areas. This rule applies uniformly to regulated parties that do business in both rural and non-rural areas of New York State.

Job Impact Statement

The Department of Financial Services finds that this rule should have no impact on jobs and employment opportunities. The rule conforms the requirements regarding placement of coverage with excess line insurers to Chapter 61 of the Laws of 2011, which amended the Insurance Law to conform to the federal Nonadmitted and Reinsurance Reform Act of 2010. The rule also makes an excess line insurer subject to Insurance Law section 1213, unless it chooses to establish and maintain a trust fund in New York for the benefit of New York policyholders.

EMERGENCY RULE MAKING

Credit Exposure Arising from Derivative Transactions

I.D. No. DFS-17-13-00011-E

Filing No. 386

Filing Date: 2013-04-09

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: Addition of Part 117 to Title 3 NYCRR.

Statutory authority: Banking Law, sections 103 and 235; and Financial Services Law, section 302

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

Specific reasons underlying the finding of necessity: Derivative transactions, including swaps and options, are a basic tool used by many banking organizations in New York and elsewhere to hedge their exposure to various types of risk, including interest rate, currency and credit risk.

The federal Dodd-Frank Wall Street Reform and Consumer Protection Act [cite] ("DFA") became effective [date]. Section 611 of DFA amended Section 18 of the Federal Deposit Insurance Act to provide that effective January 21, 2013, an insured state bank (including an insured state savings bank) may only engage in derivative transactions if the law of its chartering state regarding lending limits "takes into consideration credit exposure to derivative transactions."

In light of federal enactment of the DFA, the Legislature amended the Banking Law provision regarding loan limits in July 2011 to authorize the Superintendent to determine the manner and extent to which credit exposure resulting from derivative transactions should be taken into account. Laws of 2011, c. 182, § 2.

This regulation sets forth the manner in which derivative transactions will be taken into account for purposes of the lending limit provisions of the Banking Law. Emergency adoption of the regulation is necessary in order to ensure that New York banking organizations continue to be able to engage in derivative transactions on and after January 21, 2013.

Subject: Credit exposure arising from derivative transactions.

Purpose: To provide for the consideration of credit exposure relating to derivative transactions in calculating bank loan limits.

Text of emergency rule: PART 117

LENDING LIMITS: INCLUSION OF CREDIT EXPOSURES ARISING FROM DERIVATIVE TRANSACTIONS

§ 117.1 Definitions.

For the purposes of this Part:

a) The appropriate Federal banking agency of a bank shall be the agency specified by Section 3(q) of the Federal Deposit Insurance Act (FDIA), 12 USC § 1813(q), or the successor to such provision.

b) Bank includes a bank or trust company or a savings bank formed under the Banking Law whose deposits are insured by the Federal Deposit Insurance Corporation (FDIC).

c) Credit derivative means a financial contract that allows one party (the protection purchaser) to transfer the credit risk of one or more exposures (reference exposure) to another party (the protection provider).

d) The current credit exposure of a bank to a counterparty on a particular date with respect to a derivative transaction other than a credit derivative shall be the amount that the bank reasonably determines would be its loss under the terms of the derivative contract covering such transaction if the counterparty defaulted on such date.

e) The credit exposure of a bank to a counterparty arising from derivative transactions other than credit derivatives is the higher of zero or the sum of the then positive current credit exposures with respect to such derivative transactions, provided, however, that in calculating such credit exposure, the bank may take into account netting to the extent specified in section 117.4(a).

f) Derivative transaction includes any transaction that is a contract, agreement, swap, warrant, note, or option that is based, in whole or in part, on the value of, any interest in, or any quantitative measure or the occurrence of any event relating to, one or more commodities, securities, currencies, interest or other rates, indices, or other assets.

g) Effective margining arrangement means a master legal agreement governing derivative transactions between a bank and a counterparty that requires the counterparty to post, on a daily basis, variation margin to fully collateralize that amount of the bank's net credit exposure to the counterparty that exceeds \$1 million created by the derivative transactions covered by the agreement.

h) Eligible credit derivative means a single-name credit derivative or a standard, non-tranched index credit derivative, provided that:

(1) The derivative contract is executed under standard industry credit derivative documentation and meets the requirements of an eligible guarantee and has been confirmed by both the protection purchaser and the protection provider;

(2) Any assignment of the derivative contract has been confirmed by all relevant parties;

(3) If the credit derivative is a credit default swap, the derivative contract includes the following credit events:

(i) Failure to pay any amount due under the terms of the reference exposure, subject to any applicable minimal payment threshold that is consistent with standard market practice and with a grace period that is closely in line with the grace period of the reference exposure; and

(ii) Bankruptcy, insolvency, or inability of the obligor on the refer-

ence exposure to pay its debts, or its failure or admission in writing of its inability generally to pay its debts as they become due and similar events;

(4) The terms and conditions dictating the manner in which the derivative contract is to be settled are incorporated into the contract; and

(5) If the derivative contract allows for cash settlement, the contract incorporates a robust valuation process.

i) Eligible protection provider means:

(1) A sovereign entity (a central government, including the United States government; an agency; department; ministry; or central bank);

(2) This state or any city, county, town, village or school district of this state, the New York State Thruway Authority, the Metropolitan Transportation Authority, the Triborough Bridge and Tunnel Authority or The Port Authority of New York and New Jersey;

(3) Any state other than the State of New York;

(4) The Bank for International Settlements, the International Monetary Fund, the European Central Bank, the European Commission, or a multilateral development bank;

(5) A Federal Home Loan Bank;

(6) The Federal Agricultural Mortgage Corporation;

(7) A depository institution, as defined in Section 3(c) of the FDIA, 12 U.S.C. § 1813(c);

(8) A bank holding company, as defined in Section 2 of the Bank Holding Company Act, 12 U.S.C. § 1841;

(9) A savings and loan holding company, as defined in Section 10 of the Home Owners' Loan Act, 12 U.S.C. § 1467a;

(10) A securities broker or dealer registered with the Securities and Exchange Commission (SEC) under the Securities Exchange Act of 1934, 15 U.S.C. § 78a et seq.;

(11) An insurance company that is subject to the supervision of a state insurance regulator;

(12) A foreign banking organization;

(13) A non-United States-based securities firm or a non-United States-based insurance company that is subject to consolidated supervision and regulation comparable to that imposed on U.S. depository institutions, securities broker-dealers, or insurance companies;

(14) A qualifying central counterparty; and

(15) Such other entity or entities as may be designated from time to time by the superintendent.

j) Readily marketable collateral means financial instruments and bullion that are salable under ordinary market conditions with reasonable promptness at a fair market value.

k) Financial market utility shall have the same meaning as used in Section 803(6) of the Dodd-Frank Wall Street Reform and Consumer Protection Act, 12 U.S.C. § 5462(6).

l) The following terms shall have the same meaning as used in the Capital Adequacy Guidelines for Banks: Internal-Ratings-Based and Advanced Measurement Approaches (Capital Adequacy Guidelines) of the bank's appropriate Federal banking agency.¹

i. Eligible guarantee.

ii. Qualifying master netting agreement.

iii. Qualifying central counterparty.

§ 117.2 General Rule.

a) In computing the amount of loans of a bank outstanding to a person under Section 103.1 of the Banking Law or to a borrower under Section 235.8-c of the Banking Law at any specific time, the credit exposures of the bank arising from derivative transactions with respect to such person or borrower shall be included.

b) Such credit exposures shall be calculated as the sum of the bank's credit exposure to such person or borrower as a counterparty arising from derivative transactions other than credit derivatives plus the bank's credit exposure to such person or borrower as a counterparty arising from credit derivatives plus, where such person or borrower is the obligor on a reference exposure, the bank's credit exposure with respect to such person or borrower as obligor on such reference exposure arising from credit derivatives.

§ 117.3 Credit Derivatives.

a) Credit exposure to a counterparty. A bank shall calculate its credit exposure to a counterparty arising from credit derivatives by adding the net notional value of all protection purchased from the counterparty with respect to each reference exposure.

b) Credit exposure with respect to a reference exposure. A bank shall calculate the credit exposure with respect to a reference exposure arising from credit derivatives entered by the bank by adding the notional value of all protection sold on such reference exposure.

c) Exposure mitigants. In computing the exposures in paragraphs a and b hereof, the bank may take into account exposure mitigants to the extent specified in section 117.4.

§ 117.4 Exposure Mitigants.

a) Netting. In computing the credit exposures arising from derivative transactions of a bank with a particular counterparty with whom such bank has in force a qualifying master netting agreement, such bank may net the credit exposures covered by such qualifying master netting agreement.

b) Collateral. In computing the credit exposures arising from derivative transactions of a bank with a particular counterparty, such credit exposures may be reduced where such credit exposures have been secured with readily marketable collateral under an effective margining arrangement. The amount of such reduction shall be equal to the value of such collateral multiplied by the percentage applicable to such type of collateral as may be prescribed by the superintendent from time to time.

c) Hedging. In computing the credit exposures arising from derivative transactions of a bank with a particular counterparty or with respect to a particular reference exposure, such credit exposures may be reduced to the extent hedged by an eligible credit derivative from an eligible protection provider.

§ 117.5 Exception.

In computing its credit exposures arising from derivative transactions, a bank need not include credit exposures to a qualifying central counterparty that has been designated by the Financial Stability Oversight Council as a financial market utility that is, or is likely to become, systemically important.

§ 117.6 Alternate Valuation Method.

With the permission of the superintendent, a bank may utilize an alternate method to evaluate its credit exposures arising from derivative transactions.

§ 117.7 Interim Method.

Until and including June 30, 2013, a bank may calculate its credit exposures arising from derivative transactions utilizing any method, provided that the bank reasonably determine that such method appropriately reflects such exposures. On and after July 1, 2013, a bank must calculate its credit exposures arising from derivative transactions in accordance with a method prescribed by, or otherwise permitted under, this part.

§ 117.8 Residual Authority of the Superintendent.

Where the method or methods used by a bank fails to appropriately reflect the credit exposures of the bank arising from derivative transactions, the superintendent may direct such bank to use an alternate method or methods.

¹ In the case of a bank that is a member of the Federal Reserve System (member bank), the applicable definitions appear at Section 2 of Appendix F to 12 C.F.R. Part 208, and the case an Federally-insured bank that is not a member of the Federal Reserve System (nonmember insured bank), the applicable definitions appear at Section 2 of Appendix D to 12 C.F.R. Part 325.

This notice is intended to serve only as an emergency adoption, to be valid for 90 days or less. This rule expires July 7, 2013.

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

Regulatory Impact Statement

1. Statutory Authority

Section 14 of the Banking Law provides that the Superintendent of Financial Services (the "Superintendent") shall have the power to make, alter and amend regulations not inconsistent with law. Sections 103 and 235(8-c) of the New York Banking Law (the "Banking Law") authorize the Superintendent to prescribe regulations limiting the credit extended to any one person by state banks and savings banks, respectively. Section 302 of the Financial Services Law (the "FSL") authorizes the Superintendent to prescribe regulations involving financial products and services to effectuate any power given to the Superintendent under the FSL, the Banking Law or any other law.

2. Legislative Objectives

The federal Dodd-Frank Wall Street Reform and Consumer Protection Act, Public Law 111-203 ("DFA") became effective July 22, 2010. Section 611 of DFA amended Section 18 of the Federal Deposit Insurance Act to provide that effective January 21, 2013, an "insured state bank" (which term includes an insured state savings bank) may engage in a derivative transaction only if the law of its chartering state concerning lending limits "takes into consideration credit exposure to derivative transactions." 12 U.S.C. § 1828(y).

In response to federal enactment of Section 611 of DFA, the New York

Legislature amended the Banking Law regarding loan limits in July 2011 to authorize the Superintendent to determine the manner and extent to which credit exposure resulting from certain types of transactions, including derivative transactions, shall be taken into account for purposes of the statutory loan limits. (L. 2011, c. 182).

This emergency regulation implements the Superintendent's authority by setting forth the manner in which derivative transactions will be taken into account for purposes of the lending limit provisions of the Banking Law. Note that state chartered or licensed entities subject to DFA Section 610, including savings associations, and branches and agencies of foreign banking organizations, are not covered by the regulation.

3. Needs and Benefits

Derivative transactions, including swaps and options, are a basic tool used by many banking organizations to manage exposure to various types of risk, including interest rate, currency and credit risk. If the state's lending limit rules do not take account of credit exposure from derivatives transactions, DFA Section 611 will prohibit insured state banks from engaging in derivatives transactions starting January 21, 2013.

Such a prohibition would have a severely adverse effect on state banks' ability to manage the exposures embedded in their existing balance sheets (including exposures from any derivatives contracts entered into prior to the cutoff date), as well as the risks arising out of their ongoing business. The inability to manage such risks using derivatives would have the effect of limiting the banks' ability to conduct their usual business in a safe and sound manner. It would also leave state banks at a substantial competitive disadvantage relative to federally chartered banking organizations, which will be able to continue to enter into derivatives transactions so long as they do so in compliance with applicable federal regulations.

While noting that there already exists some flexibility in the lending limit statute to interpret what constitutes credit exposure, the objective of the amendment was to provide certainty that New York law will comply with the requirements of DFA so as to ensure that insured banks in New York could continue to engage in derivative transactions after the cutoff date in Section 611 of DFA.

4. Costs

Banks that use derivatives already have systems in place to measure and manage the exposures incurred and their effect on the banks' overall risk position. The Department currently reviews such systems as part of its regular safety and soundness examination of regulated organizations.

It is believed that most state banks which use derivatives to manage the risk exposures arising out of their activities engage in a relatively limited number of non-complex derivatives transactions. For those banks, it is anticipated that the credit exposure computation required by the regulation will be comparatively simple and straightforward, and the information necessary to make the computation will be readily available from their existing risk management systems. Compliance costs for these banks are expected to be minimal.

Banks that engage in a larger volume of more complex derivatives transactions already have more sophisticated systems and processes in place for managing their risks, including those associated with derivatives transactions. The regulation provides that these institutions may, with the permission of the Superintendent, use an "alternative valuation method" to measure their credit exposure resulting from derivatives. Such institutions are expected to seek permission to use measurement methods which reflect their existing risk management procedures, thus minimizing the additional compliance costs resulting from the regulation.

5. Local Government Mandates

None.

6. Paperwork

The regulation does not require that state banks produce any additional reports. Banks that use derivatives have internal systems to measure their exposures, including exposures resulting from derivatives. In the course of its regular safety and soundness examination, the Department expects to be able to review the bank's records and computations regarding compliance with applicable lending limits.

While a bank seeking permission from the Department to utilize an alternative valuation model will be expected to provide information supporting the reasonableness of the proposed model, it is anticipated that such models will normally already have been reviewed by the Department during the examination process.

7. Duplication

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

8. Alternatives

The Department could choose not to adopt a regulation with respect to loan limits that takes into consideration credit exposure to derivative transactions. However, under DFA Section 611 if such a regulation is not adopted insured state banks will not be able to engage in derivative transactions, a basic tool used by many banking organizations to manage their exposure to various types of risk, including interest rate, currency

and credit risk. In addition, not adopting such a regulation would put state banks at a competitive disadvantage, since federally chartered banks will be able to continue to engage in derivative transactions to manage their exposure to risk.

The Department also considered adoption of a regulation similar to the interim rule adopted by the federal Office of the Comptroller of the Currency (the "OCC") regarding credit exposure arising from derivatives and securities financing transactions (the "OCC Interim Rule"). 77 FR 37265, 37275 (June 21, 2012), C.F.R. § 32 (2012). However, that rule is quite complex and requires institutions to devote significant resources to compliance. Given the non-complex nature of the derivatives activity of most state banks, the Department did not consider it necessary to impose such extensive requirements.

9. Federal Standards

Although DFA Section 611 prohibits state banks from engaging in derivative transactions after January 20, 2013 if state's law does not take into account credit exposure to derivative transactions, there are no federal standards for how state law is to do so.

The OCC Interim Rule applies to national banks and federal and state savings associations. Under Section 4 of the International Banking Act of 1978, federally licensed branches and agencies of foreign banks are generally subject to the same limitations on their activities as national banks. Thus, the OCC Interim Rule effectively applies to them as well and through the Foreign Bank Supervision Enhancements Act applies to state-licensed branches and agencies. See 12 USC § 3105(h). However, the OCC Interim Rule does not apply to state-chartered banks and savings banks.

10. Compliance Schedule

The regulation is effective immediately. However, it is recognized that banks will require a period of time to ensure that their systems for calculating credit exposure from derivative transactions are consistent with the method of calculation required by the new rule, or to apply for and receive approval from the Superintendent to use an alternative calculation method. Therefore, the rule provides that until July 1, 2013, a bank may use any reasonable methodology to calculate its credit exposure from derivative transactions, subject to the Superintendent's Section 117.8 authority to require use of a different methodology.

Regulatory Flexibility Analysis

1. Effect of the Rule

The federal Dodd-Frank Wall Street Reform and Consumer Protection Act, Public Law 111-203 ("DFA") became effective July 22, 2010. Section 611 of DFA amended Section 18 of the Federal Deposit Insurance Act to provide that effective January 21, 2013, an "insured state bank" (which term includes an insured state savings bank) may engage in a derivative transaction only if the law of its chartering state concerning lending limits "takes into consideration credit exposure to derivative transactions." 12 U.S.C. § 1828(y). This emergency regulation implements the authority of the Superintendent of Financial Services (the "Superintendent") under Sections 14, 103 and 235(8-c) of the New York Banking Law (the "Banking Law") and under Section 302 of the Financial Services Law (the "FSL").

Section 14 of the Banking Law provides that the Superintendent shall have the power to make, alter and amend regulations not inconsistent with law. Sections 103 and 235(8-c) of the Banking Law authorize the Superintendent to prescribe regulations limiting the credit extended to any one person by state banks and savings banks, respectively. Section 302 of the Financial Services Law authorizes the Superintendent to prescribe regulations involving financial products and services to effectuate any power given to the Superintendent under the FSL, the Banking Law or any other law.

Those banks that are small businesses are predominantly in the business of making commercial loans. To the extent these banks utilize derivatives, they generally use non-complex derivative transactions to manage their exposure to interest rate risk. If this regulation is adopted, such banks will continue to be able to manage their risk exposure using derivatives. However, under DFA Section 611, failure to adopt a regulation applicable to these banks would have the effect of prohibiting them from engaging in derivative transactions, which would have a severe adverse effect on their ability to manage the risks embedded in their existing balance sheets as well as the risks arising out of their ongoing business. Such banks would also be left at a substantial competitive disadvantage relative to federally-chartered banking organizations, which will be able to continue to enter into derivative transactions so long as they do so in compliance with applicable federal regulations.

This regulation does not have any impact on local governments.

2. Compliance Requirements

It is believed that most banks which are small businesses and which use derivatives to manage the risk exposures arising out of their activities engage in a relatively limited number of non-complex derivatives transactions. For those banks, it is anticipated that the credit exposure

computation required by the regulation will be relatively simple and straightforward. The regulation does not require that banks, including banks that are small businesses, produce any additional reports.

3. Professional Services

Banks that are small businesses and engage in derivative transactions will already have the information necessary to make the computation regarding the regulation from their existing risk management systems.

4. Compliance Costs

Those banks that are small businesses and use derivatives generally engage in a relatively limited number of non-complex derivative transactions. For such banks it is anticipated that the credit exposure computation required by the regulation will be relatively simple and straightforward, and the information necessary to make the computation will be readily available from their existing risk management systems. Compliance costs for such banks are expected to be minimal.

While new Part 117 is effective immediately, it is recognized that some banks may require a period of time to ensure that their systems for calculating credit exposure from derivative transactions are consistent with the method of calculation required by the new rule, or to apply for and receive approval from the Superintendent to use an alternative calculation method. Therefore, the rule provides that until July 1, 2013, a bank may use any reasonable methodology to calculate its credit exposure from derivative transactions, subject to the Superintendent's Section 117.8 authority to require use of a different methodology. This provision should further serve to minimize compliance costs for those banks that are small businesses.

5. Economic and Technological Feasibility

The regulation will provide an economic benefit to banks, including banks that are small businesses, since they will be able to continue using derivatives to manage the risk exposures resulting from their normal business activities.

Compliance with the regulation should not present a technological challenge, since banks that use derivatives, including banks that are small businesses, already have in place systems to measure and manage their exposures from derivative transactions. Moreover, the provision of the rule effectively giving banks until to July 1, 2013, to start using the credit exposure calculation methodology set forth in the regulation, or to get the Superintendent's approval to use an alternative calculation methodology, will facilitate the resolution of any remaining economic or technological issues facing individual banks, including banks that are small businesses.

6. Minimizing Adverse Impacts

If the state's lending limit does not take account of credit exposure from derivatives transactions, DFA Section 611 will prohibit insured state banks from engaging in derivatives transactions starting January 21, 2013.

Such a prohibition would have a severely adverse effect on the ability of banks, including banks that are small businesses, to manage the exposures embedded in their balance sheets. The inability to manage such risks using derivatives would have the effect of limiting the banks' ability to conduct their usual business in a safe and sound manner. It would also leave banks, including banks which are small businesses, at a substantial competitive disadvantage relative to federally chartered banking organizations, which will be able to continue to enter into derivatives transactions so long as they do so in compliance with applicable federal regulations.

7. Small Business and Local Government Participation

The Department has had informal discussions regarding preliminary versions of the regulation with industry associations representing banks which engage in derivatives activities, including banks that engage in significant derivatives activities as well as banks that are small businesses. The regulation takes account of the comments received in the course of this process.

Rural Area Flexibility Analysis

1. Effect of the Rule

The federal Dodd-Frank Wall Street Reform and Consumer Protection Act, Public Law 111-203 ("DFA") became effective July 22, 2010. Section 611 of DFA amended Section 18 of the Federal Deposit Insurance Act to provide that effective January 21, 2013, an "insured state bank" (which term includes an insured state savings bank) may engage in a derivative transaction only if the law of its chartering state concerning lending limits "takes into consideration credit exposure to derivative transactions." 12 U.S.C. § 1828(y). This emergency regulation implements the authority of the Superintendent of Financial Services (the "Superintendent") under Sections 14, 103 and 235(8-c) of the New York Banking Law (the "Banking Law") and under Section 302 of the Financial Services Law (the "FSL").

Section 14 of the Banking Law provides that the Superintendent shall have the power to make, alter and amend regulations not inconsistent with law. Sections 103 and 235(8-c) of the Banking Law authorize the Superintendent to prescribe regulations limiting the credit extended to any one person by state banks and savings banks, respectively. Section 302 of the Financial Services Law authorizes the Superintendent to prescribe regulations involving financial products and services to effectuate any power

given to the Superintendent under the FSL, the Banking Law or any other law.

Those banks that are located in rural areas are predominantly in the business of making commercial loans. To the extent these banks utilize derivatives, they generally use non-complex derivative transactions to manage their exposure to interest rate risk. If this regulation is adopted, such banks will continue to be able to manage their risk exposure using derivatives. However, under DFA Section 611, failure to adopt a regulation applicable to these banks would have the effect of prohibiting them from engaging in derivative transactions, which would have a severe adverse effect on their ability to manage the risks embedded in their existing balance sheets, as well as the risks arising out of their ongoing business. Such banks would also be left at a substantial competitive disadvantage relative to federally chartered banking organizations, which will be able to continue to enter into derivative transactions so long as they do so in compliance with applicable federal regulations.

2. Compliance Requirements

It is believed that most banks which are located in rural areas and which use derivatives to manage the risk exposures arising out of their activities engage in a relatively limited number of non-complex derivatives transactions. For those banks, it is anticipated that the credit exposure computation required by the regulation will be relatively simple and straightforward. The regulation does not require that banks, including banks that are located in rural areas, produce any additional reports.

3. Professional Services

Banks which are located in rural areas and engage in derivative transactions will already have the information necessary to make the computation regarding the regulation from their existing risk management systems.

4. Compliance Costs

To the extent banks located in rural areas use derivatives, they generally engage in a relatively limited number of non-complex derivative transactions. For such banks, it is anticipated that the credit exposure computation required by the regulation will be relatively simple and straightforward, and the information necessary to make the computation will be readily available from their existing risk management systems. Compliance costs for such banks are expected to be minimal.

While new Part 117 is effective immediately, it is recognized that some banks may require a period of time to ensure that their systems for calculating credit exposure from derivative transactions are consistent with the method of calculation required by the new rule, or to apply for and receive approval from the Superintendent to use an alternative calculation method. Therefore, the rule provides that until July 1, 2013, a bank may use any reasonable methodology to calculate its credit exposure from derivative transactions, subject to the Superintendent's Section 117.8 authority to require use of a different methodology. This provision should further serve to minimize compliance costs for banks that are located in rural areas.

5. Economic and Technological Feasibility

The regulation will provide an economic benefit to banks, including banks that are located in rural areas, since they will be able to continue using derivatives to manage the risk exposures resulting from their normal business activities.

Compliance with the regulation should not present a technological challenge, since banks that use derivatives, including banks that are located in rural areas, already have in place systems to measure and manage their exposures from derivative transactions. Moreover, the provision of the rule effectively giving banks until to July 1, 2013 to start using the credit exposure calculation methodology set forth in the regulation, or to get the Superintendent's approval to use an alternative calculation methodology, will facilitate the resolution of any remaining economic or technological issues facing individual banks, including banks that are located in rural areas.

6. Minimizing Adverse Impacts

If the state's lending limit did not take account of credit exposure from derivatives transactions, DFA Section 611 would prohibit insured state banks from engaging in derivatives transactions starting January 21, 2013.

Such a prohibition would have a severely adverse effect on the ability of banks, including banks that are located in rural areas, to manage the exposures embedded in their balance sheets. The inability to manage such risks using derivatives would have the effect of limiting the banks' ability to conduct their usual business in a safe and sound manner. It would also leave banks, including banks which are located in rural areas, at a substantial competitive disadvantage relative to federally chartered banking organizations, which will be able to continue to enter into derivatives transactions so long as they do so in compliance with applicable federal regulations.

7. Rural Area Participation

The Department has had informal discussions regarding preliminary versions of the regulation with industry associations representing banks which engage in derivatives activities, including banks that engage in significant derivatives activities as well as banks that are located in rural

areas. The regulation takes account of the comments received in the course of this process.

Job Impact Statement

The regulation will not have an adverse impact on employment in the state. Banking organizations that engage in derivative transactions already have systems and staff in place to manage the credit and other risks associated with those transactions.

Conversely, failing to adopt the regulation could have an adverse impact on employment. Under DFA Section 611, state banks would be prohibited from engaging in derivative transactions and therefore would need to find other uses for staff currently involved in derivatives activity. Moreover, if state banks were no longer able to use derivatives to manage the risks resulting from their current types and levels of business, they might be forced to reduce or restructure the banking services they provide, which could have a further adverse impact on employment levels for both the banks and their customers.

NOTICE OF ADOPTION

Holding Companies

I.D. No. DFS-52-12-00005-A

Filing No. 387

Filing Date: 2013-04-09

Effective Date: 2013-06-23

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

Action taken: Amendment of Subpart 80-1 (Regulation 52) of Title 11 NYCRR.

Statutory authority: Financial Services Law, sections 202 and 302; and Insurance Law, sections 301 and 306 and art. 15

Subject: Holding Companies.

Purpose: To conform with the National Association of Insurance Commissioners' amended Model Act, and for modernization measures.

Substance of final rule: Insurance Regulation 52 (11 NYCRR 80-1) implements Article 15 of the Insurance Law, which governs the regulation of insurance holding company systems. The National Association of Insurance Commissioners ("NAIC") recently made amendments to its model Insurance Holding Company System Regulatory Act ("Model Act"), many of which are likely to become NAIC accreditation standards. Some of New York's holding company requirements do not match the Model Act, so updating Regulation 52 is necessary to ensure that New York maintains its accreditation status. The proposed amendments to Regulation 52 aim to modernize the Department's processes, to the benefit of both insurers and Department staff.

The Department made technical amendments to section 80-1.1.

The Department amended section 80-1.2 to require insurers to file a registration statement electronically, except in those instances where the Superintendent grants an exemption, and to require a registration statement to include language that provides that the board of directors oversees corporate governance and manages internal controls.

The Department made technical amendments to section 80-1.3.

The Department amended sections 80-1.4 and 80-1.6 to state that upon written application of a significant person or a controlled person who is an individual, the superintendent may permit the significant person to submit a certified public accountant compilation rather than an opinion of an independent certified public accountant, if the superintendent finds, upon review of the application, that submitting an opinion of an independent certified public accountant would constitute a hardship upon the significant person or controlled person. The written application must explain how submitting an opinion of an independent certified public accountant would constitute a hardship upon the significant person or controlled person.

The Department also amended section 80-1.4 to require every controlled insurer to submit to the Superintendent a list that identifies each insurer in the holding company system that is not an authorized insurer in New York State (an "unauthorized insurer") and that electronically filed its most recent annual statement with the NAIC, and for an unauthorized insurer that has not electronically filed its most recent annual statement with the NAIC, a copy of the most recent annual statement filed with the unauthorized insurer's state of domicile.

The Department amended section 80-1.5 to raise the threshold for when a property/casualty insurer must submit a reinsurance agreement to the Superintendent for review and raised the threshold for when an insurer must notify the Superintendent of any lease of real or personal property that does not provide for the rendering of services on a regular and sys-

tematic basis. The amendment to section 80-1.5 also would require an insurer to submit to the Superintendent notice of any management agreements, service contracts, tax allocation agreements, guarantees, or cost-sharing arrangements.

The Department made technical amendments to section 80-1.7.

The Department repealed section 80-1.8 and added a new section that states that where a holding company seeks to divest its controlling interest in a domestic insurer in any manner and the domestic insurer is aware of the proposed divestiture, the domestic insurer must file with the Superintendent notice of the proposed divestiture upon the earlier of 30 days prior to the proposed cessation of control or within ten days of becoming aware of the proposed divestiture; provided, however, that the domestic insurer need not file notice if a person seeking to acquire direct or indirect control of the domestic insurer submits an application for approval of acquisition of control.

The Department added a new section 80-1.9 that sets forth the way in which an insurer or a person may apply to the Superintendent for an exemption from the electronic filing requirement.

Final rule as compared with last published rule: Nonsubstantive changes were made in sections 80-1.2 and 80-1.8.

Text of rule and any required statements and analyses may be obtained from: Sally Geisel, New York State Department of Financial Services, One State Street, New York, NY 10004, (212) 480-5287, email: sally.geisel@dfs.ny.gov

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 ("RIS") for the Third Amendment to 11 NYCRR 80-1 (Insurance Regulation 52).

The revisions to the last published rule merely clarify the text and correct technical errors (i.e., grammar), which requires no change to the Regulatory Impact Statement, Regulatory Flexibility Analysis, Rural Area Flexibility Analysis, Job Impact Statement.

Initial Review of Rule

As a rule that requires a RFA, RAFA or JIS, this rule will be initially reviewed in the calendar year 2016, which is no later than the 3rd year after the year in which this rule is being adopted.

Assessment of Public Comment

The New York State Department of Financial Services ("Department") received comments from a trade association representing the life insurance industry in New York ("life trade organization") and from a national property/casualty insurance trade organization ("property/casualty trade organization") in response to its publication of the proposed rule in the New York State Register.

Summaries of the comments on the proposal and the Department's responses thereto are as follows.

The property/casualty trade organization commented that it supports the proposal in so far as it reflects changes contained in the National Association of Insurance Commissioners' ("NAIC's") Model Insurance Holding Company System Regulatory Act (the "Model Act"). The organization also urged the Department to consider adopting certain provisions in the Model Act that are not present in this proposal, including provisions pertaining to enterprise risk and supervisory colleges. However, some of these provisions would need to be adopted through legislation rather than through promulgation of a regulation.

The life trade organization requested certain technical changes to a proposed amendment pertaining to corporate governance and a proposed amendment pertaining to divestiture of a controlling interest in a domestic insurer, and the Department made certain non-substantive amendments to address those concerns. The life trade organization also requested that reinsurance agreements involving life insurers be treated the same as reinsurance agreements involving property/casualty insurers. However, the Department did not make this change to the proposed amendment because property/casualty insurers typically enter into large numbers of reinsurance agreements, many of which are for relatively small and ascertainable exposures, while reinsurance agreements entered into by life insurers generally are complex, and a person generally would not know in advance whether a life reinsurance agreement would meet a certain threshold, because of the nature of life insurance.

In addition, the life trade organization urged the Department to add the Model Act language that provides a threshold for notice of guarantees when made by a domestic insurer. The Department did not make any changes to the proposed amendment because the language in the Model Act appears to be inconsistent and the Department believes that it needs to see all the guarantees anyway.

Comments on specific parts of the proposed rule are discussed below.

Proposed Item 9 of 11 NYCRR 80-1.2(d) ("Corporate Governance")
Comment

The life trade organization suggested making slight modifications to the language set forth in new item 9 because it believes the modifications more accurately reflect the customary roles of the board of directors and members of senior management in matters of corporate governance and internal controls.

Department's Response

After further discussion with the life trade organization, the Department made non-substantive changes to the proposed item to address the concern.

Proposed Amendment to 11 NYCRR 80-1.5(b)(4) ("Reinsurance Contracts")

Comment

The proposed amendment would require a domestic property/casualty insurer to file with the Superintendent of Financial Services ("Superintendent") only reinsurance treaties or agreements that meet a certain threshold, unless otherwise requested by the Superintendent. The life trade organization commented that the Model Act contains a similar threshold for reinsurance treaties or agreements that is not limited to only certain types of insurance, and that it does not see any rationale for why the proposed amendment needs to be different from the Model Act, since a de minimis reinsurance transaction between a domestic controlled life insurer and its holding company parent should not be viewed any differently than a transaction between a domestic property/casualty insurer and its parent.

Department's Response

The proposed amendment makes a distinction between different kinds of insurers because property/casualty insurers typically enter into large numbers of reinsurance treaties and agreements, but many of them are for relatively small and ascertainable exposures. The threshold should ensure that the Superintendent will review the material transactions that have the potential for negatively impacting domestic property/casualty insurers.

However, reinsurance treaties and agreements entered into by life insurers generally are complex, often involving off-shore affiliates, captives, and securitizations, and it generally would not be known in advance whether a reinsurance treaty or agreement involving a life insurer would meet a certain threshold because of the nature of life insurance. With regard to accident and health insurers, the volume of reinsurance treaties and agreements is not as great as those entered into by property/casualty insurers. In addition, holding company arrangements involving many accident and health insurers affect entities dually regulated by the Department of Financial Services and Department of Health, so it is necessary for the Superintendent to review reinsurance treaties and agreements to ensure compliance not only with the Insurance Law, but also the Public Health Law.

Therefore, the Department did not make any changes to this amendment.

Comment

The property/casualty trade organization commented that it would appear that the Department is attempting to introduce a threshold trigger for prior approval of related party reinsurance contracts as contained in the Model Act, and that the result is a set of circumstances in which the New York domiciled ceding insurer still must seek prior approval from the Department for all related party reinsurance transactions, but only must submit a copy of the reinsurance contract if the transaction size is above the threshold. The organization asserts that this result creates confusion.

Department Response

Insurance Law § 1505(d) prohibits a domestic controlled insurer from entering into a reinsurance treaty or agreement with any person in its holding company system unless the insurer has notified the Superintendent in writing of its intention to enter into the treaty or agreement at least 30 days prior thereto and the Superintendent has not disapproved it within the 30 day period. Therefore, an insurer does not need the Superintendent's prior approval. Rather, the insurer only needs to notify the Superintendent and may proceed after 30 days if the Superintendent has not disapproved it. Thus, no changes to the proposal are necessary.

Proposed Amendment to 11 NYCRR 80-1.5(c)(3) ("Guarantees")

Comment

The Department has revised this section to expand the list of transactions between a domestic controlled insurer and any person in its holding company system that are deemed to be material to include any management agreements, service contracts, tax allocation agreements, guarantees, or cost-sharing arrangements. The life trade organization commented that, while it recognizes that the language mirrors language in the Model Act, it does not include the subsequent provision that provides a threshold for notice of guarantees when made by a domestic insurer and urged the Department to add this provision to the proposed amendment.

Department's Response

The Model Act requires a domestic insurer to notify the Superintendent of all management agreements, service contracts, tax allocation agreements, guarantees, and all cost-sharing arrangements. The Model Act then states that a domestic insurer must notify the Superintendent of guarantees when made by a domestic insurer if the guarantee meets a certain threshold. The language in the Model Act seems to be inconsistent, as the

distinction between these two provisions is unclear. Nonetheless, the Department believes that it needs to see all the guarantees anyway and therefore did not make any changes to the proposed amendment.

Proposed Amendment to 11 NYCRR 80-1.8 ("Divestiture")

Comment

The life trade organization commented that customarily, an acquiring party does not submit an application for approval of acquisition until after a stock purchase agreement has been signed, and suggested that language to this effect be added to the proposed amendment.

Department's Response

It is the Department's understanding that the divestiture language set forth in the Model Act was added to address a situation that occurred in which a holding company divested its controlling interest in an insurer by giving away stock in the insurer to charities in small enough quantities that no one person had a controlling interest in the insurer. Since no one was acquiring control of the insurer, there likely was no stock purchase agreement and an application for approval of acquisition of control was never filed.

Under the Model Act, the obligation falls upon the holding company seeking to divest, not the insurer. However, absent legislative change, the Department could address the concern only by putting the obligation on the insurer. After discussing this issue further with the life trade organization, the Department added language to the proposed amendment to clarify that a domestic insurer must file with the Superintendent a notice of a proposed divestiture when the insurer anticipates that no person will have a controlling interest in the domestic insurer after the proposed divestiture. The Department believes that this is a non-substantive amendment that addresses only the unusual circumstance that the amendment to the Model Act addressed.

Enterprise Risk Filing

Comment

The property/casualty trade organization urged the Department to adopt the enterprise risk filing provision set forth in the Model Act and to work with the insurance departments of other states and the insurance industry to ensure a smooth, efficient implementation of this reporting requirement. The organization noted that the Model Act failed to include a uniform effective date and suggested that the Department adopt an effective date that is no sooner than January 1, 2014 so that states have lead time to coordinate with other states with regard to implementing the enterprise risk report.

Department's Response

The enterprise risk filing is not the subject of this amendment. However, the Department will take the comment into consideration when it promulgates a separate regulation or proposes legislation pertaining to enterprise risk.

Supervisory Colleges

Comment

The property/casualty trade organization commented that New York is the domiciliary state for a large number of insurers, and without including language that enables the Superintendent to participate in a supervisory college, the Department will lack the proper authority to effectively participate in the process, potentially leaving many supervisory colleges devoid of the Department's judgment and participation.

Department's Response

Supervisory colleges are not the subject of this amendment. Rather, the Department has proposed legislation that would adopt the Model's supervisory college language.

Confidentiality

Comment

The property/casualty trade organization commented that the confidentiality provisions of the Model Act ensure the confidentiality of all documents, materials, or other information obtained by or disclosed to an insurance regulator pursuant to the holding company system laws and regulations, with such information not subject to the relevant freedom of information laws, subpoena, or discovery, or admissible into evidence in any private civil action. The organization asserts that without inclusion of these provisions, the Department may lack the ability to share with or obtain from the NAIC or other supervisors certain information about domiciliary insurers.

Department's Response

Insurance Law § 1504(c), which applies to holding companies, already requires the Superintendent to keep confidential the contents of each report made pursuant to Article 15, and any information obtained in connection therewith. Insurance Law § 1709, which applies to subsidiaries of domestic life insurance companies and certain other entities, requires the Superintendent to keep confidential the contents of certain information reports and information pertaining thereto. In addition, Insurance Law § 110 allows the Superintendent to share confidential documents with and receive confidential documents from the NAIC, the NAIC's affiliates or subsidiaries, or regulatory and law enforcement officials of other foreign or do-

mestic jurisdictions. Any other confidentiality language would need to be added to the Insurance Law by legislation. Therefore, the Department did not make any changes to the proposed amendment.

NOTICE OF ADOPTION

Multiple Parts of Titles 3 and 11 NYCRR

I.D. No. DFS-08-13-00001-A

Filing No. 388

Filing Date: 2013-04-09

Effective Date: 2013-06-01

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

Action taken: Amendment of multiple Parts of Titles 3 and 11 NYCRR.

Statutory authority: Financial Services Law, sections 202 and 302; Banking Law, section 14(1); Insurance Law, section 301

Subject: Multiple Parts of Titles 3 and 11 NYCRR.

Purpose: To revise references, now outdated, as a result of the consolidation of the New York State Insurance and Banking Departments.

Text or summary was published in the February 20, 2013 issue of the Register, I.D. No. DFS-08-13-00001-P.

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

Text of rule and any required statements and analyses may be obtained from: Sally Geisel, NYS Department of Financial Services, 25 Beaver Street, New York, NY 10004, (212) 480-5287, email: sallygeisel@msn.com

Revised Job Impact Statement

This amendment should not adversely impact job or employment opportunities in New York. This rulemaking merely revises references that are now outdated as a result of the consolidation of the New York State Insurance and Banking Departments into a new Department of Financial Services, and makes certain other technical changes (e.g., grammatical corrections and repeal of obsolete forms).

There is no evidence that these rules would have any adverse impact on self-employment opportunities.

The Department of Financial Services has no reason to believe that the rules will result in any adverse impacts.

Assessment of Public Comment

The agency received no public comment.

Department of Health

NOTICE OF ADOPTION

Medicaid Eligibility

I.D. No. HLT-43-12-00008-A

Filing No. 374

Filing Date: 2013-04-03

Effective Date: 2013-04-24

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

Action taken: Amendment of section 360-2.4 of Title 18 NYCRR.

Statutory authority: Public Health Law, sections 201 and 206; and Social Services Law, section 363-a

Subject: Medicaid Eligibility.

Purpose: Time frames for issuance of Medicaid Eligibility determinations.

Text or summary was published in the October 24, 2012 issue of the Register, I.D. No. HLT-43-12-00008-PC.

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

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

Assessment of Public Comment

The agency received no public comment.

Division of Housing and Community Renewal

PROPOSED RULE MAKING HEARING(S) SCHEDULED

Regulations Govern the Implementation of the Emergency Tenant Protection Act

I.D. No. HCR-17-13-00005-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 2500.3(b)-(f), 2500.9(s), 2501.2(b), (c), 2502.4(a)(2)(vi)(22), (a)(7), (b)(3)(iii), 2502.5(c), 2502.6(a), 2503.4(a)(2), (b), (c)(2), 2503.5(b)(2), (3), 2504.3(c)(1), (2), 2505.6, 2506.1(a), (g), 2507.9(a), 2508.1, 2509.2, 2509.3, 2510.11, 2510.12, 2511.2 and 2511.4(b) of Title 9 NYCRR.

Statutory authority: Emergency Tenant Protection Act of 1974, L. 1974, ch. 576, section 10a; L. 2011, ch. 97, part B, section 44

Subject: Regulations govern the implementation of the Emergency Tenant Protection Act.

Purpose: Modification based on DHCR's experience, court cases and input from regulated parties since last major amendments in 2000.

Public hearing(s) will be held at: 10:00 a.m., June 10, 2013 at Westchester District Rent Office, 75 S. Broadway, 2nd Fl., White Plains, NY; and 10:00 a.m., June 10, 2013 at Theodore Roosevelt Executive and Legislative Bldg., Peter Schmitt Memorial Legislative Chamber, 1st Fl., Mineola, 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.nyschr.org): 9 NYCRR § 2500.3 new paragraph (b) is added to define the Office of Rent Administration.

9 NYCRR § 2500.3 paragraphs (c), (d) and (e) are re-lettered (d), (e), and (f) and a new paragraph (c) is added to designate the Tenant Protection Unit (TPU) as a distinct unit under DHCR.

9 NYCRR § 2500.9 new paragraph (s) is added to advise an owner to provide the first tenant of a deregulated unit an exit notice explaining how the unit became deregulated, how the rent was computed, and what the last regulated rent was and a copy of the rent registration indicating deregulated rent which should also be provided to the tenant.

9 NYCRR § 2501.2(b) is amended, 9 NYCRR § 2501.2(b)(2) is repealed, and 9 NYCRR § 2501.2(c) amended to provide that where a preferential rent is charged, the legal rent can only be preserved by disclosure in a tenant's lease; a rent registration indicating a preferential rent will not be dispositive. DHCR shall review and the owner be required to submit the rental history immediately preceding a preferential rent to the present which may be prior to the four-year period preceding the filing of a complaint.

9 NYCRR § 2502.4(a)(2)(vi)(22) is amended to provide there will be no MCI rent increases for conversions from master to individual metering; however, electrical wiring for the building can be subject to an MCI rent increase.

9 NYCRR § 2502.4(a)(7) is renumbered (8) and a new paragraph (7) is added to provide that an outstanding service reduction or immediately hazardous violation will bar the granting of an MCI application with the ability to refile upon its prompt clearance.

9 NYCRR § 2502.4(b)(3)(iii) is amended to provide that a tenant receiving DRIE (disabled) benefits will not be subject to electrical sub-metering conversions; this conforms to how SCRIE (senior citizens) tenants are treated.

9 NYCRR § 2502.5(c) and (d) are re-lettered (d) and (e) and a new paragraph (c) is added to require additional information in leases as to how the rent was calculated, including details regarding any individual apartment improvement (IAI) rent increases; tenants will be able to request documentation from owners to support an IAI increase; if the lease information and/or any requested IAI documents are not provided, there can be

no rent increase until the information/documentation is provided unless the owner can prove the rent charges is otherwise legal; if the rent charged is above the legal rent during the period when information/documentation is not provided, there can be a rent overcharge proceeding and no rent increase can be collected until the information/documentation is provided.

9 NYCRR § 2502.6(a) is amended and 9 NYCRR § 2506.1(g) and (h) are re-lettered (h) and (i) and new subdivision (g) is added to provide that when the rent on base date for establishing rent under the four-year look-back period cannot be determined or the rent set on the base date was the subject of a fraudulent scheme to deregulate, the 3-part, court-sanctioned default formula for setting rents, e.g., lowest rent for comparable unit in building, will be used and a general catch-all, e.g. data compiled by DHCR or sampling method, will be available.

9 NYCRR § 2503.4(a)(2), (b), and (c)(2) are amended to provide: A tenant complaint of a service decrease will not be dismissed if the tenant failed to provide the owner with notice of the problem prior to filing a complaint with DHCR; any decrease in rent based upon a service decrease order will include a bar to future MCI and vacancy bonus rent increases; an owner's time to respond to a service decrease complaint will be reduced to 20 days if the tenant, in fact, gives prior notice, otherwise the response time is 60 days; if the tenant is forced to vacate, a 5 day response time is required and; if the complaint is for lack/reduction in heat/hot water then a 20 day response time is required.

9 NYCRR § 2503.5(b)(2) and (3) are amended to provide that tenants holding over after the lease expires (they failed to renew their lease) will be treated as month-to-month tenants and not held to a new full lease term.

9 NYCRR § 2504.3(c)(1) and (2) are amended to clarify amend certain notice requirements.

9 NYCRR § 2505.6 is amended to redefine harassment to include certain false filings and false statements designed to interfere with tenant's quiet enjoyment or rights.

9 NYCRR § 2506.1(a)(2)(ii) is amended and 9 NYCRR § 2506.1(a)(2) adds new subparagraphs (iii), (iv), (v), (vi), (vii), (viii) and (ix) and 9 NYCRR § 2506.1(a)(3)(iii) is amended to provide a more comprehensive list of exceptions to the rule that when examining rent overcharges the look-back period to determine an overcharge is four years. The list of exceptions includes: when there is an allegation of a fraudulent scheme to deregulate the unit; prior to base date there is an outstanding rent reduction order based upon a decrease in services; it is determined that there is a willful rent overcharge; there is a vacant or exempt unit on the four-year base date, in which case DHCR may also look at the last rent registration, or; there is a need to determine whether a preferential rent exists.

9 NYCRR § 2507.9(a) is amended by adding new subdivisions (c) and (d) to amend certain notice requirements.

9 NYCRR § 2508.1 is amended by adding new paragraphs (c) and (d) to provide certain notice requirements.

9 NYCRR § 2509.2 is amended to clarify that registration information may be collected as required by DHCR, ETPA, TPR, or 2507.11 and to provide that owners will not be able to amend a rent registration without going through an administrative proceeding with notice to the tenant unless the change is governed by another government agency.

9 NYCRR § 2509.3(a) is amended to clarify that a rent freeze for failing to register will include MCI increases and vacancy bonus increases.

9 NYCRR § 2510.11 is amended to clarify filing requirements for Article 78 proceedings.

9 NYCRR § 2510.12(a) is amended to clarify the 60 day statute of limitations from date of mailing of an order.

9 NYCRR § 2511.2 is amended to prohibit luxury decontrol filings on SCRIE and DRIE tenants.

9 NYCRR § 2511.4 is amended to correct a typographical error.

Text of proposed rule and any required statements and analyses may be obtained from: Gary R. Connor, General Counsel, Division of Housing and Community Renewal, 25 Beaver St., 7th Floor, New York, New York 10004, (212) 480-6707, email: gconnor@nyshcr.org

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.

Summary of Regulatory Impact Statement

1. STATUTORY AUTHORITY:

The Emergency Tenant Protection Act of 1974 ("ETPA") (McKinney Unconsol. Law § 8621, et seq.), Laws of 1974 Chap. 576, section 10a provides authority to the Division of Housing and Community Renewal ("DHCR") to amend the Tenant Protection Regulations ("TPR"); Section 44 of Chap. 97, Part B of the Laws of 2011 ("the Rent Law of 2011") further empowers DHCR to promulgate rules and regulations to implement and enforce all provisions of the Rent Law of 2011 and any law renewed or continued by the Rent Law of 2011 which includes the ETPA.

ETPA §§ 8626(d)(3), 8627(a), 8630(a) and 8632(a) also provide specific statutory authority governing the subject matter of many of the proposed amendments.

2. LEGISLATIVE OBJECTIVES:

The overall legislative objectives are contained in Sections 8622 and 8623 of the ETPA. Because of a serious public emergency, the regulation of residential rents and evictions is necessary to prevent the exaction of unreasonable rents and rent increases and to forestall other disruptive practices that would produce threats to public health, safety and general welfare. DHCR is specifically authorized by ETPA § 8630 to promulgate regulations to protect the rights granted under the ETPA and is empowered by the Rent Law of 2011 to promulgate regulations to implement and enforce new provisions added by the Rent Law of 2011 as well as any law continued or renewed by the Rent Law of 2011 which includes the ETPA.

3. NEEDS AND BENEFITS:

DHCR has not engaged in an extensive amendment process with respect to these regulations since 2000. Since that time there has been significant litigation interpreting, not only these regulations, but the laws they implement. In addition, DHCR has had twelve years of experience in administration which informs this process as does its continuing dialogue during this period with owners, tenants, and their respective advocates.

This dialogue is not only through its Office of Rent Administration (ORA) which engages in close to one hundred forums and meetings on an annual basis, but through the Tenant Protection Unit (TPU) which has been created to investigate and prosecute violations of the ETPA.

DHCR underwent the regulatory process for the promulgation of amendments expressly required by the Rent Law of 2011 which generated further comments.

This specific promulgation process was also preceded by a mass email outreach to known stakeholders in the field to solicit even further comments and suggestions.

The needs and benefits of some of the specific modifications proposed are highlighted below.

a. Addition of TPU.

Its inclusion demonstrates DHCR's commitment to the TPU and proactive enforcement of the ETPA.

b. Creation of "Exit Registration" forms and notices.

This new section provides for the service of appropriate notices on a tenant in an apartment alleged to be exempt from the ETPA because of high rent vacancy deregulation.

Greater transparency with respect to deregulation is appropriate in light of discrepancies among the registrations filed with high rent vacancy deregulation as the stated reason and the number of units simply failing to register but without explanation. Its use would have the salutary effect of providing information up front, reducing the potential need for administrative proceedings and/or investigation with respect to overcharge and improper deregulation claims.

c. Preferential Rent Review.

There exists a compelling need to adopt a new regulation which requires owners, in situations where a tenant is initially charged a preferential lesser rent and then charged a higher rent, to demonstrate the legitimacy of that higher rent.

Close to twenty-five percent of the rents in NYC and approximately twenty-six percent of the rents in the counties subject to the ETPA are listed in DHCR's registration data-base as having preferential rents.

The present regulations contain incorrect legal standards. Further, courts have also acknowledged that the "4 year rule" gives way in areas where there is a continuing obligation to conform one's conduct to standards created by other provisions of the Rent Stabilization Law.

The present rule of time limiting review to four years of preferential rent (regardless of when the higher rent was theoretically assumed to be proper, but never really established) places tenants in an untenable situation that discourages the exercise of their right to obtain a proper rent history.

d. Submetering costs and MCI eligibility.

This new provision properly recalibrates what equipment is MCI eligible with respect to submetering.

e. Enhanced DRIE and SCRIE Protections.

Since the last code review, the State of New York adopted a Disability Rent Increase Exemption (DRIE) for eligible low income disabled tenants similar to the existing Senior Citizen Rent Increase Exemption (SCRIE) available to the low income elderly.

DHCR regulations, which already prohibit the implementation of electrical submetering for SCRIE recipients, will be extended to disabled tenants receiving DRIE.

DHCR also is amending its regulations to exempt both SCRIE and DRIE tenants from the high income/high rent deregulation procedures set forth in the TPR as those tenancies have already been vetted through other government programs to have income far below that required for deregulation.

f. Lease Requirements and Enforcement.

DHCR data and experience shows that Individual Apartment Improvement (IAI) increases upon vacancy make up one of the largest components of increases under the ETPA. Paradoxically, a tenant may now only secure meaningful information or review of the propriety of these increases by filing an overcharge complaint before DHCR or a Court. Providing more information in the vacancy lease itself, as well as affording tenants the ability to demand supporting documentation directly from the owners without Court or DHCR intercession, will provide a cost effective alternative to such proceedings.

g. Codification of the overcharge “default formula”.

DHCR uses this kind of formula for setting rents where an owner fails to provide appropriate documentation to establish the legal rent in an overcharge proceeding or where there was an illusory prime tenancy or a fraudulent scheme to deregulate the housing accommodation.

However, the regulations, themselves, did not incorporate it.

h. Strengthening the process for service complaints.

The present regulation provides that tenants are required, prior to filing a service complaint with DHCR, to send a certified letter to the owner regarding the service deficiency.

More than a decade of implementation has led DHCR to the conclusion that the rule has often become a hurdle that suppresses the filing of complaints by the most vulnerable tenants.

The DHCR amendments also bar those parts of MCI increases slated for future collection, where there is a subsequently issued service reduction order. Precluding the collection of these future 6% MCI increments until an outstanding service deficiency is cured, is consistent with the ETPA, which bars collection of increases where there is a failure to provide services and will aid DHCR in incentivizing prompt restoration of services. In addition, an outstanding service reduction or immediately hazardous violation will bar the granting of an MCI application with the ability to re-file upon its prompt clearance.

Similarly, vacancy and longevity increases will no longer be allowed where there is an outstanding service reduction.

i. Deemed Leases.

A 2000 codification of the “deemed lease” rules apparently allowed owners to claim that they could extract the full rent from tenants for a new lease term where a tenant may have remained only for a short period prior to moving out. DHCR is returning to the more traditional and appropriate use of such “deemed leases” in overcharge proceedings.

j. Harassment Definition.

This regulation expands the definition of “harassment” to reflect some of the more up-to-date schemes to deprive tenants of their legitimate rights as rent stabilized tenants. Not every harassing act is designed to create a vacancy, but can include intimidating the tenant in place to preclude the legitimate exercise of such rights. These actions can include false and illegitimate filings before DHCR.

k. Codification of Certain Four Year Rule Exceptions.

These provisions seek to set forth, in one place, a more comprehensive list of areas where, to date, by statute, case law or regulation, the “four year rule” that ordinarily governs rent and overcharge review, has been held not to be applicable and changes to rules with respect to preferential rents and “vacancy on base date” cases.

The preferential rent change has already been explained. With claims of vacancies on the base date, it is more appropriate to test the validity of a present rent against these usual standards of overcharge review, rather than simply rubber-stamping any rent that is collected because of an alleged fortuity of a vacancy.

l. Amended registration.

DHCR has accepted for filing, amended registrations at any time for any year. These amendments, if treated similarly to “late” registrations under the ETPA could carry a substantial penalty, but no penalty has been imposed.

The number of such amendments is significant and has the effect of corrupting the purpose of DHCR’s registration data base as a contemporaneously created history of rents. Now such amendments, where appropriate, would be reviewed and regulated by DHCR.

DHCR is also amending the registration provisions to appropriately reflect DHCR’s authority and ability to change the registration forms themselves each year to capture data appropriate for the administration and enforcement of the ETPA and TPR.

m. Freeze of Vacancy Bonuses based on Failure to Register.

This change will conform DHCR’s practice to this statutory penalty for failing to properly register.

4. COSTS:

The regulated parties are tenants and owners. There are no additional direct costs. Costs by statute are proportionately borne by each municipality with ETPA units based on the number of units. Such costs may then be assessed by the municipality to the owner. However, DHCR has not sought to certify as municipal costs more than the \$10 per unit cost which is the

statutory cap for Rent Stabilized New York City units. The amended regulations do not impose any new responsibility upon state or local government. Owners will need to be initially more vigilant to assure their compliance with these changes, but such costs are already a generally-accepted expense of owning regulated housing. There are increased penalties in some instances if the regulations are violated, but the costs of conforming present business practices to the change in standards is not substantial. In addition, these consequences are largely consistent with existing case law or otherwise necessary to secure compliance. DHCR has made a significant effort to assure a safe harbor or alternatives from the more dire consequences for owners who are operating in good faith and in substantial compliance.

5. LOCAL GOVERNMENT MANDATES:

No new program, service, duty or responsibility is imposed on local government.

6. PAPERWORK:

The amendments may, in a limited fashion, increase the paperwork burden. There will be additional costs associated with filings and the need for additional record retention, but it is comparably minimal and is of a kind with already existing registrations and record keeping requirements.

Any particularized specific claims that a changed regulation may create hardship or inequity can and will be handled in the context of the administrative applications.

7. DUPLICATION:

No known duplication of State or Federal requirements except to the extent required by law.

8. ALTERNATIVES:

DHCR considered a variety of alternatives to many of these new rules. The alternative of continuing the rule presently in place for all of these changes was considered and rejected.

9. FEDERAL STANDARDS:

The proposed amendments do not exceed any known minimum Federal standards.

10. COMPLIANCE SCHEDULE:

It is not anticipated that regulated parties will require any significant additional time to comply with the proposed rules.

Regulatory Flexibility Analysis

1. EFFECT OF RULE:

The Emergency Tenant Protection Regulations (TPR) apply only to rent stabilized housing units located in those communities in Westchester, Rockland and Nassau Counties that are subject to the Emergency Tenant Protection Act. The class of small businesses affected by these proposed amendments would be limited to small building owners, those who own small numbers of rent stabilized units. The amended regulations would have limited burdensome impact on such small businesses. These amendments to the TPR apply only in the aforementioned communities, and are expected to have no impact on the local governments thereof.

2. COMPLIANCE REQUIREMENTS:

The proposed amendments would require small businesses that own regulated residential housing units to perform some minimal additional recordkeeping or reporting. Such businesses will continue to need to keep records of rent increases and improvements made to the properties in order to qualify for rent increases authorized under the proposed changes.

Further, such businesses will be required to provide a valid explanation for the need to amend registration statements already filed with DHCR. The proposed amendment of the registration statements must also be provided to the tenant in occupancy and would generally require the owner to provide DHCR an explanation of the need for such amendment.

In addition, small businesses will be required to produce rental records prior to the four year review of rental records in circumstances where there is a finding of a fraudulent scheme to deregulate an apartment; where there is a “preferential rent” in order to establish the terms and conditions of such preferential rent and whether it was previously established; and where an apartment was vacant or temporarily exempt on the base date. While these businesses may need to retain proof of the legality of rent for a longer period and produce such to DHCR, a prudent business owner would already have retained that information for these purposes already based on existing case law.

Businesses for a very limited time period will also be required to provide additional information directly to tenants with respect to explaining the propriety of IAI charges comprising the rent as a new lease. However, since the purpose of this is to cut down on rent overcharge proceedings before DHCR and the court, it may be ultimately more cost effective than waiting on administrative or judicial proceedings to supply the information.

3. PROFESSIONAL SERVICES:

The proposed amendments will not require small businesses to obtain any new or additional professional services.

4. COMPLIANCE COSTS:

There is no indication that the proposed amendments will impose any

significant, initial costs upon small businesses. There are no additional direct costs. Costs by statute are proportionately borne by each municipality with ETPA units based on the number of units. Such costs may be assessed by the municipality to the owner. However, DHCR has not sought to certify as municipal costs more than the \$10 per unit cost which is the statutory cap for Rent Stabilized New York City units. Small business owners of regulated housing accommodations will need to be initially more vigilant to assure their compliance with these changes. Compliance costs are already a generally-accepted expense of owning regulated housing. There are increased penalties in some instances if the regulations are violated, but the costs of conforming present business practices to the change in standards is not substantial. In addition, these consequences are largely consistent with existing case law or otherwise necessary to secure compliance. DHCR has made a significant effort to assure a safe harbor or alternatives from the more dire consequences for owners who are operating in good faith and in substantial compliance.

The additional costs need to be weighed against the actual outlay by owners leading to what DHCR is seeking to supervise by many of these changes: increases leading to the possible deregulation of units. Imposing rents that approach deregulation thresholds requires a significant outlay of funds on the part of owners. The median rent stabilized rent is \$1,107 per month. The median stay of a rent stabilized tenant is 7 to 8 years based on DHCR's review of turn over from its registration database. Thus adding the vacancy bonus and longevity increase to the median rent will result in a rent of \$1,288 per month while the amount to deregulate an apartment is a rent of \$2,500. This means an owner must increase the rent through individual apartment improvements through installation of improvements costing either \$72,880 or \$42,420 depending on the number of units in the building. This financial outlay stands in contrast to the median family income of a rent stabilized tenancy of \$37,000 per year and mean family income of \$51,357 per year as reported by New York City Rent Guidelines Board.

In the areas subject to the ETPA, the same analysis holds. The median ETPA rent for Nassau County is \$1,281.38, for Rockland County it is \$1,134.99 and for Westchester County it is \$1,100.00. The median family income for renter families (including regulated and non-regulated rentals) in Nassau County is \$47,618 per year, for Rockland County it is \$41,705 per year and for Westchester County it is \$40,609 as reported by the U.S. Census Bureau.

The amended regulations do not impose any new program, service, duty or responsibility upon any state agency or instrumentality thereof, or local government.

5. ECONOMIC AND TECHNOLOGICAL FEASIBILITY:

Compliance is not anticipated to require any unusual, new or burdensome technological applications but ultimately encourages the use of "online" filings and use of DHCR forms, which are increasingly online, which will actually reduce costs.

6. MINIMIZING ADVERSE IMPACT:

The proposed regulations have no adverse impact on local government. They will have comparatively minimal costs to businesses considering that these changes are necessary to enforce a statute designed to protect the public health safety and welfare. The regulations being implemented do not create different regulatory standards for small businesses. Instead DHCR in the administrative proceedings themselves can take equitable circumstances into consideration which may include the size of the business. It is difficult, on a blanket regulatory basis, to make exceptions for small businesses. Outside of the proceedings themselves, it is difficult to ascertain the size of the business subject to these regulations as a single business may own multiple properties often created as single asset corporations. However, as set forth in the Regulatory Impact Statement, the new rules recognize a variety of mitigating circumstances, safe harbors and curative provisions so that an otherwise legally compliant owner suffers minimal or no penalties for a paperwork omission error. To the extent the approaches suggested in SAPA section 202-b are otherwise appropriate, present procedures take these into account.

7. SMALL BUSINESS AND LOCAL GOVERNMENT PARTICIPATION:

DHCR personnel within its Office of Rent Administration (ORA) engages in close to one hundred forums and meetings on an annual basis with community groups, owner and tenant advocacy organizations and local officials where the administration and implementation of these provisions was under discussion. In the last year this information gathering process has been enhanced through several additional actions taken by DHCR.

DHCR created the Tenant Protection Unit (TPU) a unit designated by the Commissioner to investigate and prosecute violations of the ETPA, the RSL and the City and State Rent Laws. TPU itself has met with the various stakeholders in an effort to ascertain what issues and concerns impinge on the owner and tenant community affected by these regulations.

Further, DHCR underwent the regulatory process for the promulgation of amendments expressly required by the Rent Law of 2011. That process

generated significant comments on other issues relating to the rent regulations. ORA subsequently sent outreach letters to stakeholders, specifically including small businesses and their advocates, seeking comments and suggestions on changes to the regulations.

Rural Area Flexibility Analysis

The Emergency Tenant Protection Act applies only to rent stabilized housing units located in those communities in Westchester, Rockland and Nassau Counties that are subject to the Emergency Tenant Protection Act and therefore, the proposed rules will not impose any reporting, recordkeeping, or other compliance requirements on public or private entities located in any rural area pursuant to Subdivision 10 of SAPA Section 102.

Job Impact Statement

It is apparent from the text of the rules, required by statutory amendment, that there will be no adverse impact on jobs and employment opportunities by the promulgation of these regulations.

PROPOSED RULE MAKING HEARING(S) SCHEDULED

Regulations Govern the Implementation of the Rent Stabilization Law

I.D. No. HCR-17-13-00007-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 2520.5(o), 2520.11(u), 2521.1, 2521.2(b), (c), 2522.4(a)(3)(22), (a)(13), (d)(3)(iii), 2522.5(c)(1), (3), 2522.6(b), 2523.4(a)(1), (2), (c), (d)(2), 2523.5(c), 2524.3(a), (e), (g), 2525.5, 2526.1(a), (g), 2527.9, 2528.3, 2528.4, 2529.12, 2530.1 and 2531.2 of Title 9 NYCRR.

Statutory authority: L. 1974, ch. 576, section 10a; NYC Admin Code section 26-511(b), as recodified by L. 1985, ch. 907, section 1 as added by L. 1985, ch. 888, section 8; and L. 2011, ch. 97, section 44, part B

Subject: Regulations govern the implementation of the Rent Stabilization Law.

Purpose: Modification based on DHCR's experience, court cases and input from regulated parties since last major amendments in 2000.

Public hearing(s) will be held at: 10:00 a.m., June 10, 2013 at U.S. Custom House Auditorium, Alexander Hamilton U.S. Custom House, One Bowling Green, New York, 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.nysdcr.org): 9 NYCRR § 2520.5 paragraphs (o) and (p) are re-lettered (p) and (q) and a new paragraph (o) is added to designate the Tenant Protection Unit (TPU) as a distinct unit under DHCR.

9 NYCRR § 2520.11 new paragraph (u) is added to provide that an owner will be required to provide the first tenant of a deregulated unit an exit notice explaining how the unit became deregulated, how the rent was computed and what the last regulated rent was. A copy of the rent registration indicating deregulated rent must be provided to the tenant.

9 NYCRR § 2521.1 is amended to add a new subdivision (l) to establish the criteria for setting the initial legal regulated rent for housing accommodations located in properties that were or continue to be owned by housing development fund companies (HDFC).

9 NYCRR § 2521.2(b) is amended, 9 NYCRR § 2521.2(b)(2) is repealed, and 9 NYCRR § 2521.2(c) amended to provide that where a preferential rent is charged, the legal rent can only be preserved by disclosure in a tenant's lease; a rent registration indicating a preferential rent will not be dispositive. The owner shall be required to maintain and submit where required by DHCR the rental history immediately preceding a preferential rent to the present which may be prior to the four-year period preceding the filing of a complaint.

9 NYCRR § 2522.4(a)(3)(22) is amended to provide there will be no MCI rent increases for conversions from master to individual metering; however, electrical wiring for the building can be subject to an MCI rent increase.

9 NYCRR § 2522.4(a)(13) is amended to provide that when an MCI rent increase application is received, DHCR will initiate its own search to determine if there is an "immediately hazardous" violation in a building

and, if there is such a violation, the application will be rejected with leave to renew once the violation is remedied.

9 NYCRR § 2522.4(d)(3)(iii) is amended to provide that a tenant receiving DRIE (disabled) benefits will not be subject to electrical sub-metering conversions; this conforms to how SCRIE (senior citizens) tenants are treated.

9 NYCRR § 2522.5(c)(1) and 9 NYCRR § 2522.5(c)(3) are amended to provide the following: Required lease riders attached to leases will have greater detail as to how the rent was calculated, including details about how any IAI rent increase was calculated; tenants will be able to request documentation from owners to support an IAI increase; if the lease rider and/or any requested IAI documents are not provided, there can be no rent increase until the rider/documentation is provided unless the owner can prove the rent charged is otherwise legal; if the rent charged is above the legal rent during period when rider/documentation is not provided, there can be a rent overcharge proceeding and no rent increase can be collected until the rider/documentation is provided.

9 NYCRR § 2522.6 (b) is amended and 9 NYCRR § 2526.1(g) is re-lettered (h) and new subdivision (g) is added to provide that when the rent on base date for establishing rent under the four-year look-back period cannot be determined or the rent set on the base date was the subject of a fraudulent scheme to deregulate, the 3-part, court-sanctioned default formula for setting rents, e.g., lowest rent for comparable unit in building, will be used and a general catch-all, e.g. data compiled by DHCR or sampling method, will be available.

9 NYCRR § 2523.4(a)(1), (a)(2), (c) and (d)(2) are amended to provide:

A tenant complaint of a service decrease will not be dismissed if the tenant failed to provide the owner with notice of the problem prior to filing a complaint with DHCR; any decrease in rent based upon a service decrease order will include a bar to future MCI and vacancy bonus rent increases; an owner's time to respond to a service decrease complaint will be reduced to 20 days if the tenant, in fact, gives prior notice, otherwise the response time is 60 days; if the tenant is forced to vacate, a 5 day response time is required and; if the complaint is for lack/reduction in heat/hot water then a 20 day response time is required.

9 NYCRR § 2523.5(c)(2) and (3) are amended to provide that tenants holding over after the lease expires (they failed to renew their lease) will be treated as month-to-month tenants and not held to a new full lease term.

9 NYCRR § 2524.3(a), (e), and (g) are amended to amend certain notice requirements.

9 NYCRR § 2525.5 is amended to redefine harassment to include certain false filings and false statements designed to interfere with tenant's quiet enjoyment or rights.

9 NYCRR § 2526.1(a)(2)(ii) is amended and 9 NYCRR § 2526.1(a)(2) adds new subparagraphs (iii), (iv), (v), (vi), (vii), (viii) and (ix) and 9 NYCRR § 2526.1(a)(3)(iii) is amended to provide a more comprehensive list of exceptions to the rule that when examining rent overcharges the look-back period to determine an overcharge is four years. The list of exceptions includes: when there is an allegation of a fraudulent scheme to deregulate the unit; prior to base date there is an outstanding rent reduction order based upon a decrease in services; it is determined that there is a willful rent overcharge; there is a vacant or exempt unit on the four-year base date, in which case DHCR may also look at the last rent registration, or; there is a need to determine whether a preferential rent exists.

9 NYCRR § 2527.9 is amended by adding new subdivisions (c) and (d) to amend certain notice requirements.

9 NYCRR § 2528.3 (a) is amended to clarify that registration information may be collected as required by DHCR, RSC, or 2527.11.

9 NYCRR § 2528.3 is amended to add paragraph (c) to provide that owners will not be able to amend a rent registration without going through an administrative proceeding with notice to the tenant unless the change is governed by another government agency.

9 NYCRR § 2528.4(a) is amended to clarify that a rent freeze for failing to register will include MCI increases and vacancy bonus increases.

9 NYCRR § 2529.12 is amended to clarify filing requirements for Article 78 proceedings.

9 NYCRR § 2530.1 is amended to clarify the 60 day statute of limitations from date of mailing of an order.

9 NYCRR § 2531.2 is amended to prohibit luxury decontrol filings on SCRIE and DRIE tenants.

Text of proposed rule and any required statements and analyses may be obtained from: Gary R. Connor, General Counsel, Division of Housing and Community Renewal, 25 Beaver St., 7th Floor, New York, New York 10004, (212) 480-6707, email: gconnor@nyshcr.org

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.

Summary of Regulatory Impact Statement

1. STATUTORY AUTHORITY:

The Administrative Code of the City of New York, (also known as "the

Rent Stabilization Law") (RSL) § 26-511(b) provides authority to the Division of Housing and Community Renewal ("DHCR") to amend the implementing regulations (also known as "the Rent Stabilization Code") ("RSC"); Section 44 of Chap. 97, Part B of the Laws of 2011 ("the Rent Law of 2011") further empowers DHCR to promulgate rules and regulations to implement and enforce all provisions of the Rent Law of 2011 and any law renewed or continued by the Rent Law of 2011 which includes the RSL.

RSL §§ 26-504.2(b), 26-511(c), 26-511(d), 26-514, 26-516(b) and 26-517 also provide specific statutory authority governing the subject matter of many of the proposed amendments.

2. LEGISLATIVE OBJECTIVES:

The overall legislative objectives are contained in Sections 26-501 and 26-502 of the RSL and Section 2 of the Emergency Tenant Protection Act ("ETPA"). Because of a serious public emergency, the regulation of residential rents and evictions is necessary to prevent the exaction of unreasonable rents and rent increases and to forestall other disruptive practices that would produce threats to public health, safety and general welfare. DHCR is specifically authorized by RSL § 26-511(c)(1) to promulgate regulations to protect tenants and the public interest, and is empowered by the Rent Law of 2011 to promulgate regulations to implement and enforce new provisions added by the Rent Law of 2011 as well as any law continued or renewed by the Rent Law of 2011 which includes the RSL.

3. NEEDS AND BENEFITS:

DHCR has not engaged in an extensive amendment process with respect to these regulations since 2000. Since that time there has been significant litigation interpreting, not only these regulations, but the laws they implement. In addition, DHCR has had twelve years of experience in administration which informs this process so does its continuing dialogue during this period with owners, tenants, and their respective advocates. This dialogue is not only through its Office of Rent Administration (ORA) which engages in close to one hundred forums and meetings on an annual basis, but through the Tenant Protection Unit (TPU) which has been created to investigate and prosecute violations of the RSL. DHCR underwent the regulatory process for the promulgation of amendments expressly required by the Rent Law of 2011 which generated further comments.

This specific promulgation process was also preceded by a mass email outreach to known stakeholders in the field to solicit additional comments and suggestions.

The needs and benefits of some of the specific modifications proposed are highlighted below.

a. Addition of TPU definition

Its inclusion demonstrates DHCR's commitment to the TPU and proactive enforcement of the RSL.

b. Codification of "Exit Registrations"

This new provision in the regulation is taken from RSL § 26-504.2(b) and provides for the service of appropriate notices on a tenant in an apartment alleged to be exempt from the RSL because of high rent vacancy deregulation. With the passage of the Rent Law of 2011 which expressly gave DHCR additional authorization to enforce the RSL, inclusion of this provision in the regulations is appropriate.

Greater oversight is demonstrably necessary in light of discrepancies among the registrations filed; those that are no longer being filed with high rent vacancy deregulation as the stated reason; and the number of units simply failing to register but without explanation.

Tying compliance into the current registration system provides an appropriate enforcement mechanism.

c. Preferential Rent Review

There exists a compelling need to adopt a new regulation which requires owners, in situations where a tenant is initially charged a preferential lesser rent and then charged a higher rent, to demonstrate the legitimacy of that higher rent. Close to twenty-five percent of the rents in New York City are listed in DHCR's registration data-base as having preferential rents.

The present regulations contain incorrect legal standards. Further, courts have also acknowledged that the "4 year rule" of review gives way in areas where there is a continuing obligation to conform one's conduct to standards created by other provisions of the Rent Stabilization Law.

The present rule of time-limiting review to four years of preferential rent (regardless of when the higher rent was theoretically assumed to be proper, but never really established), places tenants in an untenable situation that discourages the exercise of their right to obtain a proper rent history.

d. Submetering costs and MCI eligibility

This new provision properly recalibrates what equipment is MCI eligible with respect to submetering.

e. "C" violations and MCI's

DHCR will now be conducting independent reviews of New York City's database for immediately hazardous violations which will assure uniform and consistent enforcement of this standard governing MCI's.

f. Enhanced DRIE and SCRIE Protections

Since the last code review, the State of New York adopted a Disability Rent Increase Exemption (DRIE) for eligible low income disabled tenants similar to the existing Senior Citizen Rent Increase Exemption (SCRIE) available to the low income elderly.

DHCR regulations, which already prohibit the implementation of electrical submetering for SCRIE recipients, will be extended to disabled tenants receiving DRIE.

DHCR also is amending its regulations to exempt both SCRIE and DRIE tenants from the high income/high rent deregulation procedures set forth in the RSL as those tenancies have already been vetted through other government programs to have income far below that required for deregulation.

g. Lease Rider Requirements and Enforcement

DHCR data and experience shows that Individual Apartment Improvement (IAI) increases upon vacancy make up one of the largest components of increases under the RSL. Paradoxically, a tenant may now only secure meaningful information or review of the propriety of these increases by filing an overcharge complaint before DHCR or a Court. Providing more information in the vacancy lease rider itself, as well as affording tenants the ability to demand supporting documentation directly from the owners without Court or DHCR intercession, will provide a cost effective alternative to such proceedings.

h. Codification of the overcharge “default formula”

DHCR uses this kind of formula for setting rents where an owner fails to provide appropriate documentation to establish the legal rent in an overcharge proceeding or where there was an illusory prime tenancy or a fraudulent scheme to deregulate the housing accommodation. However, the regulations themselves, did not incorporate it.

i. Strengthening the process for service complaints

The present regulation provides that tenants are required, prior to filing a service complaint with DHCR, to send a certified letter to the owner regarding the service deficiency.

More than a decade of implementation has led DHCR to the conclusion that the rule has often become a hurdle that suppresses the filing of complaints by the most vulnerable tenants.

The DHCR amendments also bar those parts of MCI increases slated for future collection, where there is a subsequently issued service reduction order. Precluding the collection of these future 6% MCI increments until an outstanding service deficiency is cured, is consistent with the plain language of the RSL, which bars collection of increases where there is a failure to provide services and will aid DHCR in incentivizing prompt restoration of services.

Similarly vacancy and longevity increases will no longer be allowed where there is an outstanding service reduction.

j. Deemed Leases

A 2000 codification of “deemed lease” rules apparently allowed owners to claim that they could extract the full rent from tenants for a new lease term where a tenant may have remained only for a short period prior to moving out. DHCR is returning to the more traditional and appropriate use of such “deemed leases” in overcharge proceedings.

k. Harassment Definition

This regulation expands the definition of “harassment” to reflect some of the more up-to-date schemes to deprive tenants of their legitimate rights as rent stabilized tenants. Not every harassing act is designed to create a vacancy, but can include intimidating the tenant in place to preclude the legitimate exercise of such rights. These actions can include false and illegitimate filings before DHCR.

l. Codification of Certain Four Year Rule Exceptions

These provisions seek to set forth, in one place, a more comprehensive list of areas where, to date, by statute, case law or regulation, the “four year rule” that ordinarily governs rent and overcharge review, has been held not to be applicable and changes the rules with respect to preferential rents and “vacancy on the base date” cases.

The preferential rent change has already been explained. With claims of vacancies on the base date, it is more appropriate to test the validity of a present rent against these usual standards of overcharge review, rather than simply rubber-stamping any rent that is collected because of an alleged fortuity of a vacancy.

m. Amended registration and registration requirements

DHCR had accepted for filing, amended annual registrations at any time for any year. These amendments, if treated similarly to “late” registrations under the RSL, could carry a substantial penalty, but no penalty has been imposed.

The number of such amendments is significant and has the effect of corrupting the purpose of DHCR’s registration data base as a contemporaneously created history of rents. Now, such amendments, where appropriate, would be reviewed and regulated by DHCR.

DHCR is also amending the registration provisions to appropriately reflect DHCR’s authority and ability to change the registration forms themselves each year to capture data appropriate for the administration and enforcement of the RSL and RSC.

n. Freeze of Vacancy Bonuses based on Failure to Register

This change will conform DHCR’s practice to this statutory penalty for failing to properly register.

4. COSTS:

The regulated parties are tenants and owners. There are no additional direct costs imposed as costs of regular administration are capped at \$10 per unit per year. The amended regulations do not impose any new responsibility upon state or local government. Owners will need to be initially more vigilant to assure their compliance with these changes, but such costs are already a generally-accepted expense of owning regulated housing. There are increased penalties in some instances if the regulations are violated, but the costs of conforming present business practices to the change in standards is not substantial. In addition, these consequences are largely consistent with existing case law or otherwise necessary to secure compliance. DHCR has made a significant effort to assure a safe harbor or alternatives from the more dire consequences for owners who are operating in good faith and in substantial compliance.

5. LOCAL GOVERNMENT MANDATES:

No new program, service, duty or responsibility is imposed on local government.

6. PAPERWORK:

The amendments may, in a limited fashion, increase the paperwork burden. There will be additional costs associated with filings and the need for additional record retention, but these costs are comparably minimal and are of a kind with already existing registration and record keeping requirements.

Any particularized specific claims that a changed regulation may create hardship or inequity can and will be handled in the context of the administrative applications.

7. DUPLICATION:

No known duplication of State or Federal requirements except to the extent required by law.

8. ALTERNATIVES:

DHCR considered a variety of alternatives to many of these new rules. The alternative of continuing the rule presently in place for all of these changes was considered and rejected.

Other alternatives suggested, but rejected included; treating amended registrations as the equivalent of late registration, creating even more stringent pre-requirements for MCI filings with respect to violation clearance, and even more severe penalties for notice violations with respect to exit registrations and the provision of the lease rider. Continuation of the present lease rider rule, requiring an order from DHCR directing that such a rider be provided prior to any penalty, was not a real option as it effectively limits an owner’s necessary compliance with lease rider requirements to a subset of tenants already sufficiently knowledgeable to file a complaint with DHCR.

9. FEDERAL STANDARDS:

Do not exceed any known minimum Federal standards.

10. COMPLIANCE SCHEDULE:

It is not anticipated that regulated parties will require any significant additional time to comply with the proposed rules.

Regulatory Flexibility Analysis

1. EFFECT OF RULE:

The Rent Stabilization Code (“RSC”) applies only to rent stabilized housing units in New York City. The class of small businesses affected by these proposed amendments would be limited to certain small property owners, who own limited numbers of rent stabilized units. The amended regulations would have limited burdensome impact on such businesses. These amendments to the RSC, which apply exclusively in New York City, are expected to have no impact on the local government thereof.

2. COMPLIANCE REQUIREMENTS:

The proposed amendments would require small businesses that own regulated residential housing units to perform some minimal additional recordkeeping or reporting. Such businesses will continue to need to keep records of rent increases and improvements made to the properties in order to qualify for rent increases authorized under the proposed changes, but in addition to keeping such records, will also be required in vacancy and renewal lease riders to provide such records to the tenant. In addition, rent increases will not be permissible until the proper lease rider is provided to the tenant. The rent would be frozen based on such failure if the rent is otherwise illegal.

Further, such businesses will be required to provide a valid explanation for the need to amend registration statements already filed with DHCR. The proposed amendment of the registration statements must also be provided to the tenant in occupancy and would generally require the owner to provide DHCR an explanation of the need for such amendment.

In addition, small businesses will be required to produce rental records prior to the four year review of rental records in circumstances where there is a finding of a fraudulent scheme to deregulate an apartment; where there is a “preferential rent” in order to establish the terms and conditions

of such preferential rent and whether it was previously established; and where an apartment was vacant or temporarily exempt on the base date. While these businesses may need to retain proof of the legality of rent for a longer period and produce such to DHCR, a prudent business owner would already have retained that information for these purposes already based on existing case law.

Such businesses will also be required to file an exit registration with DHCR when an apartment is deregulated and required to serve such on the tenant who resides in the apartment that the business asserts is no longer subject to regulation. The exit registrations themselves give these businesses a contemporaneous benchmark which will aid them in legitimate efforts to contemporaneously establish the propriety of high rent/vacancy deregulation and help them defend against claims by tenants that such deregulations are part of fraudulent scheme as defined by the Court of Appeals in *Grimm v DHCR*, 15 N.Y.3d 358, 912 N.Y.S.2d 491 (1st Dept. 2010). This requirement has also been statutory since 2000.

Businesses for a very limited time period will also be required to provide additional information directly to tenants with respect to explaining the propriety of IAI charges comprising the rent as a new lease. However, since the purpose of this is to cut down on rent overcharge proceedings before DHCR and the court, it may be ultimately more cost effective than waiting on administrative or judicial proceedings to supply the information.

3. PROFESSIONAL SERVICES:

The proposed amendments will not require small businesses to obtain any new or additional professional services. Many businesses do use a professional service to file and serve their annual registrations. Even if the filing of a rent registration was considered a new requirement, as explained in the Regulatory Impact Statement, the cost is comparatively minimal.

4. COMPLIANCE COSTS:

There is no indication that the proposed amendments will impose any significant, initial costs upon small businesses. There are no additional direct costs imposed on these businesses by these amendments as owner direct costs are capped at \$10 per unit per year. Small business owners of regulated housing accommodations will need to be initially more vigilant to assure their compliance with these changes. Compliance costs are already a generally-accepted expense of owning regulated housing. There are increased penalties in some instances if the regulations are violated, but the costs of conforming present business practices to the change in standards is not substantial. In addition, these consequences are largely consistent with existing case law or otherwise necessary to secure compliance. DHCR has made a significant effort to assure a safe harbor or alternatives from the more dire consequences for owners who are operating in good faith and in substantial compliance.

The additional costs need to be weighed against the actual outlay by owners leading to what DHCR is seeking to supervise by many of these changes: increases leading to the possible deregulation of units. Imposing rents that approach deregulation thresholds requires a significant outlay of funds on the part of owners. The median rent stabilized rent is \$1,107 per month. The median stay of a rent stabilized tenant is 7 to 8 years based on DHCR's review of turn over from its registration database. Thus adding the vacancy bonus and longevity increase to the median rent will result in a rent of \$1,288 per month while the amount to deregulate an apartment is a rent of \$2,500. This means an owner must increase the rent through individual apartment improvements through installation of improvements costing either \$72,880 or \$42,420 depending on the number of units in the building. This financial outlay stands in contrast to the median family income of a rent stabilized tenancy of \$37,000 per year and mean family income of \$51,357 per year as reported by New York City Rent Guidelines Board.

The amended regulations do not impose any new program, service, duty or responsibility upon any state agency or instrumentality thereof, or local government.

5. ECONOMIC AND TECHNOLOGICAL FEASIBILITY:

Compliance is not anticipated to require any unusual, new or burdensome technological applications but ultimately encourages the use of "online" filings and use of DHCR forms, which are increasingly online, which will actually reduce costs.

6. MINIMIZING ADVERSE IMPACT:

The proposed regulations have no adverse impact on local government. They will have comparatively minimal costs to businesses considering that these changes are necessary to enforce a statute designed to protect the public health safety and welfare. The regulations being implemented do not create different regulatory standards for small businesses. Instead DHCR in the administrative proceedings themselves can take equitable circumstances into consideration which may include the size of the business. It is difficult, on a blanket regulatory basis, to make exceptions for small businesses. Outside of the proceedings themselves, it is difficult to ascertain the size of the business subject to these regulations as a single business may own multiple properties often created as single asset

corporations. However, as set forth in the Regulatory Impact Statement, the new rules recognize a variety of mitigating circumstances, safe harbors and curative provisions so that an otherwise legally compliant owner suffers minimal or no penalties for a paperwork omission error. To the extent the approaches suggested in SAPA section 202-b are otherwise appropriate, present procedures take these into account.

7. SMALL BUSINESS AND LOCAL GOVERNMENT PARTICIPATION:

DHCR personnel within its Office of Rent Administration (ORA) engages in close to one hundred forums and meetings on an annual basis with community groups, owner and tenant advocacy organizations and local officials where the administration and implementation of these provisions was under discussion. In the last year this information gathering process has been enhanced through several additional actions taken by DHCR.

DHCR created the Tenant Protection Unit (TPU) a unit designated by the Commissioner to investigate and prosecute violations of the ETPA, the RSL and the City and State Rent Laws. TPU itself has met with the various stakeholders in an effort to ascertain what issues and concerns impinge on the owner and tenant community affected by these regulations.

Further, DHCR held a public hearing on the implementation of regulations to conform to the changes in the rent laws enacted by the 2011 Law at which many of these provisions were raised by commenters as suggested changes and ORA subsequently sent outreach letters to stakeholders, specifically including small businesses and their advocates, seeking comments and suggestions on changes to the regulations. Finally, the Rent Stabilization Law specifically provides for review by the New York City Department of Housing Preservation and Development prior to promulgation.

Rural Area Flexibility Analysis

The Rent Stabilization Code applies exclusively to New York City, and therefore, the proposed rules will not impose any reporting, recordkeeping, or other compliance requirements on public or private entities located in any rural area pursuant to Subdivision 10 of SAPA Section 102.

Job Impact Statement

It is apparent from the text of the rules, required by statutory amendment, that there will be no adverse impact on jobs and employment opportunities by the promulgation of these regulations.

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Regulations Govern the Implementation of the New York City Rent Control Law

I.D. No. HCR-17-13-00004-P

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

Proposed Action: Amendment of sections 2200.2(q), (r), 2202.16(e)(3), 2204.2(a)(1), 2205.1(b), 2208.12, 2209.1 and 2211.2 of Title 9 NYCRR.

Statutory authority: Omnibus Housing Act, L. 1983, ch. 403, section 28(not subdivided); and Administrative Code of the City of New York, section 26-405(g)(1); L. 2011, ch. 97, section 44, part B

Subject: Regulations govern the implementation of the New York City Rent Control Law.

Purpose: Modification based on DHCR's experience, court cases and input from regulated parties since last major amendments in 2000.

Text of proposed rule: 9 NYCRR § 2200.2(q) is added as follows:

(q) *Office of Rent Administration. The office of the city rent agency designated by the Administrator to administer the ETPA, the Rent Stabilization Law and the City and State Rent Laws.*

9 NYCRR § 2200.2(r) is added as follows:

(r) *Office of the Tenant Protection Unit (TPU). The office of the city rent agency designated by the Administrator to investigate and prosecute violations of the ETPA, the Rent Stabilization Law and the City and State Rent laws. In furtherance of such designation, the TPU may invoke all authority under the ETPA, Rent Stabilization Law, and the State and City rent laws and the regulations thereunder that inures to the Commissioner, city rent agency or the Office of Rent Administration. However, nothing contained herein shall limit the mission and authority of the city rent agency to administer and enforce the ETPA, the Rent Stabilization Law, and the City and State Rent laws and all such regulations promulgated thereunder.*

9 NYCRR § 2202.16(e)(3) is amended to read as follows:

(3) *Recipients of Senior Citizen Rent Increase Exemptions (SCRIE) or Disability Rent Increase Exemptions (DRIE):* For a tenant who on the date of the conversion is receiving a SCRIE or DRIE authorized by sec-

tion 26-405(m) of the City Rent and Rehabilitation Law, the rent is not reduced and the cost of electricity remains included in the rent, although the owner is permitted to install any equipment in such tenant's housing accommodation as is required for effectuation of electrical conversion pursuant to this subdivision.

(i) After the conversion, upon the vacancy of the tenant, the owner, without making application to the city rent agency, is required to reduce the maximum rent for the housing accommodation in accordance with the Schedule of Rent Reductions set forth in Operational Bulletin 2003-1, and thereafter [the] *any subsequent* tenant is responsible for the cost of his or her consumption of electricity, and for the legal rent as reduced, including any applicable major capital improvement rent increase based upon the cost of work done to effectuate the electrical conversion.

(ii) After the conversion, if a tenant ceases to receive a SCRIE or DRIE, the owner, without making application to the city rent agency, may reduce the rent in accordance with the Schedule of Rent Reductions set forth in Operational Bulletin 2003-1, and thereafter the tenant is responsible for the cost of his or her consumption of electricity, and for the legal rent as reduced, including any applicable major capital improvement rent increase based upon the cost of work done to effectuate the electrical conversion, for as long as the tenant is not receiving a SCRIE or DRIE. Thereafter, in the event that the tenant resumes receiving a SCRIE or DRIE, the owner, without making application to the city rent agency, is required to eliminate the rent reduction and resume responsibility for the tenant's electric bills.

9 NYCRR § 2204.2(a)(1) is amended to read as follows:

The tenant is violating a substantial obligation of his tenancy, other than the obligation to surrender possession of such housing accommodation, and has failed to cure such violation after written notice by the landlord that the violation cease within 10 days; or within a three-month period immediately prior to the commencement of the proceeding, the tenant has willfully violated such an obligation inflicting serious and substantial injury upon the landlord. *If the written notice by the owner that the violations cease within ten days is served by mail, then five additional days, because of service by mail, shall be added, for a total of 15 days, before an action or proceeding to recover possession may be commenced after service of the notice required by section 2204.3 of this Title.*

9 NYCRR § 2205.1(b) is amended to read as follows:

It shall be unlawful for any person, with intent to cause any tenant to vacate housing accommodations, or to surrender or waive any rights of such tenant under the Rent Law or these regulations, to engage in any course of conduct (including but not limited to interruption or discontinuance of essential services or filing of false documents with or making false statements to the city rent agency) which interferes with or disturbs, or is intended to interfere with or disturb, the comfort, repose, peace or quiet of such tenant in his use or occupancy of the housing accommodations.

9 NYCRR § 2208.12 is amended to read as follows:

The filing and determination of a PAR is a prerequisite to obtaining judicial review of any provision of these regulations or any order issued thereunder, except as provided by section 26-410 of the Rent Law. A proceeding for review may be instituted under article 78 of the Civil Practice Law and Rules, provided the petition in the Supreme Court is filed within 60 days after the *issuance date* of the final determination of the PAR. *Issuance date is defined as the date of mailing of the order.* Service of the petition upon the Division of Housing and Community Renewal shall be made by either:

9 NYCRR § 2209.1 is amended by adding new subdivisions (d) and (e) to read as follows:

(d) *Unless otherwise expressly provided in this Title, no additional time is required for service by mail of any notice, order, answer, lease offer or other papers, beyond the time period set forth in these regulations and such time period provided is inclusive of the time for mailing.*

(e) *Unless otherwise expressly provided in this Title, no additional time is required to respond or to take any action when served by mail with any notice, order, answer, lease offer, or other papers, beyond the time period set forth in these regulations and the time to respond is commenced upon mailing of said notice, order answer, lease offer or other paper.*

9 NYCRR § 2211.2 is amended to add a new paragraph (e) as follows:

(e) *No such ICF may be served on any apartment where the tenant is the recipient of a Senior Citizen Rent Increase Exemption (SCRIE) or a Disability Rent Increase Exemption (DRIE).*

Text of proposed rule and any required statements and analyses may be obtained from: Gary R. Connor, General Counsel, Division of Housing and Community Renewal, 25 Beaver St., 7th Floor, New York, New York 10004, (212) 480-6707, email: gconnor@nyshcr.org

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

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

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

Regulatory Impact Statement

1. STATUTORY AUTHORITY:

The Omnibus Housing Act, Laws of 1983, Chap. 403, section 28, (not

subdivided), and section 26-405g(1) of the Administrative Code of the City of New York provide authority to the Division of Housing and Community Renewal (DHCR) to amend the City Rent and Eviction Regulations (CRER) and Section 44 of Chap. 97, Part B of the Laws of 2011 further empowers DHCR to promulgate rules and regulations to implement and enforce all provisions of such law and any law renewed or continued by the Rent Law of 2011 which includes the City Rent and Rehabilitation Law (CRRL).

2. LEGISLATIVE OBJECTIVES:

The CRRL requires, because of a serious public emergency, the regulation of residential rents and evictions to prevent the exaction of unreasonable rents and rent increases and to forestall other disruptive practices to produce threats to public health safety and general welfare. The CRRL is further designed to assure that any transition from regulation to normal market bargaining with respect to such landlords and tenants is administered with due regard to these emergency conditions. See CRRL § 26-401(a). DHCR is specifically authorized to promulgate regulations by CRRL § 26-405 (g)(1), and is further empowered by Chapter 97 of the Laws of 2011 to promulgate regulations to implement and enforce provisions of that chapter and any law continued or renewed by that chapter including the CRRL.

3. NEEDS AND BENEFITS:

DHCR has not engaged in an extensive amendment process with respect to these regulations since 2000. Since that time there has been litigation interpreting, not only these regulations, but the laws they implement. In addition, DHCR has had twelve years of experience in administration which informs this process, as does its continuing dialogue during this period with owners, tenants, and their respective advocates.

DHCR personnel within its Office of Rent Administration (ORA) engages in close to one hundred forums and meetings on an annual basis where the administration and implementation of these laws are discussed.

In the last year this information gathering process has been enhanced through several additional actions taken by DHCR.

First, DHCR created the Tenant Protection Unit (TPU), a unit designated by the Commissioner to investigate and prosecute violations of the ETPA, the RSL and the City and State Rent Laws. TPU, itself, has met with the various stakeholders in an effort to ascertain what issues and concerns impinge on the owner and tenant community affected by these regulations.

Second, DHCR underwent the regulatory process for the promulgation of amendments expressly required by the Rent Law of 2011. That process generated significant comments on other issues relating to the rent regulations.

Third, this specific promulgation process was preceded by a mass email outreach to known stakeholders in the field to solicit even further comments and suggestions.

The needs and benefits of some of the specific modifications proposed are highlighted below.

a. Addition of TPU.

The inclusion of TPU as a specific term within the regulations, demonstrates DHCR's commitment to the TPU and proactive enforcement of the CCRL.

b. Enhanced DRIE and SCRIE Protections

Since the last code review, the State of New York adopted a Disability Rent Increase Exemption (DRIE) for eligible low income disabled tenants similar to the existing Senior Citizen Rent Increase Exemption (SCRIE) available to the low income elderly.

DHCR regulations, which already prohibit the implementation of electrical submetering for SCRIE recipients, will be extended to disabled tenants receiving DRIE.

DHCR also is amending its regulations to exempt both SCRIE and DRIE tenants from the high income/high rent deregulation procedures set forth in the CRER. As those tenancies have already been vetted through other government programs to have income far below that required for deregulation, the procedure, if invoked by the owners, cannot obtain any meaningful result. It simply creates unneeded stress on these vulnerable populations. Even worse, it may result in the inappropriate loss of apartments through these senior or disabled tenants failing to adequately respond to mechanically generated notices as part of the process.

c. Harassment Definition

This regulation expands the definition of "harassment" to reflect some of the more up-to-date schemes to deprive tenants of their legitimate rights as rent stabilized tenants. Not every harassing act is designed to create a vacancy, but can include intimidating the tenant in place, to preclude the legitimate exercise of such rights. These actions can include false and illegitimate filings before DHCR.

4. COSTS:

The regulated parties are tenants and owners of rent controlled housing accommodations. The amended regulations do not impose any new program, service, duty or responsibility upon any state agency or

instrumentality thereof, local government or business, and therefore impose no costs on those entities which are not already required through the enactment of the CRRL generally or through these amended provisions referenced above. For the owners of regulated housing accommodations, who may need to be initially more vigilant to assure their compliance with these new statutory requirements, costs should be relatively minimal. In fact, compliance costs are already a generally-accepted expense of owning regulated housing. Similarly, tenants will not incur any additional costs through implementation of the proposed regulations.

5. LOCAL GOVERNMENT MANDATES:

The proposed rule making will not impose any new program, service, duty or responsibility upon any level of local government.

6. PAPERWORK:

The amendments will not increase the paperwork burden on either regulated parties or the agency. Any particularized specific claims that a changed regulation may create hardship or inequity can and will be handled in the context of the administrative applications, themselves, where such factual claims can be assessed.

7. DUPLICATION:

The amendments do not add any provisions that duplicate any known State or Federal requirements except to the extent required by law. There are instances where a rent controlled property participates in another State, city or federal housing program. In those instances there may be a need to comply with the City Rent and Eviction Regulation requirements as well as the mandates of that city, State or Federal program.

8. ALTERNATIVES:

DHCR considered a variety of alternatives to many of these new rules. As set forth in part in the Needs and Benefits section, the alternative of continuing the rule presently in place for all of these changes was considered and rejected.

9. FEDERAL STANDARDS:

The proposed amendments do not exceed any known minimum Federal standards.

10. COMPLIANCE SCHEDULE:

It is not anticipated that regulated parties will require any significant additional time to comply with the proposed rules.

Regulatory Flexibility Analysis

1. EFFECT OF RULE:

The City Rent and Eviction Regulations (CRER) apply only to housing units located in New York City that are subject to the City Rent and Rehabilitation Law. The small businesses that would be affected by these proposed amendments are the owners of small numbers of regulated housing units, at least one of which is rent controlled. These amendments to the CRER, which apply exclusively in New York City, are expected to have no impact on the local government thereof.

2. COMPLIANCE REQUIREMENTS:

The proposed amendments would not require small businesses that own regulated residential housing units to perform additional recordkeeping or reporting. Such businesses will continue to need to keep records of improvements made to the properties in order to qualify for rent increases authorized under the proposed changes.

3. PROFESSIONAL SERVICES:

The proposed amendments will not require small businesses to obtain any new or additional professional services.

4. COMPLIANCE COSTS:

There is no indication that the proposed amendments will impose any significant, initial costs upon small businesses. There are no additional direct costs imposed on these businesses by these amendments. Small business owners of regulated housing accommodations will need to be initially more vigilant to assure their compliance with these changes. Compliance costs are already a generally-accepted expense of owning regulated housing. DHCR has made a significant effort to assure a safe harbor or alternatives from the more dire consequences for owners who are operating in good faith and in substantial compliance.

The amended regulations do not impose any new program, service, duty or responsibility upon any state agency or instrumentality thereof, or local government.

5. ECONOMIC AND TECHNOLOGICAL FEASIBILITY:

Compliance is not anticipated to require any unusual, new or burdensome technological applications but ultimately encourages the use of "online" filings and use of DHCR forms, which are increasingly online, which will actually reduce costs.

6. MINIMIZING ADVERSE IMPACT:

The proposed regulations have no adverse impact on local government. They will have comparatively minimal costs to businesses considering that these changes are necessary to enforce a statute designed to protect the public health safety and welfare. The regulations being implemented do not create different regulatory standards for small businesses. Instead, DHCR in the administrative proceedings themselves, can, where appropriate, take equitable circumstances into consideration which may include

the size of the business. It is difficult, on a blanket regulatory basis, to make exceptions for small businesses. Outside of the proceedings themselves it is difficult to ascertain the size of the business subject to these regulations as a single business may own multiple properties often created as single asset corporations. To the extent the approaches suggested in SAPA section 202-b are appropriate, present procedures take these into account.

7. SMALL BUSINESS AND LOCAL GOVERNMENT PARTICIPATION:

DHCR personnel within its Office of Rent Administration (ORA), engages in close to one hundred forums and meetings on an annual basis with community groups, owner and tenant advocacy organizations and local officials where the administration and implementation of these provisions was under discussion. In the last year, this information gathering process has been enhanced through several additional actions taken by DHCR.

DHCR created the Tenant Protection Unit (TPU) a unit designated by the Commissioner to investigate and prosecute violations of the ETPA, the RSL and the City and State Rent Laws. TPU itself has met with the various stakeholders in an effort to ascertain what issues and concerns impinge on the owner and tenant community affected by these regulations.

Further, DHCR held a public hearing on the implementation of regulations to conform to the changes in the rent laws enacted by the 2011 Law at which many of these provisions were raised by commenters as suggested changes and ORA subsequently sent outreach letters to stakeholders, specifically including small businesses and their advocates, seeking comments and suggestions on changes to the regulations.

Rural Area Flexibility Analysis

The City Rent and Eviction Regulations apply exclusively to New York City, and therefore the proposed rules will not impose any reporting, recordkeeping, or other compliance requirements on public or private entities located in any rural area pursuant to Subdivision 10 of SAPA Section 102.

Job Impact Statement

It is apparent from the text of the rules, required by statutory amendment, that there will be no adverse impact on jobs and employment opportunities by the promulgation of these regulations.

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Regulations Govern the Implementation of the State Rent Control Law

I.D. No. HCR-17-13-00006-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 2100.3(c), 2102.4(h)(3), 2104.2(a), 2105.8, 2108.13, 2109.1 and 2110.2 of Title 9 NYCRR.

Statutory authority: Emergency Housing Rent Control Law, L. 1946, ch. 274, subd. 4(a), as amd. by L. 1950, ch. 250, as amd., as transferred to the Division of Housing and Community Renewal by L. 1964, ch. 244 and L. 2011, ch. 97, part B, section 44

Subject: Regulations govern the implementation of the State Rent Control Law.

Purpose: Modification based on DHCR's experience, court cases and input from regulated parties since last major amendments in 2000.

Text of proposed rule: 9 NYCRR § 2100.3 paragraphs (c), (d), (e), (f), (g), (h) and (i) are re-lettered (d), (e), (f), (g), (h), (i) and (j) and a new paragraph (c) is added as follows:

(c) *Office of the Tenant Protection Unit (TPU). The office of the commission designated by the Administrator to investigate and prosecute violations of the ETPA, the Rent Stabilization Law and the City and State Rent laws. In furtherance of such designation, the TPU may invoke all authority under the ETPA, Rent Stabilization Law, and the State and City rent laws and the regulations thereunder that inures to the Commissioner, commission or the Office of Rent Administration. However, nothing contained herein shall limit the mission and authority of the commission to administer and enforce the ETPA, the Rent Stabilization Law, and the City and State rent laws and all such regulations promulgated thereunder.*

[(c)], [(d)], [(e)], [(f)], [(g)], [(h)], [(i)] (d), (e), (f), (g), (h), (i), (j) [re-lettered only – text remains the same]

9 NYCRR § 2102.4(h)(3) is amended to read as follows:

(3) Recipients of Senior Citizen Rent Increase Exemptions (SCRIE) or Disability Rent Increase Exemptions (DRIE). For a tenant who on the date of the conversion is receiving a SCRIE or DRIE authorized by section 26-

405(m) of the City Rent and Rehabilitation Law, the rent is not reduced and the cost of electricity remains included in the rent, although the owner is permitted to install any equipment in such tenant's housing accommodation as is required for effectuation of electrical conversion pursuant to this subdivision.

(i) After the conversion, upon the vacancy of the tenant, the owner, without making application to the commission, is required to reduce the maximum rent for the housing accommodation in accordance with the Schedule of Rent Reductions set forth in Operational Bulletin 2003-1, and thereafter [the] *any subsequent* tenant is responsible for the cost of his or her consumption of electricity, and for the legal rent as reduced, including any applicable major capital improvement rent increase based upon the cost of work done to effectuate the electrical conversion.

(ii) After the conversion, if a tenant ceases to receive a SCRIE or DRIE, the owner, without making application to the commission, may reduce the rent in accordance with the Schedule of Rent Reductions set forth in Operational Bulletin 2003-1, and thereafter the tenant is responsible for the cost of his or her electricity, and for the legal rent as reduced, including any applicable major capital improvement rent increase based upon the cost of work done to effectuate the electrical conversion, for as long as the tenant is not receiving a SCRIE or DRIE. Thereafter, in the event that the tenant resumes receiving a SCRIE or DRIE, the owner, without making application to the commission, is required to eliminate the rent reduction and resume responsibility for the tenant's electric bills.

9 NYCRR § 2104.2(a) is amended to read as follows:

The tenant is violating a substantial obligation of his tenancy, other than the obligation to surrender possession of such housing accommodation, and has failed to cure such violation after written demand by the landlord that the violation cease within 10 days; or within a three-month period immediately prior to the commencement of the proceeding the tenant has willfully violated such an obligation inflicting serious and substantial injury to the landlord. *If the written notice by the owner that the violations cease within ten days is served by mail, then five additional days, because of service by mail, shall be added, for a total of 15 days, before an action or proceeding to recover possession may be commenced after service of the notice required by section 2104.3 of this Title.*

9 NYCRR § 2105.8 is amended to read as follows:

It shall be unlawful for any landlord or any person acting on his behalf, with intent to cause the tenant to vacate, to engage in any course of conduct (including, but not limited to, interruption or discontinuance of essential services or filing of false documents with or making false statements to the commission) which interfere with or disturbs or is intended to interfere with or disturb the comfort, peace, repose or quiet of the tenant in his use or occupancy of the housing accommodations. (See section 10, subdivision 5 of the Act.)

9 NYCRR § 2108.13 is amended to read as follows:

The filing and determination of a PAR is a prerequisite to obtaining judicial review of any provision of this Subchapter or any order issued thereunder, except as provided by section 8 of the act. A proceeding for review may be instituted under article 78 of the Civil Practice Law and Rules provided the petition is filed within 60 days after the *issuance date* of the final determination of the PAR. *Issuance date is defined as the date of mailing of the order.* Service of the petition upon the Division of Housing and Community Renewal shall be made by either:

9 NYCRR § 2109.1 is amended by adding new subdivisions (d) and (e) to read as follows:

(d) *Unless otherwise expressly provided in this Title, no additional time is required for service by mail of any notice, order, answer, lease offer or other papers, beyond the time period set forth in this Subchapter and such time period provided is inclusive of the time for mailing.*

(e) *Unless otherwise expressly provided in this Title, no additional time is required to respond or to take any action when served by mail with any notice, order, answer, lease offer, or other papers, beyond the time period set forth in this Subchapter and the time to respond is commenced upon mailing of said notice, order answer, lease offer or other paper.*

9 NYCRR § 2110.2 is amended to add a new paragraph (e) as follows:

(e) *No such ICF may be served on any apartment where the tenant is the recipient of a Senior Citizen Rent Increase Exemption (SCRIE) or a Disability Rent Increase Exemption (DRIE).*

Text of proposed rule and any required statements and analyses may be obtained from: Gary R. Connor, General Counsel, Division of Housing and Community Renewal, 25 Beaver St., 7th Floor, New York, New York 10004, (212) 480-6707, email: gconnor@nyshcr.org

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

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

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

Regulatory Impact Statement

1. STATUTORY AUTHORITY:

The Emergency Housing Rent Control Law, Laws of 1946, Chap 274,

subdivision 4(a), as amended by the Laws of 1950, Chap. 250, as amended, as transferred to the Division of Housing and Community Renewal (DHCR) by the Laws of 1964, Chap. 244, provides the authority to the DHCR to amend the State Rent and Eviction Regulations (SRER) and Section 44 of Chap. 97, Part B of the Laws of 2011 further empowers DHCR to promulgate rules and regulations to implement and enforce all provisions of such law and any law renewed or continued by the Rent Law of 2011 which includes the Emergency Housing Rent Control Law (RCL).

2. LEGISLATIVE OBJECTIVES:

The RCL requires, because of a serious public emergency, the regulation of residential rents and evictions to prevent the exaction of unreasonable rents and rent increases and to forestall other disruptive practices to produce threats to public health, safety and general welfare. The RCL is further designed to assure that any transition from regulation to normal market bargaining with respect to such landlords and tenants is administered with due regard to these emergency conditions. See RCL § 8581(1). DHCR is specifically authorized to promulgate regulations by RCL § 8584(4)(a), and is further empowered by Chapter 97 of the Laws of 2011 to promulgate regulations to implement and enforce the provisions of that chapter and any law continued or renewed by that chapter which includes the RCL.

3. NEEDS AND BENEFITS:

DHCR has not engaged in an extensive amendment process with respect to these regulations since 2000. Since that time there has been litigation interpreting, not only these regulations, but the laws they implement. In addition, DHCR has had twelve years of experience in administration which informs this process as does its continuing dialogue during this period with owners, tenants, and their respective advocates.

DHCR personnel within its Office of Rent Administration (ORA) engages in close to one hundred forums and meetings on an annual basis where the administration and implementation of these laws are discussed.

In the last year this information gathering process has been enhanced through several additional actions taken by DHCR.

First, DHCR created the Tenant Protection Unit (TPU), a unit designated by the Commissioner to investigate and prosecute violations of the ETPA, the RSL and the City and State Rent Laws. TPU, itself, has met with the various stakeholders in an effort to ascertain what issues and concerns impinge on the owner and tenant community affected by these regulations.

Second, DHCR underwent the regulatory process for the promulgation of amendments expressly required by the Rent Law of 2011. That process generated significant comments on other issues relating to the rent regulations.

Third, this specific promulgation process was preceded by a mass email outreach to known stakeholders in the field to solicit even further comments and suggestions.

The needs and benefits of some of the specific modifications proposed are highlighted below.

a. Addition of TPU.

The inclusion of TPU as a specific term within the regulations, demonstrates DHCR's commitment to the TPU and proactive enforcement of the RCL.

b. Enhanced DRIE and SCRIE Protections.

Since the last code review, the State of New York adopted a Disability Rent Increase Exemption (DRIE) for eligible low income disabled tenants similar to the existing Senior Citizen Rent Increase Exemption (SCRIE) available to the low income elderly.

DHCR regulations, which already prohibit the implementation of electrical submetering for SCRIE recipients, will be extended to disabled tenants receiving DRIE.

DHCR also is amending its regulations to exempt both SCRIE and DRIE tenants from the high income/high rent deregulation procedures set forth in the RCL. As those tenancies have already been vetted through other government programs to have income far below that required for deregulation, the procedure, if invoked by the owners, cannot obtain any meaningful result. It simply creates unneeded stress on these vulnerable populations. Even worse, it may result in the inappropriate loss of apartments through these senior or disabled tenants failing to adequately respond to mechanically generated notices as part of the process.

c. Harassment Definition.

This regulation expands the definition of "harassment" to reflect some of the more up-to-date schemes to deprive tenants of their legitimate rights as rent stabilized tenants. Not every harassing act is designed to create a vacancy, but can include intimidating the tenant in place, to preclude the legitimate exercise of such rights. These actions can include false and illegitimate filings before DHCR.

4. COSTS:

The regulated parties are tenants and owners of rent controlled housing accommodations. The amended regulations do not impose any new program, service, duty or responsibility upon any state agency or

instrumentality thereof, local government or business, and therefore impose no costs on those entities which are not already required through the enactment of the CRRL generally or through these amended provisions referenced above. For the owners of regulated housing accommodations, who may need to be initially more vigilant to assure their compliance with these new statutory requirements, costs should be relatively minimal. In fact, compliance costs are already a generally-accepted expense of owning regulated housing. Similarly, tenants will not incur any additional costs through implementation of the proposed regulations.

5. LOCAL GOVERNMENT MANDATES:

The proposed rule making will not impose any new program, service, duty or responsibility upon any level of local government.

6. PAPERWORK:

The amendments will not increase the paperwork burden on either regulated parties or the agency. Any particularized specific claims that a changed regulation may create hardship or inequity can and will be best handled in the context of the administrative applications, themselves, where such factual claims can be assessed.

7. DUPLICATION:

The amendments do not add any provisions that duplicate any known State or Federal requirements except to the extent required by law. There are instances where a rent controlled property participates in another State, city or federal housing program. In those instances there may be a need to comply with the State Rent and Eviction Regulation as well as the mandates of that city, State or Federal program.

8. ALTERNATIVES:

DHCR considered a variety of alternatives to many of these new rules. As set forth in part in the Needs and Benefits section, the alternatives of continuing the rule presently in place for all of these changes was considered and rejected.

9. FEDERAL STANDARDS:

The proposed amendments do not exceed any known minimum Federal standards.

10. COMPLIANCE SCHEDULE:

It is not anticipated that regulated parties will require any significant additional time to comply with the proposed rules.

Regulatory Flexibility Analysis

1. EFFECT OF RULE:

The State Rent and Eviction Regulations (SRER) apply only to housing units located in those communities outside New York City that are subject to the Emergency Housing Rent Control Law. The small businesses that would be affected by these proposed amendments are the owners of small numbers of regulated housing units, at least one of which is rent controlled.

2. COMPLIANCE REQUIREMENTS:

The proposed amendments would not require small businesses that own regulated residential housing units to perform additional recordkeeping or reporting. Such businesses will continue to need to keep records of rent increases and improvements made to the properties in order to qualify for rent increases authorized under the proposed changes.

3. PROFESSIONAL SERVICES:

The proposed amendments will not require small businesses to obtain any new or additional professional services.

4. COMPLIANCE COSTS:

There is no indication that the proposed amendments will impose any significant, initial costs upon small businesses. There are no additional direct costs imposed on these businesses by these amendments. Small business owners of regulated housing accommodations will need to be initially more vigilant to assure their compliance with these changes. Compliance costs are already a generally-accepted expense of owning regulated housing. DHCR has made a significant effort to assure a safe harbor or alternatives from the more dire consequences for owners who are operating in good faith and in substantial compliance.

The amended regulations do not impose any new program, service, duty or responsibility upon any state agency or instrumentality thereof, or local government.

5. ECONOMIC AND TECHNOLOGICAL FEASIBILITY:

Compliance is not anticipated to require any unusual, new or burdensome technological applications but ultimately encourages the use of "online" filings and use of DHCR forms, which are increasingly online, which will actually reduce costs.

6. MINIMIZING ADVERSE IMPACT:

The proposed regulations have no adverse impact on local government. They will have comparatively minimal costs to businesses considering that these changes are necessary to enforce a statute designed to protect the public health safety and welfare. The regulations being implemented do not create different regulatory standards for small businesses. Instead, DHCR in the administrative proceedings themselves, can, where appropriate, take equitable circumstances into consideration which may include the size of the business. It is difficult, on a blanket regulatory basis, to make exceptions for small businesses. Outside of the proceedings

themselves, it is difficult to ascertain the size of the business subject to these regulations as a single business may own multiple properties often created as single asset corporations. To the extent the approaches suggested in SAPA section 202-b are appropriate, present procedures take these into account.

7. SMALL BUSINESS AND LOCAL GOVERNMENT PARTICIPATION:

DHCR personnel within its Office of Rent Administration (ORA) engages in close to one hundred forums and meetings on an annual basis with community groups, owner and tenant advocacy organizations and local officials where the administration and implementation of these provisions was under discussion. In the last year this information gathering process has been enhanced through several additional actions taken by DHCR.

DHCR created the Tenant Protection Unit (TPU) a unit designated by the Commissioner to investigate and prosecute violations of the ETPA, the RSL and the City and State Rent Laws. TPU itself has met with the various stakeholders in an effort to ascertain what issues and concerns impinge on the owner and tenant community affected by these regulations.

Further, DHCR held a public hearing on the implementation of regulations to conform to the changes in the rent laws enacted by the 2011 Law at which many of these provisions were raised by commenters as suggested changes and ORA subsequently sent outreach letters to stakeholders, specifically including small businesses and their advocates, seeking comments and suggestions on changes to the regulations.

Rural Area Flexibility Analysis

The proposed rules are not anticipated to impose any reporting, record-keeping, or other compliance requirements on public or private entities located in any rural area pursuant to Subdivision 10 of SAPA Section 102.

Job Impact Statement

It is apparent from the text of the rules, required by statutory amendment, that there will be no adverse impact on jobs and employment opportunities by the promulgation of these regulations.

Public Service Commission

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Provision of Historical Utility Pricing Information for Comparison Purposes for Residential ESCO Customers

I.D. No. PSC-17-13-00008-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 recommendations on the provision of historical utility billing information for residential energy services company (ESCO) customers for comparison on monthly bills and other outreach venues to payment troubled customers.

Statutory authority: Public Service Law, sections 2, 4(1), 30-53, 65 and 66

Subject: Provision of historical utility pricing information for comparison purposes for residential ESCO customers.

Purpose: Provision of historical utility pricing information for comparison purposes for residential ESCO customers.

Substance of proposed rule: The Commission is considering whether to adopt, modify, or reject, in whole or part, recommendations on the provision of historical utility billing information for residential energy services company (ESCO) customers for comparison on monthly bills and other outreach venues to payment troubled customers in the service territory of Niagara Mohawk Power Corporation d/b/a National Grid (the Company).

In its March 15, 2013 Order in this proceeding, the Commission approved the development and implementation of a web-based bill calculator to enable ESCO customers to compare their actual billings to what they would have been billed had they been full-requirements customers of the Company through a collaborative.

The March 15, 2013 Order also directed that the collaborative consider other enhancements for the provision of historical utility billing information for ESCO customers on the presentation of similar comparisons on monthly customer bills and outreach venues to payment troubled customers.

The collaborative will report its recommendations to the Commission within 90 days of the issuance of the Commission Order.

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

Data, views or arguments may be submitted to: Jeffrey C. Cohen, Acting Secretary, Public Service Commission, 3 Empire State Plaza, Albany, New York 12223-1350, (518) 408-1978, email: secretary@dps.ny.gov

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

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

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

(12-E-0201SP2)

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

New York City Clean Heat Area Growth Program

I.D. No. PSC-17-13-00009-P

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

Proposed Action: The Commission is considering whether to grant, modify or deny a tariff filing by Consolidated Edison Company of New York, Inc. proposing revisions to its gas tariff schedule to establish a New York City Clean Heat Area Growth Program.

Statutory authority: Public Service Law, sections 65 and 66(12)

Subject: New York City Clean Heat Area Growth Program.

Purpose: To grant, modify or deny a petition to establish a New York City Clean Heat Area Growth Program.

Substance of proposed rule: The Public Service Commission is considering whether to approve, modify or reject, in whole or in part, a tariff filing by Consolidated Edison Company of New York, Inc. (Con Edison) to establish a New York City Clean Heat Area Growth Program. The tariff modification is to facilitate customer participation in the New York City Clean Heat Program on a cost-effective basis for new and existing gas customers. Con Edison may establish one or more temporary "Area Growth Zones" under an Area Growth Program within its New York City gas service territory, in conjunction with the New York City Clean Heat Program, which requires the phasing out of the use of No. 6 and No. 4 fuel oils for heating by 2015 and 2030, respectively. Under the Area Growth Program, main extension and service line charges for gas service in an Area Growth Zone may be waived for oil-to-gas heat conversion applicants if certain conditions are met. The amendments have an effective date of July 1, 2013. The Commission may apply its decision here to other utilities.

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

Data, views or arguments may be submitted to: Jeffrey C. Cohen, Acting Secretary, Public Service Commission, 3 Empire State Plaza, Albany, New York 12223-1350, (518) 408-1978, email: secretary@dps.ny.gov

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

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

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

(13-G-0156SP1)

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

Provision of Historical Pricing Information for Comparison Purposes for Residential ESCO Customers

I.D. No. PSC-17-13-00010-P

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

Proposed Action: The Commission is considering recommendations on the provision of historical utility billing information for residential energy services company (ESCO) customers for comparison on monthly bills and other outreach venues to payment troubled customers.

Statutory authority: Public Service Law, sections 2, 4(1), 30-53, 65 and 66

Subject: Provision of historical pricing information for comparison purposes for residential ESCO customers.

Purpose: Provision of historical pricing information for comparison purposes for residential ESCO customers.

Substance of proposed rule: The Commission is considering whether to adopt, modify, or reject, in whole or in part, recommendations on the provision of historical utility billing information for residential energy services company (ESCO) customers for comparison on monthly bills and other outreach venues to payment troubled customers in the service territory of Niagara Mohawk Power Corporation d/b/a National Grid (the Company).

In its March 15, 2013 Order in this proceeding, the Commission approved the development and implementation of a web-based bill calculator to enable ESCO customers to compare their actual billings to what they would have been billed had they been full-requirements customers of the Company through a collaborative.

The March 15, 2013 Order also directed that the collaborative consider other enhancements for the provision of historical utility billing information for ESCO customers on the presentation of similar comparisons on monthly customer bills and outreach venues to payment troubled customers.

The collaborative will report its recommendations to the Commission within 90 days of the issuance of the Commission Order.

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

Data, views or arguments may be submitted to: Jeffrey C. Cohen, Acting Secretary, Public Service Commission, 3 Empire State Plaza, Albany, New York 12223-1350, (518) 408-1978, email: secretary@dps.ny.gov

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

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

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

(12-G-0202SP2)

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

Emergency Response Plans Filed 4/1/13 by Consolidated Edison Company of New York, Inc.

I.D. No. PSC-17-13-00012-P

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

Proposed Action: The Commission is considering whether to approve, reject, or amend, in whole or in part, the 2013 Emergency Response Plan (ERP), Overhead, and Underground (Heat & Winter Related) ERPs filed 4/1/13 by Consolidated Edison Company of New York, Inc.

Statutory authority: Public Service Law, sections 5 and 66(21)

Subject: Emergency Response Plans filed 4/1/13 by Consolidated Edison Company of New York, Inc.

Purpose: To consider Emergency Response Plans filed 4/1/13 by Consolidated Edison Company of New York, Inc.

Substance of proposed rule: The Commission is considering whether to approve, reject, or amend, in whole or in part, the 2013 Emergency Response Plan (ERP), Overhead, and Underground (Heat & Winter Related) ERPs filed April 1, 2013 by Consolidated Edison Company of New York, Inc. The Plans are titled, 2013 Emergency Response Plan, Overhead Emergency Response Procedure, Underground Contingency Heat Event Response Procedure, and Winter Related Underground Contingency Procedure. In accordance with Public Service Law (PSL) § 66(21), the Commission is required to review and approve electric emergency response plans, which are required to be submitted annually by electric utilities. At the conclusion of the comment period, the Commission will possibly modify and approve each utility's emergency response plan, and order the utility to conform with that plan during emergencies.

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

Data, views or arguments may be submitted to: Jeffrey C. Cohen, Acting Secretary, Public Service Commission, 3 Empire State Plaza, Albany, New York 12223-1350, (518) 408-1978, email: secretary@dps.ny.gov

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

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

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

(13-E-0025SP2)

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

Emergency Response Plan Filed 4/1/13 by New York State Electric and Gas Corp. and Rochester Gas and Electric Corp.

I.D. No. PSC-17-13-00013-P

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

Proposed Action: The Commission is considering whether to approve, reject, or amend, in whole or in part, the 2013 Electric Emergency Response Plan filed 4/1/13 by New York State Electric and Gas Corp. and Rochester Gas and Electric Corp. for review and approval.

Statutory authority: Public Service Law, sections 5 and 66(21)

Subject: Emergency response plan filed 4/1/13 by New York State Electric and Gas Corp. and Rochester Gas and Electric Corp.

Purpose: To consider emergency response plan filed 4/1/13 by New York State Electric and Gas Corp. and Rochester Gas and Electric Corp.

Substance of proposed rule: The Commission is considering whether to approve, reject, or amend, in whole or in part, the 2013 Electric Emergency Response Plan filed April 1, 2013 by New York State Electric and Gas Corp. and Rochester Gas and Electric Corp. for review and approval. The Plan is titled, NYSEG/RG&E 2013 Electric Utility Emergency Plan. In accordance with Public Service Law (PSL) § 66(21), the Commission is required to review and approve electric emergency response plans, which are required to be submitted annually by electric utilities. At the conclusion of the comment period, the Commission will possibly modify and approve each utility's emergency response plan, and order the utility to conform with that plan during emergencies.

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

Data, views or arguments may be submitted to: Jeffrey C. Cohen, Acting Secretary, Public Service Commission, 3 Empire State Plaza, Albany, New York 12223-1350, (518) 408-1978, email: secretary@dps.ny.gov

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

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

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

(09-E-0715SP4)

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

Emergency Response Plan Filed 4/2/13 by Orange and Rockland Utilities, Inc.

I.D. No. PSC-17-13-00014-P

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

Proposed Action: The Commission is considering whether to approve, reject, or amend, in whole or in part, the 2013 Electric Emergency Response Plan filed 4/2/13 by Orange and Rockland Utilities, Inc. for review and approval.

Statutory authority: Public Service Law, sections 5 and 66(21)

Subject: Emergency Response Plan filed 4/2/13 by Orange and Rockland Utilities, Inc.

Purpose: To consider Emergency Response Plan filed 4/2/13 by Orange and Rockland Utilities, Inc.

Substance of proposed rule: The Commission is considering whether to approve, reject, or amend, in whole or in part, the 2013 Electric Emergency Response Plan filed April 2, 2013 by Orange and Rockland Utilities, Inc. for review and approval. The Plan is titled, Electric Emergency Response Plan 2013. In accordance with Public Service Law (PSL) § 66(21), the Commission is required to review and approve electric emergency response plans, which are required to be submitted annually by electric utilities. At the conclusion of the comment period, the Commission will possibly modify and approve each utility's emergency response plan, and order the utility to conform with that plan during emergencies.

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

Data, views or arguments may be submitted to: Jeffrey C. Cohen, Acting Secretary, Public Service Commission, 3 Empire State Plaza, Albany, New York 12223-1350, (518) 408-1978, email: secretary@dps.ny.gov

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

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

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

(13-E-0025SP3)

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

Emergency Response Plan Filed 4/1/13 by Consolidated Edison Company of New York, Inc.

I.D. No. PSC-17-13-00015-P

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

Proposed Action: The Commission is considering whether to approve, reject, or amend, in whole or in part, the 2013 Corporate Coastal Electric Emergency Response Plan filed 4/1/13 by Consolidated Edison Company of New York, Inc. for review and approval.

Statutory authority: Public Service Law, sections 5 and 66(21)

Subject: Emergency Response Plan filed 4/1/13 by Consolidated Edison Company of New York, Inc.

Purpose: To consider Emergency Response Plan filed 4/1/13 by Consolidated Edison Company of New York, Inc.

Substance of proposed rule: The Commission is considering whether to approve, reject, or amend, in whole or in part, the 2013 Corporate Coastal Electric Emergency Response Plan filed April 1, 2013 by Consolidated Edison Company of New York, Inc. for review and approval. The Plan is titled, Corporate Coastal Storm Plan. In accordance with Public Service Law (PSL) § 66(21), the Commission is required to review and approve

electric emergency response plans, which are required to be submitted annually by electric utilities. At the conclusion of the comment period, the Commission will possibly modify and approve each utility's emergency response plan, and order the utility to conform with that plan during emergencies.

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

Data, views or arguments may be submitted to: Jeffrey C. Cohen, Acting Secretary, Public Service Commission, 3 Empire State Plaza, Albany, New York 12223-1350, (518) 408-1978, email: secretary@dps.ny.gov

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

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

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

(13-E-0025SP1)

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

Emergency Response Plan Filed 3/28/13 by Central Hudson Gas & Electric Corp.

I.D. No. PSC-17-13-00016-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 whether to approve, reject, or amend, in whole or in part, the 2013 Electric Emergency Response Plan filed 3/28/13 by Central Hudson Gas & Electric Corp. for review and approval.

Statutory authority: Public Service Law, sections 5 and 66(21)

Subject: Emergency response plan filed 3/28/13 by Central Hudson Gas & Electric Corp.

Purpose: To consider emergency response plan filed 3/28/13 by Central Hudson Gas & Electric Corp.

Substance of proposed rule: The Commission is considering whether to approve, reject, or amend, in whole or in part, the 2013 Electric Emergency Response Plan filed March 28, 2013 by Central Hudson Gas & Electric Corp. for review and approval. The Plan is titled, Central Hudson Gas & Electric Electric Emergency Plan. In accordance with Public Service Law (PSL) § 66(21), the Commission is required to review and approve electric emergency response plans, which are required to be submitted annually by electric utilities. At the conclusion of the comment period, the Commission will possibly modify and approve each utility's emergency response plan, and order the utility to conform with that plan during emergencies.

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

Data, views or arguments may be submitted to: Jeffrey C. Cohen, Acting Secretary, Public Service Commission, 3 Empire State Plaza, Albany, New York 12223-1350, (518) 408-1978, email: secretary@dps.ny.gov

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

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

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

(13-E-0148SP1)

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

Emergency Response Plan Filed 4/2/13 by Orange and Rockland Utilities, Inc.

I.D. No. PSC-17-13-00017-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 whether to approve, reject, or amend, in whole or in part, the 2013 Corporate Coastal Electric Emergency Response Plan filed 4/2/13 by Orange and Rockland Utilities, Inc. for review and approval.

Statutory authority: Public Service Law, sections 5 and 66(21)

Subject: Emergency Response Plan filed 4/2/13 by Orange and Rockland Utilities, Inc.

Purpose: To consider Emergency Response Plan filed 4/2/13 by Orange and Rockland Utilities, Inc.

Substance of proposed rule: The Commission is considering whether to approve, reject, or amend, in whole or in part, the 2013 Corporate Coastal Electric Emergency Response Plan filed April 2, 2013 by Orange and Rockland Utilities, Inc. for review and approval. The Plan is titled, Corporate Coastal Storm Plan 2013. In accordance with Public Service Law (PSL) § 66(21), the Commission is required to review and approve electric emergency response plans, which are required to be submitted annually by electric utilities. At the conclusion of the comment period, the Commission will possibly modify and approve each utility's emergency response plan, and order the utility to conform with that plan during emergencies.

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

Data, views or arguments may be submitted to: Jeffrey C. Cohen, Acting Secretary, Public Service Commission, 3 Empire State Plaza, Albany, New York 12223-1350, (518) 408-1978, email: secretary@dps.ny.gov

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

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

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

(13-E-0025SP4)

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

Waiver of 16 NYCRR Sections 894.1 Through 894.4(b)(2)

I.D. No. PSC-17-13-00018-P

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

Proposed Action: The Public Service Commission is considering to approve, modify or reject a Petition from the Town of Stark to waive 16 NYCRR sections 894.1 through 894.4 pertaining to the franchising process for the Town of Stark, New York.

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

Subject: Waiver of 16 NYCRR Sections 894.1 through 894.4(b)(2).

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

Substance of proposed rule: The Public Service Commission is considering whether to approve, modify, or reject the Petition of the Town of Stark to waive 16 NYCRR, Sections 894.1, 894.2, 894.3, and 894.4 regarding franchising procedures for the Town of Stark, Herkimer County, New York.

Text of proposed rule and any required statements and analyses may be obtained by filing a Document Request Form (F-96) located on our website <http://www.dps.ny.gov/f96dir.htm>. For questions, contact: Deborah Swatling, Public Service Commission, 3 Empire State Plaza,

Albany, New York 12223-1350, (518) 486-2659, email: Deborah.Swatling@dps.ny.gov

Data, views or arguments may be submitted to: Jeffrey C. Cohen, Acting Secretary, Public Service Commission, 3 Empire State Plaza, Albany, New York 12223-1350, (518) 408-1978, email: secretary@dps.ny.gov

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

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

Statements and analyses are not submitted with this notice because the proposed rule is within the definition contained in section 102(2)(a)(ii) of the State Administrative Procedure Act. (13-V-0158SP1)

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

Emergency Response Plan Filed 3/29/13 by Niagara Mohawk Power Corporation

I.D. No. PSC-17-13-00019-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 whether to approve, reject, or amend, in whole or in part, the 2013 Electric Emergency Response Plan filed 3/29/13 by Niagara Mohawk Power Corporation for review and approval.

Statutory authority: Public Service Law, sections 5 and 66(21)

Subject: Emergency response plan filed 3/29/13 by Niagara Mohawk Power Corporation.

Purpose: To consider emergency response plan filed 3/29/13 by Niagara Mohawk Power Corporation.

Substance of proposed rule: The Commission is considering whether to approve, reject, or amend, in whole or in part, the 2013 Electric Emergency Response Plan filed March 29, 2013 by Niagara Mohawk Power Corporation for review and approval. The Plan is titled, New York Electric Emergency Procedures Manual. In accordance with Public Service Law (PSL) § 66(21), the Commission is required to review and approve electric emergency response plans, which are required to be submitted annually by electric utilities. At the conclusion of the comment period, the Commission will possibly modify and approve each utility’s emergency response plan, and order the utility to conform with that plan during emergencies.

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

Data, views or arguments may be submitted to: Jeffrey C. Cohen, Acting Secretary, Public Service Commission, 3 Empire State Plaza, Albany, New York 12223-1350, (518) 408-1978, email: secretary@dps.ny.gov

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

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

Statements and analyses are not submitted with this notice because the proposed rule is within the definition contained in section 102(2)(a)(ii) of the State Administrative Procedure Act. (13-E-0148SP2)

Department of State

NOTICE OF ADOPTION

Address Confidentiality Program

I.D. No. DOS-07-13-00002-A

Filing No. 390

Filing Date: 2013-04-09

Effective Date: 2013-04-24

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

Action taken: Addition of Part 134 to Title 19 of NYCRR.

Statutory authority: Executive Law, sections 91 and 108

Subject: Address Confidentiality Program.

Purpose: To implement the Address Confidentiality Program pursuant to Executive Law, section 108.

Substance of final rule: The new 19 NYCRR part 134 sets forth the practices and procedures of the Secretary of State relative to Executive Law section 108, Address Confidentiality Program (“ACP”). The regulations will implement the ACP statute by defining key terms and establishing rules for applications, cancellation appeals, certification and training of application assistants, handling of confidential information and waiver requests by state and local agencies, agency release of participant information, and acceptance of service of process by the Secretary of State.

Final rule as compared with last published rule: Nonsubstantive changes were made in sections 134.7(c) and 134.9(a).

Text of rule and any required statements and analyses may be obtained from: Gary M. Trechel, Department of State, One Commerce Plaza, Albany, NY 12231, (518) 473-2278, email: Gary.Trechel@dos.ny.gov

Revised Regulatory Impact Statement

A Revised Regulatory Impact Statement is not required with this rulemaking notice because the two minor changes made to the proposed rule are non-substantive changes that merely clarify procedures previously proposed in the text of the proposed rulemaking for this rule. As such, these changes do not necessitate revision to the previously published Regulatory Impact Statement.

Revised Regulatory Flexibility Analysis

A Revised Regulatory Flexibility Analysis for Small Businesses and Local Governments is not required with this rulemaking notice because changes made to the proposed rule will neither impose any adverse economic impact on small businesses nor impose new reporting, record keeping or other compliance requirements on small businesses or local governments.

Revised Rural Area Flexibility Analysis

A Revised Rural Area Flexibility Analysis is not required with this rulemaking notice because changes made to the proposed rule will neither impose any adverse economic impact on rural areas nor impose new reporting, record keeping or other compliance requirements on public or private entities in rural areas.

Revised Job Impact Statement

A Revised Job Impact Statement is not required with this rulemaking notice; it is evident from the subject matter of the rule, including changes made to the proposed rule, that it will have no impact on jobs and employment opportunities.

Initial Review of Rule

As a rule that requires a RFA, RAFA or JIS, this rule will be initially reviewed in the calendar year 2016, which is no later than the 3rd year after the year in which this rule is being adopted.

Assessment of Public Comment

Since publication of the Notice of Proposed Rule Making in the February 13, 2013 issue of the State Register, the Department of State received comments. The following is a summary of these comments and this Department’s responses.

1. COMMENT

One comment requested that the Proposed Rule be revised to define “public record” in order to exempt records that are otherwise confidential. The commenter noted that without an exemption state agencies will need to apply to the Department of State for waivers in order to collect and disclose the confidential address information of participants in the Address Confidentiality Program.

RESPONSE

The Department determined that Executive Law Section 108 includes a definition of “public record” and that legislative action would be required to revise the definition in order to exempt records which are otherwise confidential.

2. COMMENT

One comment requested that the Proposed Rule be revised to permit disclosure of a program participant’s actual address without a waiver when an agency needs to respond to audit or review requests from federal oversight agencies.

RESPONSE

The Department determined the requested change would be in conflict with Executive Law Section 108 which permits the Department to issue waivers to agencies and which provides restrictions on the disclosure of actual address by agencies granted waivers.

3. COMMENT

One comment indicates that the provisions 19 NYCRR 134.7(c), which permit the Department to verify a program participant's participation in the Address Confidentiality Program are at variance with 19 NYCRR 134.13(c). 19 NYCRR 134.7(c) permits agency personnel to contact the Department to verify a participant's participation in the Program. Program participant approval is not required for agency verification. 19 NYCRR 134.13(c) permits DOS to verify a participant's participation in the Address Confidentiality Program to anyone upon written request of the participant.

RESPONSE

The Department revised 19 NYCRR 134.7(c) to clarify that the Department may provide verification to agencies of a program participant's participation in the Address Confidentiality Program without the written request of the participant.

4. COMMENT

One comment noted that the provisions of 19 NYCRR 134.7(e), which provide that agencies will not question participants about their inclusion in the Address Confidentiality Program and will accept the Department's determination that a participant qualifies program participant, would not limit an agency's authority to conduct investigations to determine eligibility for services.

RESPONSE

The Department determined that the provisions of 19 NYCRR 134.7(e) would not limit an agency's authority to conduct investigations to determine eligibility for services and that the provision did not need to be revised.

5. COMMENT

One comment suggested that the provisions of 19 NYCRR 134.8 should be revised to authorize waiver applications across multiple agency programs. The comment indicated that separate waiver applications for different agency programs would be "unduly burdensome."

RESPONSE

The Department determined that requiring separate waiver applications for different agency programs will enhance agency confidentiality procedures.

6. COMMENT

One comment requested that the provisions of 19 NYCRR 134.8 be revised to permit waiver applications on behalf of "State-supervised entities."

RESPONSE

The Department determined that Executive Law Section 108 permits the Department to grant waivers for state and local agencies only. Any agency requesting a waiver must be required to submit its own waiver application to the Department to ensure the confidentiality of address records.

7. COMMENT

One comment indicated that the provisions of 19 NYCRR 134.8(a)(1)(vii), which require waiver applications to include the names of individuals who will have access to the actual address, should be revised to require only the "offices, units or job titles in the requesting agency that would have access to the record."

RESPONSE

The Department determined that the provisions of 19 NYCRR 134.8(a)(1)(vii), which require agency waiver applications to identify the individuals that will have access to actual address information, will enhance confidentiality procedures and should not be revised as requested.

8. COMMENT

One comment requested that the provisions of 19 NYCRR 134.8(a)(3) be revised to permit designees of the agency heads to sign a certification regarding the confidentiality of address information.

COMMENT

The Department determined that Public Officers Law Section 9 currently authorizes heads of agencies to appoint a designee to sign certifications required by 19 NYCRR 134.8(a)(3) and, thus, no revision is necessary.

9. COMMENT

One Comment requested that the provisions of 19 NYCRR 134.8(b) be revised to add a "Grant with Modification" option to the waiver review process.

RESPONSE

The Department determined that the provisions of 19 NYCRR 134.8(b) provides agencies with a procedure to request reconsideration of the waiver application and to provide additional information if the waiver application is denied. The Department determined that this requested revision to the provisions of 19 NYCRR 134.8(b) was not necessary.

10. COMMENT

One comment indicated that the provisions of 19 NYCRR 134.8(c)(3), which permit waivers granted by the Department to specify the "record format in which address information may be maintained," may be problematic and may be considered an unfunded mandate.

RESPONSE

The Department determined that the provisions of 19 NYCRR 134.8(c)(3) are necessary to permit the Department to require that actual address information be maintained in a confidential manner. The Department determined that this provision would not result in additional costs for agencies.

11. COMMENT

One comment requested that the provisions of 19 NYCRR 134.8(4) be revised to provide an expedited waiver renewal process for agencies that have been granted waivers.

RESPONSE

The Department determined that an expedited waiver renewal procedure for agencies previously granted waivers is not necessary. Agencies will need to review and update, if necessary, their original waiver application.

12. COMMENT

One comment regarding the provisions of 19 NYCRR 134.9 (c)-(d) which requires notices of cancellation to be sent to the program participant's last known address may not be received by the participant if the participant has moved.

RESPONSE

The Department notes that Executive Law Section 108 requires the Department to "send" notice of cancellation to the program participant. The Department determined sending the notice of cancellation to the last known address would be the best method of sending the notice. If the participant moves and wants to remain in the Address Confidentiality Program, the participant is required to provide the program with a new address.

Workers' Compensation Board

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Electronic Reporting of First Reports of Injury and Subsequent Reports of Injury

I.D. No. WCB-17-13-00002-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 300.22 and addition of new section 300.22; and amendment of sections 300.23 and 300.38 of Title 12 NYCRR.

Statutory authority: Workers' Compensation Law, sections 117, 141, 25 and 110

Subject: Electronic Reporting of First Reports of Injury and Subsequent Reports of Injury.

Purpose: To require electronic reporting of first reports of injury and subsequent reports of injury.

Substance of proposed rule (Full text is posted at the following State website: www.wcb.ny.gov): The proposed regulation repeals Section 300.22 and adds a new 300.22.

Subdivision (a) of Section 300.22 adds definitions of "disability event," "Electronic Trading Partner Agreement," "filed electronically," "Special Fund" and "Third Party Administrator."

Subdivision (b) of Section 300.22 sets forth the process and requirements for mandatory first reports of injury, including medical only cases, notices of controversy and when a carrier acquires responsibility for a claim from another carrier. The subdivision also sets forth the requirements for filing an employer's first report of injury required by Workers' Compensation Law Section 110.

Subdivision (c) of Section 300.22 sets forth the process and requirements for filing mandatory subsequent reports of injury and initial actions including notice of initial controversy, notice that compensation is not controverted and payment has begun, and notice that compensation is not controverted but payment has not begun.

Subdivision (d) of Section 300.22 sets forth the rules for filing a notice of controversy following a notice of indexing as a subsequent report of injury.

Subdivision (e) of Section 300.22 sets forth the notices and rules required when an insurance carrier makes payments pursuant to Workers' Compensation Law Section 21-a because it is unsure of the extent of its liability for a claim for workers' compensation.

Subdivision (f) of Section 300.22 sets forth the rules and process for reporting subsequent reports of injury following certain payments, the

reporting of periodic summary of payments, and when to report other types of benefits including penalties paid to the claimant.

Subdivision (g) of Section 300.22 sets forth that the regulation shall be effective on April 20, 2014 and every carrier must complete an Electronic Trading Partner Agreement prior to the effective date.

Subdivision (h) of Section 300.22 states that the date of transmittal shall be the date a notice is actually mailed or transmitted.

Section 300.23 is amended throughout to provide that modification or suspension of claimant's workers' compensation benefits shall be by electronic notice that conforms to the requirements set forth in Section 300.22 and that evidence in support of the modification or suspension shall be mailed or submitted to the Board on the same day.

Subdivision (f) of Section 300.23 is added to state that the date of transmittal shall be the date a notice is actually mailed or transmitted.

Subdivision (a) of Section 300.38 is amended to add that any notice of controversy must be submitted as a first report of injury or subsequent report of injury and transmitted to all other parties within one business day of the date it is filed electronically with the Board.

Subparagraph (2) of subdivision (a) of Section 300.38 is amended to state that the written certification required to be submitted by the carrier with a notice of controversy may be completed at the pre-hearing conference.

Subdivision (d) of Section 300.38 is amended to change "files a form to controvert" to "submits a notice of controversy."

Subparagraph (2)(i) of subdivision (g) of Section 300.38 is amended to add "and notices" and change "filed with" to "submitted to."

Text of proposed rule and any required statements and analyses may be obtained from: Heather MacMaster, Workers' Compensation Board, 328 State Street, Office of General Counsel, Schenectady, NY 12305-2318, (518) 486-9564, email: regulations@wcb.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:

The Chair of the Workers' Compensation Board (Board) is authorized to repeal and add a new 12 NYCRR 300.22 and to amend 12 NYCRR 300.23 and 300.38. Section 117(1) of the Workers' Compensation Law (WCL) authorizes the Chair to make reasonable regulations consistent with the provisions of the WCL and the Labor Law. Section 141 of the WCL also authorizes the Chair to make administrative regulations and orders. Section 25 of the WCL requires the employer or carrier to make payments or controvert the claim and file a report of its action to the Board on the form prescribed by the Chair within time frames established under that section. Section 110 also requires the employer to file a report of injury within ten days of an "accident" as that term is thereafter defined.

2. Legislative objectives:

The Board seeks to create clear procedures for carrier reporting requirements that conform to the national standard created by the International Association of Industrial Accident Boards Commission (IAIABC) and unifies the disparate standards within the Workers' Compensation Law in order to assist in the timely payment and reporting of benefits to injured workers and to permit the Chair to require such reporting to be made in electronic format.

The proposed regulatory amendments update the process for supplying evidentiary support to supplement a required notice or report (12 NYCRR 300.23) and permit certification of Notices of Controversy to take place at a hearing rather than submitted on a paper form (12 NYCRR 300.38). The proposed changes align Board processes to accommodate the rules for electronic notice and reporting established by 12 NYCRR 300.22.

3. Needs and benefits:

The proposed repeal and addition of a new 12 NYCRR 300.22 creates a uniform standard for the reporting by employers and carriers of first reports of injury and subsequent reports of injury. This regulation conforms to a national standard created by the IAIABC that uses electronic data interchange (EDI) for employer and carrier reports concerning actions taken with respect to reported work place injuries. There are over 30 states actively engaged in using the national IAIABC Claims EDI standard.

The proposed repeal and addition of a new 12 NYCRR 300.22 also synchronizes inconsistent elements within the WCL to clarify carrier and employer reporting and payment requirements following work place injuries. Section 25 of the WCL requires that employers and insurance carriers pay injured workers compensation within 18 days after "disability" or within ten days after the employer first has knowledge of an "alleged accident." Section 25 of the WCL also provides that the employer or carrier must controvert a claim for compensation within 18 days after "disability," within 10 days after knowledge of the "alleged accident" or within 25 days "from the date of mailing of the notice that the case has

been indexed." Section 25 of the Workers' Compensation Law also authorizes the Chair to adopt rules related to how pre-hearing conferences are conducted. Workers Compensation Law Section 110 (2) requires an employer to file with the Chair a report of accident within ten days after the "accident." Section 110 (2) further states that such report is required following an "accident resulting in personal injury which has caused or will cause a loss of time from regular duties of one day beyond the working day or shift on which the accident occurred, or which has required or will require medical treatment beyond ordinary first aid or more than two treatments by a person rendering first aid." Within the proposed new 300.22 of the 12 NYCRR there is a definition of a "disability event" that adopts the definition of a reportable accident contained in Section 110 of the WCL and applies it to accidents, alleged accidents, occupational diseases, alleged occupational diseases and compensable death claims. Accordingly, the proposed new 300.22 of 12 NYCRR removes ambiguity over the employer and carrier's duty to report and notify the Board of a FROI and SROI in a timely manner.

The current mechanism for carrier and employer reporting is the filing of a paper form which may be incomplete. Under the IAIABC standard such reports will be submitted electronically via EDI enabling the Board to do contemporaneous checking of each submission for completeness and accuracy. When such reports are submitted via EDI, timeliness of the reports and payments may be managed electronically and preliminary penalties for untimely payments issued automatically. Experience under the IAIABC standard indicates that this results in much greater compliance by employers and carriers in the timely reporting and payment of claims. Further, research suggests that there is a direct correlation between the timeliness of first payments to injured workers and recovery from a work place injury and ability to return to work. Employers and carriers who have used the IAIABC reporting standards find an associated reduction in costs in both management of claims and in payments for a particular injury due to speedier recovery and return to work.

4. Costs:

National carriers have already adopted the IAIABC EDI reporting standard. Accordingly, they should not have any costs associated with conforming to the new Section 300.22 and amended 300.23 and 300.38 of 12 NYCRR. The State Insurance Fund, self-insured employers, self-insured municipalities and self-insured groups may need to update their technology to permit electronic submission of FROI and SROI. The Board is developing a web portal for submission of FROI and SROI individually. Employers and carriers who do not submit large batches of FROI and SROI may use the web portal without any incurred expense and will save the expense of a paper mailing to the Board. Employers and carriers who elect to use a vendor to handle EDI FROI and SROI submissions will pay that vendor for its service. The Board anticipates that the cost for per item submission of FROI and SROI using a vendor will be measurably less than the cost of generating and mailing a paper form.

Despite these costs, there are significant anticipated savings. As noted above, carriers and employer will save the cost of mailing a paper form with the Board, and over time the benefits and savings associated with having FROI and SROI data available in EDI format should provide tremendous efficiencies in processing claims and resulting savings to all participants.

In addition, the Board will see significant cost savings by not having to process the incoming mail from carriers and employers, and pay for the scanning and indexing of each piece of mail. As previously mentioned, by receiving FROI and SROI via EDI, the Board will receive complete and accurate data elements, that may be used to more effectively manage individual claims, ensure timely payment of benefits, including imposition of penalties when appropriate. The Board will also have access to EDI for FROI and SROI on a macro-scale that will assist in the comprehensive functioning of the workers' compensation system through analysis of return to work times, costs, and notice and response times. Based on the experience of other states, it is anticipated that these changes will result in cost-savings throughout the workers' compensation system.

5. Local government mandates:

Approximately 2,500 political subdivisions currently participate as municipal employers in self-insured programs for workers' compensation coverage in New York State. These self-insured municipal employers will be affected by the proposed rule in the same manner as all other employers who are self-insured for workers' compensation coverage.

6. Paperwork:

This proposed new rule and amendments mandate the electronic submission to the Board of FROI and SROI. These types of reports and notices have generally been supplied as a paper form in the past. Accordingly, this rule will not generate any new paperwork.

7. Duplication:

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

8. Alternatives:

One alternative discussed was to take no action. However, in order to adopt the IAIABC standard for FROI and SROI requires amendment of these regulations. As the IAIABC standard has proven so effective on a national level the Board did not consider not moving forward with its adoption. Accordingly, the regulations required amendment. Given the extent of the changes to Section 300.22 of 12 NYCRR, it was advisable to repeal and add a new version of the regulation to synchronize the statutory requirements of reporting payment or controversy and timely notification of same. It is believed that these changes will simplify the process and make monitoring claims easier for all parties.

The Board has met with a numerous insurance carriers. The Board has met with more than ten self-insured employers and municipal self-insured employers. The Board has met with at least twenty-one licensed third-party administrators. The Board has also met with numerous legal organizations. These meetings with external stake holders are part of an ongoing effort by the Board. The Board has also conducted extensive outreach to additional stakeholders via email.

9. Federal standards:

There are no federal standards applicable to this proposed rule.

10. Compliance schedule:

The Board has developed an extensive plan to assist carriers and employers with compliance on or before the effective date of April 20, 2014.

Regulatory Flexibility Analysis

1. Effect of rule:

Approximately 2500 political subdivisions currently participate as municipal employers in self-insured programs for workers' compensation coverage in New York State. These self-insured local governments will be required to comply with the new 300.22 and amended 300.23 and 300.38. Any businesses that are self-insured will also be required to comply with the new 300.22 and amended 300.23 and 300.38.

The Board is developing a web portal for submission of FROI and SROI in individual claims. Employers and carriers who do not submit large batches of FROI and SROI may use the web portal without any technology upgrades (other than routine internet access) or additional incurred expense and will save the expense of a paper mailing to the Board. Self-insured municipalities or employers who elect to use a vendor to handle EDI FROI and SROI submissions will pay that vendor for its service. The Board expects that the cost for per item submission of FROI and SROI using a vendor will be measurably less than the cost of traditional generation and mailing of a paper form by the self-insured municipality or small business.

Despite these costs, there are significant anticipated savings. As noted above, carriers and employer will save the cost of mailing a paper form with the Board, and over time the benefits and savings associated with having FROI and SROI data available in EDI format should provide tremendous efficiencies in processing claims and resulting savings to all participants.

2. Compliance requirements:

There are no new compliance requirements associated with the proposed addition of 300.22 and amendment of 300.23 and 300.38. The changes are limited to the method for transmission of existing reporting requirements.

3. Professional services:

It is believed that no professional services will be required to comply with this rule. A self-insured municipality or small business may elect to use the services of a vendor. However use of a vendor is entirely voluntary and not required by the proposed regulation or amendments.

4. Compliance costs:

This proposal should not impose any compliance costs on local governments or small businesses. A large self-insured municipality with a high number of workers' compensation claims may wish to make technology upgrades or hire a vendor to handle its FROI and SROI submissions. However a web portal will be available for submission of individual FROI and SROI by the municipality or small business.

5. Economic and technological feasibility:

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

6. Minimizing adverse impact:

This proposed rule is designed to minimize adverse impacts for small businesses and local governments. Ultimately, the proposed regulation and amendments should provide only a benefit to small businesses and local governments by reducing the time and cost of mailing paper forms. The Board has published a detailed Implementation Schedule on its website that sets forth the compliance dates for each carrier, third-party administrator and self-insured employer to implement FROI and SROI submissions. The schedule consists of three phases beginning in June 2013 and ending March 31, 2014. Self-insured employers and municipalities

have been assigned to the latest implementation phase, unless the self-insured employer or municipality (or its third-party administrator) requested an earlier date.

7. Small business and local government participation:

The Board has met or participated in email outreach with more than 17 self-insured employers and municipal self-insured employers. The Board has met with at least twenty-one licensed third-party administrators who represent self-insured employers and self-insured municipalities. Meetings and outreach are ongoing.

Rural Area Flexibility Analysis

1. Types and estimated numbers of rural areas:

This rule applies to all carriers and employers in every area of the state.

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

There are no new reporting, recordkeeping or compliance requirements associated with the proposed addition of 300.22 and amendment of 300.23 and 300.38. The changes are limited to the method for transmission of existing reporting requirements.

3. Costs:

This proposal will not impose any compliance costs on rural areas.

4. Minimizing adverse impact:

This rule is designed to minimize adverse impact for all businesses and local government regardless of geographic location. There is no difference between the impact on rural areas and other more densely populated areas of the state. It is anticipated that the creation of set fees and requirements for prompt payment will increase the pool of available impartial specialists. This may improve access to these practitioners in rural areas. In addition, the proposed rule provides for a review of records by an impartial specialist when a physical examination of the claimant is unnecessary or presents difficulties.

5. Rural area participation:

The Board sought input from the New York State Association of Self-Insured Counties, which did not have any comments on the proposed regulation.

Job Impact Statement

The proposed rule will not have an adverse impact on jobs. This rule is intended to streamline the process for notice and reporting by insurance carriers and self-insured employers. The requirements to provide the notices and reports already exist under the Workers' Compensation Law.