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 Audit and Control

NOTICE OF ADOPTION

Accounting, Reporting and Supervision Requirements of Public Authorities and Other Public Corporations

I.D. No. AAC-25-13-00007-A
Filing No. 815
Filing Date: 2013-08-06
Effective Date: 2013-08-21

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

Action taken: Amendment of section 201.1 of Title 2 NYCRR.

Statutory authority: Constitution art. X, section 5; and State Finance Law, section 8(14)

Subject: Accounting, reporting and supervision requirements of public authorities and other public corporations.

Purpose: To clarify the scope of accounting, reporting and supervision requirements of public authorities and other public corporations.

Text or summary was published in the June 19, 2013 issue of the Register, I.D. No. AAC-25-13-00007-P.

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

Text of rule and any required statements and analyses may be obtained from: Jamie Elacqua, Office of the State Comptroller, 110 State Street, Albany, NY 12236, (518) 473-4146, email: jelacqua@osc.state.ny.us

Assessment of Public Comment
The agency received no public comment.

Department of Financial Services

EMERGENCY RULE MAKING

Unclaimed Life Insurance Benefits and Policy Identification

I.D. No. DFS-34-13-00003-E
Filing No. 792
Filing Date: 2013-08-02
Effective Date: 2013-08-02

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

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

Statutory authority: Financial Services Law, sections 202 and 302; and Insurance Law, sections 301, 316, 1102, 1104, 2601, 3240 (Unclaimed benefits), 4521, 4525 and art. 24

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

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

On July 5, 2011, the Department issued a letter to insurers, pursuant to New York Insurance Law section 308 ("308 Letter"), that required every insurer to submit a report that included a narrative summary of the SSA's Death Master File ("SSA Master File") cross-check procedures implemented by the insurer; the overall results of the SSA Master File cross-check; the current procedures utilized by the insurer to locate beneficiaries, and a seriatim listing of death benefits paid as a result of the SSA Master File cross-check. To date, over $812 million has been paid to beneficiaries nationwide, including more than $241 million paid to New York beneficiaries. The 308 Letter required a one-time cross-check of the SSA Master File. This rule requires insurers to continue to perform regular SSA Master File cross-checks and to request more detailed beneficiary information (e.g., social security number, address) when policies are issued to facilitate locating and making payments to beneficiaries.

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

To ensure that policyowners and policy beneficiaries are provided with all such benefits, this Part requires insurers to implement reasonable procedures to identify unclaimed death benefits, locate beneficiaries, and

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

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

Subject: Unclaimed Life Insurance Benefits and Policy Identification.

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

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

Section 226.0 Purpose

(a) Beginning in 2011, the Department conducted an investigation into how life insurance companies and fraternal benefit societies track life insurance policyholders. The Department's investigation found that many insurers had been regularly using lists of recent deaths from the social security administration to promptly cease making annuity payments. However, most insurers had not been using the lists to determine whether death benefits were payable to beneficiaries.

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

(c) To ensure that policyowners and policy beneficiaries are provided with all of the benefits for which they have paid and to which they are entitled, this Part was promulgated on an emergency basis. Subsequently, the Legislature enacted Insurance Law section 3212-a, which was renumbered as section 3240, to address the issues that the Department had observed.

(d) This Part requires insurers to implement reasonable procedures to identify unclaimed death benefits, locate beneficiaries, and make prompt payments. In addition, to further ensure payment of unclaimed benefits, this Part requires insurers to respond to requests from the superintendent to search for policies insuring the life of, or owned by, decedents and to initiate the claims process for any death benefits that are identified as a result of those requests.

Section 226.1 Definitions

(a) Account means:

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

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

(b) Death index means the death master file maintained by the United States social security administration or any other database or service that is at least as comprehensive as the death master file maintained by the United States social security administration and that is acceptable to the superintendent.

(c) Insured means an individual covered by a policy or an annuitant when the annuity contract provides for benefits to be paid or other monies to be distributed upon the death of the annuitant.

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

(e) Lost policy finder means a service made available by the Department of Financial Services on its website or otherwise developed by the superintendent either on his or her own or in conjunction with other state regulators, to assist consumers with locating unclaimed life insurance benefits.

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

Section 226.2 Applicability

(a) This Part shall apply to a policy that is:

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

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

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

Section 226.3 Multiple policy search procedures

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

(b) An insurer that receives a notification of death of an insured or account holder, or identifies a death index match, shall notify each United States affiliate, parent, or subsidiary, and any entity with which the insurer contracts that may maintain or control records relating to policies or accounts covered by this Part of the notification or verified death index match. An insurer shall take all steps necessary to have each affiliate, parent, subsidiary, or other entity perform the search required by subdivision (a) of this section.

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

(a)(1) Except as set forth in paragraph (2) of this subdivision, at no later than policy delivery or the establishment of an account and upon any change of insured, owner, account holder, or beneficiary, an insurer shall request information sufficient to ensure that all benefits or other monies are distributed to the appropriate persons upon the death of the insured or account holder, including, at a minimum, the name, address, date of birth, social security number, and telephone number of every owner, account holder, insured and beneficiary of such policy or account, as applicable.

(2) Where an insurer issues a policy or provides for an account based on information received directly from an insured's employer, the insurer may obtain the beneficiary information described in paragraph (1) of this subdivision by communicating with the insured after the insurer's receipt of the information from the insured's employer.

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

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

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

(ii) where the insurer does not know the insured or account holder's social security number, the name and date of birth of the insured or account holder.

(3) An insurer may comply with the requirements of this subdivision by using the full death index once annually and using the death index update files for the remaining cross-checks in that year.

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

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

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

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

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

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

(4) incomplete social security number; and

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

(f) If an insurer only has a partial name, social security number, date of birth, or a combination thereof, of the insured or account holder under a policy or account, then the insurer shall use the available information to perform the cross-check pursuant to subdivision (b) of this section, which may be accomplished by using the procedures outlined in subdivision (e) of this section.

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

(h) This section shall not apply to any policy or any account:

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

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

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

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

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

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

(7) where the insurer does not maintain or control the records containing the information necessary to comply with the requirements of this section under a group policy administered by the group policyholder;

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

(9) where the insurer has novated the policy;

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

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

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

(13) where a policy has lapsed or terminated with no benefits payable that was cross-checked with a death index within the 18 months preceding the effective date of this Part or that was cross-checked with a death index more than 18 months prior to the most recent cross-check conducted by the insurer.

Section 226.5 Lost policy finder application procedures

(a) An insurer shall:

(1) upon receiving a request forwarded by the superintendent through a lost policy finder, search for policies, excluding group policies administered by group policyholders where the insurer does not maintain or control the records containing the information necessary to comply with the requirements of section 226.4 of this Part, and any accounts subject to this Part that insure the life of, or are owned by, an individual named as the decedent in the request forwarded by the superintendent;

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

(i) within 30 days of receiving the request, or within 45 days of receiving the request where the insurer contracts with another entity to maintain the insurer's records, the findings of the search; and

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

(3) within 30 days of receiving the request, or within 45 days of receiving the request where the insurer contracts with another entity to maintain the insurer's records, for each identified policy and account insuring the life of, or owned by, the named decedent, provide to:

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

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

(b)(1) An insurer shall establish procedures to electronically receive the lost policy finder request from, and make reports to, the superintendent as provided for in subdivision (a) of this section. When transmitted electronically, the date that the superintendent forwards the request shall be deemed to be the date of receipt by the insurer; provided however that if the date is a Saturday, Sunday or a public holiday, as defined in General Construction Law section 24, then the date of receipt shall be as provided in General Construction Law section 25-a.

(2) An insurer required to electronically receive and submit pursuant to this Part may apply to the superintendent for an exemption from the requirement that the submission be electronic by submitting a written request to the superintendent for approval.

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

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

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

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

Section 226.6 Report to the comptroller

An insurer subject to this Part shall include in the report required under Abandoned Property Law section 703 any information on unclaimed benefits due pursuant to this Part and the number of policies and accounts that the insurer has identified pursuant to section 226.4 of this Part for the prior calendar year under which any outstanding monies have not been paid or distributed by December thirty-first of such year, except potential matches still being investigated pursuant to section 226.4 of this Part. A copy of the report also shall be filed with the superintendent.

This notice is intended to serve only as a notice of emergency adoption. This agency intends to adopt this emergency rule as a permanent rule and will publish a notice of proposed rule making in the *State Register* at some future date. The emergency rule will expire October 30, 2013.

Text of rule and any required statements and analyses may be obtained from: Michael Maffei, New York State Department of Financial Services, One State Street, New York, NY 10004, (212) 480-5027, email: michael.maffei@dfs.ny.gov

Regulatory Impact Statement

1. Statutory authority: The Superintendent's authority for promulgation of this rule derives from sections 202 and 302 of the Financial Services Law ("FSL") and sections 301, 316, 1102, 1104, 2601, 3240 (Unclaimed benefits), 4521, and 4525 and Article 24 of the Insurance Law.

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

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

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

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

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

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

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

Insurance Law section 3240 (Unclaimed benefits) requires insurers to compare life insurance policies against the federal death master file to identify potential matches of their insureds or account holders and to undertake a good faith effort to confirm the death of the insureds and locate beneficiaries. Section 3240(j) authorizes the superintendent to promulgate rules and regulations to implement the statute.

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

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

2. Legislative objectives: Beginning in 2011, the Department investigated allegations of unfair claims and trade practices by authorized life insurers and fraternal benefit societies (collectively herein, "insurers") in connection with claims and the location of beneficiaries. The Department was concerned that many insurers had not adopted or implemented reasonable procedures and standards to investigate claims and locate beneficiaries with respect to death benefits due under policies and accounts. In particular, there were instances in which a death had occurred and no claim had been filed, but premiums continued to be deducted from the account

value or cash value until the policy lapsed. In other instances, the policies or accounts may simply have remained dormant after death. In these instances, a valid death benefit was either not paid or distributed or was delayed.

The Department met with several insurers that have substantial writings in New York to discuss past and current claim and death benefit payment practices. Some insurers had used the U.S. Social Security Administration's Death Master File ("SSA Master File") to confirm the death of contract holders so that they could cease making annuity payments, but had not used the SSA Master File to determine whether any death benefit payments were due under insurance policies or other accounts.

The Department sent a letter dated July 5, 2011, to every insurer requesting the submission of a special report, pursuant to Insurance Law section 308 (the "308 Letter"). The 308 Letter required each insurer to submit a report that included a narrative summary of the SSA Master File cross-check procedures implemented by the insurer; the overall results of the SSA Master File cross-check; the current procedures utilized by the insurer to locate beneficiaries, and a seriatim listing of death benefits paid as a result of the SSA Master File cross-check. After matches were identified, each insurer was directed to provide to the Superintendent a final report updating the actions it had taken to investigate the matches to determine whether a death benefit payment was due, and to describe the procedures it had implemented to locate the beneficiaries and make payments, where appropriate. To date, over $812 million has been paid nationwide to beneficiaries, including more than $241 million that was paid to New York beneficiaries.

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

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

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

This rule requires insurers to establish procedures to respond within 30 days of the Department's notification of a request to identify coverage that the Department receives through its new Lost Policy Finder application, or within 45 days of receiving the request where an insurer contracts with another entity to maintain the insurer's records. The rule also requires an insurer to notify the beneficiary, within 30 days of the Department's notification, or within 45 days of receiving the request where the insurer contracts with another entity to maintain the insurer's records, of all items necessary to file a claim, if the insurer determines that there are benefits to be paid or other monies to be distributed.

After the initial issuance of the regulation, the Legislature in 2012 enacted Insurance Law section 3213-a, which required insurers to perform a comparison of life insurance policies against the federal death master file to identify potential matches of their insureds or account holders and to undertake a good faith effort to confirm the death of insureds and locate beneficiaries. It also authorized the Superintendent to promulgate rules and regulations to implement the statute. Although the governor signed the bill into law, he expressed a number of concerns with the legislation. A chapter amendment amended the bill, addressing those concerns. The chapter amendment also renumbered the section as section 3240. Since the original bill had a delayed effective date, it never took effect in its original form. The regulation has been amended to conform to the requirements of new section 3240 (Unclaimed benefits).

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

This practice led to many abuses. For example, in some instances, a death may have occurred with no claim being filed, but premiums would continue to be deducted from the account value or cash value until the policy lapsed. In other cases, the policies or accounts may simply have remained dormant after death. In these instances, a valid death benefit was either not paid or distributed or was delayed.

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

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

4. Costs: All insurers affected by this rule have already implemented procedures required by this rule, which was promulgated on an emergency basis on May 14, 2012, August 10, 2012, November 9, 2012, February 6, 2013, and May 6, 2013. Additionally, in response to the 308 Letter sent by the Department to insurers in July 2011, several insurers had confirmed then that they had already established, or were in the process of establishing, the standards and procedures required by this rule. Thus, insurers should incur only minimal, if any, additional costs to comply with the requirements of this rule.

As a result of the 308 Letter, to date, more than $812 million has been paid to beneficiaries nationwide, including more than $241 million paid to New York beneficiaries. Additionally, more than $338 million has been escheated or identified for escheatment. The amounts paid to beneficiaries and escheated (or identified for escheatment) now totals more than $1.1 billion.

The public benefit of ensuring that all policyowners and policy beneficiaries are provided with all of the benefits for which they have paid and to which they are entitled outweighs the minimal costs of complying with this rule.

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

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

6. Paperwork: Section 226.5 of this rule requires every insurer to report to the Superintendent, within 30 days of receiving the Superintendent's request to search for policies and accounts, or within 45 days of receiving the request where the insurer contracts with another entity to maintain the insurer's records, the findings of that search. In addition, within 30 days of the final disposition of the request, every insurer is required to report the benefits or amounts paid, if any, as a result of the search, and any other information requested by the Superintendent. Section 226.6 of this rule requires every insurer to submit a report to the Office of the Comptroller specifying the number of policies and accounts that the insurer has identified through a death index match or notification of the death of an insured or account holder, for the prior calendar year, any outstanding monies that have not been paid or distributed by December thirty-first of such year.

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

8. Alternatives: There are no viable alternatives to this rule. As a result of the 308 Letter, to date, more than $812 million has been paid to beneficiaries nationwide, including more than $241 million paid to New York beneficiaries. Additionally, more than $338 million has been escheated or identified for escheatment. The amount paid to beneficiaries and escheated (or identified for escheatment) now totals more than $1.1 billion - unquestionably an ongoing benefit to the public. While some insurers may have voluntarily implemented these procedures, promulgation of this rule was necessary to require all insurers to do so. This rule addresses unfair claims and trade practices by insurers in a manner that protects the public while providing minimal burdens on insurers.

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

After the regulation was first promulgated on an emergency basis, the Legislature enacted section 3213-a, now 3240 (Unclaimed benefits). The regulation is revised to the extent necessary to conform to the statute.

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

10. Compliance schedule: All insurers affected by this rule have already complied with the requirements of this rule, which was promulgated on an emergency basis on May 14, 2012, August 10, 2012, November 9,

2012, February 6, 2013, and May 6, 2013. Therefore, this rule will take effect upon filing with the Secretary of State.

Regulatory Flexibility Analysis

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

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

Rural Area Flexibility Analysis

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

2. Reporting, recordkeeping and other compliance requirements, and professional services: This rule requires authorized life insurers and fraternal benefit societies (collectively, "insurers") to establish standards for investigating claims and locating claimants under policies and accounts providing benefits in the event of the death of an insured or account holder. It also requires insurers to establish procedures to search for policies and accounts upon receipt of a death notice or the Superintendent's notification of a request to identify coverage, which was received through the Lost Policy Finder application. It requires insurers to perform, no less than quarterly, a cross-check of the death index (i.e., the U.S. Social Security Administration's Death Master File ("SSA Master File") or any other database or service that is acceptable to the Superintendent). In addition, it requires insurers to establish procedures for lost policy searches, and establishes a filing requirement with the Office of the Comptroller regarding unpaid benefits.

Section 226.5 of this rule requires every insurer to report to the Superintendent, within 30 days of receiving the Superintendent's request to search for policies and accounts, or within 45 days of receiving the request where the insurer contracts with another entity to maintain the insurer's records, the findings of that search. In addition, within 30 days of the final disposition of the request, every insurer is required to report the benefits or amounts paid, if any, as a result of the search, and any other information requested by the Superintendent. Additionally, section 226.6 of this rule requires every insurer to submit a report to the Office of the Comptroller specifying the number of policies and accounts that the insurer has identified through a death index match or notification of the death of an insured or account holder, for the prior calendar year, any outstanding monies that have not been paid or distributed by December thirty-first of such year.

3. Costs: All insurers affected by this rule have already implemented procedures required by this rule, which was promulgated on an emergency basis on May 14, 2012, August 10, 2012, November 9, 2012, February 6, 2013, and May 6, 2013. Additionally, in response to the 308 Letter sent by the Department to insurers in July 2011, several insurers had confirmed then that they had already established, or were in the process of establishing, the standards and procedures required by this rule. Thus, insurers should incur only minimal, if any, additional costs to comply with the requirements of this rule.

As a result of the 308 Letter, to date, more than $812 million has been paid to beneficiaries nationwide, including more than $241 million paid to New York beneficiaries. Additionally, more than $338 million has been escheated or identified for escheatment. The amounts paid to beneficiaries and escheated (or identified for escheatment) now totals more than $1.1 billion.

The public benefit of ensuring that all policyowners and policy beneficiaries are provided with all of the benefits for which they have paid and to which they are entitled outweighs the minimal costs of complying with this rule.

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

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

The Department sent a letter, dated July 5, 2011, to every insurer requesting the submission of a special report, pursuant to Insurance Law section 308 (the "308 Letter"). The 308 Letter required the insurer to submit a report that included a narrative summary of the SSA Master File cross-check procedures implemented by the insurer; the overall results of the SSA Master File cross-check; the current procedures utilized by the insurer to locate beneficiaries, and a seriatim listing of death benefits paid as a result of the SSA Master File cross-check. After matches were identified, each insurer was directed to provide to the Superintendent a final report updating the actions it had taken to investigate the matches to determine whether a death benefit payment was due, and to describe the procedures it had implemented to locate the beneficiaries and make payments, where appropriate. To date, over $812 million has been paid nationwide to beneficiaries, including more than $241 million that was paid to New York beneficiaries.

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

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

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

This rule requires insurers to establish procedures to respond within 30 days of the Department's notification of a request to identify coverage that the Department received through its new Lost Policy Finder application, or within 45 days of receiving the request where an insurer contracts with another entity to maintain the insurer's records. The rule also requires the insurer to notify the beneficiary, within 30 days of the Department's notification, or within 45 days of receiving the request where the insurer contracts with another entity to maintain the insurer's records, of all items necessary to file a claim, if the insurer determines that there are benefits to be paid or other monies to be distributed.

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

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

Job Impact Statement

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

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

PROPOSED RULE MAKING
NO HEARING(S) SCHEDULED

Debt Collection

I.D. No. DFS-34-13-00002-P

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

Proposed Action: Addition of Part 1 to Title 23 NYCRR.

Statutory authority: Financial Services Law, sections 202 and 302

Subject: Debt Collection.

Purpose: Establishes the oversight of debt collectors and sets basic rules for debt collection in New York.

Text of proposed rule: *DEBT COLLECTION*

§ 1.1 Definitions.

For the purposes of this Part:

(a) Clear and conspicuous means that the statement, representation or term being disclosed is of such size, color, and contrast and/or audibility and is so presented as to be readily noticed and understood by the person to whom it is being disclosed. If such statement is necessary as a modification, explanation or clarification to other information with which it is presented, it must be presented in close proximity to the information it modifies, in a manner so as to be readily noticed and understood.

(b) Collection efforts means any action or attempted action by a debt collector in obtaining or attempting to obtain payment on a debt owed by a consumer.

(c) Consumer means any natural person who owes or who is alleged to owe a debt.

(d) Debt means any obligation or alleged obligation of a natural person for the payment of money or its equivalent which arises out of a transaction wherein credit has been offered or extended to a natural person, and the money, property or service which was the subject of the transaction was primarily for personal, family or household purposes. This term includes the obligation of a natural person who is a co-maker, guarantor, or endorser, as well as the obligation of the natural person to whom the credit was originally extended. Debt shall not include any obligation or alleged obligation of a consumer for the payment of money or its equivalent which arises out of credit extended directly to a consumer exclusively for the purpose of enabling that consumer to purchase consumer goods or services directly from the seller.

(e) Debt collector means any person engaged in a business with the principal purpose of collecting or attempting to collect debts, or any person who regularly collects or attempts to collect, directly or indirectly, debts owed or due or asserted to be owed or due another. Debt collector includes without limitation a buyer of delinquent debt who seeks to collect such debt either directly or indirectly.

(f) Default means that the payment on a debt obligation is delinquent under the terms of the original agreement that created the debt.

(g) Original creditor means any person who offers or extends credit creating a debt.

(h) Person has the same meaning as prescribed in Financial Services Law section 104(a)(3).

§ 1.2 Required initial disclosures by debt collectors.

(a) Within five days after the initial communication with a consumer in connection with the collection of any debt, a debt collector shall, unless the following information is contained in the initial communication, provide the consumer clear and conspicuous written notification of the consumer's rights in connection with the debt, including:

(1) that debt collectors, in accordance with the federal Fair Debt Collection Practices Act, 15 U.S.C § 1692 et seq., are prohibited from engaging in abusive, deceptive, and misleading debt collection efforts, including but not limited to:

(i) the use or threat of violence;

(ii) the use of obscene or profane language; and

(iii) repeated phone calls made with the intent to annoy, abuse, or harass.

(2) the following written notice:

"A creditor may sue you to collect on this debt. Even if the creditor wins and obtains a judgment against you, state and federal laws prevent certain 'exempt' moneys from being taken to satisfy that judgment. Income that you receive from the following sources may be 'exempt' from collection:

1. Supplemental security income, (SSI);

2. Social security;

3. Public assistance (welfare);

4. Spousal support, maintenance (alimony) or child support;

5. Unemployment benefits;

6. Disability benefits;

7. Workers' compensation benefits;

8. Public or private pensions;

9. Veterans' benefits; and

10. Federal student loans, federal student grants, and federal work study funds."

(b) Within five days after the initial communication with a consumer in connection with the collection of any defaulted debt, a debt collector shall, unless the following information is contained in the initial communication, provide the consumer clear and conspicuous written notification regarding the nature of the consumer's defaulted debt, including:

(1) The name of the original creditor;

(2) An itemized accounting of the debt, including:

(i) The total amount of the debt due as of default, including principal balance due and any charges and fees;

(ii) each additional charge or fee accrued since the default;

(iii) the name of the creditor or debt collector that levied each charge or fee since the default;

(iv) the date of and the basis for the accrual of each additional charge or fee since the default; and

(v) each payment made on the debt since the default, including settlements, and the date of each payment.

§ 1.3 Disclosures for debts in which the statute of limitations may be expired.

(a) If a debt collector knows or has reason to know that the statute of limitations for a debt may be expired, before accepting payment on the defaulted debt, the debt collector must provide the consumer with clear and conspicuous notice of the following in the same medium (e.g., via telephone, electronic communication) that the debt collector will accept payment that:

(1) the debt collector believes that the statute of limitations applicable to the debt may be expired;

(2) if the consumer is sued on a debt that has expired, the consumer can stop the lawsuit by responding to the court that the statute of limitations has expired;

(3) the consumer is not required to provide the debt collector with an admission, affirmation, or acknowledgment of the debt, a promise to pay the debt, or a waiver of the statute of limitations;

(4) if the consumer makes any payment on an expired debt or admits, affirms, acknowledges, or promises to pay the expired debt, the statute of limitations may restart; and

(5) failure to pay a debt that the consumer owes, even if the statute of limitations has expired, may damage the consumer's credit history and credit score and may negatively affect the consumer's ability to obtain credit.

(b) The following language satisfies the notice requirement contained in section 1.3(a) of this Part:

"We are required by regulation of the New York State Department of Financial Services to notify you of the following information. This information is NOT legal advice:

Your creditor or debt collector believes that the legal time limit (statute of limitations) for suing you to collect this debt may have expired. If the creditor sues you to collect on this debt, court rules require you to tell the court that the statute of limitations has expired to prevent the creditor from obtaining a judgment against you.

Even if the statute of limitations has expired, you may choose to make payments on the debt. However, be aware: if you make a payment on the debt, admit to owing the debt, promise to pay the debt, or waive the statute of limitations on the debt, the time period in which the debt is enforceable in court may start again.

Further, please note that an expired debt is not extinguished even though the statute of limitations has expired. Failure to pay the debt may negatively affect your credit history and credit score and your ability to obtain credit.

If you would like to learn more about your legal rights and options, you can consult an attorney or a legal assistance or legal aid organization."

§ 1.4 Verification of debts.

(a) If a consumer disputes the validity of a defaulted debt or requests verification of a defaulted debt orally or in writing, a debt collector must provide the consumer written verification of the defaulted debt within 30 days of the dispute or request. Verification of the defaulted debt shall include:

(1) documentation identifying the original creditor, including copies of:

(i) the signed contract or signed application that created the debt, or, in the case of a transaction that does not involve a signed contract or signed application, other documents evidencing the transaction resulting in the indebtedness of the consumer to the original creditor; and

(ii) the final account statement, or equivalent document, issued by the original creditor to the consumer;

(2) a statement describing the complete chain of title from the original creditor to the present debt owner, including the date of each assignment;

(3) where applicable, the consumer's account number with the original creditor at the time of default, the current account number, and any intervening account numbers; and

(4) records reflecting the amount and date of any prior settlement agreement reached in connection with the debt.

(b) If a consumer disputes a defaulted debt or requests verification of a defaulted debt pursuant to section 1.4(a) of this Part, the debt collector must retain the following documentation until the debt is discharged, sold, or transferred:

(1) evidence of the consumer's dispute or request for verification; and

(2) all documents provided in response to the dispute or request.

§ 1.5 Debt payment procedures.

(a) No debt collector shall accept any payment under a debt payment schedule or other agreement to settle a defaulted debt without first furnishing the consumer with a clear and conspicuous written document containing:

(1) written confirmation of the debt payment schedule or other agreement to settle the defaulted debt. This written confirmation shall not include any terms or conditions to which the consumer did not specifically agree; and

(2) the following notice:

"A creditor may sue you to collect on this debt. Even if the creditor wins and obtains a judgment against you, state and federal laws prevent certain 'exempt' moneys from being taken to satisfy that judgment. Income that you receive from the following sources may be 'exempt' from collection:

1. Supplemental security income, (SSI);
2. Social security;
3. Public assistance (welfare);
4. Spousal support, maintenance (alimony) or child support;
5. Unemployment benefits;
6. Disability benefits;
7. Workers' compensation benefits;
8. Public or private pensions;
9. Veterans' benefits; and
10. Federal student loans, federal student grants, and federal work study funds."

(b) If a consumer agrees to a debt payment schedule or other agreement to settle a defaulted debt, the debt collector shall provide the consumer with an accounting of the debt on at least a quarterly basis.

(c) Within 15 business days of the receipt of a payment satisfying a consumer's defaulted debt, the debt collector shall send to the consumer a written confirmation of the satisfaction of the debt that identifies the original creditor and the last original account number.

§ 1.6 Communication through electronic mail.

(a) After mailing a consumer written disclosures as required under section ____.2 of this Part, a debt collector may provide subsequent correspondence to the consumer through electronic mail only if the consumer has:

(1) voluntarily provided a secure electronic mail account to the debt collector which is not an electronic mail account furnished or owned by the consumer's employer; and

(2) consented in writing to receive electronic mail correspondence from the debt collector in reference to a specific debt. A consumer's electronic signature constitutes written consent under this Section.

§ 1.7 Effective date.

This Part shall become effective upon adoption, except that sections 1.2(b) and 1.4(a) of this Part shall become effective 180 days after adoption.

Text of proposed rule and any required statements and analyses may be obtained from: Max Dubin, Department of Financial Services, One State Street, New York, NY 10004-1511, (212) 480-7232, email: Max.Dubin@dfs.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 Superintendent's authority for the promulgation of this rule derives from Sections 202, 301, 302, and 408 of the Financial Services Law ("FSL").

Section 202 of the FSL established the office of the Superintendent and designated the Superintendent of Financial Services as the head of the Department of Financial Services ("Department").

FSL Sections 301 authorizes the Superintendent to take such action as the Superintendent deems necessary to protect and educate users of financial services and products.

FSL Section 302 authorizes the Superintendent to prescribe rules and regulations involving financial products and services and in effectuating the provisions of the Financial Services Law.

FSL Section 408 authorizes the Superintendent to enforce state and federal fair debt collection practices laws.

2. Legislative objectives: The New York Legislature granted the Department of Financial Services authority to regulate financial products or services offered or sold to consumers, with some exceptions, in order to eliminate financial fraud, abuse and unethical conduct and educate and protect users of financial products and services. Further, the Legislature empowered the Department with the authority to enforce state and federal fair debt collection practices laws.

Debt collection is a necessary step in the consumer debt cycle. Debt collection companies are hired to collect on debts from credit cards, mortgages, and medical bills, among other transactions that occur every day. The practices employed by debt collection companies impact the financial transactions of New York consumers and business owners. The Department has found that many debt collection companies operating in New York employ abusive and misleading collection practices. Often debts are given to third-party debt collectors or sold to debt buyers with little information about the debt. This results in collection efforts that may be for the wrong amount of money or targeted against the wrong consumer. The Legislature empowered the Department to enforce state and federal fair debt collection practices laws. These rules build upon these laws to instruct debt collectors as to what information must be provided to alleged debtors in order to ensure that the consumer and the debt collector have information identifying the correct identity of the debtor and the accurate amount owed, among other things.

Further, most consumers are unrepresented by counsel when dealing with debt collectors and may not understand their rights. Consumers may receive threats of a lawsuit without understanding that the statute of limitations on that lawsuit has expired, or may not understand how to invoke that defense should a debt collector sue. Consumers may also not understand their rights under fair debt collection practices laws, including the protection from harassing phone calls. This rule requires debt collectors to inform consumers of these rights.

3. Needs and benefits: In creating the Department, the Legislature tasked the Department with regulating the debt collection industry. This rule establishes the Department's oversight of debt collectors and sets basic rules for debt collection in New York, including disclosures that must be provided to consumers and information that must be provided when a debt is disputed. The statutory authority allows for regulation of debt collection, but provides little guidance for debt collectors. These regulations clarify for debt collectors and consumers what are required practices for debt collection in New York. Without these regulations, the statutory authority would have little impact on the marketplace and would not allow for sufficient oversight of debt collection practices in New York. This regulation is intended to provide a safe and sound financial market in New York, ensuring that debt collectors pursue the correct debtor for the correct debt and that consumers are aware of their rights when being solicited for payments.

4. Costs: Costs of compliance will vary depending on the structure of the debt collector, including the kinds of debts typically collected and whether the debt collector purchases debts to collect or collects debts owed to another. For debt collectors operating throughout the state, this rule should have a limited cost, since this rule is similar to the requirements set by the New York City Department of Consumer Affairs on debt collectors operating in the city. Costs should also be minimized since the disclosure rules primarily expand on the information provided in disclosures already required by state and federal fair debt collection practices acts and would not require many more communications. Costs to the Department will be minimal since the Department already accepts consumer complaints regarding debt collection. The only new costs to the Department would arise from any investigations to enforce the rule.

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

6. Paperwork: Section 2 of the rule requires additional information to be provided to the consumer at the start of any collection effort. However, under federal law, an initial disclosure must already be mailed, and this would only expand upon this mailing, requiring no new paperwork. Section 3 similarly only requires information be provided on a document when a collection effort is made after the expiration of the statute of limitations, and adds no new paperwork. Section 4 requires information be provided when a debt is disputed. Currently state and federal law requires documents be provided in certain disputes, but the documents provided is undefined. This Section would provide clarity for what documentation is required, not necessarily more documentation. Section 4 does expand, beyond the current law, which disputes qualify for verification, which could require additional paperwork. Section 5 requires that debt collectors provide written confirmation of any settlement agreement. Section 6 may reduce paperwork for debt collectors since this allows, in certain cases, for debt collectors to communicate with consumers by electronic mail.

7. Duplication: This rule will not duplicate any existing state rule. Portions of this rule are similar to New York City debt collection rules, which would already apply to some New York debt collectors.

8. Alternatives: This rule addresses basic debt collection practices performed by debt collectors and the most common consumer complaints regarding abusive or misleading debt collection practices. The Department has determined that there are no other viable alternatives to this rule.

9. Federal standards: This rule expands upon the requirements of the federal Fair Debt Collection Practices Acts. The federal rules set mini-

mum debt collection standards and allow for states to expand upon these requirements. Further, the federal rule inadequately addresses the abusive and deceptive debt collection practices this rule is intended to alleviate.

10. Compliance schedule: Sections 2(b), and 4(a) of this rule will take effect 180 days after adoption. Otherwise this Part will be effective immediately upon adoption.

Regulatory Flexibility Analysis

1. Effect of rule: This rule sets standards for debt collection practices in New York, including necessary disclosures to consumers and requirements to verify a debt when an alleged debtor disputes the validity or amount of the debt. Many debt collectors operate in New York, but the Department does not have an exact number of debt collectors or their size. The New York State Collectors Association, a trade group of New York debt collectors, claims 147 members, but it is not known how many are "small businesses," as defined in section 102(8) of the State Administrative Procedure Act. This rule has no anticipated affect on local governments.

2. Compliance requirements: Section 2 of the rule requires additional information to be provided to the consumer at the start of any collection effort. However, under federal law, an initial disclosure must already be mailed, and the rule would only expand upon this mailing, requiring no new paperwork. Section 3 similarly only requires information be provided on a document when a collection effort is made after the expiration of the statute of limitations, and adds no new paperwork. Section 4 requires information be provided when a debt is disputed. Currently state and federal law require documents be provided for certain disputes, but the content of the documents to be provided is undefined. This Section would provide clarity for what documentation is required, not necessarily more documentation. Section 4 does expand, beyond the current law, which disputes qualify for verification, which could require additional paperwork. Section 5 requires debt collectors provide written confirmation of any settlement agreement. Section 6 may reduce paperwork for debt collectors since this section allows, in certain cases, for debt collectors to communicate with consumers by electronic mail.

3. Professional services: Small businesses to which this regulation applies will not need any additional services beyond the staff currently needed for their business. The debt collection business model will remain unchanged; debt collectors will only need to perform their functions in a more consumer friendly, deliberate manner.

4. Compliance costs: This rule should have minimal initial and annual costs to regulated businesses. Debt collectors will continue to attempt to collect from consumers in the same manner. The disclosures required should have a negligible effect on compliance costs. There may be some cost to maintaining documentation proving the validity of a debt and providing this to consumers if there is a dispute. The Department does not have an estimate of the cost of this documentation, however, debt collectors operating in New York City already must maintain most of this information. The costs may be higher for debt collectors who purchase the debts in comparison to debt collectors hired to collect debts on behalf of another.

5. Economic and technological feasibility: Small businesses to which this regulation may apply will not incur an economic or technological impact as a result of this rule. Debt collectors must already maintain information evidencing a debt, and must provide alleged debtors with written disclosures under state and federal laws. This rule merely sets standards for what information and disclosures must be provided to consumers, but debt collectors should not have any problems with meeting the economic and technological requirements of these rules.

6. Minimizing adverse impact: This rule applies equally to all debt collectors, regardless of their size. The rule does not impose any adverse or disparate impact on small businesses. This rule does not affect local governments.

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

Rural Area Flexibility Analysis

1. Types and estimated number of rural areas: Debt collectors to which this regulation applies do business in every county of New York State, including rural areas defined in section 102(10) of the State Administrative Procedure Act. This regulation will apply to all debt collectors operating in New York, including those located in rural areas.

2. Reporting, recordkeeping, and other compliance requirements; and professional services: The rule imposes the same reporting, recordkeeping, and other compliance requirements for all debt collectors, in rural and non-rural areas. Section 2 of the rule requires additional information to be provided to the consumer at the start of any collection effort. However, under federal law, an initial disclosure must already be mailed, and this would only expand upon this mailing, requiring no new paperwork. Section 3 similarly only requires information be provided on a document when a collection effort is made after the expiration of the statute of limitations, and adds no new paperwork. Section 4 requires information be provided when a debt is disputed. Currently state and federal law require documents be provided for certain disputes, but the content of the documents to be provided is undefined. This Section would provide clarity for what documentation is required, not necessarily more documentation. Section 4 does expand, beyond the current law, which disputes qualify for verification, which could require additional paperwork. Section 5 requires that debt collectors provide written confirmation of any settlement agreement. Section 6 may reduce paperwork for debt collectors since this section allows, in certain cases, for debt collectors to communicate with consumers by electronic mail.

3. Costs: There are no expected costs of compliance that would vary between debt collectors in rural and non-rural areas. A full assessment of the costs of this rule is not clear since the costs will vary depending on the structure of the debt collector, including the kinds of debts typically collected and whether the debt collector purchases debts to collect or collects debts owed to another. For debt collectors operating throughout the state, this rule should have a limited cost, since these rules are similar to the requirements set by the New York City Department of Consumer Affairs on debt collectors operating in the city. Costs should also be minimized since the disclosure rules primarily expand on the information provided in disclosures already required by state and federal fair debt collection practices acts, and would not require many more mailings. Costs to the Department will be minimal since the Department already accepts consumer complaints regarding debt collection. The only new costs to the Department would arise from any investigations to enforce the rule.

4. Minimizing adverse impact: The requirements of this rule will apply equally to all debt collectors, whether they are located in rural or non-rural areas.

5. Rural area participation: This notice is intended to provide entities in rural and non-rural areas with the opportunity to participate in the rule making process. Interested parties will have the opportunity to comment on the proposed rule for 45 days following publication in the State Register.

Job Impact Statement

1. Nature of impact: This rule sets standards for debt collection practices in New York, including necessary disclosures to consumers and requirements to verify a debt when an alleged debtor disputes the validity or amount of the debt. This rule should not have an impact on jobs and employment opportunities in New York. Debt collectors will need to comply with the rule, but this should not have a negative impact on how many employees are needed to collect debts in New York.

2. Categories and numbers affected: The debt collection industry employs many New York residents, however, this rule should not affect the numbers of jobs or employment opportunities.

3. Regions of adverse impact: This rule regulates debt collectors operating in New York, no matter where the company is located. There should be no disproportionate impact on any region.

4. Minimizing adverse impact: There should be no adverse impact on existing jobs or employment opportunities, so the Department has not needed to take into account minimizing any impact on jobs.

New York State Gaming Commission

NOTICE OF ADOPTION

Use of Cellular Telephones in the Paddock

I.D. No. RWB-08-13-00004-A
Filing No. 816
Filing Date: 2013-08-06
Effective Date: 2013-08-21

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

Action taken: Addition of section 4104.14 to Title 9 NYCRR.

Statutory authority: Racing, Pari-Mutuel Wagering and Breeding Law, sections 103(1), 104(1), (19) and 301(1)

Subject: Use of cellular telephones in the paddock.

Purpose: To allow cellular telephones and other electronic communication devices in designated areas of a harness race track paddock.

Text or summary was published in the February 20, 2013 issue of the Register, I.D. No. RWB-08-13-00004-P.

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

Text of rule and any required statements and analyses may be obtained from: Kristen M. Buckley, New York State Gaming Commission, One Broadway Center, Suite 600, Schenectady, NY 12305-2553, (518) 388-3332, email: info@gaming.ny.gov

Assessment of Public Comment

The agency received no public comment.

NOTICE OF ADOPTION

Ability of a New Owner of a Claimed Horse to Void the Claim

I.D. No. RWB-08-13-00005-A

Filing No. 818

Filing Date: 2013-08-06

Effective Date: 2013-08-21

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

Action taken: Amendment of section 4038.5 of Title 9 NYCRR.

Statutory authority: Racing, Pari-Mutuel Wagering and Breeding Law, sections 103(1), 104(1) and (19)

Subject: Ability of a new owner of a claimed horse to void the claim.

Purpose: To remove the incentive to horse owners to race substandard horses in a claiming race.

Text or summary was published in the February 20, 2013 issue of the Register, I.D. No. RWB-08-13-00005-P.

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

Text of rule and any required statements and analyses may be obtained from: Kristen M. Buckley, New York State Gaming Commission, One Broadway Center, Suite 600, Schenectady, NY 12305-2553, (518) 388-3332, email: info@gaming.ny.gov

Initial Review of Rule

As a rule that does not require a RFA, RAFA or JIS, this rule will be initially reviewed in the calendar year 2018, which is no later than the 5th year after the year in which this rule is being adopted.

Assessment of Public Comment

The agency received no public comment.

NOTICE OF ADOPTION

Implementation of Substantive Changes and Procedures Pertaining to Equine Drugs and Reporting Requirements for Thoroughbreds

I.D. No. RWB-08-13-00006-A

Filing No. 817

Filing Date: 2013-08-06

Effective Date: 2013-08-21

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

Action taken: Amendment of sections 4043.2(e)(9), (g)(5)-(16), (i) and 4043.4(b) of Title 9 NYCRR.

Statutory authority: Racing, Pari-Mutuel Wagering and Breeding Law, sections 103(1), 104(1), (19) and 902(1)

Subject: Implementation of substantive changes and procedures pertaining to equine drugs and reporting requirements for thoroughbreds.

Purpose: To protect the health and safety of thoroughbred race horses, jockeys, and exercise riders.

Text of final rule: Subdivision (g) of section 4043.2 of 9 NYCRR is amended as follows:

4043.2 Restricted use of drugs, medication and other substances.

(g) The following substances are permitted to be administered by any means until 96 hours before the scheduled post time of the race in which the horse is to compete:

(1) acepromazine;
(2) albuterol;
(3) atropine;
(4) butorphanol;
[(5) clenbuterol;]
[(6)]*(5)* detomidine;
[(7)]*(6)* glycopyrrolate;
[(8)]*(7)* guaifenesin;
[(9)]*(8)* hydroxyzine;
[(10)]*(9)* isoxsuprine;
[(11)]*(10)* lidocaine;
[(12)]*(11)* mepivicaine;
[(13)]*(12)* pentoxifylline;
[(14)]*(13)* phenytoin;
[(15)]*(14)* pyrilamine;
[(16)]*(15)* xylazine.

[They may not] *None of these substances* may be administered within 96 hours of the scheduled post time of the race in which the horse is to compete. In this regard, substances ingested by a horse shall be deemed administered at the time of eating and drinking. It shall be part of the trainer's responsibility to prevent such ingestion within such [96 hours] *96-hour period*.

Paragraph 9 of Subdivision (e) of section 4043.2 of 9 NYCRR is amended as follows:

(9) hormones [and steroids] (e.g., [testosterone, progesterone, estrogens,] chorionic gonadatropin[, glucocorticoids])[, except in conjunction with joint aspiration as restricted in subdivision (i) of this section; the use of anabolic steroids is governed by section 4043.15 of this Part];

Subdivision (i) of section 4043.2 of 9 NYCRR is amended to read as follows:

(i) In addition, a horse [which has had a joint aspirated (in conjunction with a steroid injection)] may not race for [at least five days following such procedure, and whenever such procedure is performed, the trainer shall notify the stewards of such fact, in writing, before the horse is entered to race] *the following periods of time:*

(1) for at least five days following a systemic administration of a corticosteroid;

(2) for at least seven days following a joint injection of a corticosteroid; and

(3) for at least 14 days following an administration of clenbuterol.

In this regard, substances ingested by a horse shall be deemed administered at the time of eating and drinking. It shall be part of the trainer's responsibility to prevent such ingestion within such time periods.

New Subdivision (b) is added to section 4043.4 of 9 NYCRR to read as follows:

(b) Trainers shall maintain accurate records of all corticosteroid joint injections to horses trained by them. The record(s) of every corticosteroid joint injection shall be submitted, in a form and manner approved by the Board, by the trainer to the Board within 48 hours of the treatment. The trainer may delegate this responsibility to the treating veterinarian, who shall make these reports when so designated. The reports shall be accessible to the examining veterinarian for the purpose of assisting with pre-race veterinary examinations.

Final rule as compared with last published rule: Nonsubstantive changes were made in section 4043.2(g).

Text of rule and any required statements and analyses may be obtained from: Kristen M. Buckley, New York State Gaming Commission, One Broadway Center, Suite 600, Schenectady, NY 12305-2553, (518) 388-3332, email: info@gaming.ny.gov

Revised Regulatory Impact Statement

The Gaming Commission made two stylistic changes to subdivision (g) of section 4043.2 of Title 9 of NYCRR, in comparison to the Notice of Proposed Rulemaking which published the proposed amended text in the February 20, 2013 State Register. Both changes only improve the writing style of the rule.

These nonsubstantive changes do not make any change in the meaning or effect of this rule. Such changes do not necessitate a revised Regulatory Impact Statement.

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

As is evident by the nature of this rulemaking and the nonsubstantive changes that were adopted to subdivision (g) of section 4043.2, in comparison to the previously published rule, this will not have an adverse affect on jobs or rural areas. This proposal concerns the restricted administration of certain drugs to thoroughbred race horses, the testing procedures to ensure compliance with those restrictions, and reporting of the administration of certain drugs. These medications – corticosteroids and clenbuterol – are currently permitted and will continue to be permitted but under different administration schedules. These schedules will have no impact on jobs or rural areas. This amendment is intended to reduce equine deaths in thoroughbred racing, and as such will have a positive effect on horseracing and the revenue generated through pari-mutuel wagering and breeding in New York State. This will not adversely impact rural

areas or jobs or local governments and does not require a Rural Area Flexibility Statement or Job Impact Statement. Further, the adopted rules' nonsubstantive changes, in comparison to the published Notice of Proposed Rulemaking in the February 20, 2013 State Register, are only stylistic changes in the first and last sentences of the concluding paragraph in subdivision (g)i of section 4043.2, in Title 9 of the NYCRR. As only stylistic changes, such changes do not necessitate a revised RFA, RAFA, or JIS.

Initial Review of Rule

As a rule that does not require a RFA, RAFA or JIS, this rule will be initially reviewed in the calendar year 2018, which is no later than the 5th year after the year in which this rule is being adopted.

Assessment of Public Comment

The agency received no public comment.

Department of Health

NOTICE OF ADOPTION

Prescription Monitoring Program

I.D. No. HLT-25-13-00017-A
Filing No. 821
Filing Date: 2013-08-06
Effective Date: 2013-08-27

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

Action taken: Amendment of Part 80 of Title 10 NYCRR.

Statutory authority: Public Health Law, sections 3333, 3343-a and 3371

Subject: Prescription Monitoring Program.

Purpose: Reporting requirements to the prescription monitoring program registry by pharmacies and dispensing practitioners.

Text or summary was published in the June 19, 2013 issue of the Register, I.D. No. HLT-25-13-00017-P.

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

Text of rule and any required statements and analyses may be obtained from: Katherine Ceroalo, DOH, Bureau of House Counsel, 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 Department of Health (DOH) received the following comments, which are summarized below with responses:

COMMENT: Many comments from practitioners, pharmacists and professional organizations were supportive of DOH's Prescription Monitoring Program Registry (PMP).

COMMENT: Several comments were received from the pharmacy community related to the 24-hour controlled substance reporting requirement. Requests were made to change the 24-hour reporting requirement to "within one business day". Operational details related to this requirement were also requested.

RESPONSE: Representatives of DOH met with pharmacy associations, representing both chain pharmacies and independent pharmacies, to assess the feasibility of 24-hour controlled substance reporting to the PMP. DOH representatives were assured that a 24-hour reporting period was feasible. In addition, the 24-hour reporting period was also suggested by the workgroup established by the Internet System for Tracking Over-Prescribing Act (I-STOP), Chapter 447 of the Laws of 2012. Operational requirements have been posted on the DOH, Bureau of Narcotic Enforcement's web site.

COMMENT: Several comments were received related to the zero controlled substance reporting requirements for pharmacies. A commenter stated that this requirement required a change in software and requested an expanded time frame (six months) for implementation of the zero reporting requirement.

RESPONSE: The zero reporting requirement utilizes the same reporting requirements currently in existence for the reporting of controlled substance data in NYS. DOH acknowledges that minimal changes in software may be necessary. This is not expected to impact the majority of pharmacies in NYS.

COMMENT: Comments were received related to the submission of dispensing data based on the date the prescription was delivered. Multiple comments suggested that this is a new standard. Commenters requested that DOH allow for the option to report to the PMP from "either…the date filled or from the point of sale" with an indication of which date was used or to change the requirement all together to the date filled.

RESPONSE: There was no change in the regulation related to the submission of data based on the date the controlled substance was delivered. The current regulation does not provide for information to be submitted based on date filled, and the change proposed in these regulations is only related to the time frame (i.e., 24 hours) in which reporting must occur. The definition of "deliver" in regard to controlled substances may be found in Article 33 of the Public Health Law, Section 3302.

COMMENT: Comments were received regarding the time frame for the submission of corrections of pharmacy data submissions.

RESPONSE: Time frames related to error correction reporting were not addressed in this regulation.

COMMENT: Comments were received related to unattended or automated reporting of pharmacy controlled substance data and requests were made to "have an unattended reporting tool for an automatic uploading of data to enable them to submit their daily information to the PMP."

RESPONSE: Unattended reporting of pharmacy controlled substance data was not addressed in this regulation, and there is nothing in statute or regulation prohibiting it. Although it is not available yet, DOH is actively working on this tool for pharmacy data submissions.

COMMENT: Comments were received inquiring about access to the PMP by a health care plan pharmacist and whether or not a physician employed by a health care plan could access the PMP information and delegate the information to others.

RESPONSE: The proposed regulations only relate to each of these questions within the context of a customer presenting a valid prescription to a pharmacist or a patient being treated by a physician.

COMMENT: A comment was received requesting "state specific penalties for practitioners or pharmacists whose practices access a person's information when not done in the course of patient care."

RESPONSE: These regulations did not establish any new penalties. However, there are multiple statutes that provide penalties for willful violations of the NYS Public Health Law.

COMMENT: A number of comments were received that explained certain types of practices and scenarios that the commenters believed warranted specific exceptions to the duty to consult or report to the PMP, and one suggested that self-monitoring would be sufficient if practitioners were given access to the PMP. A comment was received asking why, in a pharmacy setting, access to the PMP as a designee is limited to pharmacists and pharmacy interns. A number of comments included fact-specific information regarding why consultation of the PMP or reporting (or zero reporting) to the PMP would be difficult, costly, or create negative unintended consequences and requesting that an exception be made or waiver granted.

RESPONSE: The issue that all of the types of comments have in common is that they are based on objections to requirements in I-STOP. While these requirements are included in the proposed regulations as well, they are statutory requirements that cannot be undone by regulation. Specific exceptions were included in I-STOP, and it must be presumed that the Legislature intended to provide exceptions only in those instances and that any group or scenario that was not specifically exempted by the Legislature in I-STOP was intended to comply with the statute and subsequent regulations. In the instances where specific facts regarding individual offices, companies or practices were provided, the commenters may wish to request a waiver in compliance with the I-STOP regulations upon adoption of such regulations.

COMMENT: One comment was received requesting access to the PMP by out-of-state pharmacists filling prescriptions that were written in New York.

RESPONSE: That issue is not mandated in I-STOP and was not addressed in the proposed regulations.

COMMENT: A number of comments have requested grace periods for certain groups or in general and/or a delay in implementation of the proposed regulations. One comment, in particular, noted that the possibility of the proposed regulations becoming effective so close to the implementation date results in a "very narrow timeline [that] does not provide adequate time to develop and implement policies and procedures at the institution that will be sufficient to meet the requirements outlined in the final regulations."

RESPONSE: I-STOP does not provide for a grace period or any delay in implementation.

COMMENT: One comment asserted that the current PMP does not allow providers to identify designees, and that there will be a wait time of approximately two to three weeks after implementation before this becomes possible.

RESPONSE: This comment addresses concerns about implementation rather than concerns or suggestions regarding the proposed regulations.

However, it should be noted that this assertion is inaccurate, and providers have been able to identify designees since July 8, 2013. There will be no wait time regarding the identification of designees on the PMP for providers who have the necessary Health Commerce System (HCS) account.

COMMENT: Additionally, one comment stated that when I-STOP is effective, many prescribers may not yet have obtained the required HCS account or have "obtained approval for designated support staff to facilitate the duty to consult the [PMP]."

RESPONSE: Practitioners have been authorized to access the PMP through an HCS account since February of 2010, and the upcoming duty to consult the PMP was specified in I-STOP, which was signed into law on August 27, 2012. The proposed regulations were not the initiator of a practitioner's need to access to the HCS system. Additionally, the only "approval" that is necessary to designate support staff is that of the practitioner, who exhibits his/her approval by signing into his/her HCS account, accessing the PMP, and adding the support staff member as a designee – no additional approval is required in I-STOP or the proposed regulations.

COMMENT: Comments were submitted requesting exceptions from the requirement to document in a patient's chart whether or not the PMP was consulted and, if not, the specific exception that would authorize the decision not to consult the PMP. The exceptions were being sought for instances such as where opioids are administered to inpatients, asserting that this requirement would be burdensome, or when an exception would regularly apply such as physicians in emergency departments.

RESPONSE: I-STOP and the proposed regulations provide multiple exceptions to the duty to consult the PMP. The I-STOP workgroup recommended that practitioners document whether or not they have consulted the PMP and, if they have not consulted, the specific exception relied on by the practitioner in choosing not to consult the PMP. That recommendation was incorporated into the proposed regulation. This documentation could be as simple as a checkbox in the patient's chart – especially in instances where the exception is regularly utilized. This provision will serve to protect practitioners who will, undoubtedly, have instances where they will have to answer questions about their treatment of specific patients. Rather than having to rely on memory or reconstruct their thought process at a given time, practitioners will have documentation regarding their consultation of – or reason to not consult – the PMP.

COMMENT: A comment was submitted requesting "clarification permitting hospital-employed practitioners/prescribers to utilize hospital administrative personnel who work with their practices as designees."

RESPONSE: This issue is addressed in the proposed § 80.63(c)(3)(ii), specifying that a practitioner may appoint a designee if "the designee is employed by the same professional practice or is under contract with such practice. For purposes of this subparagraph, professional practice shall include, but not be limited to, an institutional dispenser where the designating practitioner is employed, under contract, or otherwise has privileges or authorization to practice". Therefore, a practitioner who is not within the same practice, in the traditional sense, as a hospital's administrative personnel may still be authorized to designate such personnel to access the PMP on his/her behalf.

COMMENT: A number of commenters presented questions or suggestions specific to implementation. For example, questions about how to utilize the system, where and how often information must be uploaded and electronic prescribing (which is not the subject of these regulations). Also, comments were received suggesting that DOH continue to alert pharmacies of missing or incorrect data and allow them to send in corrections within a reasonable timeframe, as well as providing written guidance to hospice program directors.

RESPONSE: This is not the proper forum to address these implementation issues, and the commenters are encouraged to contact the Bureau of Narcotic Enforcement directly with any questions or concerns regarding implementation and the PMP system. Additionally, DOH will consider all suggestions that have been submitted whether or not they apply to the proposed regulations.

COMMENT: Comments were received requesting that practitioners be allowed to use PMP data obtained more than 24 hours before a prescription is issued. Citing practitioner's workflow, these requests included a 36-hour time frame or at the time of admission for a prescription issued to inpatients upon discharge.

RESPONSE: The 24-hour window allows practitioners or their designees to obtain a patient's history outside of patient hours, yet ensures the data is still timely. This timeframe was recommended by the I-STOP workgroup.

COMMENT: Multiple comments were received asking that residents be allowed direct access to the PMP rather than accessing it as designees of a practitioner.

RESPONSE: The definition of "practitioner" within Article 33 does not include unlicensed residents, therefore precluding them from having direct access to the PMP. Unlicensed residents may access PMP information as a designee, receive it from a supervising physician or colleague or from administrative staff, providing teaching institutions with multiple options for disseminating this information. Residents who are licensed through the State Education Department may independently access the PMP. Moreover, the proposed regulations are also consistent with the supervised and limited practice of medicine engaged in by residents.

COMMENT: Comments were received concerning a practitioner's responsibility when she/he cannot access the PMP due to various technological failures.

RESPONSE: These concerns were addressed in the proposed regulations. Proposed section 80.63(2)(ix) would exclude practitioners from the duty to consult the registry on an occasion "when [the] registry is not operational…or where it cannot be accessed by the practitioner due to a temporary technological or electrical failure."

Lake George Park Commission

PROPOSED RULE MAKING HEARING(S) SCHEDULED

Mandatory Inspection of Trailered Vessels for Aquatic Invasive Species Prior to Launching into the Waters of Lake George Park

I.D. No. LGP-34-13-00001-P

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

Proposed Action: Repeal of Subpart 646-8 and addition of new Subpart 646-8 to Title 6 NYCRR.

Statutory authority: Environmental Conservation Law, sections 43-0117(4), 43-0107(8) and 43-0107(32)

Subject: Mandatory inspection of trailered vessels for aquatic invasive species prior to launching into the waters of Lake George Park.

Purpose: To prevent the introduction and spread of aquatic invasive species into the waters of the Lake George Park.

Public hearing(s) will be held at: 2:00 p.m., Oct. 8, 2013 at Fort William Henry, Lake George, NY; and 6:00 p.m., Oct. 10, 2013 at Best Western Inn, Ticonderoga, NY.

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

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

Text of proposed rule: A new subpart, 6 NYCRR Subpart 646-8 is added to read as follows:

AQUATIC INVASIVE SPECIES REGULATION FOR THE LAKE GEORGE PARK

Section 646-8.1 Purpose and Intent

The purpose of these regulations is to prevent the introduction and spread of aquatic invasive species. Aquatic invasive species (AIS) pose a serious threat to the waters of Lake George and can have a disastrous impact to the ecology and economy of the Lake George Park. This rule is intended prohibit all introductions of invasive species to Lake George, and to provide close management of the primary vector, trailered boats, by providing for the inspection of vessels to ensure that the operators of these vessels have taken steps to prevent the spread of aquatic invasive species.

Section 646-8.2 Applicability

All actions that cause the transport and introduction of aquatic invasive species in the Lake George Park. All trailered vessels shall be subject to inspection, and if determined necessary, decontamination prior to launch into the waters of the Lake George Park. This inspection may take place anywhere within the Lake George Park or at any designated location authorized by the Commission.

Section 646-8.3 Definitions

The following terms shall have the stated meanings whenever used in this Subpart or in documents referenced or prepared by the Commission. Other terms defined in section 645-2.1 of this Title shall have the meanings set forth in that section.

(a) "Aquatic invasive species (AIS)" means an aquatic animal or plant species that is:

(i) nonnative to the ecosystem under consideration; and

(ii) whose introduction causes or is likely to cause economic or environmental harm or harm to human health as identified by the New York State Invasive Species Task Force list of aquatic invasive species.

(b) "Decontamination" means any method determined by the Commission to effectively remove aquatic invasive species from vessels or trailered vessels.

(c) "Launch" means any boat launch, ramp, hoist or other area on a lakefront lot that is or may be used to allow a trailered vessel to enter Lake George.

(d) "Launch operator" means the owner of the lakefront lot upon which a launch is located, or the operator of the launch.

(e) "Trailered vessel" means any vessel as defined in 645-2.1(c)(a) which is towed by another vehicle. The term includes a vessel's motor, trailer, compartments, and any other associated equipment or containers that routinely or reasonably could be expected to contain, or come into contact with water. Trailered vessel does not include seaplanes, hand-launched rafts, kayaks, belly boards, float tubes, canoes, row boats, windsurfer boards, sail boards, inner tubes, standup paddleboards or similar devices.

(f) "Vessel inspection control seal (VICS)" means a device, authorized by the Commission to verify that vessels have met the requirements of this subpart.

(g) "Vessel inspection technician (VIT)" means a person who is certified by the Commission to provide services in the form of inspections only, or both inspections and decontamination.

Section 646-8.4 Prohibitions

(a) No person shall transport or introduce aquatic invasive species into the Lake George Park by any means, including but not limited to aquaculture, aquarium dump, animal release, trailered boats, non-motorized vessels, docks, construction equipment, fishing equipment, and bait.

(b) No person shall provide inaccurate or false information to Commission personnel or VIT concerning prior launches, introduction of aquatic invasive species, launch registration, or any other information required to be provided pursuant to this subpart.

(c) No person shall alter or modify any vessel inspection and invasive control seal used by the Commission or any VIT.

(d) No person shall operate a launch without maintaining launch records as required by this Subpart.

(e) No person shall launch or allow or cause to be launched any trailered vessel without having demonstrated compliance with vessel inspections, decontamination and administration as set forth in Section 646-8.5 of this Subpart.

Section 646-8.5 Vessel Inspections, Decontamination and Administration

(a) Unless exempted under Paragraph (c) below, prior to launch into the waters of the Lake George Park, all trailered vessels shall be inspected by a VIT to detect the presence of, and prevent the introduction of, aquatic invasive species. Non-trailered vessels may be subject to inspection prior to entering the waters of the Lake George Park if determined necessary by the Commission or any VIT.

(b) All vessels inspected pursuant to subparagraph 646-8.5(a) shall be subject to decontamination if determined necessary by the Commission or any VIT prior to entering the waters of the Lake George Park.

(c) Trailered vessels bearing positive verification of having last launched within the Lake George Park shall be exempted from inspection and decontamination as required under Paragraphs (a) and (b). The Commission shall have the authority to enter into agreements with launch operators who demonstrate compliance with launching vessels only subject to launch in the Lake George Park.

(d) Inspections and decontamination performed pursuant to this Subpart may be subject to a fee related to the Commission's costs of performing such services and other vessel inspection program costs.

(e) All launches shall be registered with the Commission on such form as the Commission may prescribe. Launch registration must be completed by the launch operator within 60 days of adoption of this regulation. Launch operators shall certify compliance with Commission rules and maintain a written record of launches on such forms as the Commission may prescribe.

(f) Launch operators shall secure launches in a manner authorized by the Commission so as to prevent trailered vessels which are not in compliance with these regulations from entering the waters of the Lake George Park.

(g) Vessel inspection technicians will be trained and certified annually by the Commission. A training fee may be charged to individuals taking the course. The Commission will identify the type and hours of training to be completed by VITs on an annual basis.

Section 646-8.6 Program Evaluation

During the second year after the adoption of this subpart, the Commission will reevaluate the effectiveness, cost and regulatory impact of the mandatory trailered boat inspection program and determine whether to continue the program, with or without modifications. This subpart will expire as of December 31, 2015.

Text of proposed rule and any required statements and analyses may be obtained from: David Wick, Executive Director, Lake George Park Commission, P.O. Box 749, 75 Fort Orange Road, Lake George, NY 12845, (518) 668-9347, email: dave@lgpc.state.ny.us

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.

Summary of Regulatory Impact Statement

This regulatory impact statement (RIS) has been prepared for the proposed regulation, 6 NYCRR Subpart 646-8, promulgated by the Lake George Park Commission (the "Commission"). Articles one and two of the State Administration Procedures Act (SAPA) contain procedural and substantive requirements with which the agencies must comply when proposing and adopting rules.

The Legislature established the Lake George Park Commission ("Commission") as an independent agency and delegated broad and expansive powers to protect enhance and regulate the resources of the Lake George Park, and particularly the waters of the Lake George. Environmental Conservation Law Section 43-0117(4) directs the Commission to promulgate regulations relative to the permitting of boats, the regulation of marinas, and regulation of recreational activities to protect and preserve the water quality of Lake George and further provides that no person "shall operate any boat or vessel, or undertake any regulated activity without complying with such regulations." Environmental Conservation Law 43-0107 (8) provides that the Commission shall have the power to adopt, amend and repeal rules and regulations which are consistent with Title 43 of the Environmental Conservation Law, as it deems necessary to administer this article, and "to do any and all things necessary or convenient to carry out the purpose and policies of this article and to exercise all powers granted by law."

The proposed regulation is consistent with the legislative objects by regulating the use of boats on the waters of Lake George Park and by enhancing and preserving the quality of those waters for the public benefit. The proposed regulation is intended to protect the waters of Lake George Park from further infestation of Aquative Invasive Species (AIS) and to reduce the spread and proliferation of the 5 AIS that are currently found in Lake George.

The Lake George communities have already expended more than Six Million Dollars to manage three of these AIS in Lake George. It is estimated that failure to adopt appropriate measures to reduce the spread of AIS will result in more aggressive and unmanageable AIS from entering Lake George. The further spread of AIS into Lake George is estimated to result in significant losses of tourism and visits to Lake George, with a corresponding loss of approximately 9 Million to as much as 48 Million dollars to the local economies who depend on tourism. The Regulatory Impact Statement describes the threat of AIS in more detail.

The proposed regulation was drafted after a two year outreach and study of possible methods to prevent the further spread of AIS into the waters of the Lake George Park. The outreach and study looked at methods to preserve the excellent water quality of Lake George and the economic and recreational benefits associated with the Lake George Park. The results of this study determined that the most effective means of reducing the spread and infestation of new AIS into the waters of Lake George Park was through a mandatory inspection program of all trailered vessels prior to being launched into the waters of the Lake George Park.

The proposed regulation requires all trailered vessels to undergo mandatory inspection and possible decontamination prior to launch in the waters of the Lake George Park. The regulation requires trailered boats to visit a regional inspection station in the Lake George watershed, and undergo a 7-10 minute invasive species inspection of the vessel and trailer. The standard for boats to pass inspection would be that of the Western states model of "clean, drained and dry" (CDD), which would work to prevent both visible and non-visible aquatic invasive threats.

Inspectors would be authorized by the Commission to enter the interior of boats in order to complete the inspection of all hull compartments. As part of the boat inspection process, boat owners will also be required to drain the bilge and properly dispose of AIS prior to leaving the launch area to prevent Lake George from being a source of AIS to other water bodies.

Boats that do not meet the C-D-D inspection standard would have to be washed and decontaminated at the inspection station with High Pressure Hot Water (HPHW) prior to launching. Boats with ballast tanks and bilges will have to be drained and possibly flushed with HPHW. Once the inspec-

tion and, if necessary, decontamination process is complete, the boat would be fitted with an inspection tag securing the boat to the trailer. Boats are then permitted to proceed to the marina of choice and launch into Lake George. As long as the boat's inspection tag is secured/connected to the trailer the boat is free to launch. Boats that are leaving Lake George launches will also be fitted with inspection tags. These boats may re-launch into Lake George without being re-inspected as long as the inspection tag is intact.

The proposed regulation avoids undue deleterious economic effects or overly burdensome impacts to boat owners because the inspection process is only expected to take 10 minutes and, at present, the Commission does not intend to charge a fee for such service. The regulation provides however that the Commission may establish a fee related to the Commission's costs of performing such services and other vessel inspection program costs and such fees may be necessary in the future.

Costs to launch operators are expected to be slight. Local governments and small businesses would be required to monitor boats entering and leaving their launches, to maintain records of launches from their properties and to secure their launches in some manner during off-hours. The regulation does not mandate the method by which the launches must be secured and businesses and launch operators may use the most cost-effective means to meet these requirements. Marinas and launch operators generally employee people to assist customers in the launching of their boats and it is expected that these same employees can perform the duties required by the regulation. Marinas and launch operators also require a fee from boaters prior to launching from their facilities and these facilities are usually closed during off hours. It is not expected that these businesses would incur much if any expense to implement this regulation. The reporting requirement is also expected to be minimal. The Commission has streamlined the process as much as possible by exempting boats whose last launch was in Lake George from inspection.

The costs to the Commission for administering the regulation are expected to be approximately $700,000 annually. The Regulatory Impact Statement provides a description of these costs as well as a description of the cost of compliance on regulated parties. The Regulatory Impact Statement also describes the possible funding alternatives available for this program.

The Regulatory Impact Statements provides a description of the various alternatives to the regulation considered by the Commission and a description of the benefits and potential adverse impacts as a result of the Regulation, including a description of the potential adverse and beneficial impacts on tourism and the local economy.

The Regulatory Impact Statement describes the reporting and compliance requirements for the regulated parties and local governments. The Regulatory Impact Statement also describes the interaction with existing State and Local Laws, as well as the Commission's own regulations. The Regulatory Impact Statement also describes the expected interaction with DEC and other state and local agencies in implementing the regulation.

The Regulatory Impact Statement and the proposed regulation provide for an expiration of the program after two years to allow the Commission the opportunity to review and reassess the efficacy, cost and benefits of the program at the end of the second season after its implementation.

Regulatory Flexibility Analysis

1. Effect of the rule:

The proposed regulation may impose some slight additional costs to local governments and small businesses who would be required to maintain records of launches from their properties and who would be required to secure their launches in some manner during off-hours. These costs are expected to be minor, however. The regulation does not mandate the method by which the launches must be secured, only that the Commission approve the method of security.

Under the program, an employee of a business or municipality would be expected to check each boat that is launched from the property to insure that the boat had a tag indicating it had been inspected by one of the Commission staff or that it was last launched in the Lake George Park. This person or persons would also be expected to tag any boats leaving the waters of the Lake George Park via that launch, if requested by the boat owner to do so. This person would also be expected to keep and maintain records of all boats that were launched from the facility and to keep all tags that were removed from the boats and those that were not used.

This regulation is not expected to impose a significant cost on local municipalities or businesses. There are currently only 2 public launches that are owned by municipalities: one in the Town of Putnam and one in the Town of Hague. The Town of Hague already employs a boat steward to assist at its launches and would likely not be required to hire any additional employees in order to implement the program. The Town of Putnam may need to hire one additional person to monitor boats coming in and out of the lake at that location. The Town of Bolton has an interest in Norowal Marina, as does DEC. The Commission intends to staff inspectors at that launch, however, thereby eliminating any cost to this municipality.

Marinas and launch operators generally require a fee from boaters prior to launching from their facilities and these facilities are usually closed during off hours. It is not expected that these businesses would incur much if any expense to implement this regulation.

Moreover, boats whose last launch was in the Lake George Park are exempt from further inspections. Thus the rule may provide for an increase in local businesses, such as marinas and quick launches, for those boaters who only launch in Lake George.

Requiring boat inspections may also cause some potential tourists to stay away from Lake George or choose to visit the lake less frequently. This would have impacts on tourism and the regional economy. Data from other lakes with inspection programs indicate that changes in boat usage after mandatory boat inspections are implemented is minimal or is within the annual variability of year-to-year recreational pursuit changes.[1]

The inconvenience and costs of the regulation are offset by the enormous benefit the regulation is expected to have on the quality of the waters of the Lake George Park and to the public health and recreation, the local economy and tourism in the Lake George area. There are currently 5 invasive species in Lake George and the Commission actively manages three of these: Eurasian Water Milfoil, zebra mussels and Asian clams. Without an effective prevention strategy, dozens of AIS may be introduced to the waters of the Lake George Park. The primary vector by which these species may arrive is trailered boats coming in from nearby waterways such as Lake Champlain, the Hudson River, and from the Great Lakes and Finger Lakes region. AIS have the potential to cause significant, long-term damage to the Lake George environment and cost millions of dollars to control in the future. These negative impacts could extend to the local tax base and the robust tourism industry.

The cost of managing existing AIS is reported to be a minimum of 16:1 times higher than the cost of prevention (US Congress of Office of Technology Assessment, 1993). Over the last 26 years (1986-2012), it has cost the Lake George community an estimated $6.5 million dollars to combat EWM, zebra mussels and Asian clams. The future threat of new AIS introductions to the Lake George Park and Lake George itself is high and the outcome of large or extensive uncontrolled growth of AIS may result in significant impacts to the regional economy. Most AIS are most likely to occur in the "littoral zone" of the lake. This zone is described as the shallow water area extending from the shoreline to a point where water depth is approximately ten (10) meters in depth (Boylen and Kuliopulo, 1981). The littoral zone of Lake George comprises approximately 8,058 acres or twenty-nine percent (29%) of the overall water coverage area and is the area where activities such as boating, swimming, scuba diving, and much of the other recreational activities occur. This area also serves as the primary habitat for many game fish attracting recreational and sport fishermen or "anglers."

The adverse economic effect of future AIS invasions and outbreaks will be most felt along the 3,130 shoreline properties along Lake George and extending through eight (8) municipalities (the Towns of Dresden, Fort Ann, Putnam, Bolton, Hague, Lake George (inclusive of the Village of Lake George), Queensbury and Ticonderoga) within three (3) counties (Washington, Warren and Essex). Additionally, it is acknowledged that the economic impact of AIS may have implications to upland (off shore) properties. The proposed rule is needed to reduce the risk of introduction and spread of aquatic invasive species by subjecting all trailered vessels to inspection, and if determined necessary, decontamination prior to launch into the waters of Lake George Park. It is anticipated that a mandatory boat inspection program will have a net positive impact on the water quality, ecology, recreational uses and economic health of the Lake George Park by significantly reducing the threat of AS from being introduced to the waters in Lake George Park and causing new ecological impacts.

2. Compliance requirements:

Local launches will be required to secure their launches in off hours in some fashion that is acceptable to the Commission. This might require the launch to install a gate or surveillance equipment for its launches. Most businesses already limit launches to business hours only and this will have little effect on these businesses.

Businesses and municipalities will also be expected to keep and maintain records of boats that launch from their facilities to ensure that such boats have been properly inspected prior to launch. Boats that have been properly inspected will be sealed to their trailers. The launch owner or operator will have to cut the seal from the boat's trailer prior to allowing the boat to launch in the lake. The launch owner or operator will also keep a record of this boat and the seal. The launch owner or operator will also re-seal any boat requesting to be re-sealed upon exiting the lake. Boats that are re-sealed upon leaving the lake may reenter the lake without being re-inspected. The launch owner or operator must also record any boats that leave the lake and are re-sealed and keep any unused seals. These record-keeping requirements are not expected to be extensive or burdensome. Most businesses that operate a launch already employ sufficient staff to perform these tasks. Moreover, the Commission is commit-

ted to work with the affected businesses and municipalities to find the most cost-effective solution to implement the regulations. Local businesses currently are required to obtain authorization or permits from the Commission for their marina activities and to construct and install docks on their facilities. The additional interaction with the Commission required by this regulation is not expected to be burdensome.

3. Professional services:

Some businesses and municipalities may have to hire additional staff to monitor their launches. These positions are labor, as opposed to professional, positions, however.

4. Compliance costs:

The costs for compliance will be the cost of additional personnel, if any, to monitor launches and maintain records and the cost to secure the business or municipality's launch during off season hours. Each business or municipality is permitted to use whatever method it chooses, with the Commission's authorization, to secure its launch, thus allowing the property owner to use the most cost-effective means available to implement the rule.

5. Economic and technological feasibility:

Compliance with the rule is both economic and technologically feasible. As set forth above, most marinas and other businesses offering launches already restrict launches to business hours and employ staff to assist customers in launching their boats. These staff members could perform the additional requirement of insuring that those boats launched from their facilities have been properly inspected prior to launch.

6. Minimizing adverse impact:

The proposed compliance requirement minimizes adverse impact to the potentially affected businesses and municipalities. The mandatory boat inspection program is the most feasible method of to prevent the further spread of aquatic invasive species into the waters of Lake George. Although there may be some initial adverse impacts from boaters who are unfamiliar with the cleaned, drained and dry protocol and who do not understand the boat inspection program, the Commission has and will institute a boater education program and public outreach to educate boaters on the new regulations. The regulation also provides that boats that were last launched in the Lake George Park do not have to be re-inspected before launching and may provide a means whereby "frozen boats," i.e. boats which have been out in below-freezing temperatures for at least 3 weeks could be certified as invasives-free, and tagged as if they were inspected. The Commission estimates that approximately 2/3 of all boats that annually launch in Lake George only launch in Lake George.

7. Small business and local government participation:

The Commission has conducted many meetings with municipalities, local chambers of commerce, business groups and environmental groups related to the proposed regulation. These conversations included means and methods of preventing the spread of aquatic invasive species into the lake. No alternative methods have been discovered that would be less adverse to small businesses and, at the same time, meet the objective of the proposal. The municipalities and the majority of the businesses involved in these discussions have been in favor of the regulation. Some businesses, while not opposed to the regulation, have expressed concern that they may lose customers to other lakes or businesses who do not comply with the regulations. Education and, if necessary, enforcement will be key to ensuring that any adverse effects to businesses are minimized. The Commission will hold two additional public information meetings on the proposal, at a southern and northern location along Lake George. The Commission will provide educational information about the program on its web site and will work with the local media, other not-for-profit groups and other agencies such as DEC and Parks and Recreation to assist in a public outreach and education campaign.

The Affects of Mandatory Boat Inspections on Recreational Boating; Brad Wright; University of Northern Colorado; 2009.[1]

Rural Area Flexibility Analysis

1. Types and estimated numbers of rural areas:

The Lake George Park is a rural area comprising some 300 square miles in land and water surface area. Of the approximately 255 miles of land surface, some 100 square miles is State-owned forest preserves. The whole area is located within the Adirondack Mountain region occupying an area at the south-eastern portion of the Adirondack Park. It is characterized by steeply sloped forested mountains and hillside areas with a number of streams and smaller lakes and ponds. Lake George is a 44 square mile glacially-formed lake that is 32 miles long, has an average width of 1.5 miles and an average depth of approximately 70 feet. Lake George includes approximately 131 miles of shoreline and is fed by more than 150 streams.

Development in the Lake George Park is concentrated along the lakeshore and nearby State highways of Route 9, 9L and 9N. There are fifteen local government entities, three counties and twelve municipalities all or partially within the Lake George Park. The population of the park expands by ten-fold in the summer months.

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

Local launches will be required to secure their launches in off-hours in some fashion that is acceptable to the Commission. This might require the launch owner to install a gate or surveillance equipment. Most businesses already limit launches to business hours only and this will have little effect on these businesses.

Businesses and municipalities will also be expected to keep and maintain records of boats that launch from their facilities to ensure that such boats have been properly inspected prior to launch. Boats that have been properly inspected will be sealed to their trailers. The launch owner or operator will have to cut the seal from the boat's trailer prior to allowing the boat to launch in the lake. The launch owner or operator will also keep a record of this boat and the seal. The launch owner or operator will also re-seal any boat requesting to be re-sealed upon exiting the lake. Boats that are re-sealed upon leaving the lake may reenter the lake without being re-inspected. The launch owner or operator must also record any boats that leave the lake and are re-sealed and keep any unused seals. These record-keeping requirements are not expected to be extensive or burdensome. Most businesses that operate a launch already employ sufficient staff to perform these tasks. Moreover, the Commission is committed to work with the affected businesses and municipalities to find the most cost-effective solution to implement the regulations. Local businesses currently are required to obtain authorization or permits from the Commission for their marina activities and to construct and install docks on their facilities. The additional interaction with the Commission required by this regulation is not expected to be burdensome.

No professional services are anticipated to be necessary for any marina, launch operator or municipality to comply with the regulation.

3. Costs:

The proposed regulation may impose some slight additional costs to local governments and small businesses who would be required to monitor boats coming entering and leaving their launches, to maintain records of launches from their properties and to secure their launches in some manner during off-hours. These costs are expected to be minor, however. The regulation does not mandate the method by which the launches must be secured, only that the Commission approve the method of security. Only 2 municipal launches will be affected: one in the Town of Putnam and one in the Town of Hague. It is not expected that the Town of Hague will require any additional personnel to implement this regulation. The Town of Putnam may need to hire one additional person to monitor boats coming in and out of Lake George at that location. Marinas and launch operators generally employ people to assist customers in the launching of their boats and it is expected that these same employees can perform the duties required by the regulation. Marinas and launch operators also require a fee from boaters prior to launching from their facilities and these facilities are usually closed during off hours. It is not expected that these businesses would incur much if any expense to implement this regulation.

Requiring boat inspections may cause some individuals to stay away from Lake George or choose to visit the lake less frequently. This would have impacts on tourism and the regional economy. Data from other lakes with inspection programs indicate that changes in boat usage after mandatory boat inspections are implemented is minimal or is within the annual variability of year-to-year recreational pursuit changes.

The regulation might increase markets for boats that are only launched on the Lake George Park during a boating season. Such boaters will be exempt from inspection, if they can prove through their boats being sealed to their trailers or otherwise, that they last launched in the Lake George Park. Overall, the program is expected to increase the quality of the water of Lake George and thereby preserve and increase tourism and jobs for the area.

The regulation will increase costs and demands on the Commission staff due to the need for staffing 5 inspection and decontamination stations, increased public outreach and education, and enforcement of the regulation. The expected annual cost for staffing the program is anticipated to be $700,000.

4. Minimizing adverse impact:

The Commission has minimized unnecessary adverse impacts on New York State jobs by creating an inspection program designed to prevent the spread of AIS into the waters of the Lake George Park, preserving the quality of the water for health, recreational, economic and tourism activities. The Commission has minimized the adverse effect of the regulation by streamlining the inspection process as much as possible, minimizing the fees charged for the process and allowing launch operators to devise their own method of securing their launches to best suit their business model.

5. Rural area participation:

The Commission has already held over 50 public meetings and intends

to hold two more public information meetings around the Lake George Park to inform the public of the proposed regulations, the need for them, how they will affect local businesses and tourism and how all can comply with the regulation.

Job Impact Statement

1. Nature of impact:

The regulation is not expected to have any significant impact on job numbers. There are some businesses, such as marinas, hotels and motels and quick launches, which will be required to keep monthly records of the launches from those facilities. These businesses will also be required to keep their launches secured during times when no inspectors are available, such as nighttime hours.

Requiring boat inspections may also cause some potential tourists to stay away from Lake George or choose to visit the lake less frequently. This would have impacts on tourism and regional economy. Data from other lakes with inspection programs indicate that changes in boat usage after mandatory boat inspections are implemented is minimal or is within the annual variability of year-to-year recreational pursuit changes.[1]

The inconvenience and costs of the regulation are offset by the enormous benefit the regulation is expected to have on the quality of the waters of the Lake George Park and to the public health and recreation, the local economy and tourism in the Lake George area. AIS have the potential to cause significant, long-term damage to the Lake George environment and cost millions of dollars to control in the future. These negative impacts could extend to the local tax base and the robust tourism industry.

The cost of managing existing AIS is extensive. Over the last 26 years (1986-2012), it has cost the Lake George community an estimated $6.5 million dollars to combat three different AIS in the Lake. The future threat of new AIS introductions to the Lake George Park and Lake George itself is high and the outcome of large or extensive uncontrolled growth of AIS may result in significant impacts to the regional economy. The areas where AIS are expected to proliferate are in the same areas where most recreational activities occur and most launches, docks and moorings are located. The adverse economic effect of future AIS invasions and outbreaks will be most felt along the 3,130 shoreline properties along Lake George and extending through eight (8) municipalities (the Towns of Dresden, Fort Ann, Putnam, Bolton, Hague, Lake George (inclusive of the Village of Lake George), Queensbury and Ticonderoga) within three (3) counties (Washington, Warren and Essex). The proliferation of additional AIS into the waters of the Lake George Park is expected to have a significant negative impact on tourism to the region, negatively impacting jobs in the area. If nothing is done to stop the spread of existing and new AIS into Lake George, the loss in total annual tourism expenditures is estimated to range between $9.74 million to $48.7 million. The annual loss in visitor events is estimated to be approximately 146,600 to 733,000 events. Tourism-related employment is estimated to experience a net loss of approximately 162 to 800 jobs with a corresponding reduction in wages paid ranging from approximately $4.55 million to $22.74 million.

The proposed rule is the most efficient method of reducing spread of existing AIS and preventing the introduction of new AIS into Lake George. The rule is reduces the risk of introduction and spread of aquatic invasive species by subjecting all trailered vessels to inspection, and if determined necessary, decontamination prior to launch into the waters of Lake George Park. It is anticipated that a mandatory boat inspection program will have a net positive impact on the water quality, ecology, recreational uses and economic health of the Lake George Park by significantly reducing the threat of AS from being introduced to the waters in Lake George Park and causing new ecological impacts.

The overall impact on jobs is expected to be positive, as the Commission will hire 30-40 additional staff to perform inspections and, if necessary, decontamination.

2. Categories and numbers affected:

The jobs affected would primarily be laborer types, requiring some training, related to inspection and decontamination of boats. These jobs would be seasonal from April through November, depending annually on weather conditions.

3. Regions of adverse impact:

The regulations apply only to the Lake George Park.

4. Minimizing adverse impacts:

The Commission has minimized unnecessary adverse impacts on New York jobs by making the boat inspections as streamlined as possible and by providing a means by which boats that are only launched in the Lake George Park during a season would be exempt from inspections. In addition, the Commission is considering a frozen boat program which would allow those boaters who can demonstrate that their boat was in frozen conditions sufficient to destroy any AIS prior to being launched into the Lake George Park may bypass the inspection. The program is expected to have a positive impact on jobs by providing for additional staffing at the Commission. Local businesses and municipalities may also hire additional personnel to ensure that boats launched from these facilities have been properly tagged and are tagged as they leave the launch, if requested.

5. Self-employment opportunities:

All inspectors are to be hired and trained by the Commission, so the program does not offer any self-employment opportunities.

The Affects of Mandatory Boat Inspections on Recreational Boating; Brad Wright; University of Northern Colorado; 2009.[1]

Department of Motor Vehicles

NOTICE OF ADOPTION

Points for Texting and Cell Phone Use

I.D. No. MTV-25-13-00003-A
Filing No. 819
Filing Date: 2013-08-06
Effective Date: 2013-08-21

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

Action taken: Amendment of section 131.3 of Title 15 NYCRR.

Statutory authority: Vehicle and Traffic Law, sections 215(a) and 510(3)(i)

Subject: Points for texting and cell phone use.

Purpose: To increase the point value assigned for texting and cell phone violations from 3 points to 5 points.

Text or summary was published in the June 19, 2013 issue of the Register, I.D. No. MTV-25-13-00003-EP.

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

Text of rule and any required statements and analyses may be obtained from: Heidi Bazicki, Department of Motor Vehicles, 6 Empire State Plaza, Rm. 526, Albany, NY 12228, (518) 474-0871, email: heidi.bazicki@dmv.ny.gov

Assessment of Public Comment

Comment: The Administrative Regulations Review Commission (ARRC) submitted a comment, which is quoted in pertinent part:

''While DMV clearly intends to assign points for any violation involving use of a cell phone or portable electronic device, even in cases where a mandatory suspension or revocation is involved, it appears that the way this rule is drafted also sweeps in numerous other violations of the Vehicle & Traffic Law. For the rule to be limited to cell phone and texting violations, it would only need to provide an exception for violations of subparagraph (iii) of paragraph (4) of § 131.3, where the five-point value is assigned to such violations.

Instead, the emergency/proposed rule provides that there shall not be any point value assigned for "any violation, other than a violation set forth in paragraphs (1) through (6) of this subdivision, for which suspension or revocation action is mandated upon conviction." By using this language, DMV includes every violation that is assigned a point value of three points or more as "an exception to the general rule that points are not assigned when a mandatory sanction results from a conviction." Many violations require a mandatory suspension, particularly for a junior or probationary license. Pursuant to Vehicle & Traffic Law §§ 510-b and 510-c, depending on the license category these can include any speeding offense, following too closely, stop sign violations and many other violations.

Given this, I urge the agency to change the language in § 131.3(b)(7)(iii) so that it refers only to violations "involving the use of a mobile telephone or portable electronic device" in § 131.3(b)(4)(iii). If there is any interest in providing for the assignment of points for any or all of the other violations that involve mandatory suspensions or revocations, they should be adopted through a separate rulemaking proceeding that provides the public with all of the information required by the State Administrative Procedure Act. Also, I urge DMV to remove any points that have been assigned since June 1st to drivers who were subject to mandatory suspension or revocation for those violations not involving cell phones or texting.''

Response: The Department appreciates the comment submitted by the ARRC. However, the proposed rule simply conforms Part 131 to existing Department practice and procedure. Currently, for example, the holder of a probationary license who commits a speeding violation is assigned points and is subject to the suspension of his or her license. Similarly, a person who holds a junior license and is convicted of passing a stopped school

bus is assigned points and is subject to the license suspension. Thus, the proposed rule was necessary, not only to capture the changes relevant to texting and cell phone violations, but also to reflect the Department's current practices relative to other violations.

Public Service Commission

NOTICE OF ADOPTION

Approval of Petition of Macedonia Plaza Development, LLC to Submeter Electricity in Flushing

I.D. No. PSC-15-13-00013-A

Filing Date: 2013-07-31

Effective Date: 2013-07-31

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

Action taken: On 7/18/13, the PSC adopted an order approving the petition of Macedonia Plaza Development, LLC to submeter electricity in Flushing, located in the territory of Consolidated Edison Company of New York, Inc.

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

Subject: Approval of petition of Macedonia Plaza Development, LLC to submeter electricity in Flushing.

Purpose: To approve the petition of Macedonia Plaza Development, LLC to submeter electricity in Flushing.

Substance of final rule: The Commission, on July 18, 2013 adopted an order approving the petition of Macedonia Plaza Development, LLC to submeter electricity in Flushing located in the territory of Consolidated Edison Company of New York, Inc., subject to the terms and conditions set forth in the order.

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

Text of rule may be obtained from: John Graham, Public Service Commission, Three Empire State Plaza, Albany, New York 12223, (518) 474-7687, email: john.graham@dps.ny.gov An IRS employer ID no. or social security no. is required from firms or persons to be billed 25 cents per page. Please use tracking number found on last line of notice in requests.

Assessment of Public Comment

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

(13-E-0102SA1)

NOTICE OF ADOPTION

Amendments to 16 NYCRR, Chapter 1, Subchapter A, Part 10

I.D. No. PSC-20-13-00010-A

Filing No. 820

Filing Date: 2013-08-06

Effective Date: 2013-08-21

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

Action taken: On 7/18/13, the PSC adopted the final rules approving amendments to 16 NYCRR, Part 10.

Statutory authority: Public Service Law, sections 4(1), 63-ff and 66

Subject: Amendments to 16 NYCRR, Chapter 1, Subchapter A, Part 10.

Purpose: To approve amendments to 16 NYCRR, Chapter 1, Subchapter A, Part 10.

Substance of final rule: The Commission, on July 18, 2013, adopted the final rules approving amendments to 16 NYCRR Chapter I, Rules of Procedure, Subchapter A, General, Part 10, Reference Manual.

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

Text of rule may be obtained from: Deborah Swatling, Public Service Commission, Three Empire State Plaza, Albany, New York 12223, (518) 486-2659, email: deborah.swatling@dps.ny.gov An IRS employer ID no. or social security no. is required from firms or persons to be billed 25 cents per page. Please use tracking number found on last line of notice in requests.

Assessment of Public Comment

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

(13-G-0105SA1)

PROPOSED RULE MAKING
NO HEARING(S) SCHEDULED

Escrow Account and Surcharge to Fund Extraordinary Repairs

I.D. No. PSC-34-13-00004-P

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

Proposed Action: The Commission is considering Beekman Water Company, Inc.'s request to modify its petition filed on February 22, 2013, to establish a $30,400 escrow account to be funded in one year via a $25 per quarter surcharge to all customers.

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

Subject: Escrow account and surcharge to fund extraordinary repairs.

Purpose: To approve the establishment of an escrow account and surcharge.

Substance of proposed rule: The Commission is considering whether to approve, modify or reject, in whole or in part, a modification to Beekman Water Company, Inc.'s (Beekman) petition filed on February 22, 2013. Beekman is requesting to establish a $30,400 escrow account to be funded in one year via a $25 per quarter surcharge to all customers. This account will be used to fund extraordinary repairs. The Commission may resolve related matters and may take this action for other utilities.

Text of proposed rule and any required statements and analyses may be obtained by filing a Document Request Form (F-96) located on our website http://www.dps.ny.gov/f96dir.htm. For questions, contact: 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-W-0075SP2)